

THE PRESS STANDARDS BOARD OF FINANCE LIMITED

Editors' Code of Practice  
Committee

Agenda

Editors' Code of Practice Committee meeting

NS/NPA offices, 8<sup>th</sup> Floor, St Andrew's House,  
18-20 St Andrew Street London EC4 3AY  
10.30 a.m., Thursday, 21 October 2010

1. Apologies: Colin Grant
2. Minutes of Thursday, 10 April 2010 (circulated).
3. Matters arising (if not dealt with below):
  - Moderating websites -
  - Code amendment -
  - Governance Review -
  - Select Committee response -
4. Code Committee website
5. Bribery Bill
6. Payments to witnesses
7. Adverse adjudications
8. Phone hacking
9. Transparency and publication of minutes (Appendix A)
10. Online Codebook update: (Appendix B)
  - Prior notification:
  - Headlines:
  - Photography
  - Social networking
11. Suggestions from the public
12. Code Review
13. Other business
14. Next meeting

Appendix A Redacted Minutes of 10 April.

Appendix B (separate pdf): Revised Codebook online.

Appendix C (separate pdf): The Code in A4 format for easy reference.

Agenda items:

4. Code Committee website: Growth has slowed, with 260,000 hits from

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November 2009 to mid-October 2010 inclusive - about the same average as for the 12 months to March 2010. The number of pages viewed - a more reliable measure of usage - fell a little, despite a big spike in July, when the Chairman's annual report was published.

5. **Bribery Act:** It was agreed at the last meeting to defer a decision on the proposed Act until the industry's possible response to it could be assessed. The situation is not noticeably clearer, beyond continuing and increasing concerns over a law that:

- Introduces maximum ten-year sentences, without a public interest defence;
- Endangers investigative journalism;
- Threatens journalists' rights under Article 10 of the ECHR; and
- Puts publishers who introduce compliance procedures in conflict with ECHR.

There appears to be little or no prospect of an early amendment to the Act, which is due to come into effect in April. But there is a public consultation until November 8 on the Official Guidance to the new law. So damage limitation activity might be focused on trying to persuade the Government to include in its guidance an investigative journalism dimension to the public interest criteria that apply in deciding whether to prosecute. This would mean payments in the interests of investigative journalism would still be illegal - but that the risk of prosecution might diminish. The chilling effect would remain.

6. **Payments to witnesses:** Baroness Buscombe has asked the committee to clarify the issue of payments to criminal court *defendants* - as opposed to witnesses. In September 2009, the *Mail On Sunday* paid Loloahi Tapui, an illegal immigrant, for a story making serious allegations about Lady Scotland, then Attorney-general, for whom she worked as housekeeper. The contract was signed four days after Tapui was arrested for alleged immigration offences. She was found guilty and jailed in April 2010. The PCC was concerned that this payment, when proceedings were active, breached Clause 15i, given that Tapui was a witness at her own trial. However, as the Code does not mention defendants, and the issue was not covered by Payments to Criminals, the PCC - while uncomfortable with the payment - felt unable to adjudicate. The PCC believes this raises legitimate ethical concerns and asks:

- Should Clause 15 be amended explicitly to cover defendants?
- Should it make reference to appropriate timings for the offer of payments (in relation to charges being raised or pleas entered)?
- Should there be a public interest defence possible for paying defendants?

IB note: This anomaly was part of the price of a flawed deal with Lord Chancellor Derry Irvine in 2003, accepted only to avoid the alternative - a law that could jail journalists for paying witnesses. He insisted there should be no public interest defence. Irvine's professed aim was to ensure that defendants got a fair trial - they were never mentioned as a risk. Indeed, of the handful of witness payments cases over the last 60 years, none has involved payments to defendants.

