

File please

PRESS COMPLAINTS COMMISSION

From the Chairman

Ian Beales Esq
Secretary
Code Committee
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22nd September 2010

Dear Ian,

I am writing at the request of the Commission to ask the Editors' Code Committee, as a matter of some urgency, to examine Clause 15 (Witness payments in criminal trials) of the Code of Practice.

This is in the context of a recent investigation by the PCC into the payment by the Mail on Sunday to the housekeeper of Baroness Scotland, [redacted]

In mid-September 2009 it was revealed that [redacted] who was living illegally in the UK, had been employed by the then Attorney General, Baroness Scotland. Baroness Scotland was subsequently fined £5,000 on 22 September 2009 for employing an individual with no right to work in the UK. [redacted] was arrested over alleged immigration offences and released on bail without charge on 23 September 2009.

The newspaper published an interview with [redacted] on 27 September 2009 in which she made "sensational new allegations" against her former employer, including the claim that Baroness Scotland did not ask to see any documents when she was employed (in direct contradiction to Baroness Scotland's position).

In November 2009, [redacted] was formally charged by the Crown Prosecution Service with possession of a false identity document, fraud by false representation and overstaying leave to remain in the UK. In April 2010, [redacted] was found guilty of the charges; she was given a prison sentence of eight months in May 2010.

As you know, the Code is clear that there is a total ban on offers of payments to potential witnesses once proceedings are deemed active as defined under the terms of the Contempt of Court Act 1981. On this occasion, at the time of payment, proceedings against Ms Tapui were active under the terms of the 1981 Act. She had been arrested four days previously and bailed. As such, the terms of the Code meant that payment to potential witnesses was prohibited, regardless of any public interest argument.

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The question for the Commission was whether the Code should be held to cover *defendants* (who are likely to give evidence at trial) as well as third party witnesses, and whether the two classes of person should be covered in the same way. It believed this to be the first case where the question has arisen.

The Code, as it stands, makes no specific reference to defendants, and paying a defendant (whose interests in the trial may be said to be already determined) is arguably different from paying a witness. It is this that requires clarification.

The Commission felt there could be reasonable concern about the newspaper entering into a contractual relationship with Ms Tapui immediately after her arrest. At that point, for example, her own position in regard to the claims against her had not been finalised, and would not be until she was charged and then formally entered a plea.

As a result, we would like the Code Committee to answer the following questions:

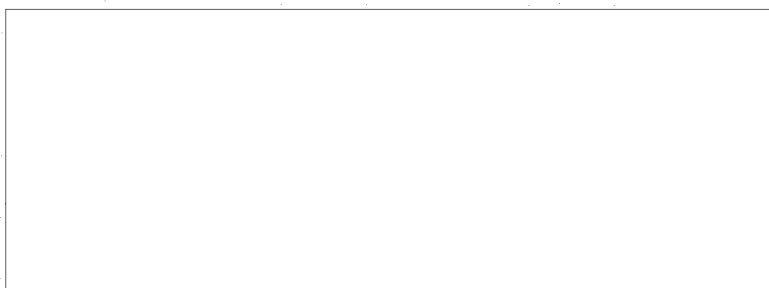
- should Clause 15 be amended explicitly to cover defendants?
- should it make reference to appropriate timings for the offer of payment (in relation to charges being raised or pleas being entered)?
- should there be a public interest defence possible in paying defendants?

It is the view of the Commission that payments being offered to defendants may raise issues of legitimate ethical concern. We believe that consideration should be given to amending the Code to set clear guidance about this for the future.

The wider issue of payments made by journalists is likely to be raised by the forthcoming Bribery Act. I would also, therefore, welcome the thoughts of the Committee on whether the Code should be amended in light of this new legislation.

I look forward to these issues being considered by the Code Committee. I will then report back to the Commission.

With kind regards.



Baroness Buscombe

