

## Editors' Code of Practice Committee

### Private and confidential

*Minutes of the Editors' Code of Practice Committee meeting held at the offices of the Newspaper Society/NPA, 18-20 St Andrew's Street, London, on 26 November 2009.*

### Present:

*Chairman:* Paul Dacre (NPA)

Jonathan Grun (NPA)	Neil Benson (NS)	June Smith-Sheppard (PPA)
John Witherow (NPA)	Douglas Melloy (NS)	Harriet Wilson (PPA)
	Hannah Walker (NS)	

### Attending:

Baroness Buscombe (Chairman, PCC); Stephen Abell (Deputy Director, PCC);  
Ian Beales (*Secretary*).

### Apologies:

Apologies were received from Ian Murray and Tim Toulmin.

### Membership:

The Chairman welcomed Hannah Walker, of the *South London Press*, who was attending her first meeting as an NS nominee. The secretary reported the resignations of NPA nominees Neil Wallis and Alan Rusbridger, and of NS representatives Doug Melloy and Adrian Faber and of David Pollington, SDNS. The Chairman said thanks were due to all the departing members. He paid particular tribute to Mr Melloy, who had served 12 years on the committee, describing him as a stalwart whose contribution was the very stuff of self-regulation: the industry owed him a great deal. Mr Dacre also recorded the committee's thanks and appreciation to Tim Toulmin, who was leaving the PCC, and congratulated his successor Stephen Abell.

The secretary said Colin Grant, of the *Cambridge Evening News*, and Mike Sassi of *The Sentinel*, Stoke, would join the committee as NS nominees. NPA and SDNS nominations were expected soon.

Minutes of the meetings held on 16 April 2009 were approved and signed.

Code changes: The committee formally endorsed the amended Code changes agreed by email in June. They had been ratified by the PCC and took effect on 19 October.

Privacy: The secretary reported on a European Court of Human Rights judgment involving *Ici Paris* magazine, in which freedom of expression trumped privacy. It reflected the reasoning behind the latest Code change on privacy - which judges have to consider, when hearing privacy cases - and the two developments could together influence future UK judgments in favour of freedom of expression.

DCMS Select committee: Stephen Abell said the committee's report was not expected until late December or January, possibly when Parliament was not sitting. It was expected to be critical on the *News of the World* phone hacking issue and urge the PCC to have investigatory powers. Lady Buscombe said the PCC's attempts to persuade the committee to accept that such powers would lead to state regulation were being subordinated to the MPs' need to show that, after a year's inquiry, they had been doing something.

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The secretary said the new Information Commissioner's evidence to the Select committee had prompted the Ministry of Justice to launch another consultation on the introducing of jail sentences for breaches of s55 of the Data Protection Act. Paul Dacre said this was a reversal of the MoJ's previous commitment to leave custodial sentences as a Damoclean sword, and would be strongly opposed by the industry. It was agreed the Code Committee should await developments before deciding whether to make its own submission to the consultation.

**Code Committee website:** The secretary said the website had received 240,000 hits in the last 12 months – more than double the first year total – but the subscription base remained small. June Smith-Sheppard suggested the committee should publish a twice-yearly online newsletter to draw people to the site and highlight Code issues. Neil Benson said the site could be marketed to target the burgeoning numbers of journalism students. The secretary said that, while there was a limit to what might be achieved, he would welcome suggestions for developing the site. It was agreed these could be discussed at the next meeting.

**Online Codebook:** The committee agreed to a PCC request for permission to set up direct links from the Commission's website section on *Understanding the Code and Key Rulings* to relevant sections of the online version of *The Editors' Codebook*. Full acknowledgment would be given.

**Suggested Codebook guidance:** The committee considered a five-point checklist of questions suggested by Alan Rusbridger for inclusion in the *Codebook*. There was general agreement that guidance on privacy could be helpful but much debate on whether such subjective concepts as *integrity of motive* and *the public good* could ever be satisfactorily defined. Instead, it was felt it would be more helpful to concentrate on *proportionality* in the *public interest*. The secretary was asked to prepare a draft on privacy which should be emailed to all members of the committee for their consideration.

**Other Codebook updates:** The secretary listed a series of recent landmark cases that he had earmarked for inclusion in the online Codebook early next year. These included guidance on seeking comment ahead of publication; due prominence; payments to children in the wake of the Alfie Patten case; appropriate use of subterfuge; the right, under freedom of expression, to make snide comment; and the reporting of crime and police raids.

After discussion, it was agreed to add to the list guidance on observing 'desist' alert notices, which should be advisory, rather than mandatory. Following the case of the Fabio Capello 'mudbath' pictures, Paul Dacre expressed concern that lawyers and agents were exploiting the system by using the PCC as a conduit, in order to weaken the case of editors who chose to ignore the alerts. Stephen Abell said the PCC did not accept pre-emptive desist alerts, and that issue would be discussed with managing editors in January.

It was also agreed to include in the Codebook guidance on the pixilation of pictures, which was often unnecessary. That too would be discussed with managing editors.

