

# DBULLETIN

## Dealing with Adverse Media

With the new prospect of being ‘named and shamed’ under the recently introduced corporate homicide regime, board members and the senior management of care homes, may find themselves facing media attention.

Reading “Private Eye”, one might be forgiven for thinking that the traditional role of the lawyer in dealing with adverse media is to claim for libel following the offending publication or broadcast. Regrettably, litigation is, all too frequently a case of “slamming the door after the horse has bolted”. It is also expensive and risks “collateral damage”.

However, where the care provider’s officers are facing adverse media – or the prospect of it – lawyers can be proactive in a number of ways. For example:

- providing advice on the applicable codes of practice or conduct (see below);
- helping you to collect, and collate, the relevant facts;
- assisting you in ensuring that your organisation puts across a consistent response;
- being available as an objective sounding board for your responses.

### Press

As an illustration, if facing a hostile journalist it is well worth looking up relevant code of practice, on the internet. This may be helpful in putting forward your organisation’s side of the story. For example:

#### Extract from the Press Complaints Commission Code of Practice.

1. “Accuracy

- i) The Press must take care not to publish inaccurate, misleading or distorted information including pictures.
- ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and – where appropriate – an apology published.
- iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact ...”

### 2. “Opportunity to reply

A fair opportunity for reply to inaccuracies must be given to individuals or organisations when reasonably called for.”

#### Radio and television

If called by a journalist from a local radio station, one should be aware of the Ofcom Broadcasting Code.

#### Extracts from Ofcom’s Broadcasting Code 2008

“5.1 News, in whatever form, must be reported with due accuracy and presented with due impartiality.

5.2 Significant mistakes in news should normally be acknowledged and corrected on air quickly...”

“7.9 Before broadcasting a factual programme, including programmes examining past events, broadcasters should take

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reasonable care to satisfy themselves that:

- material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and
- anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.”

“8.10 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster’s own material.

8.11 Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep...”

## “Meaning of “doorstepping”:

Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning.”

The BBC has its own guidelines. The BBC Editorial Guidelines outlines the standards the BBC expect of all content on BBC TV, radio and online.

## Practical Steps

While you may not have the luxury of a phalanx of media advisors, here are a few points to consider if you find yourself facing adverse media:

ensure that there is a single person to whom media enquiries are referred. Consider whether

that person should be given media training;

- check the relevant facts;
- find out what’s already been said by others within the organisation and ensure that the organisation is giving a consistent message;
- If the relevant person knows that they are going to be interviewed or are due to meet a journalist make sure that they know, in advance what points need to be made. If doing a radio interview, use notes;
- respond promptly - you’ll be taken more seriously. However, don’t be rushed into a premature response. If you need time to think ascertain the copy deadline and tell the journalist that you will call him back before the deadline;
- keep your response simple – and accurate and avoid being drawn into speculation;
- make a brief note of what you said, with a time and date;
- change the editor’s perception of the risk of your taking the complaint further - editors do not want to be distracted from the next edition;
- focus on inaccuracies- they are universally recognised as indicative of bad journalism;
- never stop asking questions about how the piece was put together – in case the journalist may have something to hide;
- for registered care providers, keep the regulator “in the loop” if you suspect there is an adverse story looming or that a journalist may call them up for a quote - regulators don’t like surprises on their “watch” (sometimes, if forewarned, they might even ‘give you a steer’ about the journalist’s angle of questioning);
- if you’ve told a journalist that you will call him

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back by a certain time - do so.

If an inaccurate news story has been published,

- state clearly what you want - apology, correction, clarification, letter in next edition, promises about future conduct;
- seek agreement that your response is added to their cuttings archives - journalists rely heavily on easy accessibility to their databases;
- talk to the editor, the legal department and the journalist - this will increase the pressure to achieve your objective;
- while the threat of a libel action is your biggest lever - they are rarely practicable. Incidentally, for care organisations which are registered charities there are additional regulatory considerations to be considered before issuing proceedings;
- complaints to the Press Complaints Commission will only rarely achieve your objective - win or lose it usually results in the repetition of the story;

Useful Websites:

Press Complaints Commission: [www.pcc.org.uk](http://www.pcc.org.uk)

Ofcom Broadcasting Code 2008: [www.ofcom.org.uk](http://www.ofcom.org.uk)

BBC: [www.bbc.co.uk/guidelines/editorialguidelines](http://www.bbc.co.uk/guidelines/editorialguidelines)

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