

THE PRESS STANDARDS BOARD OF FINANCE LIMITED

Editors' Code of Practice Committee

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AGENDA

For meeting at the Newspaper Society offices
74-76 Great Russell Street, London

Thursday, 4 March, 2004 at 10.30am

1. Apologies
 2. New members – Neil Benson (NS); Alan Rusbridger (NPA); Peter Wright (NPA).
 3. Minutes of 24 September 2003 (circulated)
 4. Business arising, if not dealt with below.
 5. Media-scrums - liaison with Ofcom and broadcasters Page 2
 6. Anonymity of suspects – meeting with Paul Goggins, Home Office 2-3
 7. Data Protection – PCC Guidance note. 4
 8. Metropolitan Police rewards protocol 4
- Annual Code Review
9. Representations on the Code 5-6
 10. Summary of Code committee members' comments 7-10
 11. The Code Draft 2 11-16
 - Endnotes
 - Appendix A *Alan Rusbridger comments*
 - Appendix B *Derek Tucker comments*
 - Appendix C *Neil Wallis comments*
 12. Code Handbook *Secretary's update*
 13. Other business
 14. Next meeting

Editors' Code of Practice Committee

5. Media Scrums

5.1 The committee agreed, in the wake of the Select Committee report on Privacy and Media Intrusion, to initiate a meeting with Ofcom and the BBC to try to harmonise arrangements for dealing with media scrums. As a result of the meeting on 7 January, the PCC emerged as potentially the principal co-ordinator of the arrangement.

5.2 It was agreed:

- While the PCC has a role pre-publication, OFCOM regulates post-transmission.
- That the broadcasters' response should therefore be based on self-regulation.
- The PCC agreed to meet the broadcasters separately to agree a way forward.

5.3 At a meeting on 23 February, the BBC, Sky and ITN (the broadcasters) agreed to work with the PCC to provide those who feel they are being harassed with a "one-stop-shop" for communicating with the entire industry – written and electronic.

- The PCC already operates a 24 hour advice service – a helpline which complainants can contact if they believe they are being harassed.
- If someone makes a complaint, the PCC then contacts the editor concerned to alert them, and other newspapers to the problem.
- The PCC agreed to add broadcasters' representatives to its distribution list and ensure they are notified of any complaint.
- The broadcasters already have a well-established, informal dialogue between their senior editors, based on common operations and logistics.
- The broadcasters agreed to invite the PCC to take part in that dialogue – and ensure that any complaints the broadcasters receive about privacy and intrusion are shared with the PCC – and through their network, the rest of the written media.

6. Anonymity of suspects

6.1 The Chairman led a meeting with Paul Goggins, Parliamentary Under-Secretary at the Home Office, to discuss the threat by Opposition parties in the House of Lords to amend the Sexual Offences Bill to introduce anonymity for those accused of sex offences. The Government made it clear that, while it was against such a move, it would not be able to stop it (without losing the Bill) unless some acceptable self-regulatory alternatives could be offered.

6.2 The Code Committee/PCC argued that there was no need for legislation, which would have wide ramifications - particularly for the local press - and would impact on open justice and press freedom. However it was agreed the Code Committee and PCC would examine ways of strengthening guidance on this general area, not just relating to sexual offenders. We made clear in a letter to Mr Goggins:

6.3 "We believe the Code generally covers the relevant areas under its existing clauses of Accuracy, Opportunity to Reply and Reporting of Crime, and what is actually needed is for these strands to be drawn together in some fuller guidance. We are therefore looking not to change the Code but to strengthen that guidance by two means. First, we are discussing with the PCC the wording of a specific joint Guidance Note, and secondly we plan to incorporate that in the section on Reporting of Crime in our forthcoming Handbook to the Code. "

6.4 The PCC's draft guidance note is printed overleaf:

Editors' Code of Practice Committee

PCC DRAFT GUIDANCE NOTE

THE REPORTING OF PEOPLE ACCUSED OF CRIME

This note brings together the provisions in the Code which are relevant when reporting allegations that individuals have committed a criminal offence. Such allegations might originate from a third party, police sources or a formal police procedure such as an arrest.

Accuracy

Given that there will be occasions where allegations turn out to be ill-founded, particular care must be taken to ensure that they are presented accurately and that conjecture is distinguished from fact. Clause 1 (iv) therefore has a particular relevance in such cases, although this should not be taken as restricting the legitimate rights to freedom of expression that accusers might have. There may be times when it is difficult to substantiate allegations made by third parties, but which ought to be reported in the public interest if true. If editors wish to publish material in these circumstances, they should give serious consideration to doing so without identifying the accused as a way of meeting the requirements of the Code.

If a complaint is made about the accuracy of the allegations, there is a particular obligation on editors to investigate matters swiftly because of the danger that incorrect accusations will be reproduced elsewhere in the media —something that might enhance their credibility. For the same reason, corrections should be made as quickly as possible if the complaint is merited, or an early offer made to reply to inaccuracies as set out in Clause 2 of the Code.

Privacy

A number of the privacy clauses in the Code are relevant in such cases.

Editors must bear in mind that the Code affords everyone – including those who have been accused or convicted of crime – the right to respect for his or her private life, home, health and correspondence. Editors should not rely on the fact that someone has been accused of a criminal offence as justification for publishing material that would otherwise be held to be intrusive, unless the material ought to be published in the public interest or is in some way relevant.

Clause 4 also entitles individuals to protection from harassment. If asked to desist, journalists must cease telephoning, questioning, pursuing or photographing individuals unless the public interest is served by ignoring the request. The Commission would remind editors that it operates a 24-hour helpline which all members of the public – whether they have been accused of crime or not – are entitled to use to communicate 'desist' messages to the press.

Sex cases

Clauses 7 and 12 of the Code are relevant when publishing articles about people accused of sexual offences. Care must be taken to ensure that the identification of someone accused of a sexual offence does not lead to the identification of the alleged victim. If it is likely to do so, editors should err on the side of caution and report the allegations anonymously.

Innocent relatives

Editors should bear in mind at all times that the innocent relatives of people who have been accused of crime have special protection under the Code. They should not be identified – unless it is in the public interest or the relationship is in the public domain – without their consent. The provisions on privacy and harassment are especially important for such people, who may be particularly vulnerable at such times.

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7. Data Protection - PCC guidance note

7.1 The Data Protection Commissioner approached the PCC concerning misunderstandings of how the Act applied to the press. It was agreed a PCC Guidance Note be issued clarifying the law. The PCC is working on the note.

8. Metropolitan Police rewards protocol

8.1 The committee received a request from the Metropolitan Police that the Code should incorporate a protocol covering media rewards in criminal investigations. The protocol, drawn up after the Damilola Taylor trial, and planned eventually to be extended nationally, says:

8.2 *"This protocol is designed to provide a code of practice for media organisations wishing to offer a reward to members of the public during an active Metropolitan Police investigation.*

It is accepted that the media organisation concerned will be the final arbiter in deciding whether or not it is in the public interest for them to offer a reward at a particular time.

