

PRESS COMPLAINTS COMMISSION

The Minutes of the 175th Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 8th December 2010

Present: Baroness Buscombe Chairman
Matti Alderson
Anthony Longden
Ian MacGregor
Ian Nichol Deputy Chairman
Lindsay Nicholson
Eve Salomon
Simon Sapper
Julie Spence
Ian Walden
Tina Weaver
Peter Wright

In attendance: Stephen Abell Director

The following members of the secretariat attended the meeting as observers: Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Becky Hales, Amber Mun, Scott Langham, Catherine Speller and Ben Milloy.

1. Apologies

Apologies were received from Simon Reynolds, John Home Robertson, John McLellan and Esther Robertson.

The Chairman welcomed Alison Hastings, consultant to the PCC, and Mike Willcocks, independent Charter Commissioner, to the meeting.

2. Minutes

The minutes of the meeting held on 27th October were approved as a correct record of the meeting and for publication.

3. Matters arising

(i) Complaint No. 10-2836 Forest of Dean District Council v Forest of Dean and Wye Valley Review

The Chairman confirmed that, following the Commission's adjudication against the newspaper at its last meeting, she had written to the Review's publisher, Sir Ray Tindle, with regard to the unacceptable delay in the newspaper's response to the secretariat's enquiries. Commissioners welcomed Sir Ray's response, and a further letter from the newspaper group's managing director to the PCC's Director, which showed that the matter was being dealt with seriously.

(ii) Complaint No. 10-3933 Hampshire Constabulary v Aldershot News & Mail

Tina Weaver took no part in discussion of this case and absented herself from the room.

The Commission considered further developments in this case, following the adjudication it had agreed in September. Because of ongoing, related legal proceedings, details of the Commission's findings could not yet be made public.

4. Complaints

(i) Complaint No. 10-2691 Waldron/Katona v The People

Tina Weaver remained outside the room and took no part in the discussion of this complaint.

After considerable discussion the Commission concluded that it was not in a position to reconcile a conflict of evidence that lay at the heart of this dispute. As a consequence, it declined to make a full ruling on the case. However, it determined to write to the newspaper to request that it remove the article under complaint from its website (as it had offered to do) and take appropriate steps to ensure that the disputed information was not republished.

(ii) Complaint No. 10-4477 Lee v The Daily Telegraph/The Sunday Telegraph

Ian MacGregor left the room and took no part in the discussion of these complaints. Tina Weaver returned to the meeting.

After discussion the Commission concluded that the newspapers had taken steps to adhere to the requirements of the Code of Practice in relation to financial journalism. As a result, the complaint was not upheld. The Commission also concluded that there was no breach of the Code in respect of an additional complaint under Clause 1 (Accuracy). It agreed the following adjudication:

Mr Keith Lee complained to the Press Complaints Commission about a series of investment recommendations in the Questor column, which appears in the Daily Telegraph and Sunday Telegraph. He was concerned about the frequency with which certain shares – in which the column's editor had a stated financial interest – were recommended. The Commission determined to examine the matter under the terms of Clause 13 (Financial journalism) of the Editors' Code of Practice.

The complaint was not upheld.

The Questor column is a regular feature in the newspapers and has been running for almost 50 years. The column gives recommendations on whether to buy, hold or sell particular shares.

The complainant said he was concerned that the Questor editor was publishing excessively frequent "buy" recommendations for certain shares. In particular, the complainant pointed out that shares in JP Morgan Indian investment trust (in which the Questor editor had a stated financial interest) had been "tipped" on nine occasions between 14 January 2009 and 15 April 2010, while Hill & Smith shares had been recommended six times between 28 June 2009 and 10 August 2010. He noted that there was a correlation between the appearance of recommendations for JP Morgan Investment Trust and the traded volume of shares in that stock. The price of the share also tended to rise more steeply than the FTSE 100 index.

In response to the complaint, the newspaper group said that its policy since late 2008 (when the current Questor editor took charge of the column) was to focus Questor on a relatively small pool of securities. This, it said, provided greater interest to the typical reader. In the subsequent period, several shares had been frequently recommended by Questor: in addition to those referred to by the complainant, Petrofac had been mentioned 16 times, Templeton Emerging Markets 14 times and Vedanta 11 times.

Decisions about which shares to recommend were made by the Questor editor and the newspaper group's head of business. The fact that the price of shares rose after being tipped by Questor was in no way sinister. It was simply a demonstration that the recommendations made in the column were well-founded. (The newspaper group noted, in response to the example put forward by the complainant, that the value of the JP Morgan fund is not based on the volume of shares traded. It argued that an increase in the volume of shares being traded was likely to cause only small changes in the share price.)

