

EDITORS' CODE OF PRACTICE COMMITTEE

The Editors' Codebook

Ian Beales

REVISED
SECOND
EDITION

The handbook to the Editors' Code of Practice

The Editors' Codebook

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The Editors' Codebook is an essential guide to how the PCC interprets the press Code of Practice. By highlighting relevant Commission rulings, it fleshes out the Code's requirements on key subjects such as harassment; the protection of children; intrusion into privacy; and how to resolve complaints. It also includes a series of helpful briefing notes such as how to approach the reporting of suicide. As such, it is required reading for editors, journalists and anyone who needs to use the PCC's numerous services — and will help to raise standards in British journalism further.

TIM TOULMIN, DIRECTOR, PCC

This book is a must-have for every newsroom. It is a map through the ethical minefield. It will not make you bombproof — but it demonstrates that if you use the code carefully and with common sense you can get to where you need to be with all your best journalistic principles intact. It also shows just how seriously editors and journalists view the code which is at the heart of the PCC system.

BOB SATCHWELL, EXECUTIVE DIRECTOR, SOCIETY OF EDITORS

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Foreword

Freedom in the balance

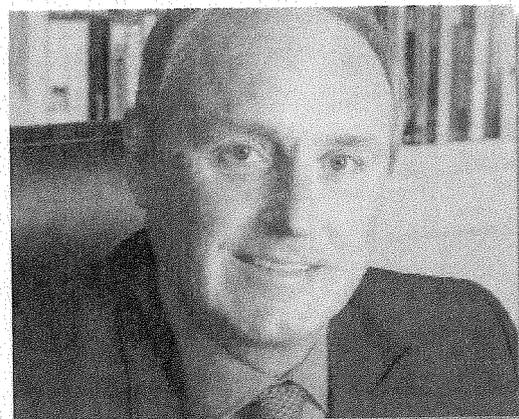
by Paul Dacre
Chairman, Editors' Code of Practice Committee and Editor, the Daily Mail

In the era of 24-hour rolling news, it is not just the press that does not sleep. Our critics too have wakeful nights dreaming up new and more ingenious ways to constrain the media. As a result, the Open Society is constantly under threat.

We can count among the principal offenders: an authoritarian Government with an increasing desire for secrecy; judges with an incomprehension of and an animus against the popular press creating a back-door privacy law under the guise of Human Rights legislation; no-win, no-fee lawyers charging monstrous fees that make it almost impossible for many newspapers to defend actions; Parliamentary Select committees with their seemingly ceaseless inquiries; and axe-grinding politicians and a supporting army of quangocrats and often self-appointed "protectors" of society. Individually, any of these can be contained. Together — especially in a period when much of the press is fighting for its commercial life — they demand greater vigilance than ever.

This leaves the media challenged on two fronts. First, to combat those who threaten the vitally important role the media plays in a healthy democracy and, with it, the public's right to know. Second, we must ensure that our own defences are sound, that the press's house is in order and that, in judging the competing freedoms of the right to know and the right to privacy, we have the balance right.

The roles of the Editors' Code of Practice Committee, which sets out the rules for achieving that balance, and the Press Complaints



Commission — which ensures the rules are observed and that there are adequate remedies for breaches — are key to this.

As Code Committee Chairman, as a former Commissioner on the PCC and, of course, as an editor, I know how difficult it is to achieve that balance. We in the media all walk that tightrope every day. Sometimes we get it wrong — and here in *The Editors' Codebook* are cases that will make all good editors and journalists win. They

remind us that there is never room for complacency. We must learn by our mistakes. Where there are legitimate public concerns, we must respond to them. Indeed, getting that balance right is a constant theme that runs through the Codebook and demonstrates how we have listened to and responded to criticism.

On the protection of personal data, for example, the Code Committee has confronted the Information Commissioner's concerns about wholesale breaches of the law — and, indeed, of the existing Code. We have strengthened the rules to explicitly ban hacking into digitally-held private information unless there is a demonstrable public interest. We have also expressly barred the use of agents or intermediaries, such as private detectives, to circumvent the rules.

At the same time, the PCC has issued comprehensive guidelines and conducted seminars on investigative journalism. The industry too has produced its own guidance on Data Protection compliance and is conducting a survey of the measures — such as contractual obligations on staff and tighter auditing processes — introduced in-house by publishers to combat abuse. To underline the message, the Codebook has drawn all these actions together in its own Briefing note.

This has been a considerable commitment by all concerned and it is now imperative that the industry, if it is to safeguard itself from tighter legal penalties, continues to demonstrate its dedication to compliance with both the law and the Code.

The reporting of suicide was another area that provoked some criticism, especially following the series of deaths of young people in South Wales. By any standards, this was a tragedy of national importance and media coverage reflected that. But though it was a legitimate subject to address, issues of insensitivity arose. We have addressed those here in the Codebook, with important new guidance that highlights press activities that can cause unintentional distress

and shows how editors can avoid this not just by following the Code but by discretionary measures, too.

Harassment is an issue that can also get the media a bad press (though we should never forget there are double standards at work here and that some celebrities who complain of the media's attention actually seek it to promote themselves). The media scrum that closed in on Prince William's girlfriend Kate Middleton when there was speculation on an impending engagement was a subject for concern. Although that was resolved very quickly, the Code Committee investigated to see if it indicated a deeper problem.

We concluded that the Code's rules on harassment — among the strictest in Western Europe — were working well. This is where people who do not wish to be pursued alert the PCC, which passes on the request to editors.

