

Editors' Code of Practice Committee

Private and confidential

Minutes of the Editors' Code of Practice Committee meeting held at the offices of the Newspaper Society, 18-20 St Andrew's Street, London, on 12 October 2006

Present:

Chairman: Leslie Hinton (NPA)

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| Alan Rusbridger (NPA) | Neil Benson (NS) |
| Peter Wright (NPA) | Doug Melloy (NS) |
| Harriet Wilson (PPA) | Ian Murray (NS) |

Attending:

Sir Christopher Meyer (Chairman, PCC); Tim Toulmin (Director, PCC); Ian Beales (*Secretary*).

Apologies:

Apologies were received from Adrian Faber (NS); Mike Gilson (NS); David Pollington (SDNS); Lindsay Nicholson (PPA); Paul Potts (NPA); Neil Wallis (NPA); John Witherow (NPA).

Minutes of the meeting held on 27 April 2006 were approved.

Business arising: The Secretary reported that the new sub-clause on suicide reporting agreed in the Code Review had been ratified by the PCC, although with some initial criticism. The Samaritans welcomed it. Following on a request from the Muslim Action Committee, the Secretary had offered - on behalf of the Code Committee - to attend a meeting to discuss issues of concern to Muslim, but had received no reply.

Accuracy and headlines

The Committee agreed fresh consideration should be given to including a reference to headlines in Clause 1i. The Secretary said a proposed amendment, agreed in the last Code Review at the PCC Secretariat's request, had been opposed by the Telegraph Group and a new form of words substituted. However, the PCC Director felt the new wording did not convey the same meaning, and the amendment was shelved. Sir Christopher Meyer said there was continuing concern over headlines not supported by the text, and that if there was no change in the Code, matters would be resolved by evolving PCC practice. It was agreed the issue should be included in next year's Code Review.

Editors' Code website

The Committee discussed proposals for an Editors' Code webpage that could form an adjunct to the PCC website, as approved by PressBoF. Peter Wright, while not against the website, was concerned that publishing details of Code committee discussions on suggestions from the public could encourage endless pressure from lobbying groups. The Chairman warned that the Committee's freedom to have uninhibited discussions must be preserved. Alan Rusbridger said it might be educative if the Committee's conclusions on the public's suggestions - even if irrelevant - for Code changes were published. Harriet Wilson said the website should not become a noticeboard inviting grandstanding by pressure groups.

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Mental Health Guidance Note

The Secretary reported that a Code Committee member had raised serious concerns about the PCC's revised Mental Health Guidance Note, which had already been ratified by the PCC and was sent to the committee as a courtesy. As a result, the PCC director had offered that in future the Code Committee would be consulted on guidance notes in advance, which would not compromise the PCC's independence. Peter Wright felt strongly that the issue of mental health and violence was controversial and not suitable for a Guidance Note that was simply nodded through. This was not a straightforward case of giving advice; it adopted a view. There was colossal pressure from groups to get on the PCC's agenda, which needed to be resisted. Doug Melloy said the Guidance Notes should be routed through the Code Committee. The Chairman said that would now happen.

Sir Christopher Meyer said it was very important not to compromise the independence of the PCC Commissioners. Tim Toulmin suggested that, in view of the concerns raised, the matter could be referred back to the PCC Commissioners who could decide on what action, if any, they might take in the light of the points raised. It was agreed that would be the best course.

Audio-Visual Guidance Note

Tim Toulmin and Ian Beales reported on joint consultations with online editors on drafting a Guidance Note covering online publications, especially audio-visual material. An early draft of the document was tabled for the Committee's input*. During a full discussion, Peter Wright questioned whether this was, as suggested, sanctioned by PressBoF. He had picked up a great deal of concern about extending self-regulation in this market, where the press was only one of many suppliers and might be disadvantaged against unregulated rivals. There were many problems of definitions and we should tread with great caution – it was significant that OFCOM was keeping out of this area. He said it was also possible for organisations to set up sites to avoid regulation.

The Chairman said PressBoF had commissioned the Guidance Note. There were pressures from Brussels particularly to regulate website videos, and if the industry did not state its determination there was a danger of leaving a vacuum. In the European context, the clamour for regulation made it important for the press to be on the front foot. Ian Murray welcomed the Guidance Note and said it was vital that the industry got in first. Sir Christopher Meyer said some areas could be defined easily and others not, but he felt very strongly that the principle was to plant the standard of self-regulation in this area. Alan Rusbridger said it was often not defensible to draw a complete distinction between what appeared in print and on the website as some was the same material.

Neil Benson said there were practical issues involved. While editors were responsible for the content, web development staff are responsible for producing it and there would be a huge education process involved in ensuring compliance. He said there could be problems because not all newspaper publishers' sites were branded as such. The devil would be in the detail. Tim Toulmin said PressBoF had taken a decision on this in principle and a Minute existed to demonstrate that. The response from the online editors so far consulted had been very positive. Ian Beales said this would be self-determining, as the draft guidance would go out for consultation to the industry, which would ultimately report to PressBoF where any remaining questions of policy would be decided. Meanwhile, the Committee would be sent any substantively updated copies of the draft, for their further comments, which should be made either to the Code Committee Secretary or to the PCC Director.