While it was true that the Questor editor retained a personal financial interest in the stock market, the newspaper group said it had always followed strict policies to ensure adherence to the Editors' Code of Practice. It was standard practice for personal financial interests to be declared to the editor (which had been followed in this case). In the interests of transparency, the Questor editor made his financial interests public by making clear in the newspapers themselves when he had a stake in shares he was recommending.

The newspaper group said that, since the current Questor editor started writing for the Telegraph, any share purchases had been made through his share club, in which he owns a 10.3% stake. (This information, apart from the specific size of the journalist's stake in the club, was also included in the disclosures published at the end of the Questor column.) Since he started his role, no shares about which he had written had been sold. Shares in four companies had been bought:

- 1. Northern Foods shares were purchased on 22 March 2010 (an earlier tranche having been purchased on 20 November 2006 before he took on the Questor editorship). The shares were recommended by Questor on ten occasions between March 2009 and October 2010.*
- 2. National Grid shares were also purchased on 22 March 2010. The shares were tipped ten times between March 2009 and June 2010.*
- 3. HSBC shares were also purchased on 22 March 2010. They were tipped by Questor on six occasions between June 2009 and September 2010.*
- 4. Shares in Avanti Communications were also purchased on 22 March 2010. They were recommended by Questor in January 2010 and again in February 2010.*

The current value of Questor's holdings in these shares was:

1. *Northern Foods* - £388.86
2. *National Grid* - £500
3. *HSBC Infrastructure* - £120.05
4. *Avanti* - £207.70

He also had a holding valued at £451 in JP Morgan Indian, which had been tipped several times, as noted by the complainant. Shares in this investment trust had not been purchased since the beginning of Questor's editorship.

*No shares had been bought or sold either shortly before or shortly after they were written about in the column. The shortest gap between shares being purchased and subsequently written about was 29 days (*Northern Foods* shares having been bought on 22 March then tipped on 20 April). Consequently, the newspaper group argued that there had been no breach of Clause 13 of the Code of Practice. It said that the Questor editor had acted honestly and reputably in his role.*

However, it accepted that it was vital to ensure there could be no doubt about the legitimacy of Questor's activities. As a result, it had decided that Questor would dispose of his stake in his share club and would not buy or sell shares in the future.

Adjudication

It is extremely rare for the Press Complaints Commission to receive a complaint under Clause 13 (Financial journalism) of the Editors' Code of Practice, or for matters to arise that require investigation even in the absence of a complaint.

The only occasion on which a breach of Clause 13 (Financial journalism) was found to have occurred was in relation to the "City Slickers" case of 2000. Afterwards, the PCC introduced specific guidance in the area of financial journalism, which was updated five years ago to take account of the Investment Recommendation (Media) Regulations 2005, which gave effect in UK law to the European Union's Market Abuse Directive.

The Commission wishes to make clear that it remains vigilant in this area. In October 2010, the PCC wrote to relevant executives across the national newspaper industry reminding them of the obligations imposed by the Code of Practice (and the Investment Recommendation (Media) Regulations, as set out in the PCC's guidance). The Commission will, in the New Year, run a seminar on the subject of financial journalism for relevant figures in the industry.

This case provided an opportunity for the Commission to examine the practical effect of the terms of Clause 13 of the Code. It found that the newspaper group had taken steps to adhere to them on this occasion.

The complainant's concern related to the frequent tipping of shares in which the editor of the column where the recommendations appeared (Questor) had a personal financial interest, via membership of a share club. The frequency of recommendations is not something to which the Code of Practice or the PCC's additional guidance makes direct reference. Nonetheless, in relation to writing about shares and securities, there are two key tests and the Commission examined both.

First, the Code says that journalists "must not write about shares...in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or the financial editor".

There was no evidence that the Questor editor had breached this requirement. It was standard practice at the Telegraph newspapers for journalists' financial interests to be declared to the editor and, in Questor's case, personal financial interests were made public at the end of relevant recommendations. This ensured a suitably high level of transparency, and indeed meant that readers could see for themselves the frequency of the recommendations.

Having examined the trades in question, the Commission was not convinced that the financial interest of the Questor editor in the relevant shares could be considered "significant" in the meaning of the Code. It noted that the highest value of shares in any one company was £500.

The second key requirement of the Code is that "journalists must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future".