As I have stressed, this Codebook shows that there is no cause for complacency on the part of the newspapers but, equally, it has important lessons for our detractors. First, it shows that we are in the business of learning — why else would a constantly revised Codebook exist? Second, it demonstrates that the self-regulatory system is genuinely responsive to public concerns. And third, I hope it kills the myth that the balance that we attempt to strike is a shabby compromise between individual rights and a self-serving media waving the flag of press freedom.

Indeed, the words *press freedom* appear nowhere in the Editors' Code of Practice. What is mentioned is *freedom of expression* and *the public's right to know*, neither of which is the exclusive preserve of the press. Certainly, the balance between that public right to know, on the one hand, and the rights of the individual on the other, lead to genuine tensions, but they are inherent in any truly free system.

A democracy as a whole, not just the media, has to get the balance right. Go too far in either direction and it is members of the public — collectively or singly — who suffer. And constantly at risk is the Open Society itself.

Introduction

How the system works

The Press Complaints Commission came into force in January 1991 as the UK's new system of press self-regulation. It was a cultural step-change; it would be founded on conciliation, offer more streamlined investigations and swifter redress than the Press Council, which it replaced.

Its centrepiece, and the document that gave it a unique authority within the newspaper and magazine industry, was Britain's first universally accepted Code of Practice for the press — written by the editors themselves.

For the first time, the Code would define the rules, spell out the obligations of the press, and show the public what they were entitled to expect. It set out to balance the rights of the individual and the public's right to know. It was non-legalistic in tone or approach and required editors to comply in spirit as well as to the letter.

The simple aim then, as now, was to offer a speedy, effective system for providing remedies to individuals with grievances against the press, by working to a set of rules which the editors had themselves created, and could not contest.

The Code covers 16 causes of complaint — including accuracy and privacy, protection of vulnerable groups, financial reporting and the use of clandestine devices. It does not cover taste and decency, which is regarded as too subjective and could be an interference with freedom of expression.

THE PLAYERS

There are four main pillars of the self-regulatory regime:

The Press Standards Board of Finance, representing the

publishers, who co-ordinate and fund the newspaper and magazine industry's actions on self-regulation. Pressbof comprises representatives of the Newspaper Publishers Association, The Newspaper Society, the Periodical Publishers Association, The Scottish Daily Newspaper Society and the Scottish Newspaper Publishers Association.

The Press Complaints Commission, the independent adjudicating body: ten senior figures from outside the industry, including the chairman, and seven editors. The Commission's role is to oversee the system and adjudicate on complaints.

The PCC secretariat, which operates the system, processes complaints and acts as a conciliator wherever possible to find remedies for grievances which are acceptable to complainant and editor alike.

The Editors' Code of Practice Committee, comprises 13 editors from national and regional newspapers and magazines, representing all parts of the UK. Their job is to write, review and revise the Code to ensure it remains relevant and responsive to changing circumstances. It ensures flexibility: changes that would take many months or years to introduce in a legalistic or statutory system can be agreed and implemented within weeks.

THE SYSTEM

The PCC prides itself on providing a service which is fast, free and fair. It has a target of resolving complaints within 35 days, with no charge to the complainant.

Complaints should usually relate to articles published within the

BRIEFING

Key points to remember

- The Code does not replace the law or diminish legal responsibility. Always ask: *Is it legal?*
- The Public Interest defences do not apply to the whole of the Code. Appropriate clauses are marked by an asterisk.
- The PCC judges each case on its merits — so the circumstances in one case may not always be an appropriate precedent in another.
- Past adjudications are archived at the PCC website www.pcc.org.uk
- The PCC is always willing to give advice on the Code.
- It is usually the editor's responsibility to demonstrate compliance with the Code, rather than for the complainant to prove a breach.
- The Code applies to all editorial staff, including photographers, and to contributed editorial material, such as agency copy, citizen journalists — and readers' letters.
- Failure to co-operate with a PCC investigation can itself be a breach.
- The Code should be honoured in the spirit as well as the letter.
- This Codebook is for guidance only — it does not expand on the Code and is not binding on the PCC.

previous two months — although that is extended in special circumstances.

If the PCC regards the complaint as raising a possible issue under the Code, the editor will be approached and given seven days to formulate an initial response. The PCC will then try to see if there is a basis for conciliation, acting as a go-between to find a suitable remedy (See *Briefing*).

If conciliation fails, or is inappropriate, or if the case involves a

major policy issue, the Commission will publish an adjudication. When a complaint is upheld, then the newspaper or magazine *must* publish the adverse adjudication.

This is one of the main sanctions. There are no fines or compensation, since these would inevitably involve lawyers, making the system legalistic, slow and expensive — and less accessible to ordinary people seeking swift redress.

Adverse adjudications are effective. Editors dislike having to publish them. It means their mistakes are exposed to their own readers, and often to criticism and ridicule in the columns of their commercial rivals, which is doubly damaging.

In cases of very serious breaches of the Code, the PCC can draw the adjudication to the attention of the publisher, which could lead to a further public rebuke. Also, as adherence to the Code of Practice is written into many journalists' contracts of employment, breaches can — and do — result in dismissal, although this is a matter for individual publishers.

THE CODE AND THE LAW

While the Code has had legal recognition — under the Human Rights and Data Protection Acts, for example — it does not attempt to duplicate the law. The Code and the law are distinct. Compliance with one will not guarantee compliance with the other.

Journalists must remember that they remain, as ever, subject to the same legal constraints as every other citizen — such as the laws of defamation, contempt, trespass, harassment and a hundred others. The Code will often require more of journalists than that demanded by law, but it will never require less.