However, organisations considering offering such rewards agree not to publish or broadcast their offer until:

- *The editor (or his or her representative) ensures that a journalist or executive of their organisation contacts the Senior Investigating Officer. (This can be arranged through a police Press Officer).*
- *The Senior Investigating Officer's observations about the potential benefits or drawbacks of offering a reward at this time are taken into account when a decision is reached.*

If then offering a reward the media organisation will:

- *Lodge the sum of money on offer with police.*
- *Stipulate what it is being offered for e.g. information leading to an arrest and charge.*

In the event of the reward being claimed and in reaching a decision on whether all or part of the sum should be paid to an individual or shared, the media organisation will:

- *Liaise with police about the merits of the information provided by the claimants in reaching their decision on payment.*

In the event that no such claim is made upon the reward money lodged with police, or if the media organisation concerned does not consider the information provided merits the payment of part or all of the reward, the money lodged by them with police will be returned to them."

8.3. I promised to put it before the committee, but said it was unlikely to be a Code issue as such protocols are usually working arrangements agreed between police and press – i.e. ACPO guidance on media black-outs and rules for the press accompanying police on raids. The proposals for lodging rewards with the police would be outside the PCC remit.

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9. Representations on the Code

Accuracy (Clause 1)

9.1. [redacted] (26.02.04)

[redacted] wrote to the committee after the PCC would not support a complaint that errors were not being corrected on a website, because the inaccuracies were "not significant."

9.2 (Clause 14) She also suggested that, by not including groups, the Code does not deal with Discrimination adequately. Her complaint last year about a newspaper that was "openly blatantly and unapologetically discriminatory" could not be handled under the Code. The newspaper then deceptively implied that it had not been branded discriminatory.

Her suggestions: i) *Why not make the code suitable for all errors?*
ii) *Clause 14 be revised to include groups.*

Intrusion into grief or shock (Clause 5)

9.3. [redacted] via the PCC (10.12.03)

[redacted] complained to the PCC about intrusion into grief, after a newspaper named his son as having committed suicide by hanging himself while in hospital. [redacted] believed it intrusive and unnecessary to name his son - who was not a public figure - before relatives had been told of the tragedy. The PCC rejected the complaint on the grounds that the hospital had put the information into the public domain in a press release. [redacted] felt the Code should be changed to ensure that ordinary families have privacy at a time of grief. I pointed out that the Code already permitted the PCC to decide if the naming of his son amounted to an intrusion. It had decided, in all the circumstances, that it was not. However, we would bear his suggestion in mind both for the Code Review and the Handbook.

His suggestion: *Clause 5 be amended to prevent dead people being identified until relatives and friends have been informed.*

Discrimination (Clause 14)

9.4 [redacted] (29.11.03)

Messrs Carter and Satchwell are members of a Home Office working party on Community Cohesion. Nick Carter suggests the nearest the Code gets to acknowledging the importance of cohesive communities is through its clause banning discrimination. The changing climate in Britain means this clause does not properly reflect the heavy responsibility that lies with all editors to encourage communities to live in harmony. The code should be adapted, in the light of the growing awareness of the need for community cohesion, in the wake of the disturbances in northern cities, 9/11, Iraq, terrorism and the impact that has had on Britain's Muslim communities and their relationship with other communities. Bob Satchwell suggests action is needed to head off calls by community leaders and others for legislation in this area.

Suggestion: *The Code should bar publication of material calculated or likely to cause tension between communities. The public interest defence would apply.*

9.6. [redacted] (02.02.04)

[redacted] wrote asking for Clause 14 to include Discrimination against groups. She believes that as the Code applies only to individuals the press could use their positions of power to incite hatred against specific groups. She was particularly concerned about allegedly homophobic articles, citing as hate crime pieces in the Halifax Courier (about which she had complained unsuccessfully to the PCC) and The Spectator. Both dealt with opposition to grants to Gay support groups.

Her suggestion: *Clause 14 be revised to include groups.*

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9.5. [redacted] via the PCC (02.02.04)

[redacted] asked the PCC to launch a general investigation into sensational coverage of mental health issues, following stories about the proposed day-release of a man detained in Broadmoor after killing his mother. As part of his rehabilitation, he was being released from a secure psychiatric unit for 3 days a week to work in the Cribbs Causeway shopping mall. The stories were headlined *Monster Works In Shopping Mall: Killer Let Loose Among Christmas Crowds Is Like A Ticking Time Bomb* (News of the World) and *The Killer At Cribbs: This Man Stabbed And Beat His Own Mother To Death Then Gouged Out Her Eyes. Now He Has A Job At John Lewis* (Bristol Evening Post). As a result, the day release had been abandoned. Sir Louis accepted that a PCC Guidance Note had been issued on mental health issues, but felt that as mental health patients would be unlikely to complain, it should be revisited.

His suggestion: *The Code committee should review coverage of mental health patients and detainees. (By implication, under Clause 14).*

GENERAL

Conscience clause

9.7. Express Newspapers NUJ chapel via the PCC (undated).

The Express and Star chapel's resolution to write to PCC asking it to support a "conscience clause" as suggested by the Culture Media and Sport Select Committee, came "in the wake of a sustained series of articles in the Daily Express about the 1.6m gipsies apparently set to flood Britain. It was the chapel's view that these articles were inflammatory, subjective and racist and that individual journalists felt pressured into writing them – in direct contravention of the NUJ Code of Conduct as well as the PCC Code." The chapel noted that the PCC had said it had no evidence of journalists being asked to breach the code in the absence of the public interest and stated: "The reality of life in a national newspaper is that journalists are sometimes pressured into writing and handling copy they believe to be unethical and in breach of the PCC Code. A conscience clause inserted into journalists' contracts, with legal protection against dismissal for adhering to the terms of the code, would give the code teeth."

Their suggestion: *That the Code Committee support calls for a conscience clause to be included in staff contracts and/or (by inference) written into the Code itself.*

Anonymity for letter writers

9.8. [redacted] (14.10.03)

[redacted] was unhappy with the Committee's rejection last September of his suggestion that editors should not allow anonymity for authors of Readers' Letters unless there was a clear danger of intimidation or persecution. He cited cases where his local newspapers grant anonymity while other "reputable papers" insist on publishing names. After one letter from Grahame Thomson and two from me pointing out that this was a legitimate area for editors' discretion, he insisted this "should not left solely to the judgement of editors of local papers." He said his local papers published letters where "anonymity was not the result of fear of persecution but of cowardice or to hide political or other allegiances." He offered to meet the committee to discuss it further.

His suggestion: *The Code should advise editors that names and addresses of correspondents should be withheld only where there is a clear danger of intimidation or persecution if they were to be published.*

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Annual Code Review

Code Committee suggestions

10.1 After the first draft was circulated, some Committee members suggested amendments, (included in the Appendices). I have provisionally included some suggestions in Draft 2, but left most open to debate by the committee. The suggested amendments are summarised here in bold, followed by some contextual notes from me.