Until 2003, the Code Committee had always recognised that there should be a public interest defence available for paying both defendants and witnesses. But while the case for paying defendants could be particularly strong - to help wrongly accused people fund their defence, for example - no distinction was made as between the two. There was no need: both were covered. Nor would there be a need now for the distinction, if the public interest defence were still available. Four options, all with drawbacks, are:

1. Reintroduce the Clause 15i public interest exception. This could invite MoJ resistance.
2. Include defendants in ongoing criminal trials (or similar) in Clause 16i Payments to Criminals. Arguably, this could infringe the Human Rights of individuals who are innocent until proved guilty - but so,

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presumably, could inclusion of defendants in Clause 15i, if their rights to a fair trial were affected.

3. Include defendants in Clause 15i. This could make matters worse (see above).
4. Do nothing, on the basis that it is difficult to see how payments to defendants would interfere with their right to a fair trial; that such payments were not the Government's concern in 2002; and that it has not been a major issue for the PCC until now.
7. **Adverse adjudications:** It was agreed at the last meeting to investigate a format by which the positioning of adverse adjudications might be formally agreed in advance between editors and the PCC Director. This would both bring it into line with the recent Code change covering corrections and aid the Commission's case when emphasising the strength of existing sanctions.

A possibility might be for the Preamble to state:

Editors should co-operate swiftly with the PCC Press Complaints Commission in the resolution of complaints. Any publication judged to have breached the Code must print publish the adjudication, in full and with due prominence approved by the Commission's Director, including headline reference to the PCC.

This might have the advantage of addressing editors' concerns at interference with the right to edit, while demonstrating the PCC's clear role in deciding what constitutes due prominence in each case. As with the process for corrections, this builds on current informal practice, which has relied on the Director's good working relationship with editors. He would, of course, need to have the delegated authority of the PCC.

8. **Phone hacking:** Renewed inquiries into allegations of phone hacking by the *News of the World* inevitably raise questions of whether further Code Committee action is necessary, desirable, possible or timely. The Code has already been amended to make clear that:

...intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs or by accessing digitally-held private information without consent...including by agents or intermediaries, can generally be justified only in the public interest.

So there can be no doubt that the activity is currently covered. However, the committee may wish to address the issue of whether further action is warranted to raise the profile of the rules in the face of wide public condemnation. And - if so - whether that should be via the Code, *The Editors' Codebook*, or perhaps a public statement on how the Code covers this issue.

Any action would be constrained by problems peculiar to this case. First, by definition, the Code did not stop Clive Goodman's activities - but neither did the law. Second, there is no other PCC case law in this area. Third, any Committee action would have to be timed so as not to interfere with current criminal investigations, or give possible credence to so far unsubstantiated allegations.

9. **Code committee transparency** (see Appendix A): The secretary, as requested, has looked at ways of improving the committee's transparency.

- **Publishing agendas:** This might not pose a problem if confined to topics for discussion. There would be difficulties if we were to publish the agenda papers (such as this one). It would be particularly problematic to publish the agenda papers for the Code Review, where often very substantial submissions from civil society are necessarily reduced to a paragraph or two.
- **Publishing minutes:** Increasingly, regulatory bodies publish minutes. The PCC now does so. Ours might need to be less full than currently.

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An example of how the 10 April minutes might look if edited for publication is attached as Appendix A. As those include the annual Code Review, they also give reasons for decisions on Code changes. It is for the committee to decide whether we would wish to publish more or less information.

- **Other material:** Most areas of the committee's activity are covered by the agenda and minutes, or already published. Submissions to Government or Select Committees are made public. Some correspondence - such as to suicide prevention charities - is published by agreement. The rest is usually regarded as private. Therefore, the issue is whether we increase the existing transparency in these areas and raise the Committee's public profile.

We already have the website and *The Editors' Codebook* in both print and online versions. The Chairman's annual report attracted 39,000 hits online and was widely quoted. *Frequently Asked Questions*, already online, have now been introduced into the Codebook (see below). We publish press releases on Code amendments and other developments. We will produce a Letter to Editors for publication, announcing the annual Code Review. Other opportunities can be addressed as they arise, while taking care not to raise expectations we cannot meet.