BRIEFING

How complaints can be resolved

The PCC system of resolving complaints is based on conciliation. There are many ways of breaking the deadlock between complainant and editor, without going to adjudication, although that is always a final option. This list is not exhaustive — resolutions might involve a combination of different remedies.

- **Clarification.** A clarification might be appropriate where something has been omitted from the original article or if it is ambiguous or arguably misleading. It stops short of an admission by the editor that the article was wrong.
- **Corrections and apologies.** Straightforward factual errors are usually dealt with most cleanly and simply by the publication of a correction. In the case of serious errors, this might include an apology. The Code states that an apology should be published where appropriate.
- **Letter for publication.** An editor's offer to publish a complainant's letter can be appropriate when: the complainant has an alternative point of view but no substantive factual objections to the piece; where there are a number of minor inaccuracies; where the newspaper has an anonymous and reliable source but no other corroborative material; or where a complainant might for reasons of privacy wish to make anonymous objections to a piece.
- **Follow-up article.** An editor might offer to publish an interview with, or article by, a complainant, if there are sufficient points to be made in response to a previous story.
- **Tagging newspaper records.** This is an increasingly popular way of resolving complaints and is offered in conjunction with the above remedies or on its own. The publication's electronic database and cuttings library is tagged with the complainant's objection to ensure the mistake is not repeated.
- **Taking down online material.** Many complaints about material on newspaper or magazine websites are resolved by the editor removing it on receiving a complaint. This applies especially to user-generated material that has not been edited.
- **Private letter of apology.** Further publicity is often not an attractive option for a complainant, particularly in privacy cases or intrusion into grief. A private apology, often drafted with the help of a complaints officer, and perhaps tagged to the file as outlined above, is sometimes a more suitable remedy.
- **Private undertaking.** Similarly, undertakings by the editor about the future conduct of the newspaper and its staff might also give a complainant some peace of mind. Complaints have been resolved on this basis.

Section One: The Preamble

The philosophy and spirit of the Code

The Preamble is the key to understanding the Editors' Code of Practice. It is the part of the Code which defines the rest. It sets out not only the balance of rights and responsibilities of editors and publishers in a free press regime, but also the underpinning philosophy of self-regulation and the spirit of the Code — the glue that holds it together.

THE CODE SAYS...

- All members of the press have a duty to maintain the highest professional standards. 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. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.
- It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.
- 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.
- Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.

The spirit of the Code, the voluntary will and commitment to making the system work not just to the letter, is an essential element and one rarely available to any statutory or legalistic system.

It is only by invoking that spirit of flexibility that the balance — protecting both the rights of the individual and the public's right to know — upon which the success of a self-regulatory system relies, can be struck.

Although the Code does not try to set Olympian ethics likely to be more honoured in the breach, it is committed to the highest standards and sees these guidelines as the starting point.

The spirit of the Code is embodied in the editors' commitment to honour it neither too narrowly nor too broadly — and not just to the letter. This is a clear message to the industry, the PCC and to the public that this is an even-handed, practical Code based on solid principles rather than abstruse definitions buried in the fine print. It should not be abused either by editors trying to tiptoe around the rules, or by complainants playing the system to the detriment of the public's right to know.

The commitment to freedom of expression and publication in the public interest is at the core of the philosophy. Taken with the previous commitment, and the Public Interest defences (See Section Six), it demonstrates the balance to be struck:

- No compromises on the rights of the individual, but —
- No unnecessary interference either with freedom of expression or with publication in the public interest.

Both sides need to be weighed when taking a decision to publish and when adjudicating on complaints.

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Universal compliance: The Preamble places on publishers and editors the ultimate duty of care to ensure that the rules are implemented. It also ends uncertainty over who is covered by the Code by abolishing outdated distinctions between journalists and photographers, or other suppliers or providers of editorial services.

In the context of the Code, the rules for journalists apply to all editorial staff, external contributors or suppliers of editorial material.

For example, in cases covering clandestine devices and subterfuge, this would normally include information supplied by intermediaries or agents.

Online publications: Editorial material in online versions of newspapers and magazines is covered specifically. The rules apply to online versions of the newspapers and magazines — as opposed to freestanding online publications — and, as with the print versions, embrace editorial material only.

Increasingly, newspapers' and magazines' online content is very different from that in the print versions, including, for example, user-generated blogs and chatrooms, and audio visual material, some of which would not normally be subject to editorial control.

Therefore, in 2007, the Press Standards Board of Finance issued a guidance note extending the remit to cover audio visual editorial material and the Preamble was amended to reflect that. (See also *Complaints about websites*).

Editorial material was defined as *that for which the editor was responsible and could reasonably have been expected to apply the terms of the Code*.

User-generated content such as blogs and chatrooms continues to be excluded, as does audio visual material that had been produced to conform to the standards of another regulator — such as live or syndicated TV or radio

programmes. This reflects the traditional approach applied to print versions, where for example, Letters to the Editor are covered by the Code, but advertising and marketing material is not.

Co-operation with the PCC is the first test of the spirit of the Code in action. The voluntary system cannot work without universal compliance by the industry, and swift co-operation is the surest example of compliance.

Once the PCC is involved in a case, there is renewed pressure for a speedy resolution. First, the Code requires of editors swift co-operation with the PCC in trying to resolve the dispute. Second, the PCC's target is to resolve cases within 35 days.

Failure of publications to co-operate swiftly is, as the Preamble makes clear, itself a breach of the Code, which may result in censure. This happened when a Sunday paper, while standing by its story about a pop festival organiser who complained of inaccuracies, simply failed to produce any evidence.

