

## Editors' Code of Practice Committee

Note: Addendum needed on Changes to preamble, page 3

### 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 14 March 2007.*

### Present:

*Chairman:* Leslie Hinton (NPA)

Alan Rusbridger (NPA)	Neil Benson (NS)	Harriet Wilson (PPA)
Peter Wright (NPA)	Ian Murray (NS)	David Pollington (SDNS)
Jonathan Grun (NPA)	Mike Gilson (NS)	

### Attending:

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

### Apologies:

Apologies were received from Adrian Faber (NS); Doug Melloy (NS); Lindsay Nicholson (PPA); Neil Wallis (NPA); John Witherow (NPA).

New member: The Chairman welcomed Jonathan Grun, editor of PA, as a new member, following the resignation of Paul Potts.

Minutes of the meeting held on 12 October 2006 were approved and signed.

### Business arising:

- Code Committee website: The secretary reported that a lower quotation for setting up the system had been received and that if this were agreed by PressBoF, he hoped to set up the system in the first half of the year. He would report back to the Committee on specific proposals for content.
- AV Guidance Note: The secretary said the online guidance note had been approved and introduced, with the original final paragraphs deleted after discussion with the PCC.
- Information Commissioner: It was reported by the secretary that the Information Commissioner's draft guidance on the Data Protection Act was now with the industry for consultation. Once finalised, it would be put to the Committee for possible inclusion in *The Editors' Codebook* online.

Payments to criminals: The secretary said there had been no response to the Committee's submission to the Home Office consultation on a proposal to legislate on payments to criminals.

ICAR study: The secretary said a Home Office-funded study by the Information Centre for Asylum and Refugees in the UK had concluded that the press broadly followed the existing guidelines, which ICAR regarded as a minimum standard. "Inaccurate terminology" was used in one per cent of the papers studied, but ICAR's suggested improvements to this baseline included adding "immigration status" to the list of discrimination categories. Other suggestions included clarifying the meaning of "significant inaccuracy"; accepting third party complaints; and extending the Codebook's guidance on immigrant terminology.

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**Select Committee:** The Chairman and secretary reported briefly on the hearing of the Select Committee's sudden half-day inquiry, where the main thrust did not appear to be complaints about the Code itself. Les Hinton said that following widespread criticism of the Select Committee for being too soft on the press, he feared it might be tempted to over-compensate when it reports, probably in May. The secretary said suggestions for possible Code changes that emerged from the hearing had been included in the annual review.

### **Annual Code Review**

*The Committee considered a series of possible amendments, either submitted by the public, the industry, or by the secretary as part of the annual review.*

#### **Accuracy: Clause 1v**

**Defamation hearings:** Following an earlier request from The Guardian, the Committee considered amending Clause 1v to avoid publications effectively having to twice publish the outcome of a defamation hearing in which they were involved. The secretary suggested the Code might be amended to make clear that it referred only to court hearings, rather than private settlements (which were a matter for the parties), and should apply only to the final outcome, which would include such issues as damages. It would not cover actions that did not come to court.

❖ Decision: It was agreed to amend sub-clause 1v to state:

*"A publication must report fairly and accurately the final outcome of a court hearing disposing of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published."*

#### **Privacy: Clause 3**

**Reflecting PCC jurisprudence:** The Committee considered a Trinity Mirror proposal that PCC jurisprudence should be incorporated into the Code. The group's submission, which included a supporting Opinion by Richard Rampton QC, said that while judges were required to take the Code into account when considering privacy cases involving the press, they were not permitted to consider PCC interpretations of it. This meant that although the PCC worked on the principle that privacy might be compromised by earlier self-publicity, judges – especially those hearing emergency injunction applications – often did not.

Trinity Mirror suggested a new Privacy sub-clause which would state: *When determining whether there has been an intrusion into an individual's private life, the PCC will take into account any similar matters that he/she has previously disclosed publicly.*

The secretary said it had also been suggested that judges did not assume that either the preamble or the Public Interest panel were part of the Code. A phrase could be inserted into the preamble to clarify the situation.

Sir Christopher Meyer doubted if the Trinity Mirror proposal would work. The PCC did not need the change. It was pursuing this course already and if there was increasing divergence with the judges, this could be a problem. He also suggested that if judges thought there was a deliberate attempt to influence their thinking, they would probably resist it.