PREAMBLE:

10.2 **Delete: *while not duplicating the law as unnecessary, misleading and suggesting that the Code imposes greater restrictions than the law.* – Alan Rusbridger. (AR).**

- This phrase is not essential and, provisionally, has been deleted in Draft 2. It is, in fact, the case that the Code *does* impose greater obligations than the law.

10.3 **Delete: *founded on mediation – the Code is not founded on mediation, but self-regulation and delete non-legalistic which is misleading and may suggest the Code has no legal impact.* - AR**

- The Preamble is important because it stresses the *spirit* of the Code – the voluntary element which distinguishes it from statutory codes. *The Code* may not be based on mediation, but the *PCC procedures* are and it has been suggested there be a more obvious correlation between the two. Similarly, while the Code is legally valid, it is designed to be practical and non-legalistic in its approach. A new form of words is substituted in Draft 2 to try to convey that.

10.4 **Add: *constitutes an unnecessary interference with freedom of expression* – AR.**

- Provisionally, the words have been added to the draft, although the Public Interest definition 3 later makes clear *there is a public interest in freedom of expression itself.*

10.5 **Observation of the Code:**

- Is it realistic to expect editors to *ensure* that external contributors comply with the Code?**
- Should *all* online publications be incorporated? - Derek Tucker (DT) and AR**
- Should we delete photographers? (DT) / or add *all persons engaged by editors or publishers, including but not limited to, journalists, researchers, photographers and agents acting on their behalf or on their instructions* ? - AR**
- Delete *rigorously as otiose and possibly suggesting the Code should be interpreted narrowly.* – AR**

- The new wording defining the responsibilities of editors – which is in part aimed at obviating the need for a conscience clause for individual journalists – is intended to restate the current situation, where the preamble requires that: *Editors and publishers must ensure that the Code is observed rigorously not only by their staff but also by anyone who contributes to their publications.* Saying less might appear to reduce that commitment – which, hitherto, has not appeared a burden. There is no evidence that *rigorously* has been interpreted as *narrowly*, though *diligently* might be an option.
- The reference to online publications has been amended in Draft 2 to make clear that it refers to online *versions* of publications.
- A shorter version of the phrase *all persons engaged etc* is suggested in Draft 2.

Editors' Code of Practice Committee

Clause 1. Accuracy

10.6 **Delete First Draft revision linking corrections and apologies and revert to current Code, to avoid raising expectations and prejudicing subsequent litigation. – AR**

- The committee may consider it possible to achieve the same aim by moving the apology reference to the end of the clause, ie*once recognised must be corrected promptly and with due prominence, and - where appropriate - an apology published.*

Clause 4. Harassment

10.7 **In clause 4iii, add the inclusive phrase embracing all persons engaged by editors and publishers etc (AR) and also that editors should not knowingly publish/ or publish material which they know to be non-compliant from other sources. - DT and AR**

- The suggested amendment is longer and *not knowingly* could be a classic escape clause. Under the First Draft wording, the PCC would inevitably consider whether the editor had knowingly used non-compliant material or had made reasonable checks.

Clause 5. Intrusion into Grief or Shock

10.8 i) **The clause should have a public interest asterisk, since it is often necessary to go into details of a suicide, as in the David Kelly case. The sub-clause referring to excessive detail should remain, as it addresses the danger of imitative suicides without causing problems.-AR**

ii) **There is not a strong argument for having a separate reference to reporting on suicide but I am particularly concerned that the words "Taking care to avoid excessive details to means of death" should be removed. – Neil Wallis (NW)**

- The public interest asterisk has been added only to the new, suggested sub-clause ii on reporting suicides – which would cover Kelly - since the existing Code assumes the obligations of sympathetic and discreet approaches would not be significantly altered by the public interest and we would not wish to be accused of rowing-back on that. The *excessive detail* reference is as an option for the committee to agree or reject.

Clause 6. Children and Young People

10.9 i) **Clause 6i suggests that once people reach 18 they can expect unnecessary intrusion – we should revert to the existing Code wording. – DT. School life is conducted in a public environment and should be protected – revert to existing Code. – AR . Why is anyone suggesting extending to cover school-leavers above 16? Where is the need? - NW**

ii) ***Custodial parent* is not defined, legal custody would be difficult to establish. Substitute: a parent who is legally responsible for the child. - AR**

iii) **Delete sub-clause iii - as arguably any publication about a child could adversely affect his or her welfare. In sub-clause v, reinstate demonstrably for clearly. – AR**

- Clause 6i might be improved by adding that *Children and Young People particularly should be free to conduct their lives without unnecessary intrusion etc*, which does not suggest intrusion is necessary at 18+. The issue then is whether schoolchildren should be entitled to greater protection than school-leavers.
- While *custodial parent* is not defined, it suggests the parent with whom the child lives, which is usually easier to establish than *a parent having legal responsibility*.
- Sub-clause iii was suggested by the PCC secretariat, which felt negative impact could be more easily assessed. *Demonstrably* versus *clearly* is subjective.

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Clause 9. Reporting of Crime

- 10.10 i) **Delete *generally* as it undermines the *genuinely relevant* test - DT.**
- ii) **Delete *genuinely* as it is pejorative. it is either relevant or it is not. – AR**
- iii) **Sub-clause ii has been amended so that children who are witnesses in any legal case (and not just witnesses of crime) are covered. - AR**
- *Generally* may be expendable, but reflects the existing code's cautionary tone which says the press must *avoid* identifying relatives etc. The committee must decide whether there are degrees of relevance. Arguably, the use of the word *genuinely* echoes the spirit of the Code, giving the PCC latitude in dealing with overly-technical or legalistic arguments, either from editors or complainants.
 - It is difficult to see how sub-clause ii alters the current situation adversely.

Clause 10. Clandestine devices and subterfuge

10.11 **Delete or publish in sub-clause i as this could prevent the press from receiving unsolicited material. Reinstate unauthorised removal of documents of photographs in sub-clause ii. AR**

- This amendment might create a loophole by allowing non-compliant material to be published under the guise of having been received unsolicited. The desired aim might be achieved by adding the words *must not seek to obtain or publish...* as in Draft 2.

Clause 11. Victims of sexual assault

10.12 **What is the purpose of and they are legally free to do so? Is that not a decision for the courts, rather than the PCC? – DT. Delete *genuinely relevant* as Clause 9 – AR**

- The *legally free* qualification is technically superfluous, but was inserted in the original Code to counter suggestions that the press should not identify victims *even where the law permitted it*. This is unsustainable in high-profile court cases, where judges lift restrictions to make reporting possible. The wording has remained. It could be cut.

