John Tulloch

What moral universe are you from? Everyday tragedies and the ethics of press intrusion into grief

Nowhere is the conflict between the professional values of journalists and the values of ordinary people more apparent in the UK than in press coverage of families grieving for victims of accidents or crimes. Attempts from the beginning of the 1990s to forbid press intrusion into grief or shock have been steadily resisted by the British Press Complaints Commission, whose voluntary Code of Conduct requires journalists to make inquiries and publish material with "sympathy and discretion". Editors argue that such inquiries are in the interests of accuracy and may be welcomed by relatives but the voluntary code fails to address the problems posed by sensational journalism and its lack of compassion and empathy for grieving families.

Key words: media ethics, press conduct, grief, intrusion, compassion

The quote in the title was attributed to Labour MP and Minister for Europe Denis McShane. It was allegedly spoken to a journalist who tried to question him and his former partner Carol Barnes as they arrived, in obvious distress, at Melbourne airport in March 2004 following the death of their daughter Clare in a skydiving accident. Later that week the Sun, Daily Mirror, Daily Express, Daily Mail, Evening Standard and Daily Telegraph printed long–lens photographs of the couple grieving in the field where Clare Barnes' body had been discovered. (Greenslade 2004)

Do journalists inhabit a different moral universe to the person in the street? It is a truism in debates about media ethics that journalists experience a conflict between the canons of generally accepted moral behaviour assumed to apply to all reasonable "ordinary people" in western societies and a body of practices and values based on the assumption that journalists have a unique role and mission in society. As Stephen H. Daniel put it: "The values of truth–telling, honesty and fairness which we apply to communicators in general fail to exercise a compelling force over many journalists other than in the codes to which they give lip–service. This is not to say that journalists have no ethical standards; rather it says that the working ethical standards of the journalist are determined by what he [sic] sees as contributing to his own (and ultimately, the public) good through the survival of his paper, television station or job." (Daniel 1992: 51–52) To this list of values which fail to exercise "compelling force" might be added compassion and the ability to empathise with another human being. Many journalists are suspicious of the claims of compassion as a form of post–modern narcissism which prioritises feeling over analysis in a populism of shared emotion. According to the investigative journalist Tessa Mayes:

> "The implication is that news reporters are less humane or fail to empathise with victims of tragedies if they attempt to be forensic in gathering the news. Sadly, news reporters are more likely to be judged on their personal morals and what they feel about an event, rather than on the qualities of factual accuracy and analysis." (quoted in Keeble 2001: 140)

By implication, empathy and humanity are placed in the sphere of "personal morals" against the professional requirements of "factual accuracy" and "analysis". Of course, although Mayes assumes she is standing against a tide of woolly thinking, her position has the support of most accredited codes of journalistic conduct, including the Code of Conduct operated by the British Press Complaints Commission, where the first clause is not about respect for human rights or press freedom, but accuracy:

> "The Press must take care not to publish inaccurate, misleading or distorted information, including pictures…" (PCC 2004b)

Within the lifetime of today's pensioners, profound changes have occurred in our public attitudes towards grief and mourning and our social practices may seem impoverished when compared to the past. Geoffrey Gorer's profoundly influential study of attitudes to death and grief in the early 1960s was based on a survey of 1,628 people undertaken in May 1963. Nothing had changed about the emotional experience of grief, which he described as "a deep, complex and long–lasting psychological process with physiological overtones and symptoms" (Gorer 1965: 53) but its social expression had altered out of recognition. He concluded that, compared to their grandparents, "the majority of British people are today without adequate guidance as to how to treat death and bereavement and without social help in living through and coming to terms with

the grief and mourning which are the inevitable responses in human beings to the death of someone they have loved" (ibid: 110).

This was a huge change from the position at the beginning of the last century when, with few exceptions "everybody knew how it would be appropriate for him or her to behave and dress when they suffered a bereavement and how to treat other mourners" (ibid: 63). Writing a few years later, the French historian Philippe Aries observed that, in Britain and northern Europe, funeral rites had been reduced to "a decent minimum necessary to dispose of the body", that ceremonies were "discreet and avoid emotion" and that, in agnostic England, "too evident sorrow does not inspire pity but repugnance; it is a sign of mental instability or of bad manners: it is morbid" (Aries 1976: 90).