The newspaper group acknowledged that the Questor editor had, in several instances, purchased shares in companies he had written about. Purchases had been made through an investment club in which the journalist had a stake of around 10%. No shares had been sold.

Buying shares is not prohibited by the Code unless they have been written about "recently" or will be written about in the "near future". The Commission's guidance notes that it is impossible to define these terms more precisely without producing loopholes.

However, it goes on to make clear that, as best practice, "journalists should not speculate by buying or selling shares on a short-term basis".

In this instance, it did not appear to the Commission that the Questor editor was dealing in shares in a way that amounted to such short-term speculation. The shortest gap between a recommendation and his purchase of the recommended stock was 29 days; and there had been no subsequent sales of any shares.

In all the circumstances, the Commission was satisfied that there had been no breach of Clause 13 (Financial journalism) of the Code.

In this area of journalism (as in others), it is necessary that readers should have confidence in the propriety of the actions of journalists. It was clear to the Commission that the newspaper group had taken seriously the concerns about the Questor column. It noted the Telegraph's decision that the Questor editor would not trade in shares in the future, in order that there could be no question of a conflict of interest. This action (which was volunteered rather than required) underlines the strength of the self-regulatory mechanism in this area, which seeks to promote high standards of accountability.

The complainant had also raised a complaint under Clause 1 (Accuracy) of the Editors' Code.

He said that the column regularly made reference to the date on which shares were "first recommended". Yet in fact, the shares had often been recommended before the given date. For instance, he said, on 10 March and 9 May 2010 Questor had made recommendations to buy shares in Hill & Smith and had noted that the shares were "first recommended at 202p on February 7 last". The complainant said that, in fact, the shares had been first recommended by the column in July 2008. He also noted that an item recommending Hill & Smith on 10 August referred to them having been "first recommended at 202p on June 28 last year". Even if the July 2008 recommendation was ignored, there was clearly an error in at least one of these columns.

The newspaper group said that the phrase “first recommended” related to the first recommendation by the current Questor editor. It said this policy made more sense than referring back to a recommendation made by a previous editor, perhaps many years ago. It argued that regular readers of the column would be very well aware of a change in the editorship (the most recent editor having been welcomed in a special feature in November 2008). It did acknowledge that an error had been made in the 10 March and 9 May items when Hill & Smith were said to have been first tipped “on February 7 last”. In fact, the August 10 item was correct when it said that the first tip by the current editor of Hill & Smith shares was “on June 28 last year”. It apologised for the mistake and corrected the two earlier items online.

It subsequently corrected two further items relating to the recommendation of BP shares, both of which erroneously referred to the shares having been “first recommended” on 4 April 2009. In fact, as was correctly stated in a third recommendation – and as the complainant had pointed out – they had first been recommended on 4 February 2009.

The complainant also said that the Questor column was misleading because it used the FTSE 100 index as a point of comparison for all the shares it recommended, even when it was recommending shares that were not in the FTSE 100.

The newspaper group said that the FTSE 100 index was a sensible benchmark for all recommendations. If different comparisons were employed for different shares, there might equally be claims of distortion. Ultimately, no system was perfect.

Adjudication

The Commission was satisfied that readers would not generally be misled by the fact that references to when shares had “first been recommended” related to their first recommendation by the current Questor editor. Even if readers were not aware of changes in editorship, the “first recommendation” references were simply a point of comparison for readers to consider. The rise and fall of share prices were, of course, publicly accessible and the Commission did not conclude that it was misleading for the newspaper group to regard Questor editorships as discrete periods.

There clearly had been an error in the 10 March and 9 May articles (in which Hill & Smith had been referred to as being first tipped “on 7 February last”, which was in fact not the case) but the Commission did not consider that it was a sufficiently significant error to warrant stand-alone correction or formal censure. It took

the same view in relation to the errors about when shares in BP had first been recommended. The amendment of the articles online was a suitable way of remedying the inaccuracies. That said, these were clear mistakes and the Commission wished to make clear that editors and financial editors must remain vigilant in ensuring that information they publish is accurate.

The use of the FTSE 100 index as a benchmark for comparing share performance (even in relation to non-FTSE 100 shares) was not misleading either. Readers would generally be aware that some of the shares being written about were not listed in the FTSE 100 and they would, therefore, be able to draw their own conclusions as to the practical use of the index for comparative purposes. Even if they were not aware of this, the Commission did not believe they would be misled by the comparison.