Clause 16. Payments to criminals

10.13 i) Alan *Rusbridger* suggests (see Appendix A and also representations of the five broadsheet editors, adjourned from last September's meeting): **The clause is too broad. It should be aimed at preventing criminals and associates from profiteering from, or glamorising, crime. It should be compatible with freedom of speech under the Human Rights Act and the rehabilitation of offenders. A blanket ban is too restrictive.**

It should read: **Payment or offers of payment for stories, pictures or information, which seeks to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues. Why does it state reasonable expectation and what purpose is served by the requirement in the final paragraph to demonstrate the public interest? – AR.*

- The suggested amendment, provisionally included in Draft 2, is a liberalising measure in that it would give editors a choice of defences. First, that the payment did not result in stories which exploited or glorified a crime; second that if it did, it was necessary in the public interest. It would probably not have affected the Beckham kidnap case, or the Tony Martin or Ronnie Biggs adjudications, since the public interest defence would apply and could be interpreted as before. It would be more likely to allow payments (which did not glorify crime) to rehabilitated offenders such as Jonathan Aitken or possibly for the jail diaries of Jeffrey Archer. This might be criticised as allowing more payments where ex-criminals would profit.

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- Although The Guardian case would probably have been rejected on the grounds that it did not glorify crime, the PCC might have had to decide whether it was opportunistic to the point of being exploitative. The Hector Dick case, where payment was made on the basis of an expected revelation in the public interest which did not materialise, would not be affected. For though the material published would have had no public interest defence and might have been glorifying crime, the initial fishing expedition might have been reasonable in the public interest. A suggested addition to cover that (which deletes *and payment was necessary etc*) is offered below:
 - ii) *Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.*

The Public Interest

10.14 i) **Substituting *serious impropriety* for *serious misdemeanour* with its technical legal meaning lowers the threshold for the public interest and could make infringement of privacy simpler to argue. Suggest adding: *in public life*.**

ii) **Sub-clause 1: add iv) *Information which the public has a right to know and which the press has a corresponding legal, social or moral duty to communicate.***

iii) **Sub-clause 3: Uncouple the public domain provision from the public interest in freedom of expression. Delete *perverse-publication*. – AR**

- 'Impropriety' was not intended to lessen impact. 'Misdemeanour', abandoned in law, could be reinstated here - rather than adding *in public life*, which narrows the scope.
- The right -to-know provisions, despite being stated in the preamble, develop the spirit of the Code, and have been included in Draft 2. The other changes are subjective and the committee needs to take a view. We need to consider the length of the document.

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11. Code Review: Draft 2 (revisions from First Draft highlighted in yellow)

The Press Complaints Commission is charged with enforcing the following Code of Practice which was framed by the newspaper and periodical industry and is ratified by the Press Complaints Commission.

Existing Code

The Preamble

All members of the press have a duty to maintain the highest professional and ethical standards. This code sets the benchmark for those standards. It both protects the rights of the individual and upholds the public's right to know.

The Code is the cornerstone of the system of self-regulation to which the industry has made a binding commitment. Editors and publishers must ensure that the Code is observed rigorously not only by their staff but also by anyone who contributes to their publications.

It is essential to the workings of an agreed code that it be honoured not only to the letter but in the full spirit. The Code should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it prevents publication in the public interest.

It is the responsibility of editors to co-operate with the PCC as swiftly as possible in the resolution of complaints.

Any publication which is criticised by the PCC under one of the following clauses must print the adjudication which follows in full and with due prominence.

1. Accuracy

- i) ~~Newspapers and periodicals~~ must take care not to publish inaccurate, misleading or distorted material including pictures.
- ii) ~~Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published,~~ it must be corrected promptly and with due prominence.
- iii) ~~An apology must be published whenever appropriate.~~
- iv) Newspapers, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- v) ~~A newspaper or periodical~~ must report fairly and accurately the outcome of an action for defamation to which it has been a party.

(276 words)

Draft 2: Revised Code, 2004

The Codeⁱ

All members of the press have a duty to maintain the highest professional standards. This code sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know.

The Code is the cornerstone of the system of self-regulation - legally valid, yet non-legalistic in approach and founded on conciliation and arbitrationⁱⁱ - to which the industry has made a binding commitment.

It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.

It is the responsibility of editors and publishers to ensure the Code is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications.ⁱⁱⁱ

Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adverse adjudication in full and with due prominence, including a headline reference to the PCC.^{iv}

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.*^{vi}
- iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party.

(276)

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2. Opportunity to reply

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

3. *Privacy

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent

ii) ~~The use of long lens photography to take pictures of people in private places without their consent is unacceptable.~~

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

4. *Harassment

i) ~~Journalists and photographers must neither obtain nor seek to obtain information or pictures through intimidation, harassment or persistent pursuit~~

ii) ~~They must not photograph individuals in private places (as defined by the note to clause 3) without their consent; must not persist in telephoning, questioning, pursuing or photographing individuals after having been asked to desist; must not remain on their property after having been asked to leave and must not follow them.~~

iii) ~~Editors must ensure that those working for them comply with these requirements and must not publish material from other sources which does not meet these requirements.~~

5. Intrusion into grief or shock

In cases involving personal grief or shock, enquiries must be carried out and approaches made with sympathy and discretion. Publication must be handled sensitively at such times but this should not be interpreted as restricting the right to report judicial proceedings.

6.* Children

i) ~~Young people should be free to complete their time at school without unnecessary intrusion.~~

ii) ~~Journalists must not interview or photograph a child under the age of 16 on subjects involving the welfare of the child or any other child in the absence of or without the consent of a parent or other adult who is responsible for the children.~~

iii) ~~Pupils must not be approached or photographed while at school without the permission of the school authorities.~~

(324)

2. Opportunity to reply

A fair opportunity for reply to inaccuracies must be given^{vii} when reasonably called for.

3. *Privacy^{viii}

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.^{ix} Editors will be expected to justify intrusions into any individual's private life without consent.

ii) 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^{xi} 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.

iii) Editors must ensure these principles are observed by those working for them and not use non-compliant material from other sources^{xii}

5. Intrusion into grief or shock^{xiii}

i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.^{xiv}

ii) *Suicide or attempted suicide should be reported with due sensitivity, *taking care to avoid excessive detail of means of death.*^{xv}

6.* Children and young people^{xvi}

i) Children under the age of 16 and young people under 18 *particularly* should be free to conduct their private lives without unnecessary intrusion.^{xvii}

ii) A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.^{xviii}

iii) Editors should generally avoid publishing, without consent, material about an identifiable child which adversely affects his /her welfare.^{xix}

iv) Pupils must not be approached or photographed^{xx} at school without the permission of the school authorities.

(306)

Editors' Code of Practice Committee

iv) There must be no payment to minors for material involving the welfare of children, nor to parents or guardians for material about their children or wards, unless it is demonstrably in the child's interest.

v) Where material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his or her parents or guardian.

7. *Children in sex cases

1. The press must not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims or as witnesses.

2. In any press report of a case involving a sexual offence against a child -

i) The child must not be identified.

ii) The adult may be identified.

iii) The word "incest" must not be used where a child victim might be identified.

iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

8. *Listening Devices

Journalists must not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.