This still remains broadly true, despite the explosion of support groups, charities and the counselling industry since Gorer and Aries completed their studies and despite the Diana phenomenon of mass popular mourning. As a society we still observe a recognisable body of practices and have a general sense of what constitutes proper behaviour, even if the rites themselves are maimed, truncated and partially evacuated of meaning. We offer "sympathy" and "support" by means of cards, notes, brief calls and flowers. We offer help, even without the expectation that it will be accepted. We don't want "to intrude" unless invited. In fact, we may practise avoidance by crossing the road. We try to speak well of the dead. We may take part in a public ritual – in agnostic Britain about the only time now that most of us enter a church or temple. We are careful of the feelings of the bereaved. We practise discretion. We may not wear a black tie or dress at the ritual but our choice of colours will be muted and our dress will be whatever we recognise as formal. Appearances are still important. And we can recognise behaviour that appears to breach these mores and register distaste or revulsion.

For the press, the most dangerous debates about conduct (in the sense that they may involve widespread public distaste and revulsion and the threat of legislation) occur when journalists are seen to be transgressing a deep–rooted, popular social more. During the controversy about press self–regulation versus privacy legislation in Britain in the early 1990s, one battleground was grief. Both the Calcutt Committee and the House of Commons National Heritage Committee heard harrowing evidence of systematic harassment and doorstepping by reporters and photographers of the relatives of accident or crime victims. The MPs reserved their harshest language to describe the treatment of the families of servicemen killed in Northern Ireland:

> "Despite the provision in the [Press Complaints Commission] code the press started telephoning at 11 o'clock at night and kept the phone going all night. The family was also subjected to persistent doorstepping. And, in what seemed to the committee to be a callous and totally unacceptable breach of the code, as well as more general canons of decency and compassion, the new widow, having been persuaded to give an interview in order to reduce press pressure, was asked by the accompanying photographer to 'look like a grieving widow'" (National Heritage Committee 1993).

"Callous", "unacceptable" and breaching "decency and compassion": why does the demand "look like a grieving widow" (which sounds too neat, too convenient to be an actual quote) draw such moral obloquy? After all, although lacking in discretion, as a good professional the photographer was surely visualising what the reader would see and aiming to get the appearance to conform to the presumed reality of widowhood. Of course, the crass imperative quality of the demand ("hurry up here") certainly seems like an appalling lapse of manners and decorum. But another reason for revulsion is presumably that the demand seems to doubt the authenticity of the feeling undergone by the subject ("you don't really look like a grieving widow"). This tension between the surface of appearances and an inward state of pain that cannot easily be communicated without the suspicion of insincerity or play–acting brings an early, angry response from Hamlet when his mother suggests that death is "common" and that he really ought to start getting over the death of his father:

> "Tis not alone my inky cloak, good mother,
> Not customary suits of solemn black,
> Nor windy suspiration of forced breath,
> No, nor the fruitful river in the eye,
> Nor the dejected haviour of the visage,
> Together with all forms, moods, shapes of grief,
> That can denote me truly. These indeed seem,
> For they are actions that a man might play,
> But I have that within which passes show;
> These but the trappings and the suits of woe."
> (Shakespeare 1963 Act 1, Scene ii lines 77 – 86)

Hamlet's fierce rejection of "seemings" suggests a third motive underlying both: a revulsion against being "played" upon and turned into a stereotype as someone else's subject or thing for the interest and profit of an audience – a vivid example of that process known as reification.

Another controversy over media intrusion into grief arose in November 1993 following a crash on the M40 involving the death of 11 pupils from Hagley Roman Catholic High School. The morning after the crash the press were on hand outside the school to document the explosion of grief as the pupils learnt of the death of their friends. This was not, by all accounts, a media scrum but a successful exercise in disaster management, with the press corralled a respectful distance from the school and a team of counsellors drafted in by the education authority to do what they could to handle the distress. A media strategy was in place – the press was kept at arms length and didn't get a scoop but in return was supplied with a

story salted with some heartrending personal details and extremely powerful images. Most of the national newspapers carried a particular iconic and strangely impersonal image of grief – one pupil, her face almost a literal representation of the ancient mask of tragedy, clutching a friend to her. Alongside a mosaic of smiling school shots of the victims, released by the authority, the effect was overwhelmingly sad. But some people found the fashioning of two young people into an icon of grief not just distasteful, but a cynical invasion of privacy. One Guardian reader was revolted and wrote a stinging letter:

> "If the publication by the Mirror Group newspapers of 'those' photographs of the Princess of Wales working out at a gym] is held to be an unacceptable and unwarranted invasion of the privacy of the subject, by what twisted set of moral values is it possible to justify the publication of a large close up photograph of two (clearly identifiable) young schools girls as they hear of the death of 11 of their friends in the M40 minibus crash?" (20 November)

Any journalist could fashion a reply. The story raised genuine public interest issues about road safety, accident black spots, teachers taking on additional duties and the need for new guidelines for school trips, such as having a relief driver. Across the nation, millions of people were shocked and saddened and anyone who had waited for a child to return from a school outing could identify with the families. If catharsis was needed, the press had fashioned a masterly image.

But whatever the merits of allowing the nation to sympathise vicariously, the unanswerable fact remained that the image was based on two pupils whose consent to become a brief national icon could only be notional. Why should their grief become a public possession? In the light of abundant evidence of much worse behaviour, Calcutt had drawn up a stringent clause for the editors' Code of Conduct in 1990 which forbade any intrusion into grief or shock (Robertson and Nicol 2002) and was designed to hold editors to account for sending reporters to question relatives. Unsurprisingly, the MPs of the 1993 National Heritage Committee investigating privacy and media intrusion (National Heritage Committee 1993) supported his recommendation that the clause dealing with grief in the Editor's code should state: "The press should not intrude into personal grief or shock, in particular in the aftermath of accidents and tragedies."

But this has proved to be, alongside a privacy law, one of the great non–negotiables for the British press. Hotlines for complaints, lay members on the PCC to sit alongside editors, limited third party complaints, tough guidelines to protect children – all have been conceded over the last 10 years. But grief has proven to be a sticking–point that editors have refused to countenance. In fact, the Editor's Code Committee of the Press Complaints Commission has stuck by a clause which states the opposite: "In cases involving personal grief or shock, enquiries must be carried out and approaches made with sympathy and discretion."

Enquiries and approaches must be made. So far the only change to this clause (now Clause 5 in the revised code) was added in January 1998 in the febrile period following the death of Diana, Princess of Wales, when what seemed like a change in public sensibility, the appearance of mounting popular support for privacy legislation and widespread public revulsion against paparazzi exacerbated the already calamitously low public esteem in which newspaper journalists were held. The emotional climate is memorably recollected by Neil Ascherson, wandering down the Mall:

> "It was one of the worst moments for Britain's tabloid press. The people on the Mall had no doubts about who had killed Diana. 'She was hounded to death by the media,' they told me over and over again. But you could not find a syllable of this huge popular verdict in the tabloid newspapers. Terrified, the editors suppressed it and changed the subject to the failings of the Royal Family" (Ascherson 2002: 126–130).

One consequence was a series of panicky revisions to the code. These included an extension of the accuracy clause to deal with photo manipulation, a revision to the clause on harassment to include paparazzi–style persistent pursuit and an extension to the clause on the protection of children's privacy to all children while at school (with Princes William and Harry in mind). The PCC argues that collectively these revisions led to "perhaps the toughest set of press regulations anywhere in Europe" (PCC 2003b). One sentence was added to Clause 5 to cover publication: "Publication must be handled sensitively at such times, but this should not be interpreted as restricting the right to report judicial proceedings." But this clause has been seen as a blank cheque by journalists who have opened it up to a wide range of interpretation. Take, for instance, the evidence from this ruling:

> "Mrs Dorothy Yeomans complained to the PCC that an article published in the Rhondda Leader on 15 January 2004 headlined 'Starving pet starts to devour pensioner' was insensitive at a time of grief in breach of Clause 5 The article reported the recent death of a man who had collapsed in his home. His sister complained that the article was distressing and included unnecessarily sensationalist details. The newspaper appreciated that the complainant was obviously distressed by her brother's death. However, it said that its enquiries – which were based on information provided by a member of the public and then confirmed by two sources – were made with sympathy and discretion. Given the unusual circumstances of the case, it would have been easy to publish a sensationalised article, but the newspaper believed that the construction of the story and its headline had been handled sympathetically and with appropriate sensitivity" (PCC 2004a).

