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Finally: an ombudsman, press council and code of conduct for Ireland

The newly formed press council in Ireland is busy dealing with complaints relating to accuracy and privacy. Here Michael Foley traces the complex, historical background to the launch. And he argues that there is now extra pressure on the council and the industry to make the regulatory regime work as the Irish government threatens to introduce major privacy legislation

By Michael Foley

Europe's most recently established press council is not in a newly democratic former Soviet satellite or former Communist country, but Ireland. The press council, which some newspaper editors, privately, insisted was not necessary, is reported to have been busy with most complaints relating to clauses of the code of ethics relating to truth and accuracy and also privacy. It has also lost one of its members, with the resignation of the independent appointed Mr John Horgan, who left the new council following a majority decision not to publish minority opinions in the case of complained adjudicated by the Council.

While Ireland had no press council or ombudsman system, its journalists were governed by codes of conduct. The vast majority of journalists in Ireland are members of the National Union of Journalists and so sign up to the union's code. However, just as in the Great Britain, there is often a view that at best the NUJ's code offers a guideline for journalists and that its policing is inadequate. Broadcast journalists have always been subject to Broadcasting legislation through the Government appointed Broadcasting Complaints Commission.

At the time of writing the new Ombudsman has made decisions in 20 cases. 12 of his decisions were appealed to the press council, eight of which were rejected due to there being 'insufficient grounds to admit the appeal', while in the other cases, the council upheld the ombudsman's decision. The total number of complaints received up to June 2008 was 193, with 102 ruled to be outside the remit of the Ombudsman. Three cases were mediated with the Ombudsman deciding on 20 cases. According to statistics published by the Press Ombudsman the vast majority of cases, 63, were under the truth and accuracy clause in the code of conduct, with privacy next, at 28, and distinguishing fact and comment third place with 22 cases. Fairness and honesty attracted 20

complaints, respect for rights, 13 cases while issues relating to court reporting and also incitement to hatred both had eight complaints while three complaints relating to reporting issues concerning children. (see Press Council of Ireland at http://www.pressombudsman.ie/v2/pressombudsman/portal.php?content=_includes/statistics.php)

The Irish press council, ombudsman and code of practice was a long time coming, but after debates going back to the 1970s, Ireland has finally joined the rest of Europe with a press council and press ombudsman that takes something from a number of existing regulatory bodies, in particular those of Scandinavia and from the British Press Complaints Commission.

The new press ombudsman, Professor John Horgan¹, and the 13-person press council opened its city centre premises in Dublin following a launch which was addressed by the Minister for Justice, Brian Lenihan last January. At the launch the Minister announced that the privacy legislation, which has been approved by Cabinet, would be parked, 'in order to allow the Press Council the opportunity to prove its effectiveness in defending the right to privacy from unwarranted intrusion by the media.

'I don't think I am breaching any state secrets when I tell you that not all my colleagues had boundless enthusiasm for this approach. I would not for a moment dismiss their reservations and, indeed, concern about media intrusion is not exclusive to those of us involved in politics.'

The debate in Ireland about standards begins, coincidentally, more or less with the publication of the first Irish tabloid newspaper, in the modern sense, in the early 1970, the *Sunday World*, Seven years later RTE's² *Politics Programme* examined the need for a press council, saying a critical look at Irish newspapers was 'long overdue'. The reaction among editors and proprietors was mixed, though Journalists tended to favour the idea. Concerns, however, really did not begin in earnest until the 1990s, due to a combination of high awards in libel cases and the publication of a report from the Law Reform Commission recommending radical reforms of Irish defamation law, which had not been touched since 1961.

The report became the basis of a campaign by the proprietor's organisation, the National Newspapers of Ireland (NNI) sometimes in conjunction with an uneasy partner, the National Union of Journalists.

¹ Dr John Horgan was professor of journalism at Dublin City University and the author of a number of book relating to media history and political biography. He is a former Labour Party member of the Irish Parliament and former member of the European Parliament. He was for many years an eminent journalist, as the education correspondent of The Irish Times and also the newspaper's religious affairs correspondent. He is a life member of the National Union of Journalists.

² RTE is the Irish public service broadcast organisation.

