STEPHEN DORRELL
Evidence to the Leveson Inquiry

1. I am Stephen James Dorrell. I have been a Member of Parliament since 1979; I held various ministerial offices between 1987 and 1997 and am now Chair of the Health Committee of the House of Commons. I was Secretary of State for the National Heritage from July 1994 to July 1995. In that capacity I was responsible for coordinating the Government's response to the Review of Press Self-Regulation presented to my predecessor (Peter Brooke) by Sir David Calcutt in January 1993 ("the Second Calcutt Report").

2. The Second Calcutt Report was commissioned in July 1992 to "assess the effectiveness of non-statutory self regulation by the press since the establishment of the Press Complaints Commission"[1]. It followed the work done by Sir David as Chairman of the Committee on Privacy and Related Matters ("the Privacy Committee") which reported in June 1990.

The Privacy Committee (1989-90)

3. The Privacy Committee had been established following public and parliamentary concern about "unwarranted intrusion, by the press, into the private lives of individuals"[2]. The Second Calcutt Report summarized the recommendations of the Privacy Committee as follows[3]:

    a. "Any new means of redress needed to be carefully targeted and should not range more widely than was necessary to meet existing gaps in protection;

    b. "In the light of that, the introduction of any new wide-ranging statutory civil right of "infringement of liberty", although practicable, would not then be appropriate;

    c. "The most blatant forms of physical intrusion – practices involving door-stepping, bugging and the use of long range cameras – should be outlawed;

    d. "The existing statutory restrictions on reporting should be strengthened so as to provide added protection for children and the victims of sexual offences;

    e. "The press' own arrangements for voluntary self-regulation should be revised, and strengthened as greatly as possible by the introduction of a new Press Complaints Commission; and

    f. "If the press failed to demonstrate that non-statutory self-regulation could be made to work effectively, a statutory press tribunal for handling complaints should be introduced".

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[1] Terms of Reference of the Second Calcutt Report
[2] Second Calcutt Report Para 2.1
[3] Second Calcutt Report Para 2.6

4. The recommendations of the Privacy Committee were accepted in principle by the Government and welcomed by the Opposition. The Second Calcutt Report summarized the position which had been reached on the recommendations of the Privacy Committee as follows:

    a. "No action has yet been taken on the proposed amendment of the law to provide better protection against the most blatant forms of physical intrusion (recommendations 1-4);

    b. "Of [the] recommendations concerning restrictions on press reporting (recommendations 5-8), those made about the anonymity of victims of sexual assault have been given effect, with minor modifications, in the Sexual Offences (Amendment) Act 1992. The other reporting restrictions remain under consideration;

    c. "Recommendation 9 recommended that a statutory right of reply should not be introduced;

    d. "Recommendation 10 recommended that a tort of infringement of priacy should not *then* be introduced;

    e. "Recommendations 11-23 concerned the Press Complaints Commission [which were reviewed in detail – see next paragraph];

    f. Recommendations 24-32 were to be acted on only if non-statutory self regulation failed"[4]

5. The report went on to summarize the differences between the Press Complaints Commission which had been recommended by the Privacy Committee and the body which existed in 1993 as follows:

    a. "The members of the Commission are appointed, not by a body which is itself independent of the press, but, in effect, by a body which is the creature of the industry;

    b. "There are signs that the Commission is once again asserting, as the Press Council did, a positive role for the Commission in defending press freedom;

    c. "The Commission operates a code of practice produced and monitored, not by the Commission, but by the press industry;

    d. "The industry's code of practice reduces in significant respects the protection which the Privacy Committee proposed for individuals, and it does not hold the balance fairly;

    e. "In particular, the industry's code of practice widens consideration of "public interest" and thereby significantly reduces an individual's protection;

    f. "The Commission is generally unwilling to operate a hot line;

    g. "The Commission is presently unwilling to initiate inquiries"[5].

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[4] Second Calcutt Report Para 3.14
[5] Second Calcutt Report Para 3.94

The Second Calcutt Report (1993)

6. Paragraph 2 of the Second Calcutt Report set out the principal issues which Sir David considered:

    a. "Regulation of the press. Has non-statutory self regulation since the establishment of the Press Complaints Commission been effective? Should the present arrangements now be modified; or should they be put on a statutory basis?

    b. "Better protection against physical intrusion;

    c. "The possible introduction of a new statutory tort of infringement of privacy"[6].