Describing the headline as sensitive strained the credulity even of the Press Complaints Commission and the

Rhondda Leader was duly rebuked for "the overall tone and gratuitous inclusion of some of the detail" in the article. The PCC upheld the complaint under Clause 5 but qualified the judgement by noting that the article was published before the funeral – implying that a longer time lapse would have led to a different judgement. A further qualification was that the details had not been put into the public domain – implying that if there had been an inquest the newspaper would have been covered by its right to report judicial proceedings unless instructed otherwise.

This judgment and others like it under Clause 5 prioritise grieving family members as "victims" – members of a class of vulnerable people which includes children, patients in hospital, victims of crime and discrimination – and such protection is described by the PCC as being "at the heart of the Code of Practice" (PCC 2003b: 13). This has evolved as a consistent rhetorical strategy. Whatever its merits as an accurate description of the function and operation of the code, the rhetoric serves two extremely useful purposes: i) it implies that people who have a problem with the press are a minority: a vulnerable species who must be shielded by a friendly public–spirited body; a body "with a heart" and ii) it tends to deflect the argument that such people might have rights as citizens. The continuing political agenda here is to defeat proposals for a privacy law and slow the evolution of judicial interpretations of the Human Rights Act in the direction of a judge–built law of privacy. This political project is part of a general role the PCC has developed in acting a propagandist for voluntary regulation and against legal restrictions on the press: something described by its current chairman, Sir Christopher Meyer, as "acting as a shock absorber between a free press and a fractious establishment" (PCC 2003c).

Complaints about press intrusion into grief or shock 1994–2003

Year	Total complaints %	Complaints re intrusion into grief %	Adjudicated complaints re intrusion into grief	Upheld
1996	3023	1.3	2	1
1997	2944	2.0	4	1
1998	2505	3.3*	8	5
1999	2427	5.6	4	3
2000	2275	4.5	6	2
2001	3033	4.1	2	0
2002	2630	6.0	2	1
2003	3649	5.7	2	2

Source: Press Complaints Commission

In fact, the number of complaints to the PCC about intrusion into grief or shock had been rising from a low level before 1998 but in that year jumped significantly from 2 per cent to 3.3 per cent out of a total of around 2,500. (See Table) Meanwhile there had been a marked decline in complaints about accuracy – down from 73 per cent of all complaints in 1993 (PCC 1993) to 56.3 per cent in 2002 – and an increase in complaints under all the clauses covering privacy (including Clause 5 along with Clauses 3–4, 6–7, 9–10 and 12 of the code) to 23 per cent (PCC 2002). The commission claims that more than 90 per cent of complainants are "ordinary people". (PCC 2003a) However, as the PCC's mission is expressly to mediate, only a tiny fraction of these complaints are actually adjudicated by the commission (see Tulloch 1998). During the annus mirabilis of 1998 an unprecedented total of eight complaints about intrusion into grief were pronounced on and five upheld. Over the next two years a further ten complaints were adjudicated and five upheld. Although the total proportion of complaints under Clause 5 has continued to increase (up from 1.6 per cent in 1996 to 5.7 per cent in 2003) the number of adjudicated complaints has now fallen back to just two a year from 2001.

After this flurry of activity, the PCC, having seen off a law on privacy, now appears to feel that it has established a form of "case law" covering complaints, including intrusion into grief. Indeed, in 2004 for the first time it began to print a list of "relevant precedents" beneath each adjudication. The following principles governing intrusion into grief have been enunciated:

- newspapers and reporter must not break news of death to relatives (McKeown vs Newcastle Evening Chronicle 1997);
- reporters must not step into a property without permission (Clement vs South Yorkshire Times 1998); recent deaths must not be treated in a flippant or gratuitously humorous way (Napuk and Gibson vs FHM 1999);
- "recent" seems to mean a lot less than a year (Judith Tonner vs News of the World 2002);
- close relatives of deceased people are particularly vulnerable in the "immediate aftermath" of a death and certainly before the funeral (Yeomans vs Rhondda Leader 2004);
- while it is acceptable for newspapers to publish

> criticisms of the recent dead in obituaries, newspapers should ensure they are not handled in an "insensitive fashion" (Kellner vs BMJ 2004) (PCC 2004).