10. **Online Codebook update (Appendix B):** The Codebook has undergone a major revise online, adding 11 pages, affecting the Preamble (P10); Accuracy (P15); Privacy (P29); Harassment (P40); Intrusion into Grief (P44); Children (P51); Hospitals (P58); Reporting of Crime (P61); Clandestine devices (P63); Discrimination (P71). New material includes:

- An FAQs section (P9-10) to counter misconceptions about the Code.
- Briefing panels on Headlines (P25) and on Photo-journalism (P39).
- Extended guidance on giving subjects of stories prior notification (P16) and on the risks of using material from social networking sites (P30).
- Case summaries on the dangers of running anonymous tip-offs (P16); Rod Liddle's blog (P22); Stephen Gately (P46); problems of photographing funerals uninvited (P46); chainsaw suicide inquest (P47); Alfie Patten (P53); children in school bus crash pictures (P54); and Clare Balding and Iain Dale discrimination cases (P72).
- The new rule on publishing corrections (P20); and a note making clear that 'desist' notices are not binding (P40).

Appendix B is a pdf of the Codebook in draft form. It could be further updated in the light of imminent PCC adjudications and Code Committee decisions on Witness Payments and bribery. New entries are in their proposed position and format, but the contents page and index have yet to reflect the revise. Editing and design elements - activating internal hyperlinks, eradicating bad turns, poor spacing etc - will be dealt with once final content is settled.

11. **Suggestions from the public:**

PROMOTING RAPE AND SEXUAL VIOLENCE - from [redacted]

[redacted] suggests lads' mags regularly feature editorial and advertising material that promote rape, simulated rape and sexual violence against women and says the Code should be amended to prevent that. Shifting the buck to avoid having to act on human rights violations 'is reprehensible and should not be part of a free - and therefore requiring some measure of responsibility - press.'

DECLARATIONS OF HOSPITALITY RECEIVED - from [redacted]

[redacted] says hospitality received by journalists should be declared in the same way as are investments by financial journalists. He cites Jeremy Clarkson accepting BP's corporate hospitality before singing the company's praises in the Sun.

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RIGHT OF REPLY TO RELIGIOUS LETTERS - from [redacted]

[redacted] wants the rules changed, to require an editor who prints a pro-religious reader's letter to grant an automatic right of reply to non-religious respondents. Or vice versa.

INDECENT FRONT PAGES ON OPEN DISPLAY - from [redacted]

[redacted] asks that papers with near-pornographic front covers, and whose pages contain near-pornographic advertising, should be clearly labelled as for over-18s to encourage retailers to move them away from children's viewing.

12. Annual code review: The review will be announced in December, both online and via letters e-mailed to editors with the request that they be published.

13. Other business

14. Date of next meeting

APPENDIX A : Redacted minutes of 10 April 2010.

Recommended cuts in red. Optional extras in blue.

Present:

Chairman: Paul Dacre (NPA)

Jonathan Grun	(NPA)	Colin Grant	(NS)	June
Smith-Sheppard	(PPA)			
John Witherow	(NPA)	Mike Sassi	(NS)	
Harriet Wilson	(PPA)			
Richard Wallace	(NPA)	Hannah Walker	(NS)	Damian
Bates	(SNS)			

Attending:

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

Apologies were received from Ian Murray and Neil Benson.

Membership: The Chairman welcomed new members Damian Bates, of the *Aberdeen Evening Express* (SNS); Colin Grant, Cambridge Newspapers (NS); Mike Sassi, Staffordshire Sentinel News and Media (NS); and Richard Wallace, *Daily Mirror* (NPA).

Minutes of the meeting held on 26 November 2009 were approved and signed.

Code Committee website: The secretary said traffic on the website had continued to expand. The PCC had assisted in increasing the subscriber membership to more than 2,000.

