

Editors' Code of Practice Committee

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

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AGENDA

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

Thursday, 23 September, 2004 at 10.30am
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1. **Apologies**
 2. **New members** – Lindsay Nicholson, Editor-In-chief, Good Housekeeping magazine (PPA); Harriet Wilson, Director of Editorial Administration and Rights, Conde Nast (PPA).
 3. **Minutes of 4 March, 2004** (circulated)
 4. **Business arising**, if not dealt with below.
 5. **Anonymity of suspects:** Letter from Paul Goggins *Page 2*
 6. **Community Cohesion** *2*
 7. **Representations from the public** *3-4*
 8. **Privacy issues: Naomi Campbell and Princess Caroline** *4-5*
 9. **The Editors' Codebook: Members' views**
 10. **Other business**
 11. **Next meeting**
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4. Anonymity of suspects

4.1 The PCC Guidance Note on the Reporting of Those Accused of Crime, approved by the Code Committee as part of an agreement with the Home Office aimed at stopping a House of Lords move to introduce anonymity for people accused of sexual offences, has been published. Paul Goggins, Parliamentary Secretary of State at the Home Office, has written to Les Hinton, thanking the committee for its constructive attitude and noting that the committee also intended to address this in the Handbook.

4.2 *"Strengthening the Code of Practice, with the aim of ensuring those suspected of offences, but not yet charged, are not named in the media would have been my favoured course of action, However, I fully support and appreciate the constructive steps your organisation has taken to reiterate the responsibilities of the press in this matter.*

"As you are aware, the Government is committed to monitoring the results of strengthened self-regulation in this matter through an inter-ministerial committee, of which I am a member. Therefore, I should be grateful if you could advise me when this guidance is published and any further progress in this matter"

- The Committee needs to consider whether it wishes to go further than the reiteration of the Guidance Note as currently proposed in the Editors' Codebook.

5. Community cohesion

5.1 The Home Office's working party on Community Cohesion has produced a draft document which includes the recommendations of its Media Practitioners Group – a sub-panel comprising editors and journalists as well as representatives of ethnic and minority groups.

5.2 The MPG's media representatives, who include Bob Satchwell, Director of the Society of Editors, appear to have had some success in persuading fellow-members that legal sanctions and coercion would not be effective in promoting social cohesion. Its relevant recommendation is:

5.3 *"The MPG recommends that the DCMS work with the PCC in monitoring the nature of complaints, to assess the effectiveness of the Code in relation to faith and race issues and in respect of complaints concerning asylum seekers and refugees.*

"The PCC could report on the effectiveness of the Code in order to build confidence in this process with the public and the press. The Code offers further opportunity to advise editors on reporting faith, race and community cohesion but changing the Code is a lengthy procedure and subject to decision by the PCC.

"The MPG has attempted to influence the PCC through representation from the Society of Editors. Members of the MPG asked that the Code of Practice produced by the PCC address community cohesion. It is unlikely that PCC will agree to any significant revision in this area.

The Race Relations Amendment Act 2000 is noted in the Code. There is a suggestion that the Code could be supported by supplementary guidance and this would be welcomed by the MPG."

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6. Representations from the public

Subterfuge (Clause 10)

6.1 [redacted] via PCC

[redacted] suggested that neither journalists nor MPs should tape record conversations with each other, without first informing the other party, unless there was good reason not to - ie. To reveal or prevent serious wrongdoing.

- **Suggestion:** *The Code should insist on a clear public interest to justify covert tape recording. Does covert tape recording constitute subterfuge?*

Discrimination (Clause 13)

6.2 [redacted], Downs Syndrome Association

[redacted] was disappointed that the revised Code did not issue guidance on language that was offensive to a person who has Downs syndrome or similar genetic conditions - such as the term 'Mong'. She hoped the Handbook might include such guidance, on proper use of terms so that expressions such as *retarded/mentally handicapped/backward* should be replaced by *learning disability*;

- **Suggestion:** *That the Code promotes more positive – or less negative - coverage of people with Downs syndrome. Should it be in the Codebook?*

6.3 [redacted]

[redacted] claimed that Clause 13 does not make transparently clear that it refers only to individuals and not groups. He complained that this permitted amazing latitude, which was designed to protect the press rather than the public – it was OK to refer to “Jamaican black bastards” as long as they were not named. He specifically objected to a piece in The Times which had suggested pejoratively and inaccurately that Koreans were heathens and eating dogs in New Maldon. It was an inaccurate stereotype. The PCC had rejected the complaint on the grounds that the article was clearly the personal view of the author.

- **Implied suggestion:** *That the Code be altered to include pejorative and inaccurate references to groups.*

6.4 [redacted] Transsexual rights organisation, Press for Change

[redacted] said the Code was failing minority groups such as transsexual people by not allowing group complaints. She felt gender identity/ trans people should be listed within the categories mentioned in Clause 12 and had expressed a wish that mention could be made in the handbook or a guidance note.

- **Suggestion:** *The Code should include groups within the Discrimination protection, and specifically list transsexuals and gender identity people within its existing categories.*

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General

6.5 [redacted] supported by the RSPCA

[redacted] complained about 'Hot Wings', a feature piece in Emap's men's magazine Zoo Weekly which depicted chickens being burned alive in Asia (as a measure to curb bird flu) and made sick jokes about their suffering. He said such articles would promote the view among young men that extreme cruelty to defenceless animals was something from which it was acceptable to derive sadistic pleasure. This was damaging to the public interest and should be covered by the Code.

- **Implied suggestion:** *That the Code should ban publication which was against the public interest.*

6.6 [redacted]

[redacted] wanted the Code to take action to prevent pornographic images appearing on the covers of magazines and newspapers, which are freely displayed. The Obscene Publications Act was outdated and unworkable and the Code should cover the suitability of displayed imagery, which affected the safety of women and children.