The PCC upheld the complaint by default, reminding editors that it was their Code, and self-regulation could work only by the voluntary participation of the industry (*McIntosh v Sunday World: Report 60, 2002*).

If failing to act swiftly is one form of non-co-operation, acting precipitately can be another, especially once the PCC is involved.

When an author complained that his book about the death of Pope John Paul I had been misrepresented in a Sunday magazine section in 2005, the PCC tried to negotiate a mutually acceptable correction. But the magazine jumped the gun, publishing its own correction — despite being asked by the PCC not to do so — and without due prominence.

The wording of the correction itself would have been

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adequate, but the PCC felt the magazine's unilateral action ran counter to the spirit of the Code. "Publishing a correction which has not been agreed with the complainant, despite a request from the Commission not to do so, was neither within the spirit of the system of self-regulation nor within the letter of the Code of Practice," said the Commission in an adjudication censuring the editor. (*Yallop v The Sunday Times Magazine: Report 71, 2005*).

So while bad practice is rare, when it occurs the PCC always takes a grave view. In 2007, it censured the *Sunday Mail* for failing to hold to an undertaking given in 2003 to keep on file a complainant's denial of allegations it had made against him.

The paper had repeated the claims without recording the denials. The PCC regarded this as a serious matter and upheld a complaint that the report was misleading under Clause 1. (*Lothian v Sunday Mail: Report 76, 2008*).

When, a few months later, the same paper unilaterally changed the wording of an agreed letter resolving a complaint, it earned another stern rebuke. While the revised wording was still a proportionate response, the PCC warned that the paper's approach was highly unusual, disappointing — and should not be repeated. (*Forrester v Sunday Mail: Report 76, 2008*).

Due prominence: The second test of co-operation is the requirement that publications print adverse adjudications against them in full and with due prominence. This is the PCC's principal sanction against offending newspapers. In fact, no editor has ever failed to publish an adverse adjudication, even though they have occasionally run to 4,000 words.

While there is an excellent record of compliance on publication of adjudications, the PCC is equally insistent that

the obligation of due prominence is properly met. It has made clear it will tolerate nothing less (*See also Page 17*).

So an editor is free to decide the prominence, but the PCC is also free to decide that it was not sufficient — and that could lead to a further breach of the Code. For this reason newspapers often consult the PCC in advance for advice on prominence.

As with the placing of corrections (*See Page 18*) due prominence does not mean equal prominence. A breach of the Code in the front page lead does not necessarily mean the adjudication should be on Page One — although it might be. It depends on what would be appropriate, according to the gravity of the case.

For example, the PCC ruled that an *Evening Standard* lead story suggesting that climate change activists were planning to cause chaos at Heathrow Airport by placing hoax bomb packages and attacking the security fence was based on flimsy evidence, misleading and was a serious breach of the Code.

The newspaper published the adjudication prominently on an early inside page — with a Page One reference to it. (*The Camp for Climate Action v Evening Standard: Report 76, 2008*).

Burying adjudications: "Due prominence" implies a proportionate response to the original breach. In the spirit of the Code, that would not normally mean burying an adjudication in an obscure part of the newspaper — unless the story in question had first appeared there.

A regional evening newspaper found itself in double trouble in 2008 when it ran a critical PCC adjudication about a Page 8 picture story breaching children's privacy — on Page 32. The editor contended that although the adjudication was 24 pages later in the paper than the original article, a difference

in daily paginations meant they were each a similar distance from the back page.

But this arithmetic did not add up for the PCC, which ruled that the paper had failed to give due prominence. The Commission ordered that another adjudication, detailing both breaches, should be published — *prominently*. It was duly run on Page 14. (*The PCC, Nicholas Soames MP and The Argus: Report, 77, 2008*).

Headline reference: Since June 2004, there has been an additional requirement that there should be a *headline reference to the PCC*. Although there would be no objection to spelling out the *Press Complaints Commission* in full in a headline, the strict requirement is only to use the acronym PCC. This is intended to provide more visible "branding" for adjudications.

Preamble and public interest: Although separate from the numbered clauses, both the Preamble and the Public Interest exceptions have always been important integral components of the Code. The Preamble was amended in 2007 to stress this.

KEY QUESTIONS

- Was the Code followed in the spirit as well as to the letter?
- Was it observed by contributors and agents as well as staff?
- Is the publication co-operating swiftly to resolve a complaint?
- Has an adverse adjudication been published with due prominence?
- If so, did the headline refer to the PCC?

KEY RULINGS

- *Yallop v The Sunday Times Magazine* (Report 71, 2005).
- *Lothian v Sunday Mail* (Report 76, 2008).
- *Forrester v Sunday Mail* (Report 76, 2008).
- *The Camp for Climate Action v Evening Standard* (Report 76, 2008).
- *The PCC, Nicholas Soames MP and The Argus* (Report 77, 2008).

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The Code and the law

The Code of Practice does not attempt to duplicate the law. Journalists are bound by the same legal constraints as every other citizen — and, increasingly, by a few extra, media-specific, laws, too.

So editors and journalists are assumed to recognise their accountability under both criminal and civil law. The Code places an extra burden of responsibility on them, beyond the requirements of the usual laws of contempt, defamation, trespass, discrimination and the rest.

The golden rule, therefore, when applying any of the key tests under the Code, is to ask: Is it safe legally? The Code may require more than the law, but never less.

Nor does a complaint under the Code inhibit legal redress. Complainants do not sign a legal waiver, but merely undertake not to pursue legal action concurrently with a PCC investigation. In general, complainants rarely take both the legal and self-regulatory route.