*(*NB: An updated draft of the Guidance Note is circulated with these Minutes as an addendum and should be substituted for the draft previously sent with the Agenda Papers. Please send any comments or suggestions to Ian Beales by October 30.)*

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What Price Privacy?/DCA Consultation

The Secretary reported on a private meeting with Richard Thomas, the Information Commissioner, to discuss his Report *What Price Privacy?* which called for custodial sentences for breach of the data protection laws. He said Mr Thomas sought a positive response from the Code Committee and the industry, including recognition of the problem, a condemnation of illegal activity by journalists and a change to the Code making reference to personal information. The Commissioner had produced his own indicative draft, but had accepted the Secretary's point that it was unlikely to be acceptable as its sweep was much wider than data protection. The Secretary also submitted a draft response to the Department for Constitutional Affairs' consultation on increasing penalties for deliberate and wilful misuse of personal data, which included the proposal for custodial sentences.

Alan Rusbridger questioned why the Code Committee should make a response. It should confine its role to responding on any possible change to the Code, such as that suggested by the Information Commissioner. It was inappropriate for the Committee to produce a counter-blast to proposed government legislation, which was more the role of the Society of Editors. The Chairman said that while he sympathised with that point, it was important to convey concern at the proposed measures. Sir Christopher Meyer said he believed the Commissioner was unclear what he wanted from the PCC. Sir Christopher said that while it was inappropriate for the PCC to respond to the DCA, the Code Committee was in a different situation as changes to the Code and the threat of custodial sentences were linked and could not be taken apart. The Secretary said the Information Commissioner and DCA had conflated the issues of the Code and jail sentences; any silence from the Code Committee on the subject might appear strange. Peter Wright said the DCA proposals were horrifying and designed to deter embarrassing leaks to newspapers. However, it was not the Code Committee's job to lobby the Government on legislation as this might create the impression that the Committee was protecting journalists in the wrong circumstances.

It was agreed not to proceed with a submission to the DCA, but to seek a meeting with the Information Commissioner to discuss possible responses. The Chairman said he would be prepared to attend such a meeting, along with the Secretary and the PCC Director.

Representations from the industry and public

Clause 1iv: The Committee considered amending Clause 1iv to avoid publications effectively having to twice publish the outcome of a defamation case in which they were involved. The Secretary said the problem arose when, even where there had been no trial, an agreed settlement included a statement into court. Under the current Code wording, if the court statement did not include all the details of the settlement – such as damages – then plaintiffs had recourse to the Code. In the spirit of the Code, an outcome would usually be taken to include a mention of damages and so therefore there was an obligation to publish it.

The Secretary suggested the Code might be amended to make clear that it referred only to contested court cases, rather than private settlements (which were a matter for the parties). If the Committee wished to include provision for private that included statements into court, then the Code could stipulate that only the "final outcome" might be published, to avoid repeating an interim statement. Alan Rusbridger, whose newspaper had been affected by this, suggested the clause could refer to trials rather than contested actions. It was agreed the Secretary should include a draft wording in the Code review, after consulting industry lawyers on the wording.

Plagiarism: [redacted] complained that after his daughter's death, he granted an interview to his local newspaper on condition that the family address was not published. This was honoured, but a sister paper published a pooled copy of the story, adding the address. The Committee did not accept [redacted] assertions that this amounted to plagiarism.

Code Review: The Secretary asked for suggestions for the annual review by mid-January.

Next meeting: It was left to the Chairman and Secretary to call the next meeting.

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ADDENDUM: This is the latest Draft of the Guidance Note on Online Publication. Please send any comments or suggestions to Ian Beales by October 30. Any amendments would need to be incorporated in the draft, which is due to go out for industry consultation in early November.

DRAFT

The Code of Practice and online journalism

Since 1998 the Code of Practice has made clear that its provisions extend to both printed and online versions of publications. This includes information that has appeared exclusively on a newspaper or magazine's website: its jurisdiction is not confined only to what appears in print but duplicated online, but extends to the editorial content of sites that are branded as the online version of the paper. This Guidance Note sets out the Commission's approach to online material, including audio-visual services.

What the Code covers

Not all information on a newspaper's website is covered by the Code. As with print publications, complaints about matters of taste and decency, competitions, legal matters and adverts are not accepted. Those which are unduly delayed or made by third parties will not normally be investigated unless there is a compelling reason for the Commission to do so. Complaints about bias, fairness and balance in reporting do not generally fall under the Code.