However, before that the NNI commissioned two media law academics, Kevin Boyle and Marie McGonagle, to write a report on *Press Freedom and Libel*. That report was published in December 1988. It was the first attempt to seriously address issues relating to libel, complaints within the context of press freedom in Ireland and framed the debate for many years.

In it Boyle and McGonagle outlined the problems with the system of libel in Ireland and made recommendations:

Reform of the Defamation Act, 1961. A new Defamation Act which would abolish criminal libel, provide a statutory definition of defamation and overhaul the existing defences is recommended. A clear distinction should be made between public and private plaintiffs, and consideration should be given to removing the presumption of falsity traditionally enjoyed by plaintiffs in defamation actions. (Report on Press Freedom and Libel, 1988, Boyle and McGonagle page 1)

The NNI were mainly concerned with the level of awards in libel cases, but the report did touch on the responsibilities of newspapers themselves: ‘Newspapers have been concerned about the implications of large awards by juries and their effect on the economic viability of the newspapers, but there is persuasive evidence that newspapers themselves carry some of the responsibilities’ (op cit p 39). The authors suggested a system whereby complaints could be dealt with in each newspaper. ‘At a minimum it requires the giving of responsibility to one person with secretarial back-up.’ (op cit 41). It looked at the development in the US of the newspaper ombudsman or readers representatives:

The role of such a person is one of representing readers, receiving, investigating and responding to complaints, alerting all relevant newspaper staff about complaints, and in some cases also acting as an in-house and public critic of the newspaper, while also defending it when warranted (op cit 41)

The press council was just one idea investigated in the report. It outlined some of the problems the authors believed would need to be addressed, the nature of the representation, the need for journalists to be included, would newspapers be represented based on their circulation. Finally the authors wondered if there would be sufficient volume of complaints to justify a press council (op cit p 51).

In 1989 the NNI introduced a readers representative in all its member newspapers. Two years later the Law Reform Commission published its report, which was welcomed by the media, both print and broadcasting as well as proprietors and journalists.

In 1995 Boyle and McGonagle revisited the area and were again commissioned by the NNI to review the workings of the readers representative system. In that report, *Media Accountability: the Readers Representative in Irish Newspapers*, the authors began by

lamenting the fact that the report of the Law Reform Commission was not even debated by the Irish Parliament.

The authors were still suggesting that a press council was not the answer in Ireland:

...a press council, such as the former British Press Council, is not the answer in Ireland. In light of the data presented in this study, there is no serious problem of invasion of privacy to be addressed or policed by a press council or other such body in this country. (Boyle and McGonagle, 1995 p34)

The report was published as the Irish newspaper scene was on the cusp of change. Boyle and McGonagle were prescient enough to include a reference to the British press in Ireland. Irish newspapers were very different from the British tabloid press, they said, in that they were 'more restrained' (op cit 34).

However, the danger is that if Irish papers do not show that they have put their own house in order and have an effective system in place for readers redress, they may be equated in the public mind with the excesses of the British tabloid, leading to calls for a Code of Ethics or a Press Complaints Commission along British lines. (op cit 34)

This 'unfair' equation of Irish newspapers with the British tabloids 'is even more a risk as a result of the fact that these British tabloids are now making inroads into the Irish market.

Some have set up Irish offices in Dublin and several are publishing Irish editions. There is a fear that indigenous Irish newspapers will find it increasingly difficult to meet this competition. (op cit p 35)

Despite the positive nature of the Boyle and McGonagle report there was also a view that the Readers Representative was more of a public relations exercise to show Government that the newspapers were willing to do their bit if the Government would reform libel. The former editor of *The Irish Times*, Conor Brady, in his memoir, *Up With the Times*, writing of the Readers Representatives said: 'In reality there was more appearance than substance to the scheme in some newspapers' (Conor Brady *Up With the Times*, Gill & Macmillan 2005 p 170).

In at least one instance the readers' representative was the editor's secretary. In another case it was a junior staff member from the personnel department. Few of the reader's representatives had the influence or access from the top to bottom within the newspaper that were essential of the scheme were to succeed (op cit p 170).

The Irish Times did take the system seriously and appointed a veteran journalist who was also an assistant editor as reader's representative. He also had an assistant. A regular feature from then in *The Irish Times* has been the corrections and clarifications column.