However, while the Code does not replace the law, its authority is recognised by the courts in several areas:

- **Data Protection:** An exemption for some journalistic, literary or artistic work in specific circumstances was included in the Data Protection Act 1998. In hearing cases, judges may take account of a number of designated codes of practice — including the Editors' Code. (See *Briefing*).
- **Human Rights:** There was a risk as the Human Rights Bill was going through Parliament, that it could become a backdoor privacy law, accessible only to the rich and famous, and undermining the more publicly accessible PCC. The Bill was amended to include a clause requiring judges to pay

particular regard to the importance of the ECHR right of freedom of expression. In proceedings related to journalism, literary or artistic matters, judges were also required to take into account any relevant privacy code — which includes the Editors' Code, with its emphasis on the importance of freedom of expression.

- **Financial services:** Plans to include financial journalism within the stringent disclosure rules of the Financial Services and Markets Act 2000 were dropped after it was agreed they would be totally impractical to implement.

Instead, the Code's provisions on financial journalism were supplemented by a PCC best practice note which gave guidance on the type of disclosure required by the Code.

- **EU Market Abuse Directive:** The PCC and the Editors' Code are also recognised by the Committee of European Securities Regulators, responsible for drawing up the Market Abuse Directive.

This avoided the need to change the PCC Code when the directive was implemented in the UK — although the financial journalism best practice note was updated, effective from April 2005.

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Section Two: Getting it right

ACCURACY, COMMENT, CONJECTURE AND FACT

Errors and judgments

If the Preamble embraces the spirit of the Code, then Clause 1 goes to the heart of good practice. The Code does not demand infallibility; it requires that care should be taken. It is about getting the story right in the first place, putting it right if mistakes are made and — where appropriate — saying Sorry.

This clause accounts for the majority of complaints to the PCC. That will surprise no-one familiar with the pace at which newspapers and magazines are produced, but it should not excuse reckless or sloppy journalism.

The PCC has reminded editors that accuracy is particularly

important in dealing with emotive topics such as asylum seekers or mental health, where there is danger of creating fear and hostility not borne out by facts, and where allegations are made, ahead of formal proceedings, suggesting an individual has committed — or is suspected of — a criminal offence.

The absence of a public interest exception to justify inaccuracy increases the burden on editors. (See *Section Six, Public Interest*).

As with all else in the Code, it is a question of balance. Care must be taken to minimise both errors and their impact. Mistakes may be inevitable, but it is important that they are put right swiftly and clearly.

The Code rules on accuracy break down into two main areas, covering pre-publication and post-publication.

THE PRE-PUBLICATION REQUIREMENT

The Code is careful not to demand perfect accuracy, which would be impossible to achieve. Instead, sub-clause 1i obliges publications to take care not to publish inaccurate, misleading or distorted material, including pictures.

That is a simple, practical and deliverable requirement, applying to all they do ahead of publication. If sufficient care were taken, then that would be a defence to any subsequent complaint. The tests to apply would include such issues as:

- Are there reasonable grounds for believing the piece is accurate?
- Have proper checks been made?

THE CODE SAYS...

Clause One — ACCURACY

- i) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.
- ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and — where appropriate — an apology published.
- iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

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- Have likely complainants been given an adequate opportunity to respond?

Proving sufficient care: A complaint by the European Commission (*Martin v Mail on Sunday: Report 53, 2000*) was rejected because the PCC decided the paper had taken sufficient care to check the accuracy of a story suggesting an EC summit was to discuss a £30-a-year levy on telephone lines.

First, the story was based on a report on an official EC website which gave no indication that it was out of date; second, the paper had twice asked the EC press office to comment, but received no response; and third, it had made clear this was a proposal for consideration which had not been adopted. These checks showed that the paper had taken sufficient care on all points.

The case demonstrates that editors are not always responsible for potentially misleading reports. There can be factors over which they can have no control, and there can be occasions when the error is caused by contributory negligence on the part of the complainant.

Conversely, a complaint against a Sunday tabloid was upheld because the paper failed to put details of an uncorroborated kiss-and-tell story to the subject of the piece prior to publication. The PCC ruled (*Harkishin v Sunday Sport: Report 58, 2002*) that this amounted to insufficient care to establish the truth.

THE POST-PUBLICATION REQUIREMENT

This requires publications to offer a suitable remedy if the story, including pictures, was *significantly inaccurate, misleading or distorted*. The burden of proof, as always in the PCC system, falls on the editors. If they wish to claim the story was true, then they will need to demonstrate that there were no *significant* inaccuracies or distortions and that it was not misleading. Even if the story was not entirely correct, the newspaper would be exonerated if it could demonstrate that it had taken sufficient care to avoid inaccuracy, or that it had offered a suitable remedy.

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Was it significant? The spirit of the Code protects a substantially true story from falling due to a trifling error. The PCC's commonsense test of significance is simple: How much does it *really* matter? Getting a name wrong could be merely irritating — or wholly fundamental. The context would be crucial. The PCC might need to decide if the alleged error, taken alone, was of consequence, or even if a series of relatively minor errors, taken together, were likely to mislead or distort.

In 1998 (*Hunt v The Guardian: Report 45, 1999*) a man who had written critically about *The Guardian*, complained that a piece it had published in response was littered with inaccuracies, including a claim that he had a "shouting, screaming, vein-busting dislike" for *The Guardian*. The PCC decided the newspaper had a right to investigate a critic who had made serious allegations against it. In the context of the piece *all* the points were minor — except for an error over VAT repayment. That was significant, but had already been corrected by the newspaper. The complaint was rejected.