A website will carry more user-generated material than a printed version. But whereas letters pages in print publications are subject to the editorial process, the position with regard to user-generated content online is somewhat different, as much of the user-generated material on a website will not be solicited or edited. Moreover, third party blogs, the content of other websites to which there may be a link from the publication's site, chatrooms and other material that is not used or generated by a journalist who works for a media outlet that subscribes to the Code will usually fall outside the scope of the Code. The test here is who is responsible for the material, and what type of information it is. If it is editorial information on the newspaper's website to which an objection could be made under the Code, **and** is commissioned, used or generated by a journalist or editor who works for a publication that subscribes to the Code, it is likely to fall within the Commission's jurisdiction.

Resolution and adjudication

Complaints about exclusively online editorial material are relatively scarce. This may be because the online environment is naturally self-regulatory, with potential complainants being able swiftly to reply to perceived mistakes, and problems resolved quickly – for instance by amending information without even the need for a correction. Many publication's websites also consider that best practice is to provide a mechanism for users to report inappropriate content so that a decision can be taken at an early stage about whether it should remain on the site. They regard this as important in terms of protecting the integrity of the brand.

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As with any complaint about a newspaper or magazine, the Commission would urge complainants to approach the website editor in the first instance to give them the opportunity to resolve the matter directly. But when the Commission does receive complaints about online material that falls within the Code, its approach is to try to resolve them amicably. As with print publications, this might involve private apologies, amending records, publication of an apology or clarification, undertakings, opportunities to reply or follow-up pieces. Some websites have dedicated corrections and clarifications areas, which, if adequately signposted, might also meet the Code's requirement for corrections to be published with due prominence. The appropriate form of resolution is the subject of dialogue between the editor, Commission and complainant.

The Commission will take into account the manner in which the editor responded to the complaint and any offer of amends when considering whether any further action is required. If the complaint is nonetheless upheld, the Commission would expect its ruling to be published with 'due prominence' online. There can of course be no precise formula for what constitutes 'due prominence'. This will vary from case to case depending on the nature of the breach of the Code and where and for how long the original information appeared. As with adjudications in print versions of publications, it may therefore make sense for the prominence of an online adjudication to be discussed with the Commission in advance of publication. This is not a requirement of the Code however. Best practice would then be to archive the adjudication in a free-to-access part of the site.

There may be occasions where there is only a light element of editorial involvement in material that is published. It would only be fair for the Commission's response to be proportionate to the degree of editorial involvement in the publication of any information that breached the Code. As a matter of common sense, for the Commission to become engaged the following conditions would have to apply:

- there would have to be some degree of editorial involvement in the publication of the material;
- the complaint would have to be made by someone directly affected by the item, rather than someone with general observations and objections;
- it would have to fall under the Code (the clauses concerning accuracy, privacy, news gathering and so on, or the preamble); and
- it would have to be made within two months of the item being published or transmitted.

Audio and audio-visual material

Some websites offer news videos and audio services (AV material). The Code applies to these, but again only if they contain editorial information which is generated or commissioned by a publication which subscribes to the Code. The same principles outlined above apply – objections to taste and decency, to adverts or competitions and complaints from third parties or about third party websites are not matters for the Commission. Neither is user-generated audio-visual information over which there is no editorial control.

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But where a complaint which falls under the Code is made within two months of transmission, and by someone affected by the material, the Commission will investigate the matter in the normal way. There will be a variety of common-sense resolutions to such complaints which may not necessarily involve corrections and apologies appearing in moving images or sound. For instance, it will be common for a correction to an inaccurate audio-visual news item to involve a written online correction, with questions about prominence decided on a case by case basis by the editor concerned, following discussions with the Commission if necessary. On rarer occasions, it may be appropriate – or mutually desirable – for a response to a complaint to involve audio-visual material. But it should not be assumed that all complaints about AV material have to be resolved by such means.

Some websites use audio-visual news services commissioned by the editor but generated by third parties such as news agencies or broadcasters. This is a situation analogous to the use of agency copy in a print edition: an error may be someone else's fault, but the disseminator of the information is ultimately responsible for what is published. It would therefore fall to the disseminator to take steps to remedy any breach of the Code. However, the most straightforward resolution in such a case, where all parties accept that there has been a breach of the Code, may be for the editor to offer a written remedy as outlined in paragraph 5 (above).

It follows from the above that if the Commission upholds a complaint against audio-visual material, the publication with due prominence of its adjudication may involve either a written ruling or one in an audio-visual format, depending on what is proportionate to the complaint and appropriate in the particular circumstances.

General

This guidance is not intended to be prescriptive but to indicate how the Commission approaches complaints about online material, including audio-visual material. The Commission takes a common sense approach to the investigation and resolution of complaints, and it considers that – to a large extent – custom and practice will dictate the most appropriate means of remedying complaints about AV material. With such services constantly evolving, the Commission anticipates that this guidance may have to change to accommodate developments in technology. The ability of the regulatory framework to respond swiftly to such innovations is one of the hallmarks of a flexible system of light-touch regulation such as that overseen by the PCC.