

PRIVATE AND CONFIDENTIAL

PCC PAPER NO. 4936

Code Committee Meeting 21st October 2010

This is a brief report of the meeting attended by the PCC Director and Chairman. Commissioners will have the chance to offer any comments, or request further details, on Wednesday. The Code Committee made the following decisions:

- it expressed concern at the implications of the Bribery Act (coming into force in April), which meant that prosecution (and possible imprisonment) could follow a journalist offering any form of reward to a public official in return for information. The Committee believed that this was a threat to legitimate investigative journalism. However, it felt it was a matter for the industry to lobby on, with the intention of having a public interest criterion introduced into the guidance to the Act.
- it believed that Clause 15 (Payments to witnesses in criminal trials) was *not* intended to cover defendants. In its view, it was difficult for payment to a defendant adversely to influence the judicial process (as it did in the case of third party witnesses). The Committee undertook to write to the Commission setting its thoughts out fully. This will be discussed at the next meeting.
- it accepted the principle of the Code being changed to ensure that the prominence of upheld adjudications would have to be agreed by the PCC Director (acting with devolved authority from the Commission). This proposed change will be examined further during next year's Code Review, after which it will be sent out for consultation (including to the PCC).
- it discussed the issue of phone hacking. It felt that the Code was clear in this area, and that – given the ongoing legal inquiries – it would not be appropriate for the Committee to offer public comment at this time.
- it agreed – following the example of the PCC – to start publishing its own minutes.
- it approved amendments to the Codebook (see enclosed for new guidance sections).
- it reviewed suggestions from members of the public in the following areas: to prohibit the promotion of sexual violence by “lads” magazines; to enforce declarations of corporate hospitality by journalists; to require a right of reply to all religious letters; and to prohibit the public display of indecent front pages. It decided not to consider changing the Code to reflect any of these suggestions.
- it agreed that the annual Code Review would take place early in the New Year. The Secretary of the Code Committee would write an open letter, for publication across the industry, requesting submissions from the public.

The next Code Committee meeting is intended to be in March 2011.

Heads that win and tales that lose

A good headline will have gone around the world twice before a dull one is even noticed. Witty or sad, hard-hitting or soulful, wry or punny, playful or ironic — readers love them. When they work.

However, they have to succeed on a variety of levels: catching the reader's eye and mood, telling and selling the story in every sense — and complying with the Code. Headlines are, and have always been, covered by the Code, but not in isolation. The Accuracy clause particularly — with its requirement to take care not to mislead or distort — applies to them, but taken in the round and set in the context of the story as a whole.

Comment is acceptable — as long as ordinary readers would be aware that's what it was. Headlines with a clear political twist are readily identifiable to most readers, who will make their own judgment. Election coverage, for example, would not be the same without it, any more than sports pages would exist without today's *Captain Marvel* becoming tomorrow's *Captain Calamity*.

Satire and irony have a proud tradition in British journalism and some of the most iconic headlines in history reflect that. It is not usually a problem area for the PCC.

Metaphors that capture the essence of the story, or a significant element of it, often convey its meaning more successfully than something ploddingly factual and are rarely a source of complaints.

So the Code, and the PCC's interpretation of it, gives headline writers ample latitude to produce eye-catching baited hooks to tempt the reader. It also ensures there are reasonable limits. The twin tests are:

- When taken in conjunction with the story as a whole, is the headline significantly inaccurate, misleading or distorting? If so —
- Was sufficient care taken to prevent that?

Particular headline danger areas, which account for most successful

complaints to the PCC, are: errors of fact; tabloid splashes that go too far; and magazine teasers where Page One's exciting eye-catcher becomes Page 21's jaw-dropping disappointment.

Examples of cases that failed the test include:

Peaches: Spend Night With Me For £5k: What sounded salacious on a tabloid Page One was, by Page 5, reduced to a claim that Ms Geldof charged to attend A-list parties. In fact, she didn't, unless she was employed as a DJ. A Page 2 apology followed.

Gang of 19 Raped Teen: A weekly newspaper was censured after its Page One headline on a court story failed to make clear that this was an allegation.

Muslim-only Public Loos: They were not for Muslims only, nor paid for out of council tax, as a red top claimed. A PCC censure and Page 2 correction followed.

Victoria Celebrates Her 33rd Birthday At Home With David: It was a Page One picture spoof, using Beckham look-alikes. The magazine apologised.

I Lied – Stan Collymore's Sensational Signed Confession: Was a tabloid stunt. The soccer star thought he was giving an autograph — but was actually putting his name to a spoof 'confession' that he'd invented a story that rugby players had beaten him up. The paper was censured.