7. The recommendations of the Second Calcultt Report were as follows:

    a. "The Government should now introduce a statutory regime as set out in paragraphs 16.14 to 16.24 of the Privacy Committee's Report, and as supplemented by this Review;

    b. "The criminal offences proposed by the Privacy Committee [on physical intrusion] should (with modifications) now be enacted;

    c. "The Government should now give further consideration to the introduction of a new tort of infringement of privacy;

    d. "The Government should now give further consideration to the extent to which the Data Protection Act may contain provisions which are relevant for the purposes of misrepresentation or intrusion into personal privacy by the press;

    e. "The Government should now give consideration to amending the legislation on non-identification of minors in England and Wales to eliminate any inconsistencies or uncertainties, and [to provide that] that any criminal proceedings the Court should have the power to make an order prohibiting the publication of the name and address of any person against whom the offence is alleged to have been committed, or of any other matters likely to lead to his or her identification;

    f. "The Government should now give further consideration to the legislation covering interception of telecommunications with a view to identifying all significant gaps and determining whether any further legislation is needed".[7]

[6] Second Calcutt Report Para 2
[7] Second Calcutt Report Paras 9-21

January 1993 to June 1994

8. On 14th January 1993 my predecessor, Peter Brooke, made a statement to the House of Commons (Hansard 14th January 1993 Col 1067). The key points in his statement were as follows:

> "The Government accepts the case for new criminal offences to deal with specified types of physical intrusion and covert surveillance…. Subject to further examination of the details of the proposed offences…. The Government will bring forward legislation in due course"
>
> "The Government also accepts Sir David's recommendation that further consideration should be given to a new tort in infringement of privacy. We will, in addition, give further consideration to the legislation on the non-identification of minors and others, and to the legislation covering interception of telecommunications."
>
> "I now turn to Sir David's recommendation that the Government should introduce a statutory regime for dealing with complaints against the press….. The Government agrees with Sir David that the Press Complaints Commission, as at present constituted, is not an effective regulator of the press…..We also recognize the strength of the case he makes in his report for a statutory tribunal with wide ranging powers. At the same time we are conscious that action to make such a body statutory would be a step of some constitutional significance…..In the light of those considerations the Government would be extremely reluctant to pursue that route".

9. Peter Brooke's statement concluded by stating that although the Government was "extremely reluctant" to pursue the option of statutory regulation it would reach its final conclusions on this and the other recommendations of the Second Calcutt Report in the light of a report by the Heritage Select Committee and a parliamentary debate, both of which were pending, and of wider consultation with the press and other interested parties. The Select Committee Report was published in March 1993; it made 24 recommendations for action by the Government, and 19 for action by the industry, most of which covered similar ground to the recommendations of the Second Calcutt Report.

10. In July 1993 the Government issued a consultation paper which proposed a new tort of infringement of privacy which would have provided a civil remedy whether or not the infringement was made by or with a view to publication.

Draft White Paper - June 1994

11. On my appointment as Heritage Secretary in July 1994 I inherited a Draft White Paper which reflected the extensive internal debate which had taken place within the Government between January 1993 and June 1994. A copy of this Draft White Paper is provided as Attachment 1.

12. The Draft White Paper states in paragraphs 1.19 and 1.20 that the Government's key conclusions are as follows:

    a. "The Government accepts the [Select] Committee's analysis of the dilemma [posed by the need for a balance between freedom of expression and privacy] and agrees that, at the stage when Sir David Calcutt and the Committee reported, the necessary balance between these rights manifestly did not exist….."

    b. "Since that time, however, the press has shown hopeful signs of greater self-restraint, and the PCC has improved its procedures and practices. There have been some regrettable lapses by individual newspapers, and the Government is still to be convinced that the newspaper industry, through the PCC, is fully in control of its members and that we have entered a new era of wholly responsible journalism. But it considers that statutory intervention at this stage would be out of proportion and, possibly, counter productive. Nonetheless the Government would urge the industry to consider further the self regulatory improvements set out in paragraphs 2.36 to 2,39 and in paragraph 4.19…. Failure to implement these changes, particularly if any such failure coincided with further press abuse, will incline the Government to introduce, or give support to any Private Members' Bills introducing intrusion offences, a privacy tort, or both".