(iii) Complaint No. 10-4394 Watson v The Times

The Chairman informed Commissioners that this complaint had been resolved through mediation by the PCC secretariat. The case was not, therefore, considered further.

(iv) Complaint No. 10-4656 Watson v Daily Mail

The Chairman informed Commissioners that this complaint had been resolved through mediation by the PCC secretariat. The case was not, therefore, considered further.

(v) Complaint No. 10-1622 Caborn v The Sunday Times

The complainant had asked the Commission to delay consideration of his complaint until he could provide further evidence on the matter.

While the Commission considered this further delay in the case to be regrettable, it agreed to postpone its formal consideration of the matter until the evidence had been provided.

- (vi) The Commission formally approved (subject to individual queries on specific complaints raised with the office) the following PCC Papers, which had contained draft adjudications for Commissioners' ratification or otherwise: 4925, 4929, 4935, 4937, 4938, 4939, 4940, 4941, 4942, 4943, 4944, 4945, 4946, 4947, 4948, 4949, 4950, 4951, 4952, 4953, 4954, 4955, 4956, 4957, 4959, 4960, 4961, 4962. All papers had been circulated since the previous Commission meeting.

5. Statement by the Chairman of Pressbof to members of the Commission

The Chairman of PressBoF, Guy Black, joined the meeting at this juncture and spoke to Commissioners about funding matters.

He left the meeting after this item.

6. PCC response to Independent Governance Review

Commissioners discussed and agreed the final text of the PCC's response to the Independent Governance Review. The Commission agreed that the response should be published this month.

7. Nominations Committee

Commission members considered detailed proposals for the establishment of a new Nominations Committee. They welcomed the appointment of the Committee's independent advisor and it was agreed that Ian Nichol and Ian Walden would, along with the Chairman, comprise the membership of the Committee. Detailed proposals for the appointment process of new members (and re-appointment of serving members) were all agreed. Information about the process will be made public via the PCC's website.

8. PCC and the publication of rulings

The Commission considered proposals about improving the mechanism by which the PCC makes public its decisions on individual complaints. The principle that regular packages of information should be released about complaint outcomes was endorsed by Commissioners. But it was agreed that the secretariat should be allowed a degree of latitude to take into account specific circumstances.

9. Clause 15 response from the Code Committee

At its meeting in September, the Commission had considered the payment by the Mail on Sunday to Loloahi Tapui, the housekeeper of Baroness Scotland. As a result of Commissioners' deliberations, the Chairman wrote to the Editors' Code of Practice Committee for clarification as to the scope of Clause 15 (Witness payments in criminal trials). In response, the Code Committee had made clear its view that Clause 15 of the Code does not cover defendants, who would not automatically appear as witnesses in their own trials.

The Commission considered that this issue would be considered when it discussed its own submission to the forthcoming Code audit.

10. Chairman and Director's meetings

Commissioners received an update on appointments undertaken by the Chairman and Director.

11. Report of Charter Commissioner

The Charter Commissioner, Sir Mike Willcocks, updated the Commission on the cases he had seen in the year to date. He had dealt so far with fifty-six, some of which had resulted in considerable correspondence between himself and the complainant.

12. Any other business

(i) Anonymity for teachers

Commissioners discussed government proposals to afford anonymity to teachers who are the subject of allegations of misconduct. It was agreed that the secretariat should seek to liaise with relevant government departments to discuss the potential impact on the PCC's role.

(ii) ATVOD

The Chairman updated Commissioners on plans by ATVOD to regulate certain parts of newspaper and magazine websites. It was clear that there was potential for regulatory overlap and that it was important for the PCC to keep a close watch on developments. In the first instance, however, Commissioners agreed that this was a matter for the newspaper and magazine industry itself.

(iii) Libel action

Commissioners noted the outcome of the libel action brought by Mark Lewis against the PCC.

(iv) Adverts

A new set of advertisements about the PCC's services had been circulated to publishers across the UK and the Chairman informed Commissioners that the rate of take-up had been encouraging. Most national newspaper groups had published the advert (at no cost), as had many regional newspapers and magazines.

(v) Parliamentary Reception

The Chairman thanked those Commissioners who had attended a recent reception for Parliamentarians. There had been considerable positive feedback from MPs and Peers about the event.

(vi) Simon Sapper

Simon Sapper reported to Commissioners on a talk he had given earlier in the day, about media regulation, to a group of GSCE students at the British Film Institute.

13. Date of next meeting

2.00pm on Wednesday, 19th January 2011 at Halton House, 20/23 Holborn, London EC1.