Peter Wright supported the amendment and the principle of zonal privacy. He said many injunction cases were not heard in public and judges were taking a narrow view, making judgments where the right of privacy trumped the right of freedom of expression. The balance had turned in favour of rich and powerful individuals who wanted to keep public and private matters out of view. He thought the Committee should put down a marker against this.

Mike Gilson was concerned at the message such an amendment would send out if it was principally for the industry's own benefit. But Neil Benson and Ian Murray said there had been a growing awareness of this problem in the regional, as well as national, press as the effects of what had happened in the courts trickled down to local levels.

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A letter from Neil Wallis, who could not be present, supported the Trinity-Mirror proposal on the grounds that it was necessary to stop judges ignoring, as they have done, the PCC view and unilaterally introducing large chunks of a de facto privacy law.

Alan Rusbridger was not convinced that enough had changed to justify the amendment. He said Richard Rampton QC's Opinion made clear that judges can and do take account of compromised privacy. It was a grey area and a balance had to be struck. This clause appeared to be crafted for the world of celebrity. We would need more evidence that there were sufficient judgments of this sort to support a change in the Code.

The Chairman said there was an issue over those who prospered by using the media to achieve fame or success and then went on to change the rules - and prevail in the courts. However, if there was not going to be unanimity, he suggested the Committee should look at opening up channels to ensure that this issue was properly put before the judges. He proposed that the system should be closely monitored over the next six months to gather more tangible evidence to support a change in the Code.

Mr Rusbridger said that if there were more solid evidence over six months that this was happening, he would have a different attitude.

- ❖ Decision: No change at present on the Trinity Mirror proposal, but monitor the evidence and investigate opening channels to put the case to judges.

**Changes to the Preamble:** While no change was made to the Privacy clause, it was agreed that the preamble should be changed to make clear that both it and the Public Interest panel formed part of the Code.

- ❖ Decision: That the preamble be amended to state:

*"All members of the press have a duty to maintain the highest professional standards. This **The Code, which includes this preamble and the public interest exceptions below**, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know..."*

At the same time, Neil Benson suggested the new Guidance Note on online publications, which specifically excluded user-generated and non-edited material from the Code's remit, would conflict with the current preamble. This requires editors to "take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists."

The Committee agreed the secretary should propose a suitable form of words. He has suggested the problem might be solved by stressing that the Code applies only to editorial content (which the guidance note has made clear elsewhere does not include online user-generated material). The third paragraph of the preamble could be revised to state:

*It is the responsibility of editors and publishers **to apply the Code to editorial material in both printed and online versions of publications**. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.*

- ❖ Decision: The Code Committee to respond by email.

**Princess Caroline case:**  solicitors, suggested the Code should be reviewed in the light of the ECHR ruling in favour of Princess Caroline (Von Hannover). The Committee last reviewed it on this point in 2004.

The Committee decided that this was one of a number of sometimes conflicting rulings and that there was no unanimity that this was a definitive judgment with which the Code was automatically at variance.

- ❖ Decision: No change.

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**Information Commissioner's proposal:** The Commissioner suggested the Code should be amended to include a new Privacy sub-clause stating: It is unacceptable, without their consent, to obtain information about any individual's private life by payment to a third party or by impersonation or subterfuge. It is unacceptable to pay any intermediary for such information which was, or must have been, obtained by such means.

The secretary said that, if adopted, this would mean any private information – not just protected data – would be caught if payment were involved. Currently the test was simply whether a failure to respect private life (including digital communications) had amounted to intrusion. If it did, then it was a breach irrespective of payment.

The Committee felt the issue of intrusion, rather than payment, should remain the critical factor and decided against the proposal. Changes in Clause 10 Clandestine Devices and Subterfuge would be more appropriate. (See below).

❖ Decision: No change.

**Harassment: Clause 4**

**Kate Middleton:** The secretary said he had reviewed the Code's harassment clause in the light of the media scrum during speculation over an imminent royal engagement. The Code was clear and tight and the desist mechanism worked. No change appeared necessary.

❖ Decision: No change.

