

THE PRESS STANDARDS BOARD OF FINANCE LIMITED

Editors' Code of Practice Committee

Agenda

Editors' Code of Practice Committee meeting

NS/NPA offices, 8th Floor, St Andrew's House,
18-20 St Andrew's Street London EC4 3AY
10.30 a.m., Thursday, April 16, 2009

1. Apologies:
2. Welcome to Baroness Buscombe, Chairman of the PCC.
3. Minutes of Thursday, November 6, 2008 (circulated).
 - Tim Toulmin has identified an error in the Minutes which, under Other Business,

should be amended as follows:

Tim Toulmin said that while judges were referring to PCC adjudications, these did not include the Code in their judgments, the PCC itself did not have any landmark cases, because the complainants were going straight to the courts - where they would have both damages and the force of law - or the papers were settling...

The amended version will be signed, subject to the Committee's agreement.

4. Business arising (if not dealt with below):
 - Resignation of Mike Gilson (NS) on leaving *The Scotsman*
 - Exploitation by freelance agencies - John Dale's response
5. Protection of judges: Lords Select Committee on Constitution
6. Coroners Bill: letter from Bridget Prentice
7. Code Committee website
8. Editors Codebook relaunch
9. Privacy study
10. Annual Code Review
11. Other business
12. Next meeting

Appendix A: Annual Code Review 2008/9

Appendix B: Privacy and the Code survey - to follow as separate pdf.

Appendix C: The Code in A4 format is attached as a separate pdf for easy reference.

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Agenda items:

5. **Protection of judges:** The secretary wrote rejecting the call from the Lords' Select Committee on the Constitution for judges to be made a special case under the Code to protect the judiciary from 'inaccurate and intemperate' press criticism. The letter expressed disappointment at their lordships' failure to address most of the points we had made to them and set out detailed reasons for our decision. These included the fact that the Judicial Communications Office could - and did - pursue complaints on behalf of judges through the PCC and that we were engaging with the JCO to see if that system was effective.

The Constitution Committee, while disappointed by our decision, was pleased that we were in contact with the JCO. Their lordships said they would "retain a keen interest in the issue." In fact, the JCO seems happy with the existing arrangements. Its chief press officer Peter Farr says: "My view is that the current system is working, but there may be scope for further discussions in the future. If any significant issues arise, I now feel that we have a way of raising in wider terms than an individual complaint - for example on a wider principle of judicial privacy."

6. **Coroners Bill:** The Justice Ministry has abandoned its call for Code changes to protect bereaved families by emphasising the need for sensitivity in reporting. Bridget Prentice, Parliamentary Under Secretary at the MoJ, accepted the Code Committee's submission that the current Clause 4 requirement for sensitivity in reporting was adequate. However, she is concerned that the Code committee and the PCC should raise public awareness about the Code's protection. The Chairman replied to Ms Prentice stressing that the revised Codebook would underline the strength of the Code in this area, to the benefit of both the public and the press industry. An offer to discuss this further with MoJ officials has so far not been taken up.

7. **Code Committee website (for report):** The annual number of hits to the website from its launch in January 2008 was 100,160. This breaks down as:

Unique visitors: 3,063. Number of visits: 4,183 Pages: 13,165.

Traffic for January-February 2009 was up in all categories on the same period in 2008:

Unique visitors: 635 (+33%); Visits: 930 (+61%); Pages: 3,593 (+110%); Hits: 21,643 (+20%).

The Codebook relaunch triggered a lift in March, with traffic equalling 25% of the 2008 total:

Unique visitors: 744; Visits: 1,212; Pages: 4,225; and Hits: 33,762.

All this is from a very low base. The number of unique visitors for 2008 is roughly the same as the PCC might expect per week.