Bribery Bill: The secretary reported that the passing of the Bribery Bill posed a potential threat to journalists, as it offered no public interest defence and carried a maximum 10-year sentence. ~~An issue was whether changing the Code to cover 'inappropriate payments' might provide some protection.~~ The Chairman said this was a serious issue that should be considered at the next meeting, ~~once the industry had considered the implications.~~

Online Codebook: It was agreed that, due to heavy spring agendas, updates to the online Codebook should be rescheduled for consideration annually at autumn meetings.

Privacy checklist: The secretary presented a revised version of Alan Rusbridger's checklist of questions on privacy suggested for inclusion in *The Editors' Codebook*.

It was agreed the existing Key Questions on privacy made all the essential points. No change was needed.

Select Committee Report and PCC Governance Review: The secretary reported briefly on the CMS Select Committee report, and the Government's response to it, and also on progress of the PCC's

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Governance Review. ~~As the issues involved often overlapped, specific suggestions were considered together either in a general discussion on procedural matters or as part of the Code Review.~~

It was agreed that the secretary would draft a response to the Select committee and circulate it by email for approval.

PROCEDURAL CHANGES (SUBJECT TO PRESSBOF APPROVAL)

Lay membership and relations with the PCC: The committee discussed at length various suggestions, including from the CMS Select committee and the Government's response to it, that the Code Committee should admit lay members, including a lay chairman. ~~There was general agreement that installing a lay chairman would weaken the Code's authority within the industry and that lay members would bring only marginal presentational benefits. An option of introducing PCC lay commissioners to serve on the Code Committee on a rotating basis was considered as a way of improving both public credibility and lay commissioners' understanding of the Code Committee's work. However, the PCC Director expressed concerns, shared by the Governance Review panel, that this could blur the roles of the two organisations.~~

It was agreed that any outcomes should await the report of the Governance Review, but ~~the current main options were that:~~

- ~~• The PCC would revive its dormant Code sub committee, which would liaise informally with the Code Committee via the secretary to help improve mutual understanding.~~
- ~~• The PCC Chairman and Director should remain as Code Committee lay observers, increasingly acting as a two way conduit for expressing operational or other concerns.~~
- ~~• The Code Committee, when consulting the industry on recommended changes to the Code, would as a courtesy seek the input of the Commission.~~

Moderating websites: The Select Committee recommendation, supported by the Government, that newspapers should proactively monitor their websites and take down offensive material before complaints were received was considered. ~~Most members said their sites were reader-moderated, because of resource implications and because moderation could compromise their defence in the event of legal action. The evidence was that self moderation worked. Stephen Abell said the PCC was looking at online issues.~~

It was agreed the secretary should prepare a paper on this, in the light of legal advice, and in association with the PCC.

Positioning of adverse adjudications:  proposal to the Governance Review that the Commission should dictate positioning of adverse adjudications was broadly supported by the PCC Chairman and Director. They were against new sanctions and said that, currently, 70% of editors would informally discuss positioning in advance. ~~However, people had not accepted that things had changed. The PCC sought greater 'branding' of adjudications with Press Complaints Commission given in full in headlines thus increasing credibility by showing that these adjudications caused editors genuine pain.~~

~~Members were agreed that the 'pain' was indeed genuine. Responding to Paul Daere's call for give and take on positioning, Lady Buscombe confirmed that the system would remain bespoke, with each case decided on its merits. The secretary said that, while most editors consulted the PCC informally, having positioning imposed by Commissioners was a more sensitive issue. It might be possible to have a format by which the Commission gave the Director delegated powers to agree positioning with editors. Such mutual agreement might provide a formula that could be codified, as suggested for apologies and corrections.~~

It was agreed the secretary and PCC director should draw up a form of words to define a possible process and report back.

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Online media convergence: The NUJ, MediaWise, Campaign for Press and Broadcasting Freedom and others suggested that as print and broadcasting websites co-existed online, there should be conformity of standards, so that Ofcom issues, such as taste and decency, and the need for balance were included in the Editors' Code.

It was agreed that the limits on broadcasting freedom due to lack of bandwidth should not be adopted by a diverse press.