While all these cases were very different, they shared a common fault: they had not taken sufficient care to avoid misleading the reader.

It is impossible always to be precise about the moment when a headline stops being witty and attention-grabbing and simply becomes plain wrong, but by the time a reasonable reader has been stung by the hook — genuinely and significantly misled by a storyline that does not live up to its promise — that moment has definitely passed. And by then, it is too late.

BRIEFING: PHOTO-JOURNALISM AND THE CODE

Snap judgments

One picture may be worth 5,000 words but — in terms of the Code — its success can rely on only two: *consent* or *justification*. If you haven't got the one, you will often need the other. However, it does not begin or end there. The Code covers photo-journalism at every stage, from the circumstances in which the image was taken or obtained to the manner of its use.

Questions of consent

Not all pictures need consent and, where they do, it is often granted. But photographing without necessary consent is allowed only if justifiable in the public interest (see below). Key areas requiring consent are:

Private places — *public or private* places where individuals have a *reasonable expectation of privacy*. The test is: If the person photographed was *identifiable with the naked eye* — not a telephoto lens — to someone in a public place and was *not engaged in any private activity*, there is unlikely to be a breach.

Children under 16 — cannot be photographed on issues involving their own or another child's welfare without a custodial parent's or guardian's consent, or at school without the school's permission.

Intrusion into grief or shock — a sensitive area. Photographing funerals without consent, for example, may cause distress, especially in cases of intense grief and tragedy. The PCC urges the press to *establish the family's wishes in advance*, except in cases that are clearly public events.

Vulnerable people such as sex crime victims, or innocent relatives of people accused of crime are protected to varying degrees. Permission is usually needed to enter non-public areas of hospitals.

Professional conduct

Harassment and subterfuge: Continuing to photograph a person once asked to desist could amount to persistent pursuit. Using hidden cameras or removing digital or other images without authority might breach subterfuge rules.

Payment: Neither children nor parents should be paid for pictures, unless in

the child's interest. Nor should criminals or their associates be paid for images that exploit, or glamorise crime. Pictures from 'citizen journalists' — paid or not — must comply with the Code.

Managing the image

If the manner of obtaining pictures constituted a breach, then publishing them would usually compound it. But even using images obtained legitimately, or library pictures, can raise new issues, such as by *identifying*:

- Children whose welfare is affected, or who are involved in sex crime cases, either as victims or *defendants*, or who are featured only because of their parents' fame or notoriety.
- Victims of sex crimes, or innocent relatives of people accused of crime.
- The location of homes of vulnerable people or celebrities at risk from stalkers.
- Excessive detail of suicide methods, or by glorifying suicide.

Pixellation of pictures may prevent unwanted identification, but it does not always work — leading to breaches.

Internet: Using pictures from social networking sites, even if freely available, carries risks. The tests: *How personal is it? What is the public interest? Was access restricted? Did the subject upload it personally?*

Digital or other manipulation of images can mislead the reader, as can spoof or stunt photographs using models. If the picture isn't what it seems, readers should be told.

The public interest

The Code restrictions on intrusive pictures may be over-ridden where they can be justified in the public interest. It does not apply in every area of the Code — intrusion into grief for example — and where children are involved the case must be exceptional. The thresholds are high — intrusion must be proportionate. The justification could fail if the public interest might be fully served without using some or all of the pictures.

BRIEFING

Complaints about websites

The Editors' Code has become increasingly important in offering the UK a form of self-regulation rarely available in online media internationally. Changes to its remit in 2009 mean it now embraces not only online versions of newspapers and magazines traditionally under the PCC's jurisdiction, but also free-standing online publications.

The need for change was recognized in a PressBoF statement in 2007, covering online content and user-generated material when the remit was extended to embrace audio-visual images. The emerging pattern of complaints has been set out in the PCC's policy note on Online Complaints:

User-generated content: The rules make clear that, as with print versions, the Code covers only editorial material — i.e. that which could reasonably be expected to be under the editor's control. This would not normally include user-generated material such as chat rooms or blogs. PCC policy is that editors are responsible for:

- Any material they have taken a decision to publish.
- Any user-generated material they have decided to leave online, having been made aware of it, or received a complaint.

Audio-visual material often comprises video from non-journalists showing the conduct of identifiable people, without their consent. This can raise issues of intrusion into privacy, or grief or shock, or a child's private life, if there is not adequate justification for publication (*See Public Interest*).

