

## Editors' Code of Practice Committee

Minutes of the Editors' Code of Practice Committee meeting held at the offices of the Newspaper Society/NPA, 18-20 St Andrew Street, London, on 24 March 2011.

### **Present:**

**Chairman:** Paul Dacre (NPA)

Geordie Greig	(NPA)	Colin Grant	(NS)	Lisa Burrow	(PPA)
Jonathan Grun	(NPA)	Mike Sassi	NS)	Harriet Wilson	(PPA)
Richard Wallace	(NPA)	Hannah Walker	(NS)	Damian Bates	(SNS)
John Witherow	(NPA)				

**Attending:** Stephen Abell (Director, PCC); Ian Beales (Secretary).

**Apologies** were received from Neil Benson, Ian Murray and Baroness Buscombe.

**Membership:** The Chairman welcomed Lisa Burrow, Editor of *Closer* magazine (PPA), replacing June Smith-Sheppard, who had resigned.

**Minutes** of the meeting on 21 October 2010 were approved and signed.

### **Matters arising:**

- The secretary reported on the online launch of the revised *Editors' Codebook*.
- It was decided that the agreed revision on positioning of adverse adjudications should go to consultation via PressBof, along with changes emerging from the Code Review.
- The Chairman gave a brief update on the Bribery Act.

**Code Committee website:** The secretary reported a surge of hits after the *Codebook* relaunch.

**Phone hacking:** It was agreed in principle to set up an advisory panel that would review in depth the Code committee's options for action, without pre-empting current police inquiries. Membership and remit would be progressed by the Chairman in the light of developments.

**Defamation of the deceased:** The committee agreed to respond to a Scottish government consultation on the introduction of a law allowing relatives to sue for libel of recently-deceased people. It was felt this was unworkable, would have a chilling effect on journalism both inside and outside Scotland, and was unnecessary given the Code's existing redress for inaccuracies.

**Online journalism:** A PCC working party's report on prominence of online corrections and on applying the Code to branded journalistic Twitter messages was noted with general approval.

**ATVoD:** The Committee expressed serious concern that the Association for TV on Demand, a statutory co-regulator, was suggesting TV-like audio-visual channels run by newspapers and magazines fell within ATVoD's remit, rather than the Editors' Code.

**ANNUAL CODE REVIEW:** A number of suggested amendments to the Code were considered:

**Clarification:** Following a request from the UK Drugs Policy Commission, it was agreed clinically recognised drug abuse could, in some circumstances, fall under current Discrimination rules.

**Deferred for consultation:** A call for Clause13's financial rules to embrace property journalism.

**Suggestions not adopted:** *From B-eat:* Ban on use of skeletal images of people suffering from eating disorders. *From Engage:* Allow third party complaints in Discrimination cases to combat Islamophobia. *From Trinity Mirror:* Change of suicide reporting rules. *From various:* higher accuracy thresholds for "expert" commentators; requirement for journalists to declare hospitality received; display of sexually-explicit front covers; restrictions on publication portraying or exploiting sexual violence.

## ADDENDUM TO CODE COMMITTEE AGENDA PAPERS

### Agenda Item 5: Phone hacking

There are other options the Code Committee might wish to consider to try to counter public disquiet in this area as the police investigation continues.

#### 1. A change to the Preamble:

One of the issues often ignored by critics is that, although phone hacking is against the Code, it is also against the law, which would normally have primacy. Therefore it is the law that has failed every bit as much, or more, than the Code. The importance of working within the law could be stressed by a change to the Code Preamble. It might, for example, say:

#### **The Code**

*All members of the press have a duty to obey the law and maintain the highest professional standards. The Code, which includes this preamble and the public interest exceptions below, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know,,,*

This would have the advantage of re-stating the primacy of law, and would be very easy to introduce. There is a significant distinction between the Code and the law on phone hacking; the Regulation of Investigatory Powers Act does not allow a public interest defence. However, as no attempt has been made to argue that the cases at the heart of the current debate had a public interest dimension, this may not be an issue.

#### 2. An advisory panel

The PCC has set up a sub committee to investigate the ramifications of the issue and to report back, after the Scotland Yard investigation is complete. Without cutting across either of those reports, it would be possible for the Code Committee to set up an external Advisory Panel specifically to consider the Code Committee options for action once the police investigation is over.

This would mean that, even while the Code Committee's current room for manoeuvre is seriously limited, it could be seen to be positioning itself to act with speed and credibility as soon as the time is right. To ensure it was authoritative, independent and representative, the panel could include respected non-serving editors, a lawyer and former PCC lay commissioner.

### Code Review item 12: property journalism

If the committee wished to ensure that potential conflicts of interest on property were disclosed, it might be possible to add to Clause 13ii:

*They must not write about shares, securities or property in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.*

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To **Les Hinton**

From Ian Beales

### **Code Committee action, after Goodman and Motorman**

#### SUMMARY

It was always the case that activities such as those raised by Operation Motorman and the Clive Goodman/Glenn Mulcaire phone-hacking would be covered by the Code, unless they were conducted in the public interest. However, in the wake of both, the Code's clause 10 restrictions on the use of clandestine devices and subterfuge were changed to reinforce the existing rules, *effective from August 2007*.