Despite the reservations of Boyle and McGonagle the NNI did offer a press council, more or less based on the British model, the Press Complaints Commission, as a quid pro quo for libel reform. NNI even hired a retired parliamentary draftsman to write a proposed Defamation Bill, launched with some fanfare, but, unsurprisingly, ignored by members of the Dail (Irish Parliament).

If the proposed Defamation Bill looked like a public relations stunt, so was the decision to print and distribute a code relating to privacy. The code was launched and thousands printed, but most working journalists never saw it, read it or knew of its existence. The NNI code could not be enforced and it is doubtful if it was ever intended to be anything more than an indication of the industry's interest and seriousness in standards, taste and especially privacy.

The NNI maintained throughout the 1990s that because of the 'draconian' libel laws, it was impossible to establish a press council as it might mean newspaper editors were admitting legal liability if they apologised. No reform of libel, no regulatory system.

On May 3rd 1999, on World Press Freedom Day, the NUJ, the NNI and the Regional Newspaper Association of Ireland (RNAI) issued a joint statement calling, yet again, for reform of the libel laws. This time there was a difference in the now routine demands for libel law reform. Firstly it was issued jointly by the trade union and the employers' organisation, and, secondly, the NNI promised to pay to establish and maintain a press ombudsman. In a statement it said: 'In recognition of the need for an independent mechanism of complaint to which individuals could take their grievances, NNI has agreed to support the recommendations of the Commission on the Newspaper Industry for the appointment and funding of a wholly independent Ombudsman to investigate complaints of breaches of press standards.' The statement added as a warning to Government that 'in order for this office to operate effectively, however, the libel laws must be reformed.' It was a smart political move, designed to make the government responsible for falling standards and showing that the industry was willing to fund a body. It was now up to the government to do its bit and that without major changes in the libel legislation all the good intentions of the newspaper industry would founder.

Meanwhile, from the mid 1990s, the British press, especially the tabloids, were making inroads to the Irish market. The booming Irish economy, and the decline of sales in the UK made the Irish market increasingly attractive, and so Irish readers were invited to buy the 'Irish' *Sun*, 'Irish' *Mirror* and more recently the *Daily Mail*, Irish edition, complete with 'Irish' in green between Daily and Mail. The *Sunday Times* also targeted the Irish market. Despite some rumours that Rupert Murdoch's News International was interesting in buying some or all the Irish Press titles, it became clear rather than battle it out with Independent Newspapers and its chairman, Tony O'Reilly, who had bought 24 per cent of the Irish Press, News International decided increasing circulation of its existing titles in Ireland was a better strategy. O'Reilly's own tabloid strategy was to launch the *Star*, fifty per cent owned by Independent News and Media and the *Express*. It has a

decidedly more local Irish flavour and constantly proclaims that it is an Irish newspaper rather than an Irish edition.

At the same time a number of British media interests also bought into the weekly regional newspaper market and local radio.

There have always been sales for Irish newspapers in Ireland. The reasons for this are complex and relate to Ireland's colonial and post-colonial position vis-à-vis the media. The dominant language in Ireland is English and British television, often one of the major sources of news and stories for tabloid newspapers in particular, has been available in Ireland via very high aerials, over-spill from Northern Ireland and then cable and now satellite since the 1960s. These were among the more obvious factors that made Ireland increasingly attractive as a marketplace for British publications and British media generally. This absorption of the newspaper media of another country is very unusual and rarely happens; Canadians do not buy newspapers from the US, or Belgium French or Dutch newspapers. The only example this writer could find of one country buying a significant number of newspapers of another country was of Russian newspapers bought by Ukrainians.

As intimated by Boyle and McGonagle those newspapers brought a different newspaper culture to Ireland. This was not always a bad thing; there is little doubt the Irish media could be somewhat deferential, which could also be interpreted as a societal norm, reflecting the fact of Ireland being a small society. However, there were stories after stories where journalists working for "Irish" editions pushed the boat out; they asked the Taoiseach (Irish prime minister) about his marriage break down, and publishing accounts of celebrity marriage infidelities. There were also increasing examples of the indigenous press beginning to follow the lead given by British tabloids. Stories that had circulated as gossip or rumour were now appearing in newspapers. The private lives of politics and public figures were considered fair game. One former government minister said the publication of a story concerning her son getting into trouble at school was the reason she decided to retire from politics. It appeared as if Irish newspapers were concerned they would lose out in circulation terms unless they also adopted a more tabloid agenda.

