

Press Complaints Commission v Daily Express

Clauses noted: 15

The Press Complaints Commission has launched an own volition investigation into a payment made by Express Newspapers in April 2009 to Nicola Fisher. Ms Fisher had claimed to have been assaulted by a police officer on the second day of the G20 protests on 2 April 2009.

The Commission decided that there had been no breach of Clause 15 (Witness payments in criminal trials) of the Editors' Code of Practice.

The articles, which appeared on 17 April 2009 in the Daily Star and the Daily Express, were based on an interview with Ms Fisher in which she outlined the nature of her allegations against the police officer in question, later confirmed to be Sgt Delroy Smellie. Ms Fisher described the alleged assault in detail, claiming that the experience was "like [she'd] been whipped by the Taliban", that she feared for her life and that the officer was a "thug" who "got his kicks out of hurting a woman". Her injuries were described in the articles which included photographs of them. Ms Fisher was paid for her involvement in the story.

At the time of publication, the police officer had been suspended, but had not been arrested or charged with any offence. In September 2009 he was charged with common assault, pleading not guilty in November 2009. Sgt Smellie was subsequently cleared of the charge in March 2010. At his trial, Ms Fisher did not give evidence, apparently citing concerns that the defence would focus on her lifestyle and background.

The newspapers said that the incident with Ms Fisher, which left her badly injured, had occurred the day after the high-profile death of Ian Tomlinson, at a vigil and memorial for him. There had been extensive CCTV and mobile phone footage of each incident (which was placed immediately online).

At the time of the interview - while Ms Fisher had already spoken to the Independent Police Complaints Commission (IPCC) whose investigation was in its preliminary stages - proceedings against the officer were not active, not least because his identity had yet to become known. The CPS had been made aware of the payment to Ms Fisher - who would not have agreed to the interview without remuneration - through her representative. There was no question of her evidence being embellished (as she had already given her statement to the IPCC before her interview). In addition, the trial took place before a District Judge rather than a jury.

The newspapers said that the police tactics and conduct during the G20 protests was a matter of legitimate public interest: the IPCC had received over 270 complaints about the actions and Metropolitan, City of London and British Transport Police during the demonstrations. Given the actions of the police, including their controversial practice of 'kettling' and the death of Mr Tomlinson, it was right and proper that Ms Fisher's account be published. The footage of the incident had been widely disseminated on the internet and, at the trial, the officer did not deny the assault; rather, he defended his actions on the basis that he had used reasonable force in all the circumstances. While he had been acquitted of the charge, the decision had come in for some considerable public criticism.

Adjudication

Clause 15 of the Editors' Code imposes strict rules on payments to witnesses in criminal trials, in essence to avoid any threat, or perceived threat, to the integrity of the judicial process. It was significantly strengthened in 2003 to limit the circumstances in which payments could be made. The Commission receives relatively few complaints under this Clause (where the individual who receives payment is unlikely to complain) and is able proactively to launch an investigation of its own volition when legitimate concerns exist about the decision by a newspaper to make a payment. The

Commission is committed to vigilance in this area, and will investigate any suggestion that Clause 15 is being breached by publications.

On this occasion, it became clear that the newspapers had paid Ms Fisher for the story, and she had subsequently not testified in court. The Commission wished to satisfy itself that due consideration had been given by the newspapers to ensuring that they had abided by the terms of the Code in its dealings with Ms Fisher.

Specifically, Clause 15 prohibits paying potential witnesses in circumstances where proceedings are not active, but are "likely and foreseeable", unless "the information ought demonstrably to be published in the public interest and there is an overriding need to make...payment for this to be done".

It was arguable that proceedings in this case were likely, given the allegation of assault against a police officer. However, he had not yet publicly been identified at the time of publication. In those circumstances, Ms Fisher would certainly have been a witness for the prosecution and her evidence could have formed an essential part of the case, despite the existence of video evidence in the public domain.

The central question was whether the published information was in the public interest. The Commission considered that it was. Ms Fisher's experiences related to the allegedly violent behaviour of police at a vigil for Ian Tomlinson (who had himself notoriously been the victim of alleged assault by a police officer), which left her with visible injuries. Footage of the incident had been posted online, and the specific comments of the woman featured in it were - in the Commission's view - a key part of an ongoing story. There was no doubt that the behaviour of police at the demonstrations was a matter of intense and legitimate public discussion at the time, especially following the death of Mr Tomlinson. In these circumstances, the Commission was satisfied that there was a public interest in publishing Ms Fisher's own contribution, which she would not have apparently made without financial remuneration.

Of course, concerns may be raised about the fact that Ms Fisher did not subsequently attend the trial of the officer in question. The Commission was not in a position to comment upon her personal decision not to attend, and was aware of no evidence that the necessary disclosure about the payment had been the influencing factor. Clearly, if there had been such evidence, this would have been a matter of some concern to the Commission. In any case, the Commission believed that, at the time when the offer was made, there were sufficient public interest grounds (inherent in the subject matter of the story) to justify the newspapers' decision to pay her. It did not find a breach of the Code as a result.

Adjudication issued 19/10/2010