Was it true? If the point is significant, the next test is whether it is true. The PCC will expect from editors supporting evidence for a story, wherever possible, demonstrating that it wasn't inaccurate, misleading or distorted. However, the truth is not always easy to establish, especially if a newspaper or magazine is relying for its information on a single, confidential source, which it has a duty to protect under the Code (*See Clause 14, Confidential sources*).

The PCC has no powers of sub-poena, or of verifying unsupported evidence and in rare cases it has proved impossible to decide whether a story was accurate or not. In such situations, the Commission will often negotiate on whether it is reasonable for the complainant to be given an opportunity to reply.

In 2002 Cabinet Minister Charles Clarke accused a newspaper of inventing a story that he had 'told friends' he regarded the Speaker of the House of Commons as a liability. (*Clarke MP v The Times: Report 58, 2002*).

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BRIEFING

Reporting of cases involving paedophiles

Editors are urged by the PCC to think carefully before embarking on high-profile campaigns in which details of convicted sex offenders are published. In a *Guidance Note* the Commission recommended:

- **Consultation:** It would be advisable to talk with representatives of the probation service and local police before publication. Both services had expressed fears that identifying sex-offenders could hamper their work and endanger public safety.
- **Accuracy:** Particular care needed to be taken to comply with the Code's rules (Clause 1), given the scale of problems created for innocent people that could follow an inaccuracy.
- **Corrections:** Where there is an acknowledged inaccuracy, it should be corrected as soon as possible (Clauses 1 and 2), with an apology if necessary.
- **Privacy:** People convicted of crime do have protection under Clause 3 — although reporting of convictions would not normally breach the Code.
- **Relatives and friends:** They have a right of privacy and should not be identified without consent (Clause 9) unless they are relevant to the case or there is a public interest in doing so.
- **Children and victims of sexual assault:** Particular care needs to be taken to prevent identification of victims in line with the Code rules in Clauses 7 and 11.

The paper stood by its story — insisting it was from a confidential source — and offered Mr Clarke an opportunity to reply, but balked at publishing his claim that its journalist invented the quotes. The PCC could not break the deadlock.

As it could not establish the facts, it could not oblige the newspaper to accept that the quotes were invented. It decided that the editor's offer to publish a letter carrying all Mr Clarke's other claims was a suitable remedy.

Was sufficient care taken? The problems sometimes encountered in establishing the truth tend to make the test of whether sufficient care was taken at least as important as the test of accuracy. It is often easier to establish. (*See pre-publication requirements above*).

The PCC has ruled that this duty of care places a burden on editors to be pro-active, rather than relying on complainants to prove their case. A weekly newspaper's report that a man had been accused of assault was accurate, but the paper failed to report his subsequent acquittal, because its court reporter was ill. The editor then refused to publish an apology unless the defendant himself produced evidence of his acquittal.

The Commission rejected the notion that the onus of proof was entirely on the complainant and criticised the editor for doing nothing to try to establish the facts. It said failure to publish the verdict created a misleading impression for several months and breached the Code. (*Millichamp v Brecon & Radnor Express: Report 72, 2005*).

Was it misleading? Stories that are technically accurate can still be misleading or distorted leaving the reader with a false impression. Sometimes the problem is more because of what they don't say than what they do, and that — whether intentional or not — can breach the Code.

A magazine (*Brain v Hello! Report 55, 2001*) published interior pictures of actress Kate Winslett's new home — but didn't mention

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that they were taken during the occupation of a former owner, who complained. The PCC ruled that the pictures showing the former owner's furniture suggested Ms Winslett had disposed of treasured wedding gifts.

The complaint was upheld. A caption making clear that the pictures showed the interiors pre-Ms Winslett might have kept the magazine out of trouble. But only if it was made very clear.

Hidden escape-clause justifications aren't acceptable to the PCC — as a local newspaper discovered when it ran the story of a police raid, in which six refugees were arrested, under a Page One headline *The Front Line In Folkestone*, apparently illustrated by a large picture of officers in riot gear.

The fact that the picture showed an entirely separate incident was only revealed on an inside page. The PCC upheld the complaint — while reminding editors that inaccurate or misleading reporting could generate an atmosphere of fear and hostility not borne out by the facts. (*Harman and Harman v Folkestone Herald: Report 47, 1999*). (See *Briefing*).

Was it distortion? The PCC insists that if a picture is not what it seems, or if it has been posed or digitally manipulated, the reader should generally be told. An exception might be in publishing spoofs — such as April Fool stories — where the manipulation is the story and will ultimately be revealed. The test would be whether the reader had been significantly misled. Most are not — and they get the joke if they are.

However, a picture illustrating a genuine story of local prostitution and showing what appeared to be a vice girl on a street corner was doubly damned. The newspaper admitted it had been digitally created by combining two images — and was posed using a model. The PCC ruled that in *any case where images were significantly altered*, the caption should say so. (*A man v Luton on Sunday: Report 64, 2003*).

Again, the key word is *significantly*. The PCC does not expect

editors to chronicle each digital enhancement of every picture. The image would need to have been distorted enough to have been capable of misleading the reader.

REMEDIES: CORRECTIONS AND APOLOGIES

The need for speedy and clear corrections is set out in sub-clause 11i which requires that a significant inaccuracy, misleading statement or distortion, *once recognised* must be corrected *promptly* and with *due prominence*. There is no hard and fast definition in either case. Promptness and prominence must be decided by what is reasonable in all the circumstances, particularly subject to any over-riding legal considerations.

Promptness: While delays in some cases may be genuinely unavoidable, the Commission takes a stern view of unnecessary delays in righting undisputed — or incontestable — errors, especially where the repercussions can be serious.