8. **Editors' Codebook relaunch:** The Codebook was launched in book form and online in March. The new guidance on suicide was widely welcomed - including by the Samaritans, Papyrus, and Mrs Madeleine Moon, MP for Bridgend - and that was reflected in media coverage. The PCC reprinted the guidance in its annual report. The Society of Editors supplied copies of the book to its 400 members. The PCC sent complimentary copies to the DCMS Select Committee and others. The PCC sold around 500-600 copies in March, and there were 600 or so downloaded from the editorscode.org website. Demand for the online version was such that the bandwidth used in the week beginning March 9 was more than in the whole of 2008.

9. **Annual Code Review:** The Review follows, separately numbered, as Appendix A. The secretary's notes are included for background only.

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10. Privacy study: As requested at the last meeting, the secretary has conducted a survey into privacy and the Code and self-regulation, which is circulated as Appendix B, sent as a separate pdf.

11. Other business

12. Next meeting

APPENDIX A

Code Review 2009

ACCURACY

Clause liii - Obligation of care

From Schillings, solicitors (See also Privacy, Harassment, Children, and Confidential sources)

1. Schillings, in the first of a series of suggestions - including a similar theme under Privacy - urge that the Code should reflect the PCC's policy that failure to contact the subjects of articles ahead of publication, while not obligatory, might in some circumstances constitute a lack of care. They cite last November's ruling after the *News of the World* failed to put to Paul Burrell suggestions that he had boasted of having sex with Diana Princess of Wales.

Schillings' proposal: Clause li:

li) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures. *The obligation to take care includes, where there is an intention to publish serious allegations, an opportunity given to relevant parties to reply to allegations prior to publication and the inclusion within the story of the gist of any response.*

2. *IB note* : The PCC adjudication did suggest it would have been prudent for the NotW to put the allegations to Burrell, but the Schillings amendment does not reflect entirely PCC policy. In February, the Commission made clear that each case was decided on its merits: 'There cannot be an absolute requirement on newspapers to contact the subject of stories prior to publication. However, a failure to include all relevant sides of the story can, if left unremedied, sometimes lead to a breach of the Code of Practice.' At most, it would probably be better to state no more than that. But it is rather stating the obvious and adds little.

PRIVACY

Clause 3iii - Home addresses

From Schillings

3. Schillings again suggest current PCC practice should be explicitly stated in the Code - i.e. that home addresses should not be published where they expose individuals to increased security risk, such as from stalkers.

Schillings' proposal:

3iii) *It is also unacceptable to publish private, personal or home addresses or information that might lead to the identification of home addresses of individuals, particularly in circumstances where such publication might expose the individual to increased risk.*

4. *IB note*: PCC policy is that addresses can be published except where this increases the risk, which is normally the case with celebrities who are a prime target for stalkers. The concept of 'increased risk' itself raises issues, because some danger might be inherent.

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Also in court reports where defendant's details are openly stated, it would not be usual to omit the address unless the judge had made a specific order.

Clause 3iv - Publishing serious allegations

5. Schillings seek prior notice of intent to publish allegations about an individual's private life.

Schillings' proposal:

3iv) Where there is an intention to publish serious allegations concerning a person's private life, sufficient notice must be given to relevant person prior to publication.

6. IB note: This would invite gagging writs. Defining sufficient notice, relevant person or serious allegations could be a minefield.

PROTECTION OF RELATIVES:

From

7. said his 18-year-old daughter's privacy was not protected when a paper claimed he had provided her with an advantage by allegedly paying for her to attend an interview training day prior to the university admissions. He says it is unfair both that an independent adult child's private life can be exposed because of her parents' fame and that parents can equally be subject to criticism because of the activities of an independent child.

His suggestion:

The Clause 6v protection for the children of the famous or infamous should be extended to include adult relatives.

8. IB note: Adults are protected from general intrusion under Clause 3, which - while not specifying the fact - would normally preclude genuinely intrusive references to relatives, whether famous or not. Exceptions might apply where the family relationship is relevant to the story or where it is well-known or established in the public domain. It depends on the circumstances. Creating specific protection might imply a presumption that any mention was inherently intrusive, unless in the public interest. This would risk raising expectations among potential complainants beyond what might be considered reasonable in a free society.