9. *Hospitals

i) Journalists or photographers making enquiries at hospitals or similar institutions must identify themselves to a responsible executive and obtain permission before entering non-public areas.

ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

10. *Reporting of crime.

(i) The press must avoid identifying relatives or friends of persons convicted or accused of crime without their consent.

(ii) Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of, crime. This should not be interpreted as restricting the right to report judicial proceedings.

(294)

v) Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.

vi) Editors must not use the fame, notoriety or position of a parent or guardian as justification for publishing details of a child's private life.^{xxi}

7. *Children in sex cases

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.^{xxii}

2. In any press report of a case involving a sexual offence against a child -

i) The child must not be identified.

ii) The adult may be identified.

iii) The word "incest" must not be used where a child victim might be identified.

iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

Note: New Clause 8 – listening devices is now coupled with subterfuge in Clause 10. Original clauses 8 to 17 are renumbered accordingly

8. *Hospitals

i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.^{xxiii}

ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

9. *Reporting of crime

(i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.^{xxiv}

(ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

(255)

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11. *Misrepresentation

~~i) Journalists must not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge.~~

~~ii) Documents or photographs should be removed only with the consent of the owner.~~

~~iii) Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means.~~

12. Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and, ~~by law~~, they are free to do so.

13. Discrimination

~~i) The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or disability.~~

~~ii) It must avoid publishing details of a person's race, colour, religion, sexual orientation, physical or mental illness or disability unless these are directly relevant to the story.~~

14. Financial journalism

~~i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.~~

~~ii) They must not write about shares or securities 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.~~

~~iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.~~

(256)

10. *Clandestine devices and subterfuge^{xxv}

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 unauthorised removal of documents or photographs.^{xxvi}

ii) Engaging in misrepresentation or subterfuge, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.^{xxvii}

11. Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.^{xxviii}

12. Discrimination^{xxix}

i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.^{xxx}

ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13. Financial journalism (no change)^{xxxi}

i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.

ii) They must not write about shares or securities 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.

iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

(266)

Editors' Code of Practice Committee

15. Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

16. Witness payments in criminal trials

i) No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.

This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

17.* Payment to criminals

Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.

(301)

14. Confidential sources (No change)^{xxxii}

Journalists have a moral obligation to protect confidential sources of information.

**15. Witness payments in criminal trials^{xxxiii}
(No change)**

i) No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.

This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

16.* Payment to criminals^{xxxiv}

i) Payment or offers of payment for stories, pictures or information, which seeks to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues.

ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

(334)

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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:

- i) Detecting or exposing crime or a serious misdemeanour.
- ii) Protecting public health and safety.
- iii) Preventing the public from being misled by some statement or action of an individual or organisation.

2. ~~In any case where~~ the public interest is invoked, the Press Complaints Commission will require a full explanation by the editor demonstrating how the public interest was served.

3. There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public.

4. In cases involving children editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child
(140)
1593

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:*^{xxxv}

- i) Detecting or exposing crime or serious impropriety.^{xxxvi}
- ii) Protecting public health and safety.
- iii) Preventing the public from being misled by an action or statement of an individual or organisation.
- iv) Information which the public has a right to know and which the press has a legal, social or moral duty to communicate.

2. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.^{xxxvii}

3. There is a public interest in freedom of expression itself. The PCC will therefore consider the extent to which material is already in the public domain, or will become so, *making non-publication perverse.*^{xxxviii}

4. In cases involving children under 16 editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.^{xxxix}
(161)
158

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Regard this as page 6A

LATE ADDITION

Privacy (Clause 3) / Children (Clause 6)

9.9 Mr Ken Livingstone, the Mayor of London (02.03.04)

Mr Livingstone complained to the PCC after The People and the Saturday Daily Telegraph published pictures (taken on different occasions) showing him with his toddler son, Thomas. The People showed him pushing a supermarket trolley bearing his son, although only the back of the boy's head was visible, obscured by a Christmas tree. More seriously, the Telegraph showed Thomas clearly in a photo-spread which questioned the motives of celebrity fathers-using children for publicity, which Mr Livingstone said he had specifically chosen not to do. The PCC rejected the complaint on the grounds that the pictures could not impact on the boy's present or future welfare. In one he was not even recognisable; in both he was too young to be aware of either the taking or the publication of the photograph.

However, even before the adjudication, Mr Livingstone indicated that he wished the Code to be revised. He said the Code's 'fairly firm strictures' protecting children's privacy were undermined by the apparent assumption that photographs taken in a public suburban street were permitted because there could be no reasonable expectation of privacy. Effectively, this meant that only substantial land-owners could provide privacy for their children. He said this contradiction was vividly illustrated by the Mail On Sunday which had previously sought permission to print pictures of him with his son, even while claiming not to need it under the Code. He refused consent. 'To my surprise' the pictures were not used.

His suggestion: *The Code should be revised to make it clear a child's right of privacy does not disappear the moment they step out of the front door of their home.*

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Notes to draft changes

¹ Preamble

The preamble, arguably, is one of the most important parts of the Code since - taken together with the public interest provisions - it synthesises the spirit of the document. However, this is not always appreciated.

Possible change: *There is a case for giving the preamble extra weight by numbering it in, or at least ensuring that the words The Code appear above the preamble (as shown on the revised version).*

One potential drawback of this could be that, because the preamble is substantially addressed at the industry, it might invite third-party complaints about procedural matters or generalised complaints that professional standards have not been upheld.

ⁱⁱ This reworked wording is inserted because currently there is no obvious correlation between the Code and the PCC's commitment to conciliation.

ⁱⁱⁱ The paragraph requiring editors and publishers *to ensure that the Code is observed rigorously* etc has been moved and telescoped with the other employers' obligations partly because it sits better there, but more importantly to emphasise that this is expressly **their** responsibility – thus obviating the need for a conscience clause for individual journalists.

- The inclusive phrase – all staff and external contributors, including non-journalists is intended to establish at the outset that, for Code purposes, press photographers, researchers etc are covered by the code and are not a distinct caste to be referred to separately. The Handbook and relevant PCC literature should emphasise this.
- The reference including online versions of publications corrects an anomaly. The situation has existed for several years and is a strength of self-regulation, but is not otherwise mentioned.

^{iv} The addition to the final paragraph including a headline reference to the PCC was agreed at the last Committee meeting in line with the PCC chairman's suggestions on branding.

Clause 1 - Accuracy

^v "The press" has been substituted to save space here and in 1iii, to include periodicals.

^{vi} The new sub-clause ii replaces and embraces iii for brevity and neatness. The phrase referring to apologies moves to the end of the clause, *after* the reference to due prominence.

Clause 2 - Opportunity to reply

⁷ The phrase *individuals and organisations* is superfluous. It is difficult to see who else could seek the opportunity to reply. The qualifying factor is their reasonableness in calling for it.