A newspaper wrongly reported that an estranged husband was involved in a knife-wielding incident with his wife's new boyfriend. It was not her boyfriend — she did not have one — but a neighbour. However, due to what the editor described as a "breakdown in communications", the paper failed to correct the error for six weeks — during which time the husband was found dead.

The PCC ruled (*A woman v South Wales Evening Post: Report 59, 2002*) that the delay, while inadvertent, was not acceptable in circumstances where the potential consequences of the mistake were serious. It also found that the correction, when eventually published, should have included an apology.

Due prominence: As with the publication of adverse PCC adjudications (See Page 11), the Commission will take into account all the circumstances to decide whether the prominence given to a correction, clarification, or apology amounts to an adequate remedy.

BRIEFING

Refugees and asylum seekers

After a number of breaches of the Code, the PCC issued *Guidance* aimed at ending confusion over the terminology used to describe asylum seekers and refugees.

The Commission expressed concern that misunderstandings could lead to inaccurate, misleading or distorted reporting, in breach of the Code's accuracy rules (Clause 1), and might also generate a fear and hostility that was not borne out by the facts.

Although the Code's Discrimination rules (Clause 12) — relating to pejorative, prejudicial or irrelevant references — apply only to individuals, the wider question of whether a description is accurate, misleading or distorted applies equally to groups. This means a term such as "illegal asylum seeker" would be a breach, since it is inaccurate.

The guidance suggested:

- An *asylum seeker* is a person *currently seeking* refugee status or humanitarian protection.
- A *refugee* is someone who has fled their country in fear of their life — and may have been granted asylum under the 1951 Refugee Convention, or who otherwise qualifies for humanitarian protection, discretionary leave or has been granted exceptional leave to remain in the UK.
- An *illegal immigrant* would describe a person who had been refused such status, and had failed to respond to a removal notice to quit Britain.

The PCC has also held that stories which generated fear and hostility not borne out by the facts might in certain circumstances affect the welfare of children, in breach of Clause 6.

It has always taken the view that *due prominence* does not mean *equal* prominence: an error in a Page One lead would not automatically require a Page One lead correction. However, the PCC would expect that the positioning of apologies or corrections should generally reflect the seriousness of the error — and that would include front page apologies where appropriate.

When the *Evening Standard* ran a Page One story incorrectly stating that Prince Philip had prostate cancer, the newspaper quickly acknowledged the error and within 36 hours the PCC negotiated a settlement.

This included a Page One reference to a Page 5 item apologising unreservedly to the Prince and his family for making the distressing allegation and breaching his privacy. It was a classic example of a prompt, prominent and proportionate apology working rapidly to minimise the damage of a bad error. However, when apologies are not treated in such a way it can seriously compound the problem and aggravate the damage done.

The Mayor of Toynes complained that a *Daily Express* story claiming that she had personally ordered the scrapping of civic prayers to avoid offending other faiths, was not true. The council as a whole had agreed the move and it was not in deference to other faiths.

The Express agreed to apologise but, although the original story had appeared on Page 5, the apology was relegated to Page 33. The PCC censured the newspaper for "an unfortunate example of bad practice" especially as the complainant had to wait four months for it. (*Boswell-Harper v Daily Express: Report 75, 2007*).

Apologies: In fact, the Code makes a distinction between corrections — which usually need to be published promptly and prominently — and apologies, where the same is not always true.

First, the wording of apologies often needs to be agreed with the complainant, especially if there are legal implications — as in defamation cases, for example — which may cause unavoidable

delay, affecting promptness. Secondly, a public apology, which could highlight the error and cause renewed embarrassment, may be the last thing a complainant wants.

Editors regularly find that complainants regard a personal letter, or phone call, as more suitable. An apologetic note from a genuinely regretful editor, accompanied by a bouquet of flowers, is by no means uncommon. It is an example of the spirit of the Code in action.

Yet sometimes such gestures are neither appropriate nor enough and the demand for a published apology becomes an issue. Each case is judged on its merits, but one factor when deciding if an apology is appropriate, might be whether the story had caused significant hurt or embarrassment.

A newspaper whose headline *Blair All Spin And No Delivery* — *Field*, attributed to Frank Field MP words about the Prime Minister he had not used, offered the opportunity to reply in a letter, but refused to run an apology. The PCC upheld the complaint, ruling that, as the error had been recognised at an early stage, an apology would have been appropriate (*Field MP v The Independent: Report 51, 2000*).

COMMENT, CONJECTURE AND FACT

The Code upholds in sub-clause 1iii the Press's right to be partisan, but insists on a clear distinction between comment, conjecture and fact. The rival claims of freedom of expression and freedom from prejudice can find a battleground here, especially when distinctions become blurred in personal opinion columns.

The PCC holds the ring by defending the freedom to comment — but only as long as columnists do not try to argue a false factual basis for their views. It has particularly used this to decide cases involving complaints from minority groups about being portrayed inaccurately. The tests include:

- Is the disputed material demonstrably factual? If not —
- Does the presentation make clear that it is comment or conjecture?

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Without any legal powers to investigate the suggestion — by a named former British agent — that Mr McGuinness had co-operated with MI6, the Commission was in no position to decide on its veracity.

In fact, it did not need to. For the issue was not whether the allegation was true, but whether the newspaper had clearly separated fact from comment. The PCC decided it had, as the main headline had been accompanied by another saying, *Spook's Shock Claims*.

Mr McGuinness said the other headline appeared to be separate in another box, but the PCC ruled (*McGuinness v Sunday World: Report 74, 2006*) that readers would have understood that the suggestion that he was a spy was not stated as fact, but as a claim from an intelligence source. The complaint of inaccuracy was therefore rejected.