HARASSMENT

Clause 4ii - Identification of journalists

From Schillings

9. Schillings want journalists in 'harassment' situations to identify themselves, so that complainants can make contact with employers or agencies and make a formal request to them to desist. "It is not suggested that there ought to be a general obligation on journalists to identify themselves when asked to do so by a member of the public."

Schillings' proposal:

4ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If request is made, they must identify themselves and who they are working for.

10. IB note: There are genuine choices here. If the Committee wishes to make a change, this one would not in practice be particularly onerous. In reality, where small numbers of journalists are involved, it usually

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happens anyway. It would be difficult to persistently question or telephone entirely anonymously. A complainant could then ask the PCC to pass on a request to desist. However, it gets more complicated where larger numbers are involved, especially paparazzi - who may, in the first instance, be working for themselves and who are probably Schillings' principal target. Having the identities could greatly assist in applying for and serving injunctions. Under the Harassment rules, journalists could claim an exemption if they were acting in the public interest.

INTRUSION INTO GRIEF

Clause 5 - Suicide

From Choose Life, NHS Scotland

11. Choose Life suggests Suicide should be a clause in its own right, and proposes four areas to improve coverage:

- Photographs - including those showing the scene, method or location or representation of location (e.g. a bridge) - should not be used to support a suicide report. 'For vulnerable audiences, photographs of this type may trigger a suicidal tendency.'
- Graphics - should not be used (including of method or location) as this can 'desensitise a serious subject matter' in addition to risking causing copycat suicides.
- Caution in reporting - 'particular care should be taken to ensure suicide reporting is never melodramatic, gratuitous or repetitive to the extent that suicide is legitimised, suicide in general is stigmatised, or that the person who completed suicide is ridiculed.'
- Editors and journalists should be encouraged to refer in addition to the Editors' Code, the numerous other guidelines produced, for example, by NUJ Scotland and the Samaritans.

12. IB note: Choose Life's highly restrictive proposals are by no means the most Draconian to emerge from the suicide prevention lobby. The latest edition of The Editors' Codebook was published after the submission was written and its Briefing on suicide reporting is designed to pre-empt such proposals. We can now point to the newly expanded guidance, welcomed by the Samaritans and Papyrus, and see how that works before considering further changes.

13. Meanwhile, Choose Life's proposal to create a separate Suicide Clause would mean re-numbering the rest, which would cause a problem. But it would not be difficult to introduce a Suicide Reporting subhead above sub-clause 5ii, to raise the profile. However, for both presentational and economic reasons, it would be better done alongside other Code changes.

CHILDREN

Clause 6iv - Payment to children

Code Committee self-review

14. The case of Alfie Patten, the 13-year-old originally claimed to have fathered Chantelle Stedman's baby, raised issues under Clause 6iv. This says *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.* However this can be subject to exceptions in the public interest.

15. The aim of the sub-clause was to provide some protection against unscrupulous parents who ruthlessly exploited their children for money to the child's detriment. It was seen as a last resort option to be used only exceptionally and the case has rarely arisen. However, the Patten story begged several questions, including:

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- Is it the payment that must be in the child's interest, or the publication of the material, or both? Can they be trumped by an exceptional public interest?
 - Is the clause too paternalistic or invasive in that it requires newspapers - and ultimately the PCC - to over-ride the opinions of parents or guardians.
 - Is this sub-clause more noble than practical - does it do more harm than good?
16. No formal suggestions have been received - the story broke after the Code Review deadline. It is included here so that the Committee can make an early judgment on the need for changes.

17. IB note: From recollection, the two tests were to be taken in tandem - ideally so that the child should be a net beneficiary from the deal. In borderline cases, if disadvantages to the child outweighed the benefits, then it would not be in the child's interest. However, if there were a strong public interest in publication (as with Alfie Patten) that could be an over-riding factor.