The public interest test is vital. Editors would need to examine the footage in full, taking into account the manner in which it was obtained, to decide if it would comply with the Code, either in its current form or by removing intrusive elements that could not be justified by the public interest, for example by pixellating faces. Examples that failed or passed the test:

- Failed: Videos of schoolchildren behaving badly — it was

not necessary to identify the pupils to demonstrate lax school discipline. (*See Children*).

- Failed: Police video material on a newspaper website showing a drugs raid on an identified home where no charges followed. (*See Privacy*).
- Passed: A YouTube video uploaded on to a newspaper website that identified youths firebombing a freight train. (*See Public Interest*).

Social networking sites: Material published without consent can raise privacy issues, even if freely available online. The PCC takes account of a variety of factors: how private the material is; how it was used (i.e. in cases involving grief or shock, would it be insensitive?); how accessible it was to third parties — including whether the person concerned had restricted public access to the profile; whether the individual knew it was being used; and, importantly, whether the subject matter concerned a child.

Again, the public interest test is vital. The PCC censured a newspaper that used images freely available online to humiliate and embarrass survivors of the Dunblane school massacre. Conversely, publication of a serving policeman's insensitive comments on the death of Ian Tomlinson during the London G20 protest were ruled as in the public interest, even though they were taken from a Facebook profile that was not publicly accessible.

Online archives: As newspaper archives going back years are often freely available online, it is possible to complain about matters published outside the PCC's usual two-month time limit. However, the Commission will take into account the length of time that has elapsed; the difficulties in reaching findings when memories and evidence are no longer fresh; and the reason for any long delay in complaining — including whether a complaint was possible at the time of original publication.

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Ratification of Code Change

Commissioners will recall that the PCC was consulted – along with industry members – on a proposed amendment to Clause 1 (Accuracy) of the Code. The consultation is attached.

No Commissioner raised substantive concerns about this wording, which has also been accepted by the industry.

On that basis, the Commission is asked formally now to ratify the amendment. The Code will then be changed.

Editors' Code of Practice Committee

Code Review 2010:

Code Committee's suggested amendment

Due prominence for apologies and corrections

A perennial complaint about the PCC – and one most recently expressed by the Culture, Media and Sport Select Committee's report, and more widely in various submissions to the PCC's Governance Review panel – is that the Commission's current sanctions are inadequate and need strengthening. Perhaps the most common example cited is that the Code's current rule requiring apologies and corrections to be published with due prominence is almost universally ignored, with such statements routinely being hidden away in remote parts of the paper, unseen by readers.

The PCC believes its sanctions are strong and adequate, and does not want them widened. It commissioned research which demonstrates that currently 84% of corrections or apologies etc are published on the same page as the original article or earlier, or in recognised Corrections columns. When corrections appearing within five pages of the original article are included, the figure rises to 96%. This is not entirely surprising, given that in many cases, if not most, editors informally consult PCC staff on positioning in advance.

However, the PCC believes its hand in dealing with critics would be greatly strengthened if all this could be consolidated into the existing Code, to demonstrate that, beyond doubt, it had teeth - and works.

The Code Committee has recognised the presentational advantages of this and has drafted a change that allows for mutual agreement in advance on prominence.

It recommends that the Code should be amended to state:

iii) 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.

The basis of this recommendation was that it should codify what is effectively current standard practice in determining due prominence with the PCC. To enable this to happen, it has been agreed that the PCC secretariat would have delegated authority to agree such positioning with the Editor, without recourse to the full Commission.

Only if the Editor and the secretariat, overseen by the Director, fail to reach agreement, would it then go the Commission. In fact, this is little different from the current situation where an editor who does not publish with due prominence would face censure for a further breach.

27/10/2010

8. Communicating PCC Rulings

Commissioners discussed proposals to regularise the way in which the PCC publishes its adjudications. A number of concerns were raised, to which Commissioners requested the office give further thought. It was agreed that a second paper on the subject would be presented at the Commission's next meeting for consideration.

9. PCC website

Commissioners were updated on work being undertaken to re-design the PCC's website – the first such undertaking since the current site was launched in 2006. The project was welcomed by Commissioners.

10. Report on Code Committee Meeting – 21 October 2010

Commissioners received and discussed a short report on the Code of Practice Committee's recent meeting, which had been attended by the PCC Chairman and Director.

11. Ratification of Code Change

Commissioners had previously been consulted – along with representatives of the newspaper and magazine industry – about a proposal by the Code of Practice Committee to amend Clause 1 (Accuracy) of the Code. No substantive concerns had been raised about the suggested change and the Commission ratified the amendment formally.

12. Chairman and Director's meetings

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

13. Any other business1. Online working group

The Commission received a minute on the first meeting of the online working group. Its next meeting would be held in December.