Code Committee transparency: The secretary reported on suggestions that the committee improve its public credibility via greater transparency - such as publishing the reasons for Code Review decisions, and the minutes of meetings. ~~Reasons for Code changes were already published but, while individual proposers of suggestions were informed of the reason for rejection, this could appear negative if published en bloc.~~

~~Members agreed that there were many misconceptions about the Code Committee's role, including the fact that it was the Editors' Code and not the PCC Code. Stephen Abell said the PCC was considering a new advertisement setting out the way the system worked, and was to publish model minutes, without a narrative.~~

It was agreed that, to try to improve transparency, the secretary should:

- Draft possible criteria for publishing minutes to be included at the next meeting.
- Publish on the website answers to popular misconceptions about self-regulation.
- Incorporate the website's current Frequently Asked Questions into the Codebook itself to increase readership.
- Distribute to editors a letter for publication, or advertisement, announcing the annual Code Review.

Wider remit for Code Committee: The Governance Review panel believes the burden of defending the self-regulatory system falls disproportionately on the PCC and has floated the possibility that the Code Committee might take on a wider role to help rectify this. The secretary said any extension of the remit would be a decision for PressBoF. ~~Paul Daere said the PCC was left to take the flak because the industry was in a difficult position, being seen as parti pris. It needed spokesmen who were above the fray.~~

ANNUAL CODE REVIEW

*Suggestions from the CMS Select committee, the Government, the public, and the industry were considered.*

Accuracy

Clause 11 - prior notice: The CMS Select committee, the Government's response to it, Schillings solicitors and others suggested various ways in which the Code should cover pre-notification of people about articles concerning them. ~~The secretary said the European Court of Human Rights had agreed to fast track Max Mosley's claim that the absence of a right of prior notice from the News of the World in his privacy case breached his human rights. The case would probably be heard late this year or early next, and an advance submission from the Media Lawyers Association made reference to codes of practice. It would therefore be unwise to try to codify this without legal advice. The committee had already agreed to update Codebook guidance and it might be better to go no further. The Chairman said the industry would probably need to be consulted on any form of words.~~

\* Decision: The secretary should consult on draft Codebook guidance and report back.

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~~Clause 1i - headlines: The CMS Select committee, the Government's response, petitioners online and others suggested the Code should require that headlines on stories accurately reflect the content. The secretary said while headlines were already covered by the Code within the context of the story, they were not specifically mentioned to avoid being judged in isolation. He presented a couple of options for amending the Code, but suggested guidance in a Codebook panel might cover the issue better, making clear that headlines should reflect the essence of the story. Members supported the Codebook option, but felt 'the essence of the story' was too narrow and restrictive, especially for magazines.~~

~~\* Decision: The secretary should prepare a draft a guidance note for the Codebook. giving a fair degree of latitude.~~

Clause 1i - manipulation of pictures and low threshold of accuracy: In evidence to the PCC Governance Review, MediaWise suggested the Code should include a photography clause, to cover digital manipulation. The NUJ said the current requirement to take care to avoid inaccuracy was a low threshold. The committee agreed the Code's mention of pictures covered digital manipulation and that this was made clear in the Codebook. The NUJ assertion of a low threshold on accuracy was unsupported by evidence.

\* Decision: No change.

Clause 1i - Due Prominence for apologies and corrections: The CMS Select committee, the Government's response, online petitioners, MediaWise, Swan Turton and others called variously for apologies and corrections to appear on the same page or earlier than the original reference and suggested the Code should require editors to give the PCC advance notice of positioning. ~~The secretary said this largely codified what happened already and produced a draft for consideration, which allowed for mutual agreement between the editor and the PCC. This could work if the secretariat had powers to agree the positioning on behalf of the PCC, as routinely happened already.~~

\* Decision: It was agreed the Code would be amended to state:

ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published. In complaints involving the Commission, prominence should be agreed with the PCC in advance.