18. The aim of the sub-clause was not to be overly paternalistic, but to avoid the theoretical risk of abetting obvious exploitation - for example, by ensuring that money was paid into an appropriate trust fund. The fact that the clause has lasted for 12 years without apparent problems, might suggest it has worked, or that it has been ignored and not picked up on the radar. However, if the public anxiety now is that this test has failed, how much more concern would there be if it had not existed at all? There are presentational reasons for retaining it. But there may be a case for some tweaks, or clarifications in the next Codebook revision.

Clause 6v - Photographing children

From Schillings

19. Schillings say in a covering note they want the Code 'to prevent the taking and publication of photographs of children'. In fact, their amendment restricts this to where there is no other justification than the fame of their parents.

Schillings' proposal:

6v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life or for taking or publishing photographs of them.

20. IB note: The Code already provides strong protection for children without making them invisible. Sub-clause 6ii says that, without consent, children must not be pictured 'on issues affecting their own...welfare'. Sub-clause 6v prevents publication of 'details of a child's private life' - which could include photographs - simply because of the fame or infamy of their parents.

21. Those high thresholds would prevent most unauthorised pictures. This proposal goes further by imposing a total ban on taking or publishing unauthorised pictures of the young off-spring of a famous parent - even in a public place - unless the child was newsworthy in their own right and their welfare was not involved. If a soccer star's children were pictured at a big match cheering as he scored the winning goal, it could be a breach - even if the photograph was not published.

DISCRIMINATION

Clause 12 - Reporting of Gipsies and Travellers

From Friends, Families and Travellers Advice Unit and Mr Matt Taylor

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22. The Brighton-based Travellers Advice Unit made a presentation to the secretary in which they claimed gypsies were one of the few minority groups still being openly maligned in the press on grounds of ethnicity. They produced cuttings, letters and a DVD detailing verbal and physical attacks on Romany children, including a case where a teenager died. Newspapers regularly ran stories calling them *Pikeys*, which had been condemned as a racist term by the Commission for Racial Equality.

Their suggestion:

Broadly, they wanted the Code modified to prevent inaccurate and abusive reporting against groups and to avoid stereotyping.

23. *IB:* The Code expressly limits protection to individuals so as to allow freedom of expression, including robust comment. Gypsies and Travellers' complaints are often the result of such comments, which they claim can provoke violence towards them. Changing Clause 12 would open the floodgates to complaints about collective discrimination and would be inconsistent with the Committee's long-term policy. However, some of the cuttings the Travellers' unit produced came close to raising issues under Accuracy and the PCC's guidance on stories that generate fear and hostility not borne out by the facts, which could affect the welfare of children.

CONFIDENTIAL SOURCES

Clause 16 - publication not in the public interest

From Schillings

24. Schillings suggest that - in line with Section 10 of the Contempt of Court Act - the moral obligation to protect confidential sources should not apply where there is no public interest involved and where the informant may have ulterior motives.

Schillings' proposal:

16) Journalists have a moral obligation to protect confidential sources of information *except in cases where the source is disclosing matters which are not in the public interest and/or there are reasonable grounds for believing that the source is acting in bad faith.*

25. *IB:* This proposal would dilute an almost sacred journalistic principle. The Contempt of Court Act sets the obligation in a legal context, which is already binding on journalists. The Code's moral obligation goes further. It protects all sources that a journalist has agreed to honour, whether or not the public interest is engaged. A failure to do so would undermine trust in the wider principle and deter whistleblowers across the whole spectrum, including on issues genuinely in the public interest. That does not absolve journalists from taking care not to use the obligation of confidence as a shield to defend inaccurate reporting.

MISCELLANEOUS

26. [redacted] would like the Code somehow to prevent scientific journals and universities breaking their own embargoes by releasing stories ahead of deadline.

27. [redacted] wants the Code to be able to deal with issues arise from 'reporting on information obtained from legislature where it was placed under immunity.'