Clause 3 - Privacy

^{viii} The Privacy clause is under constant scrutiny. Both Government and Select committee have indicated the need for change to embrace modern communications, and the logic of that is fairly irresistible - as long as the public interest defence remains. Similarly, long-lens photography is no longer the sole means of intrusion, and that is now covered in the new clause on **Clandestine Devices and Subterfuge** (10 below). The case for the changes is that we would be seen to be making movement, although for the reasons given, in some ways we are clarifying the existing position.

^{ix} The inclusion of digital communications in **sub-clause 3i** closes a loophole in the current Code, which follows the wording of the Human Rights Act.

^x The change to **sub-clause ii**, which would make it unacceptable to photograph individuals in private places without their consent, while seeming drastic, actually consolidates what is effectively already the case. The current sub-clause bans *long-lens photography* of people in private places without consent. **Clause 4iv- Harassment** states that journalists *must not photograph individuals in private places*. As a result, the injunction can be removed from the Harassment clause (see below)

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Clause 4 - Harassment

^{xi} The current sub-clause 4i requires that the press should not obtain or seek information by intimidation etc. This begs the question of what other defensible reason journalists might have for such activity – other than that already covered by the public interest defence? Hence the tighter draft sub-clause, outlawing engagement in these activities.

^{xii} The changes in sub-clauses 4ii and 4iii are intended to be shorter, simpler and reflect the change in Clause 3 on photography in private places.

Clause 5 - Intrusion into grief or shock

^{xiii} The changes proposed in sub-clause 5i are for simplicity and clarity. The new draft sub-clause 5ii is in response to a growing demand from pressure groups and others for much more restraint in suicide reporting. It is a difficult area to codify. Pressure groups suggest we avoid *unnecessary detail* in suicide coverage generally, which if taken literally could apply to names, and would be unacceptably restrictive. We have proposed higher thresholds.

^{xiv} The words legal proceedings, including inquests have been substituted because PCC complainants often do not appreciate that “judicial proceedings” includes inquests (which, arguably, are not judicial). Additionally legal proceedings, expresses more accurately the press’s wider remit and has been used to replace *judicial* elsewhere in this Review.

^{xv} The new sub-clause 5ii attempts cautionary guidance on covering suicides. Reporting with due sensitivity would allow publications to take a different approach to Harold Shipman’s death than to, say, a bullied schoolchild. The *optional* reference to avoiding *excessive detail of means of death* is aimed at avoiding imitative suicides, leaving the PCC to decide what was excessive in the circumstances. It may not, for example, be excessive to state that the cause of death was a Paracetamol overdose. It would probably be excessive to state how many tablets constituted a fatal dose. The public interest defence, and the previous qualification concerning legal proceedings, would apply. The committee needs to consider whether this option might be too subjective and open floodgates.

Clause – 6 Children and young people

^{xvi} This is a difficult area. The PCC secretariat points out an anomaly in the current Clause 6 which leaves us exposed to charges of inconsistency. Sub-clause 6i states: *Young people should be free to complete their time at school without unnecessary intrusion*. This has been taken to extend the protection of children (under the age of 16) to sixth-formers, including those who could be 18 or over.

But what about young people who have left school, including those in further education? Are they covered? And should youngsters who leave school at 16 or younger, not have similar protection to those who stay on until 18+?

Is it the education we are addressing, or the vulnerability of children and young people? If it is the former, then we could let the current clause stand, on the basis that school is a category of life quite different from any other. That would create distinctions between schools and colleges (including sixth form colleges) taking 16+ students.

If it is the vulnerability of children and young people, as Lord Wakeham suggested (“not all children mature at 16”) then it would be more consistent to extend the clause to embrace all young people at work or school until the age of 18. While fairer, that would widen the group significantly. The PCC secretariat does not believe such a change would open floodgates as there are not many complaints in this area. The clause targets *unnecessary* intrusion and the normal public interest defence applies.

The upside of this change would be that we would be seen to be increasing protection for vulnerable young people generally. The downside would be that young people of 18+ still at school would *lose* the protection they currently enjoy under the Code. There is no perfect solution. We could just leave it in its imperfection, or consider a possible compromise, as drafted below.

^{xvii} The newly-drafted sub-clause 6i defines children as under the age of 16 and young people as under 18, recognising both groups *particularly* should be free from *unnecessary* intrusion. However, the ‘*exceptional*’ public interest test needed to justify stories about children need not automatically be extended to young people. (See Public Interest 4).

^{xviii} In sub-clause 6ii consent should come from a *custodial* parent or similarly responsible adult. This clarifies the situation with estranged parents, where only one is responsible for the child’s welfare.

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^{xix} It was provisionally agreed at the last committee meeting to substitute the word *personal* for private lives in Clause 6 to give children greater protection. However, there had been objections to this from the industry, lawyers and the PCC secretariat which would have had to administer it. In the new **sub-clause 6iii** the restriction on publication of material has been qualified to avoid material which **adversely affects** an identifiable child's welfare, thus providing more targeted protection.

^{xx} In **sub-clause 6iv**, the word *while* has been deleted for clarity.

^{xxi} In **sub-clauses 6v and 6vi** the wording has been shortened and simplified.

Clause 7 - Children in sex cases

^{xxii} **Sub-clause 7.1** has been tightened.

New Clause 8 – Hospitals (*listening devices etc see New Clause 10*)

^{xxiii} The old clause 9 has been renumbered as 8 and shortened.

New Clause 9 – Reporting of crime

^{xxiv} The old **sub-clause 10i**, renumbered **9i**, now delineates more clearly the circumstances in which relatives etc may be named, including *genuine relevance*. **Sub-clause 9ii** is shortened and simplified.

New Clause 10 - Clandestine devices and subterfuge

^{xxv} This new clause combines the old Clause 8 Listening Devices and Clause 10- Misrepresentation.

^{xxvi} The scope of the former Listening Devices clause is expanded to protect mobile phones, messages and emails and to embrace the use of hidden cameras, and unauthorised removal of documents and photographs.

^{xxvii} A tighter clause on misrepresentation and subterfuge deletes the reference to *obtaining or seeking to obtain information or pictures* and makes clear that engagement in such activities would not *generally* be justified unless in the public interest. The qualification *generally* would allow harmless spoofs etc.

New Clause 11 - Victims of sexual assault

^{xxviii} The small change from *by law free to do so* to *legally free* is introduced for consistency.

New Clause 12 - Discrimination

^{xxix} The *Discrimination Clause* accounts for the largest single number of complaints about the Code, because it does not embrace *Discrimination against groups*, which has always been considered a matter for editors' judgment.

^{xxx} In **sub-clauses 12i and ii**, details of a person's race etc has been changed to details of an individual's race in response to a request from the PCC secretariat, to avoid misleading members of a group into believing that they can claim they are affected personally. Gender is substituted for *sex*.

New Clause 13 – No change

^{xxxi} Although no changes are suggested now, new financial services regulations are expected which may mean this will need to be revisited later.