- **Suggestion:** *The Code should introduce guidelines for taste and decency in displayed imagery.*

7. Privacy issues: Naomi Campbell and Princess Caroline

7.1 The two landmark legal decisions have brought swift calls for consequent changes in the Code. Naomi Campbell's victory in the House of Lords has been seized on as creating a tighter interpretation of the law of confidence, which would make resolution under the Code less attractive to prospective complainants than the law. The Caroline verdict in Strasbourg is seen by some lawyers as a ban on any unauthorised pictures of people who are not public office holders on official business.

7.2 **Suggestions:** three proposals have been put to the Committee by lawyers:

- 7.2i **The Simkins Partnership**, which specialises in PCC complaints, claims that in the light of the Caroline case, *pictures of celebrities in public places are no longer justifiable and prominent individuals therefore have privacy rights in public places...* and the Code's test concerning *locations in which an individual has a "reasonable expectation of privacy" is now obsolete.* They suggest that failure to protect individuals against publication of pictures and stories *merely for 'entertainment purposes', where there is no public interest may breach the Article 8 rights of an individual.*
- 7.2ii **Harbottle and Lewis** cites Campbell to press its case that the Code should offer greater protection to children of public figures. It says it receives numerous complaints of intrusion from parents who have tried to protect their children from publicity. Many such pictures are published, encouraging paparazzi pursuit, often in an *overtly and hostile manner.* The firm suggests the pictures easily fall within the categories of those likely to cause harm, as demonstrated by the Campbell case.

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- 7.2iii **Trinity Mirror lawyers**, even before the Lords verdict, urged that the Code be changed to reflect PCC jurisprudence. This is because while both the Human Rights and Data Protection Acts require courts to take into account the Code, they do not require judges to look at the jurisprudence or pronouncements from adjudicators. Trinity Mirror suggests PCC case-law philosophy should be incorporated into this clause to ensure that the courts do not interpret the Code in a way which was not intended, and perhaps provide a more attractive remedy to complainants than the PCC. Effectively, according to Trinity Mirror, this would mean that the Code would help to make law, by influencing the judges.

7.2iv Trinity Mirror suggests a new clause 3ii should make clear that privacy can be compromised by those who *court, or do not object to*, publicity and that such people would be less protected. This echoes the Vanessa Feltz v Sunday Mirror adjudication where the PCC rejected the complainant's claim that pieces about an alleged sexual relationship were inaccurate and intrusive. The PCC took into account the large amount of material about her relationships, particularly her marriage breakdown, which was already in the public domain.

7.2v Trinity Mirror also suggested the definition of *private places* should be altered to specifically exclude anywhere which is publicly accessible.

7.3 **Legal opinion** is divided on how much the Campbell and Caroline cases, which take contradictory views on reasonable expectations of privacy, will change the landscape and whether there is a need to react now or wait to see how the law develops. The PCC takes the latter view. It sees no evidence that a legal remedy is more attractive - the number of privacy complaints to the Commission has increased, rather than waned in the wake of the Campbell court marathon. There are strong arguments for believing that, while setbacks in legal terms, neither the Campbell nor Caroline verdicts necessarily undermine the Code. Taking the cases in turn:

7.4 **The Campbell** judgment upheld the principle of publication in the public interest, fundamental to the Code. The complaint was not at the disclosure of her addiction or treatment - which given her previous public denials of drug taking was accepted as reasonable - but that the piece revealed that she was attending Narcotics Anonymous, described the nature of the treatment, and used a picture, taken secretly without consent, showing her leaving the NA clinic.

7.5 The matter is still finally balanced, relying on value judgments based on sensitivity and proportion. The PCC could, under the Code, have reached a similar verdict to the Lords and the courts could - as did five of the nine judges who heard the case - have ruled that it was not an intrusion.

7.6 **A Princess Caroline-style case** could also have been dealt with by the PCC under the Code. Caroline's victory overturned a German court ruling that paparazzi pictures of her - often with her children - in routine family situations, and taken without consent were acceptable because she was not in a secluded place. The Strasbourg court upheld her appeal because she was not engaged in public functions, and this was an intrusion into her private life, often in a climate of harassment. She had made clear she did not wish to be pursued by the paparazzi.

7.7 If Princess Caroline's case had come before the PCC, even if her privacy claims failed - the German definitions of reasonable expectations are not very different from the PCC's - a claim for harassment could well have been upheld on the grounds that for ten years she had been telling the media to desist from pursuit.

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7.8 **Summary: The Committee's options.** The PCC view is that while we should keep the situation under close scrutiny, any change now could appear hasty and be ill-advised. It can live with the Caroline and Campbell verdicts. Lawyers are divided on how the Caroline case might be translated into British law. Only time will tell. The Trinity-Mirror call for a defensive change in the Code is not universally favoured. Some lawyers argue that it would not necessarily have the influence on judges anticipated. While it would be possible to incorporate into the Code a form of words making clear that privacy could be compromised, any attempt to row back on the current definition of Private Places would be highly controversial.

8. The Editors' Codebook – comments on draft

- There should/should not be an index
- Paragraph numbers should/should not be numbered
- The Foreword and Introduction are possibly too defensive
- Key checks should/should not go at the head of sections
- Reference should be made to how the Code fits with the laws that also affect the media
- Stress that while, case-law is important, the PCC judges each complaint on its merits.

Secretary's Note: Comments so far have been restricted due to problems in delivering digital versions of the draft to Committee members. Any suggestions received in time, will be incorporated into a revised agenda.