13. The issues raised at paragraphs 2.36 to 2.39 and 4.19 were as follows:

    "The first reservation relates to the industry's decision to appoint a Privacy Commissioner from the present membership of the PCC……The Government would again draw attention to the recommendations of the Privacy Committee for an independent Appointments Commission which would, in turn, make appointments to the PCC, and the conclusion of Sir David Calcutt's review that failure to adopt these appointment procedures had contributed to the ineffectiveness of the PCC itself" (Para 2.36).

    "The Government's second reservation arises from the apparent lack of powers to be enjoyed by the Privacy Commissioner. The Government would remind the industry that Sir David Calcutt and the Select Committee both recommended a "hot-line" which would enable the PCC (and thus also the Privacy Commissioner) to intercede directly with editors if they thought a breach of the Code was likely to occur". (Para 2.38).

    "The Government's third reservation also relates to the Privacy Commissioner's powers. The Government would urge the industry to consider setting up a compensation fund for use in cases where the Commissioner has upheld a complaint by a member of the public….." (Para 2.39)

    "In the Government's view effective self-regulation would be more likely if the scope of the industry's Code of Practice were comparable with the scope of the proposed tort.….The Government is accordingly annexing draft clauses for a new civil remedy to this White Paper". (Para 4.19)

14. The Government's position described in the Draft White Paper had therefore evolved since Peter Brooke's statement of January 1993 in the following key ways:

    a. It remained reluctant to introduce a statutory regulator;

    b. It had developed a clearer view of the improvements which it sought to the regime of self regulation operated by the PCC;

    c. Its original inclination to support the introduction of new criminal intrusion offences had weakened and was now linked to the proposal for a new tort of infringement of privacy. Both were regarded as problematic and the Draft White Paper suggested that, although the options remained open, the Government would prefer to see improved self-regulation though a strengthened PCC.

July to November 1994

15. On taking office I was conscious of several factors:

    a. I am personally hostile to any proposal for official regulation of freedom of expression;

    b. Quite apart from issues of principle, any proposal to regulate the activities of the press carries obvious political risks;

    c. I was reluctant to publish the Draft White Paper which combined a theoretical willingness to legislate (about which I was dubious) with practical unwillingness to do so (which I thought was unconvincing);

    d. I was conscious that there had been substantial debate before I took office between senior members of the government, some of whom were more sympathetic to a regulatory response than I was.

16. I therefore concluded that I wanted time to reassess the options.

17. It is also worth noting that my consideration of these issues coincided with a parallel work-stream within the department concerned with the regulation of "cross media ownership" – ie the regulatory structure which limits the ability of enterprises which operate in one media sector (eg newspapers) to own or hold substantial shareholdings in operators in another media sector (eg broadcasting). My recollection is that I accorded a higher priority to resolving the issues around cross media ownership than I did to the issues around press regulation.

November 1994 to July 1995

18. A submission dated 21st November 1994 from Paul Wright (Attachment 2) reveals that the imminent appointment of Lord Wakeham as Chairman-designate of the PCC prompted a dialogue with the PCC about the options for improving the self regulatory structure.

19. The dialogue with the PCC continued into the early weeks of 1995. Against the background of this dialogue my emerging objectives were to develop the policy outlined in the Draft White Paper so that:

    a. The Government could report that it had agreed improvements to the operations of the PCC which would justify its decision not to proceed with the establishment of any form of statutory regulator;

    b. It could also report a clear conclusion:

        i. That it intended to proceed with its commitment to legislate the proposed criminal intrusion offences; and

        ii. That it did not intend to proceed with legislation to introduce a new tort of infringement of privacy.

20. This policy position is summarized in my minute to the Prime Minister dated 2nd March 1995 (Attachment 3).

21. This minute prompted responses from three ministers (Attachments 4, 5, & 6), all of whom favoured proceeding with the policy position set out in the original Draft White Paper. Both the Lord Chancellor and the Home Secretary remained sympathetic to the case for proposed new tort and the Attorney General remained unsympathetic to the case for the proposed criminal intrusion offences.