Meanwhile as Ireland changed and as the media investigated corruption and scandals, either in public life or in institutions such as the Catholic church, demands from editorial writers for public accountability and for public figures to be subject to scrutiny also brought demands that this be extended to the press itself.

Conor Brady stated that newspapers:

Played an important role, often with courage, in the exposure of corruption and other evils of sexual abuse of the young and vulnerable. It has worked effectively, in undeclared alliance, with the elected representatives, lawyers judges and other figures, to reveal the bribery and corruption that infected elements of the political and business communities in the closing decades of the 20th century.(op cit 239)

However, he continued saying that there was also another side of the role of newspapers since Boyle and McGonagle reported on Press Freedom:

...in some instance, allowed itself to be abused by proprietors and publishers, intent on pandering to the lowest tastes of voyeurism and character assassination. In other instances it has dishonoured some of its fundamental principles and time-tested precepts. Sometimes this has arisen through laziness and indifference. Sometimes it has happened in order to satisfy the demands of profit-driven editors and publishers.' (op cit p239)

And then there was former justice minister Michael McDowell, a man who mixed right wing views on the economy, with a liberal view of some social issues. He established a committee, which recommended reform of libel and a statutory press council. Following the uproar from the media, McDowell said he had no intention of establishing a statutory press council, but an independent council, recognised in law, with legal protections to do its job. As Conor Brady said: 'Calls for reform of defamation have been in the air for almost two decades. But it took the threat of a state-appointed press council from Michael McDowell to have the Mitchell group brought into being and activated' (op cit p 249)

So the media got down to working out what sort of press council would be agreeable to Irish proprietors, the British press, regional press and the National Union of Journalists, under the chairmanship of Dr Tom Mitchell, a former provost of Trinity College, Dublin. McDowell meanwhile prepared his legislation.

The industry looking at the press council hit a number of obstacles. The British press in Ireland were against any press council, but were more or less forced to accept or face a disaster. They were not enamoured with having to work alongside the NUJ. The NUJ favoured the sort of ombudsman model found in a number of Scandinavian countries. The proprietors preferred the British model. The result has been a mix of the two. The model proposed has six members from the industry, including a representative of the NUJ and seven representing civil society. The ombudsman is a former professor of journalism, who was also a highly respected journalist and politician. A code of practice has been drawn up and agreed. The proposed reform of the defamation laws are based fundamentally on the report of the Law Reform Commission drawn up back in 1991. There is one significant difference, the legislation, when it is finally agreed by the Oireachtas (Irish Parliament) will include a legal recognition of a press council. That caused huge problems for the some proprietors, including News International, but it will give protection to the Council, ensuring no one group can take it over. However, the council cannot be appointed by Governments. The industry members are nominated by their own groups while the civil society members had to apply and be selected by an independent body following an interview.

McDowell found many of his cabinet colleagues were against any changes in libel that might be beneficial to the press and insisted that any reforms of defamation be

accompanied by privacy legislation. McDowell did not favour this and suggested that the press council be allowed to operate with the reformed libel laws and that privacy be held back.

The industry went ahead with the establishment of the press council and ombudsman who would work with a code of practice drawn up by the industry (see http://www.pressombudsman.ie/v2/presscouncil/portal.php?content=_includes/codeofpractice.php), but when the legislation arrived in the upper house of the parliament it faced a filibuster. It fell when a general election was called in May 2007.

Ironically, the industry has now established a press council without the changes in libel, it claimed were so necessary. The new justice minister has promised to reintroduce McDowell's legislation and also to park the privacy bill. We await to see how quickly it can progress through parliament.

Protecting press freedom is not something that comes naturally to Irish politicians, and this government has a particularly poor record, especially when one sees what they did to the Irish Freedom of Information Act, which was amended in such a way as to offer little scope for journalists and a lot of protection for government. And now, of course, it is seeking privacy legislation, despite existing constitutional protections of privacy. The pressure is now on the new Council and the industry to make the regulatory regime work because as the justice minister, Brian Lenihan warned at the launch: "The Press Council will be relying on its moral authority and I do not mean in any way to slight that authority. But, be warned: there are many sceptics out there. You would do well to prove them wrong at an early date."

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