**Suggested amendment to the Code:** The committee considered a suggestion from [ ] a PCC Commissioner acting on his own account, that the Code's commitment to maintaining high standards should not allow publication of pejorative terms. He cited a *LondonLite* headline. *Now Brucie Defends TV 'Paki' Joke*, which the Commission had found not to breach the Code because it accurately reported what was said.

The committee noted that in making the suggestion [ ] had felt obliged to use the term 'P\*\*j' to make his point, albeit with the benefit of asterisks. It was felt this demonstrated the risks of trying to be over-definitive in this area and why such matters have been left to editors' judgment. Essentially, this was a taste and decency issue, which should remain outside the Code's remit.

**PCC Governance review:** Baroness Buscombe outlined briefly the process now under way. It was examining governance, not remit, and that while she was keeping at arm's length from the process, she understood the review panel was taking it forward and that a draft report might be expected in or around May.

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**Online advertising:** The secretary said the Advertising Standard's Authority's decision to extend its remit to cover online advertising might lead to renewed conflict over what was promotional editorial material – subject to the Editors' Code - and what was advertising, overseen by the ASA. It was agreed this was a potential problem area that should be kept under review.

**Annual Code Review:** The secretary reported that the annual code review would be announced in early December, with a deadline for suggestions set at 31 January.

**Next meeting:** It was agreed that the Chairman and secretary should set the date, probably in March or April, unless the DCMS Select committee report raised urgent issues.

THE PRESS STANDARDS BOARD OF FINANCE LIMITED  
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## Editors' Code of Practice Committee

CHAIRMAN: PAUL DACRE

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PRESS INFORMATION

For release 24 September, 2009

### Editors' Code changes approved

Three revisions to the Editors' Code of Practice, to which the British Press subscribes voluntarily and which is enforced by the Press Complaints Commission, are announced today.

The changes have been ratified by the PCC and take effect from 19 October, 2009. They cover:

- **Privacy** – Clause 3 has been amended to make clear that the PCC will take into account relevant previous disclosures made by the complainant.
- **Harassment** – Clause 4 will require journalists in situations where harassment could become an issue to identify themselves if requested to do so.
- **The Public Interest** exceptions will include journalistic activity where editors can demonstrate a *reasonable belief* that they were acting in the public interest at the time.

Code Committee Secretary Ian Beales said: "These amendments are intended to strengthen and clarify the Code, for the benefit of both complainants and the press, by incorporating elements that largely reflect embedded PCC jurisprudence or existing industry best practice.

"For example, when considering complaints of alleged intrusions into privacy, the PCC has traditionally had regard for any relevant previous disclosures by the complainant. That has now been codified.

"Also, it would be unusual for journalists in pursuit of a story not to identify themselves to the person they wanted to interview or photograph – unless there was some public interest reason for not doing so. The Code now reflects that.

"Similarly with the public interest exceptions: currently, editors must demonstrate how their action actually served the public interest. But that doesn't allow for publication or investigative activity that genuinely appeared to be in the public interest, even where none actually emerged. Increasingly in the courts – and especially under Data Protection law – the test is whether there was a *reasonable belief* that the action was in the public interest.

"In reality the PCC would also be likely to take into consideration, under the spirit of the Code, whether the action would have seemed reasonable. So now, having taken legal advice, we have modified the Code to reflect that. It means editors must convince the PCC that they had good reasons to believe their action was in the public interest. It is a stiff test – shallow or spurious reasons won't do – but a fair one."

*For actual changes, please see following page/*

#### Note for editors:

The Code Committee members are: Chairman: Paul Dacre; Neil Benson, Trinity Mirror Regional Newspapers; Adrian Faber, Express and Star, Wolverhampton; Jonathan Grun, Press Association; Douglas Melloy, Rotherham and South Yorkshire Advertiser; Ian Murray, Southern Evening Echo; David Pollington, The Sunday Post; Alan Rusbridger, The Guardian; June Smith-Sheppard, Pick Me Up magazine; Hannah Walker, South London Press; Harriet Wilson, Conde-Nast Publications; and John Witherow, Sunday Times.

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## *The Code changes in full, October 2009*

*Amendments are highlighted*

### **3 \*Privacy**

- i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. **Account will be taken of the complainant's own public disclosures of information.**
- iii) It is unacceptable to photograph individuals in private places without their consent.

Note - Private places are public or private property where there is a reasonable expectation of privacy.

### **4 \*Harassment**

- i) Journalists must not engage in intimidation, harassment or persistent pursuit.
- ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. **If requested, they must identify themselves and whom they represent.**
- iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

### **THE PUBLIC INTEREST**

*There may be exceptions to the clauses marked\* where they can be demonstrated to be in the public interest*

1. The public interest includes, but is not confined to:
  - i) Detecting or exposing crime or serious impropriety.
  - ii) Protecting public health and safety.
  - iii) Preventing the public from being misled by an action or statement of an individual or organisation.
2. There is a public interest in freedom of expression itself.
3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully **how the public interest was served that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.**
4. The PCC will consider the extent to which material is already in the public domain, or will become so.
5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

*The current full Code can be viewed at the Editors' Code Committee website:  
[www.editorscode.org.uk](http://www.editorscode.org.uk)*