22. On 20th March 1995 I sent a further minute to the Prime Minister (Attachment 7) setting out my response to the points made by colleagues and suggesting that there needed to be a collective decision about the remaining issues in order that a revised draft white paper could be presented to the relevant Cabinet Committee.

23. This minute prompted two detailed questions from the Prime Minister (Attachment 8) as well as further responses from the Lord Chancellor (Attachment 9), the Home Secretary (Attachment 10) which rehearsed familiar arguments.

24. On 24th April I sent a further minute to the Prime Minister (Attachment 11) which provides a summary of the state of the argument at that point.

25. This minute led to discussions at various levels between No 10 and the Department of National Heritage to agree a handling strategy which would bring the issue to a conclusion. The result of these discussions was that:

    a. I wrote to Lord Wakeham on 2nd June (Attachment 12) setting out developments of both the structure of the PCC and the wording of the Editors' Code which the Government believed were desirable;

    b. I circulated a memorandum together with a draft White Paper (Attachment 13) for consideration by the relevant Cabinet Committee – EDH (95) 9.

26. The Cabinet Committee met on 15th June; the minutes are appended as Attachment 14.

27. Further consideration of the issue was disrupted by events surrounding the Prime Minister's decision on 22nd June to resign his position as leader of the Conservative Party. Following his re-election, I was transferred to the Department of Health on 5th July.

White Paper 17th July 1995

28. The result of these deliberations was therefore published on 17th July 1995 by Virginia Bottomley – my successor as Secretary of State. The key points of this White Paper were:

    a. "The Government does not find the case for statutory measures in this area compelling. It believes that, in principle, industry self-regulation is much to be preferred".[8]

    b. "The Government has long recognized that there is, in principle, a case for the introduction of [new physical intrusion] offences…. The Government has however so far been unable to construct legislation which in practice would be sufficiently workable to be responsibly brought to the statute book".[9]

    c. "In considering the results of the consultation [on the feasibility of introducing a new tort of the infringement of privacy] the Government draws two conclusions. First it does not believe there is sufficient public consensus on which to base statutory intervention in this area. Secondly it strongly prefers the principle of self-regulation….It therefore has no present intention to legislate a new civil remedy".[10]

[8] Cmnd 2918 Para 2.5
[9] Cmnd 2918 Paras 3.3 and 3.4
[10] Cmnd 2918 Para 4.13

29. The White Paper of 17th July also contained an exchange of letters between Lord Wakeham and Virginia Bottomley in which Lord Wakeham set out the progress which he believed the PCC had made in developing the structure of self-regulation, and Virginia Bottomley set out the government's continuing concerns.

Conclusions

30. I remain deeply sceptical about the desirability of statutory regulation in this area. Much of the recent acknowledged wrongdoing is already against the law and I am concerned that an attempt to create a stronger regulatory framework which addresses these failings would be wrong on two counts:

    a. Firstly it would fall foul of all the conventional arguments against statutory regulation of the press in a free society; and

    b. Secondly it would be ineffective because it would be based on the belief that failings of culture, practice and ethics within an organization can be remedied by external sanction.

31. I believe that the second of these objections is the more fundamental. Recent experience has suggested a willingness on some occasions in some media organizations to "turn a blind eye", "not ask questions" and "take short cuts" to achieve journalistic objectives. This experience does not reflect a failure of regulation, or of law. It reflects a failure of management within organizations which are fundamental to the operation of a successful free society.

32. I believe that owners and managers of media operations should be challenged to demonstrate how they plan to strengthen their own organizations to ensure that these cultural failures are addressed internally. The PCC has a role to play in defining acceptable practice (through the Editors' Code) and providing an external review of performance against the Code. But this approach addresses the symptoms of the problem, not the underlying cause. The bigger challenge for the industry is to show how it intends to ensure that organizational cultures change in ways which preserve the benefits of a highly competitive journalistic environment but insist that journalistic competition respects the ethical standards about which journalists often, and rightly, write.

SD – 2nd May 2012