Opportunity to reply

Clause 2 - Right of reply: MediaWise suggested, via the Governance review, that the Code should offer an appropriate right of reply to genuinely aggrieved parties that would allow them to present, unmediated, their side of the story or point of view.

suggested both a right of reply and that newspapers provide obligatory space for readers' complaints. The committee decided the current opportunity to reply was reasonable.

\* Decision: No change.

Privacy

Clause 3 - informed consent and distorted rulings: MediaWise suggested the test of a reasonable expectation of privacy favoured the privileged, who were guarded by high walls and expensive lawyers, and called for the Code to offer a right of 'informed consent' to protect non-media savvy people. ~~This would include copy checks to prevent them being duped into giving or selling stories against their own interests.~~ The NUJ claimed, without supporting evidence, that the current privacy wording distorted PCC adjudications. The committee decided that a reasonable expectation of privacy allowed for different expectations as between the rich or privileged and more ordinary individuals.

\* Decision: No change.

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Discrimination

Clause 12 - Inclusion of groups and allowing third party complaints: The National Aids Trust, the Building and Social Housing Foundation, West London Mental Health Trust and others, including - in evidence to the Governance review - MediaWise, Campaign for Press and Broadcasting Freedom, and the NUJ, suggested various options for widening Clause 12 to embrace discrimination against groups and to allow third party complaints.

~~The secretary said discrimination against groups was the Code's most contentious issue. It had always been resisted on the basis~~ committee decided that, while pejorative or prejudicial remarks about individuals were not acceptable, a similar bar on groups would be an infringement of free speech. Third parties can complain about inaccurate stories about groups under Clause 1's Accuracy provisions. A recent survey of 20 European press self-regulatory systems revealed that only four cover discrimination against groups.

\* Decision: No change.

Confidential sources

Clause 14 - Crediting sources: Suggestions from online petitioners that all sources should be credited unless they do not wish to be, and from Heather Brooke that there should be a presumption - on the U.S. editorial model - that official spokesmen were routinely named, were rejected. ~~The committee said that these issues, however laudable, were matters for free editorial choice.~~

\* Decision: No change.

GENERAL ISSUES

Advocating illegality: [ ] suggested the Code should include a clause to prevent the publication of articles justifying illegal acts, such as torture to prevent terrorism. ~~The committee decided that, if this sort of journalism went beyond the bounds of free speech, the law would cover it. If it were not in the public interest to prosecute, it would equally not be in the public interest to prevent publication.~~ \* Decision: No change

Photography: MediaWise wanted the committee to improve its guidance on photography. This should cover issues such as the use of 'stock' pictures as illustrations, and the copying and keeping of images supplied for single usage - especially given the reliance on 'citizen journalists' to supply them. ~~Although much of this is covered in the Codebook's general guidance - such as photography at funerals and in hospitals and in reporting of crime - the committee felt there should be a Briefing panel on photography/image use for the benefit of photographers and picture desks.~~ The committee decided issues such as financial transactions with suppliers of pictures, including citizen journalists, were outside the Code's remit.

\* Decision: Include photography Briefing panel in *The Editors' Codebook*.

Editorial balance: Park Homes Residents Action Alliance asked that the Code should prevent magazines and newspaper editorial features from misleading elderly purchasers by directly comparing prices of park homes, which typically depreciate with age, with those of traditionally-built freehold houses. The committee agreed that the Code's accuracy provisions already allowed the PCC to adjudicate on misleading information.

\* Decision: No change.

Biased court reporting and naming and shaming: [ ] complained that reports of ongoing trials are often based on the prosecution's opening address, without making clear that these are allegations or giving the defence case; and do not state that a case is ongoing. [ ] whose husband died while serving a jail sentence for child sex abuse, asked that the Code should require even-handed reporting of such cases, without false allegations, or inciting

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vigilantism with lurid headlines in naming-and-shaming campaigns. The committee decided the accuracy provisions already allowed the PCC to adjudicate on poor reporting of trials.

\* **Decision:** No change.