New Clause 14 – Confidential sources: no change

³² No change has been suggested, post-Hutton. The committee may wish to consider this further.

New Clause 15 – Witness payments in criminal charges: No change

³³ This clause is left unchanged because it would mean unravelling the deal agreed last year with the Lord Chancellor's department. It might be worth revisiting it, in the light of experience, next year.

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New Clause 16 – Payments to criminals

^{xxxiv} This has now been further revised in Draft 2 to refocus on exploiting a crime, or glorifying or glamorising crime generally. The committee agreed at its last meeting to revise this clause following the Hector Dick case, where a Scottish newspaper paid for a story in the hope that it would be provided with material which was in the public interest, then published regardless when nothing in the public interest emerged. This has now been further revised in 16ii.

The public interest

^{xxxv} The words but is not confined to have been added to avoid current misunderstandings – by lawyers as well as complainants.

^{xxxvi} The word impropriety has been substituted for outdated misdemeanour. An optional extra clause has been added to improve right-to-know provisions.

^{xxxvii} Sub-clause 2 has been simplified and shortened.

³⁹ Sub-clause 3 has been redrafted to embrace the concept of *perverse non-publication*. This is designed to give the PCC greater latitude in deciding when it would be inappropriate in all the circumstances not to publish material.

⁴⁰ In view of the changes to Clause 6 – Children and Young People, the committee has the option of retaining the “exceptional” threshold for stories relating to children under 16, while not applying it to young people of 16-18.

APPENDIX A

Comments from Alan Rusbridger

The preamble

- “*while not duplicating the law*” – this phrase is unnecessary and doesn’t do what the notes to the draft changes say it is intended to do i.e. let the public know that the code does not impact on any legal restrictions on the press in the areas covered by the code. It may in fact be interpreted as suggesting that the Code is intended to impose greater restrictions than the law and for this reason should be deleted.
- “*founded on mediation*” This should be deleted. The code is founded on self-regulation, rather than mediation. The only remedy it can provide is adjudication. It is misleading to suggest that mediation is the foundation of the code.
- “*non-legalistic*” – the code is ‘legalistic, not least because it is taken into consideration under by the court under the Human Rights Act (section 12 (4)). For this reason the precise wording of the Code is extremely important. The inclusion of this phrase does not achieve the aim set out in the notes to the draft changes and is possibly misleading in suggesting that it has no legal impact.
- The Code doesn’t seem to have caught up with article 10 and the Human Rights Act and it is rather hung up on public interest when it should also have as its focus freedom of expression. For this reason I would suggest an additional amendment to the third paragraph of the preamble: the insertion of the words “*constitutes an unnecessary interference with freedom of expression or*” before “*prevents publication in the public interest*”.
- *Observation of the code* - this clause should also include agents working for newspapers, who may or may not be journalists. (A similar formula is used in clause 4 which enjoins “those working for...” etc). In addition “*rigorously*” seems at best otiose and at worst capable of suggesting that journalists must interpret the Code narrowly, which contradicts the paragraph above. In relation to editors’ compliance with the Code, “*must*” may produce an obligation, which, if not performed, would be tantamount to a breach of the Code. Since this is self-regulation ‘*should*’ seems more appropriate.

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- It would appear to suggest that the PCC regulates all on-line publications? This is a grey area. I would have thought that there is a strong argument that the Code should only apply to publication on-line of material that also appears in the newspaper? See the PCC submission to the DCMS inquiry.

I suggest the following replacement wording for this paragraph:

“It is the responsibility of editors and publishers to ensure that the Code is observed by all persons engaged by them, including but not limited to: journalists, researchers, photographers, and agents acting on their behalf or on their instructions. Editors should co-operate with the PCC as swiftly as possible in the resolution of complaints.”

Clause 1 - Accuracy

My view is that this clause should remain unchanged so that the requirement to publish a correction and not an apology in relation to the events described in (ii) is kept separate from the requirement to publish an apology in (iii).

Who is to decide when it is appropriate to publish an apology when there is a significant inaccuracy, misleading statement or distortion? While we would be happy to correct any error we may be less enthusiastic about publishing an apology to, for example, convicted criminals in relation to a PCC complaint under Clause ii). Placing the requirement for an apology under ii) raises the expectation in the claimant that he may get an apology if inaccurate (as opposed to defamatory) information is published about him.

Newspapers are of course free to apologise if they consider that the complaint merits it but the introduction of the requirement to publish an apology in these circumstances is likely to make it more difficult to resolve complaints for the following reasons:

1. the publication of an apology may prejudice a newspaper's position in subsequent litigation;
2. our experience of libel litigation is that complaints can become protracted and difficult to resolve when negotiations turn on whether an apology should be published and the wording of the apology;

The requirement to simply publish a correction manages the expectations of a complainant and makes the resolution of complaints under the code fairly straightforward.

Clause 4 - Harassment

iii) I suggest the following wording instead:

“Editors and publishers must ensure that this clause is observed by all persons engaged by them, including but not limited to: journalists, researchers, photographers, and agents acting on their behalf or on their instructions and they should not publish material which they know to be non-compliant from other sources.”

Clause 5 - Intrusion into grief or shock

The notes say that the public interest defence will be available in relation to this clause but there is no asterisk. A public interest defence is crucial here. There may be times when it is important to go into the detail of a suicide. For example in the case of David Kelly a group of doctors argued, on the basis of the detailed medical evidence, that his death was not suicide. It is possible that a suicide masks a suspected murder and this may go to the heart of an investigative piece.

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Suicide

It would be a shame if the PCC Code dropped the phrase about excessive detail. It is the whole point of the clause and it addresses the very real danger of imitative suicides. The cautionary tone of the Guardian's clause in its code of ethics has not caused any significant problems. Journalists have taken it as the caution it is intended to be and given some real thought to it in suicide coverage since it was introduced. The copycat factor is well established and this is what should be at the back of everyone's mind when these deliberations are going on.

The Guardian's own clause in relation to suicide reads as follows:

- "Journalists are asked to exercise particular care in reporting suicide or issues involving suicide, bearing in mind the risk of encouraging others. This should be borne in mind both in presentation, including the use of pictures, and in describing the method of suicide. Any substances should be referred to in general rather than specific terms if possible. When appropriate a helpline number (eg Samaritans 08457 90 90 90) should be given. The feelings of relatives should also be carefully considered.^{xxxix}

Clause 6 - Children and Young People

I would have thought that it is the school life of children, which is conducted in a relatively public environment, that should be protected. Privacy (of everyone) is protected under clause 3. I would suggest sticking with the original clause i). "*Unnecessary*", is a peculiar addition to, "*intrusion*", particularly in relation to a clause that is covered by the public interest defence.