Clause 5 and its accompanying "case law" is now seen by the PCC as a mature statement of principle and the most that the press should concede. In Clause 5 cases the PCC stubbornly defended the principle of contacting families (see, for example, Clement vs South Yorkshire Times, Maude vs Derby Evening Telegraph PCC 2004a). Thus, a robust defence was mounted when editors gave evidence to the House of Commons Culture, Media and Sport Committee in February 2003. This attacked the "widespread misconception that all approaches by the press to the bereaved are inherently intrusive" (Editors' Code of Practice Committee 2003 paras 4.19–4.21).

Defending Clause 5 and the practice of contacting bereaved relatives – known in the profession as the "death knock" – the editors argued that:

- death can allow relatives "to honour the life that has been lost" and a report can be a kind of memorial;
- many details of a person's life can only be known by their closest family, particularly where that person is not a public figure;
- funeral directors and clergy often get facts wrong – talking to close family is the only way to ensure that details are accurate;
- although some families may find the press intrusive, others (particularly older people) may welcome reporters who make inquiries sensitively.

Are these weasel words? The editors' argument captures some real dilemmas for the conscientious reporter. It eschews sensationalism and focuses on the caring celebration of a life by means of a report or obituary rather than the exposure of disreputable or upsetting detail. It invokes community and a world of responsible local newspapers. To an interesting extent the editors' position is backed up in Geoffrey Gorer's study: in the general collapse of formal mourning practices, he found a continuing role for the local newspaper in acknowledging a life: "When anything had been written about the deceased in the local newspaper this was always referred to with gratification" (Gorer op cit: 62).

What it fails to address is the messy world of the accident or tragedy, the seizing on details and graphic images, the pursuit of relatives of crime victims, the relentless doorstepping of families. In other words – the world of contemporary sensational journalism. It is a world away from the Rochdale Observer reporting a murder in 1999:

> "The complainant explained how upsetting the description of the deceased injuries had been to the family, to whom the chosen wording, including three references in a short article to 'stomach cut open' and two to 'guts hanging out' had been cruel and insensitive" (Mrs Joan Harvey vs Rochdale Observer, 6 January 1999; PCC 2004).
> The PCC upheld this complaint as well.

Conclusion

There are roughly four overlapping positions one can take on the issue of press behaviour:

- The journalism is a "rough old trade" argument. Journalists are special and should not be subject to ordinary ethical codes – their mission is to get the story and get it right. Codes have no role in this and the best journalists may not be "virtuous" in any meaningful sense. Intrusion and insensitivity is the price of press freedom. The PCC Code is primarily a public relations exercise, a deal with the political class to buy off political pressures. (Tulloch 1998)

- The "virtuous journalist" argument. Journalists should be subject to ordinary ethical codes but virtuous behaviour can only be based on the operation of individual conscience. Training can support this and so can open discussion in newsrooms and more tolerance in news organisations (Kovach and Rosenstiel 2003: 179 – 194) if individual journalists decide not to intrude. Journalists should be able to appeal to the PCC direct if they are being asked to transgress the code.

- The "cultural meliorism" argument. Voluntary codes can "improve the culture of journalism" gradually via training and contracts. For example, the PCC claims that by 2003 six national newspaper groups referred to the code in staff contracts and two more were considering including it. Legal controls will not work because newspapers will fight and the danger to freedom of expression outweighs the benefits (PCC 2003a).

- The "structural determinism" argument. Codes and conscience will count for little in a newspaper industry run by media combines to maximise profit. Media concentration leads to abuse of power, the pursuit of larger circulations and "dumbing down". Grief is one ingredient that sells newspapers. It is futile to rely on voluntary regulation – the statutory nettle of a privacy law must be grasped (O'Malley and Soley 2000).

My own prejudice would be to support the virtuous journalist argument but this is only feasible if journalists establish a right to refuse instructions that breach the code. This recommendation for a "conscience clause" was made by MPs in the Privacy and Media Intrusion report last year. (Culture, Media and Sport Committee 2003). With scarcely veiled disdain, the PCC claimed it had:

> "no evidence that journalists are asked to undertake assignments that would breach the code in the absence of any public interest. This would in any case seem to be a matter for the employer and employee" (Culture, Media and Sport Committee 2004)

It undertook to ask the Editors' Code Committee to consider the proposal. Unsurprisingly, when the editors published a much–heralded revision to the code in April, they found no reason to undermine their own authority.

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