**Children and hospitals: Clauses 6/8**

**Clinical advice on photographs:** Consultant orthopaedic surgeon [redacted] said the Code protected children in hospital less well than children in school. Parents and other third parties persuaded to take photographs for the press did not always understand the implications for the child's welfare. Sometimes the father and mother disagreed on the right course, or were themselves suspects in relation to the child's injuries.

He suggested the Code should require editors to seek advice from the relevant clinician on whether it would be appropriate to publish images of a child patient. An editor would need to have good reasons to ignore the advice. The Committee decided the proposal would be unworkable, especially where parents were barred from decision-making on their child's welfare. It should continue to be left to editors' discretion.

❖ Decision: No change.

**Clandestine devices and subterfuge: Clause 10**

**Digitally held information:** After deciding against the Information Commissioner's proposal for the Privacy clause, the Committee considered the secretary's alternative suggestions for changes in Clause 10, which might address the ICO's concerns. The first amendment was to prevent the accessing of digitally-held private information without consent. The second was to specify that engagement in misrepresentation or subterfuge by agents or intermediaries could only be justified in the public interest.

The Chairman said these changes would not make a serious difference to the PCC's actual powers, but would demonstrate the Code's comprehensiveness in this area. Alan Rusbridger suggested the reference to agents or intermediaries could be included in the preamble, where the current allusion to non-journalists was gnomic. But this was not agreed.

❖ Decision: Change Clause 10 to state:

- 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 unauthorized removal of documents, or photographs; **or by accessing digitally-held private information without consent.**
- ii). Engaging in misrepresentation or subterfuge, **including by agents or intermediaries**, can generally be justified only in the public interest, and then only when the material cannot be obtained by other means.

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**Discrimination: Clause 12**

**Immigration status:** The NUJ suggested that the Discrimination clauses should include in the categories of discrimination the term *immigration status*. It argued that this would cover a refugee, asylum seeker, immigrant or migrant. Mention of this status would be permitted only when it was relevant to the story.

Peter Wright said immigration status was a conscious choice and this was an attempt to extend the Code from covering what people are to what they choose to become. The Chairman said it would be difficult to decide at which stage immigrant status became relevant - if you were reporting on immigrant Vietnamese cannabis gangs, would it be pertinent or relevant to say they were Vietnamese? Neil Benson said Madonna was an immigrant, should she be covered? The Committee felt that the discrimination categories should not be extended unless there was overwhelming case and that had not been made.

❖ Decision: No change.

**Miscellaneous suggested changes:**

**Contempt of court:** [ ] journalist, suggested the Code should be changed in order to curb a growing and dangerous trend to flout contempt laws, which not only endangered a fair trial, but also could stir racial prejudice – as in the case of Muslims on terror charges. He said that often the reports were publishing government and police leaks, as in the Forest Gate raid.

The Chairman said there was a growing debate about British contempt laws, especially compared with the U.S., where juries were treated as thinking adults who could put out of their minds previous information that might have been thought prejudicial. Editors would rightly wish to push at this. Sir Christopher Meyer did not favour an amendment. This should be a matter for the Government law officers, and as many of the stories were fed from official sources, a Code change would be cock-eyed, he said.

❖ Decision: No change.

**Jigsaw identification:** The secretary said that, after a case where the Kent Messenger had been fined for identifying a child rape victim despite following the Code on jigsaw publication, he had spoken to the paper's Editorial Director to see if there was any flaw in the current clauses covering. The Code seemed to be sound.

❖ Decision: No change.

**Conscience clause:** The NUJ's suggestions that the Code should include a conscience clause to allow individual journalists to abstain from work that they felt might constitute a breach was raised at the Select Committee's mini inquiry into self-regulation. The secretary said this had previously been rejected in 2004 because the main responsibility for ensuring compliance rested with the editor, as emphasised in the preamble. Compliance was also written into journalists' contracts of employment and a conscience clause could clash with contractual requirements to carry out reasonable instructions.

❖ Decision: No change.

**Defaming murder victims:** The secretary reported on a suggestion from [ ] that the Code should be changed to prevent the publication of malicious falsehoods against murder victims. No evidence was produced to support the suggestion, which had appeared directed more towards the PCG.

❖ Decision: No change.

**NEXT MEETING:** It was left to the Chairman and secretary to call the next meeting, probably in September, unless the Select Committee report raised urgent issues.