With regard to ii) '*custodial parent*' is not defined and I'm not sure that it will resolve the problem envisaged in the notes. A journalist may find it difficult to establish whether a parent has legal custody. I suggest instead "*a parent who is legally responsible for the child*".

iii) My view is that this sub-clause should be deleted. In some cases it will be very difficult for a newspaper to make this judgment and arguably any publication about a child could adversely affect its welfare - as was decided by the court in the Flora Keays case. We and other newspapers breached this injunction.

v) For similar reasons, my view is that '*demonstrably*' in the existing code is better than '*clearly*'.

Clause 9 – Reporting of Crime

The inclusion of "*genuinely*" is pejorative. It should be deleted: something is either relevant or it is not.

Sub-clause ii) has been amended so that children who are witnesses in any legal case (and not just witnesses of crimes) are covered.

Clause 10 – Clandestine devices and subterfuge

The word '*publish*' should be deleted from sub-clause i) as this could prevent newspapers from receiving unsolicited material from sources. The injunction should be against methods used by the press and people engaged by them rather than against publication. The last part of this sub-clause "*or by the unauthorised removal of documents or photographs*" should be deleted and sub-clause ii) reinstated for the same reason.

Clause 11 Victims of sexual assault

See my comments on "*genuinely relevant*" in relation to Clause 9 above.

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Clause 16 Payments to Criminals

This clause seems to me far too broad (see the representations of five national newspaper editors after the adjudication against the Guardian in 2003).

The PCC, in trying to reconcile radically different interpretations of the existing Code, has succeeded only in making itself look foolish.

The purpose of the clause is surely, and reasonably, to prevent criminals, or former criminals (or their relatives etc)

- a) cashing in on their crimes by writing about them, or
- b) in some way seeking to glorify or glamorize crime in general

Are we really saying that *no-one* convicted of *any* crime can *ever* receive money from a newspaper for writing about *anything* unless it is deemed to be in the public interest? Is this compatible the notion of rehabilitation of offenders or the freedom of speech ideals enshrined in Article 10 of the Human Rights Act?

Prisoners and former prisoners may well deserve to be heard, whether or not what they write passes the code's exacting (if, at times, inflexible) public interest test. Some people might find it distasteful to read the words of prisoners or former prisoners, but the PCC surely does not see its role as an arbiter of taste. What they write may be caught by other clauses in the code (accuracy, for example, or privacy). But a blanket prohibition on anyone earning money from writing for newspapers after release is unnecessarily restrictive.

Why don't we insert some wording which would make the restrictive intention of this clause plainer? So, after "*information*" in the first sentence insert "*which seeks to exploit a particular crime, or to glorify or glamorise crime in general.*" That, at least, sets out some boundaries rather than place all convicted criminals beyond the pale in perpetuity.

What are the words "*reasonable expectation*" intended to add here? Whose reasonable expectation is it? The decision to be made, if there is a complaint, is whether material should be published in the public interest. To have an additional inquiry about whether or not there is a reasonable expectation is unnecessary. I suggest that the words are deleted.

"*Any material published would need to demonstrate that public interest*". What public interest? The problem with this formulation is that it appears to be creating a different sort of public interest than that envisaged elsewhere in the code. The requirement is to show that there is a public interest in paying money rather than that there is a public interest in publishing the information. I suggest that the last sentence is deleted since the public interest defence is available under this clause anyway.

I find the notion that *information cannot be obtained except by paying money* problematic. Many newspapers function perfectly well in the public interest without paying money. In the Tony Martin case the PCC argued that paying him was necessary because his representative demanded it and that other newspapers had offered money. This does not somehow seem a sufficient reason.

The Public Interest

I am a little anxious about the change in the definition of public interest from "*a serious misdemeanour*" to "*serious impropriety*." The second is much weaker than the first.

"Misdemeanour" has a technical legal meaning ("an indictable offence of less gravity than a felony") as well as describing misconduct or misbehaviour. Impropriety is anything which is improper – ie (Cassell) "unsuitable, unfit, unbecoming, indecent." This seems to be a significant lowering of the public interest hurdle and could, in particular, make infringement of privacy a rather simpler matter to argue.

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Adding "...in public life" after "impropriety" would make it clear that this new wording should not open the floodgates on reporting any impropriety in individuals' private lives.

Sub-clause 1 – could we add to this (iv) information which the public has a right to know and which the press has a corresponding legal, social, or moral duty to communicate?

Sub-clause 3. I suggest that the public domain provision is uncoupled from the recognition that there is a public interest in freedom of expression itself.

There would then be a separate sub-clause about information which "has, or is about to become available to the public" (as per the HRA). I would suggest deleting the words about perverse non-publication.

Appendix B

Comments from Derek Tucker

1) **The revised preamble** concerns me at the point where it states that it is the responsibility of editors to ensure that external contributors comply with the Code. I would question how realistic this is. We can, of course, write to anyone who contributes regularly to our pages to make them aware that we comply and expect them to do so, but I do not think editors should run the risk of being censured if they publish a piece which, it later transpires, was obtained by a method which broke one of the clauses. I would also question the necessity of 'in both printed and online publications' since many of the clauses apply to the manner in which material is obtained, not the use to which it is put. I'm not sure I agree with singling out photographers as a distinct group. Why not just cap 'ALL journalists'? Editors know what that means.

2) **Clause 4iii** concerns me for the same reason outlined above. Could we amend it slightly to read 'not knowingly use non-compliant material'?

3) **Clause 6i**, as proposed, gives the impression that, once people reach 18, they can expect unnecessary intrusion. I think the current wording, with its imperfections, is better than the proposal. I agree with you that there is no ideal phraseology.

4) **Clause 9i**. What is the purpose of the word 'generally'? I feel the addition of the 'genuine relevance' test would be undermined by the leeway that 'generally' appears to provide.

5) **Clause 11**. What is the purpose of 'legally free to do so'? The revised Code goes to great lengths to make it clear that it does not act in areas of illegality. If anyone identifies a victim of sexual assault when not legally free to do so, surely it is for the courts to act, not the PCC?

Appendix C

Comments from Neil Wallis

There are useful amendments here, but I worry that there are far too many changes for the sake of change, and that overall it looks like an over-reaction to the select committee's report.

On Clause 5, I don't think there is a strong argument for having a separate reference to reporting on suicide - the general issue is already covered by 5(i). But I am particularly concerned that the words "Taking care to avoid excessive details to means of death" should be removed. Is there any evidence that this is a REAL - as distinct from an occasional - problem? If it is, it certainly didn't particularly register with me during my time on the PCC. And how would the commission judge whether the level of detail is "excessive" or not?

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On Clause 6: I'm also at a loss to understand why anyone is suggesting extending under the children's clause to cover school-leavers above 16. Where is the evidence of a clamour for this - and, more important, the need? After all, they can marry, live alone or in partnership, hold down a full-time job, pay tax or claim benefits, serve operationally in the armed forces etc etc.

On Clause 12, your note refers to the demand from some people for the clause to be widened. I think we should stand fast against these demands. The clause is rightly tightly defined and does its job well.