These changes specifically included reference to digital material and intermediaries, such as private detectives, e.g. Mulcaire.

i). *The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorized removal of documents, or photographs; or by accessing digitally-held private information without consent.*

ii). *Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest, and then only when the material cannot be obtained by other means.*

The press release announcing the changes quoted you as emphasising that these changes were designed to avoid any doubt and would make the Code stronger and more effective (see 10 below).

At the same time, the industry fulfilled its earlier commitments to the Information Commissioner and others to raise awareness of the issues by:

- **The PCC** issuing new guidance on investigative reporting, to cover the Goodman and Operation Motorman situations and conducting in-house seminars for newspapers;
- **PressBof** issuing a Guidance Note on Data Protection;
- **The Code Committee** including its own Briefing Note on Investigative reporting in the newly reprinted *The Editors' Codebook*, published earlier this year in hardback and online. (The book also includes the PressBoF DPA note on Pages 57 and 58- see pdf attachments).

*The approximate time sequence is listed below.*

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### Sequence:

1. **May 2006:** The Information Commissioner's Office publishes *What Price Privacy*, alleging widespread breaches of the DPA - including by 305 journalists, as exposed by Operation Motorman - and calling for custodial sentences.

2. **August 2006:** Clive Goodman and Glenn Mulcaire arrested and charged under Regulation of Investigatory Powers Act 2000.

3. **September 2006:** Code Committee secretary meets Information Commissioner Richard Thomas, who suggests a change to the Code's privacy rules, banning bribery of officials to gain private information:

***iii) It is unacceptable, without their consent, to obtain information about any individual's private life by payment to a third party or by impersonation or subterfuge. It is unacceptable to pay any intermediary for such information which was, or must have been, obtained by such means.***

Thomas also suggests the need for better industry guidance on DPA and raising awareness of the risks of breaking the law.

4. **October 2006:** Code Committee discusses ICO amendment, but defers decision pending a meeting between Richard Thomas and Les Hinton. Following that meeting, LH writes to Thomas offering a continuing dialogue as part of a general industry initiative to tackle any potential or actual lawbreaking.

5. **December 2006:** Information Commissioner publishes follow-up report, *What Price Privacy Now?* renewing call for custodial sentences and referring to the Goodman/ Mulcaire arrests.

6. **January 2007:** Goodman and Mulcaire jailed.

7. **February 2007:** DCMS Select Committee announces inquiry into press self-regulation, conflating, Goodman, *What Price Privacy?* and paparazzi harassment of Kate Middleton. During his evidence, Richard Thomas reiterates call for Code change.

8. **April 2007:** Code committee formally considers Information Commissioner's Code change. It decides that, while the Code already covered all the activities raised by Operation Motorman and the Goodman case, changes could be made to reinforce that message. However, the test should not be of whether money was paid for the information, but whether there was intrusion of privacy, regardless of payment.

(The ICO's loosely worded suggestion, would have embraced all payment for information, even if it did not breach the DPA). The committee recommends the Code is changed in Clause 10 to address the obtaining of digitally-held information and the use of intermediaries such as private detectives.

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*public interest, and then only when the material cannot be obtained by other means.*

9. **May 2007:** PCC announces new guidelines on investigative reporting and use of subterfuge etc, in wake of Goodman and *What Price Privacy?*

- Contracts between newspapers and magazines and external contributors should contain an explicit requirement to abide by the Code of Practice;
- A similar reference to the Data Protection Act should be included in contracts of employment for staff members and external contributors;
- Although contractual compliance with the Code for staff journalists is widespread, it should without delay become universal across the industry;

- Publications should review internal practice to ensure that they have an effective and fully understood "subterfuge protocol" for staff journalists. This should include who should be consulted for advice about whether the public interest is sufficient to justify subterfuge;
- There should be regular internal training and briefing on developments on privacy cases and compliance with the law;
- There should be rigorous audit controls for cash payments, where these are unavoidable.

10. **June 2007:** The changes are ratified by the PCC to take effect in August. A Code Committee press release quotes Chairman Les Hinton: "*In Clause 10, we felt that, under the spirit of the Code, as removal of documents or photographs without consent is already unacceptable, then hacking into computers to obtain such material must also be. Similarly, the use of third parties to gain information that would otherwise be protected by the Code would also amount to a breach. In both cases, it would be better, for the avoidance of doubt, to state this specifically. The Code is stronger and more effective because of it.*"

### Other action:

- To heighten awareness among journalists of the need for compliance with the law, the Press Standards Board of Finance, acting on behalf of the newspaper and magazine industry, issued through the trade associations a detailed guidance note, *The Data Protection Act - and Why It's Important To You*.
- *The Editors' Codebook*, republished in hardback format and online early in 2009, included a Briefing Note highlighting the problems raised investigative journalism that uses intrusive, or illegal, methods to gain information if no public interest exception is involved.
- *PCC Guidance on use of subterfuge in news-gathering.*