Alternative view: The importance of presentation was stressed again in a case brought by Rina and Michelangelo Attard, the parents of conjoined twins, who had sold pictures and information to the media. (*Attard v Sunday Mirror: Report 55, 2001*).

The article was based on an interview with Mr and Mrs Hubble, who had become friends of the Attards. When the couples fell out, the Hubbles sold their story to the *Sunday Mirror*, giving their view of events.

But the PCC ruled that because the interview was presented as just one side of a complicated story, leaving readers in no doubt there would have been another point of view, it was valid. There was no breach of the Code.

Crime reporting and court stories, where accurate accounts would normally be covered by legal privilege, hold hidden dangers for newspapers when they get it wrong and confuse comment or conjecture with fact. As always, misleading headlines can be a particular problem.

The alleged rape of a 14-year-old black girl by 19 men in an Asian

shop was reported on the front page of a weekly newspaper under the headline *Gang Of 19 Rape Teen*. Although headlines and reports on inside pages had used the words "alleged gang rape" and "alleged attack", the word "alleged" was used only once in the short Page One story.

The PCC ruled that this was insufficient to enable readers to realise that the story was about allegations and the inside coverage did not mitigate that. It therefore breached the Code by failing to distinguish comment, conjecture and fact. (*A man v The Voice: Report 72, 2005-6*).

Unproven evidence: Similar problems can arise in court reporting of statements that are not proven facts. A plea of mitigation for an offence, untested and unproven, is not necessarily a fact, but an allegation. And that must be made clear — as the editor of a local newspaper found when he ran a story headlined *Man Attacked Girlfriend's Lesbian Lover*.

The defendant admitted in court attacking a woman, but said he was upset because he had discovered she was having an affair with his girlfriend. His victim complained to the PCC that the newspaper stated as fact in its headline and the intro to its story that the two women had been lovers, rather than making clear that this was an allegation made in mitigation. In fact, both women later said the claims were unfounded. However, the editor said he had accurately reported what was said in court and would not publish a letter of denial from the complainant because it could expose his newspaper to the risk of defamation proceedings.

The PCC said while the editor was not responsible for the accuracy of *what was said* in court, there was an important principle under the Code of *how proceedings were reported*. Readers would have been misled into believing that the court claim was an established fact. The Commission criticised the editor for not trying to find an amicable resolution and upheld the complaint. (*Mahmoud v Isle of Wight County Press: Report 75, 2007*).

Soon after the death of Father John Tolkien — son of JRR Tolkien — a Sunday paper published a former altar boy's claims that the priest was a paedophile, who had abused hundreds of children. The Tolkien family, in a series of complaints under five clauses of the Code, said they had been given no chance to comment on these allegations, which were presented explicitly as fact.

The editor's suggestion that publication was justified by freedom of expression and a duty to expose crime was rejected by the PCC, which ruled that while the newspaper may have strongly believed the priest to be a paedophile, he had not been convicted of, or charged with, any offence.

The presentation of the story should have made absolutely clear that these were allegations. By publishing such extremely serious claims without sufficient qualification, the newspaper had breached Clause 1 of the Code. (*Tolkien family v Sunday Mercury: Report 62, 2003*).

The issue of presentation was doubly crucial when Sinn Fein leader Martin McGuinness complained to the PCC after a Sunday newspaper splashed with the headline *McGuinness Was A Brit Spy*.

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REPORTING THE OUTCOME OF DEFAMATION CASES

Publications are required by the Code in sub-clause 1iv to report fairly and accurately the outcome of a case for defamation to which they had been party — *unless an agreed settlement states otherwise, or an agreed statement is published.*

This is intended to ensure that newspapers set the record straight in their own pages. It covers only the outcome of the case and puts no onus on editors to run ongoing reports of the action — although they may choose to do so.

A case where a man who successfully sued *The Guardian* went on to complain that the paper had not run balanced reports of the trial (*Kirby and Co. v The Guardian: Report 46, 1998*) was rejected by the PCC. The Code refers only to the outcome of the case.

Agreed statements: The provision for cases where the settlement of the defamation action clearly states that there is no requirement to publish the outcome, or where an agreed statement is published, was added in June 2004 to protect publications which reached such an agreement from being guilty of a technical breach.

That happened in 1999, when a magazine did not report the

outcome of a case, believing in good faith that the settlement did not require a report of the outcome. In its adjudication (*McQueen and Givenchy SA v Time Out: Report 46, 1999*) the PCC accepted that the Code should not be used to give litigants in resolved cases further redress.

Significantly, the Commission did not censure the magazine, but urged editors and lawyers to make clear in settlements that reporting of the outcome was not an issue.

The clear lesson for both sides is that agreed legal settlements of defamation actions should include the timing and manner of any publication of the outcome and those arrangements should be enforced as part of that settlement. It should not be a matter for the PCC to referee after the event.

KEY RULINGS

- *Martin v Mail on Sunday*, (Report 53, 2000).
- *Harkishin v Sunday Sport*, (Report 58, 2002).
- *Hunt v The Guardian*, (Report 45, 1999).
- *Clarke MP v The Times*, (Report 58, 2002).
- *Millichamp v Brecon & Radnor Express* (Report 72, 2005).
- *Brain v Hello!* (Report 55, 2001).
- *Harman and Harman v Folkestone Herald* (Report 49, 2000).
- *A man v Luton on Sunday*, (Report 64, 2003).
- *A woman v South Wales Evening Post* (Report 59, 2002).
- *Boswell-Harper v Daily Express* (Report 75, 2007).
- *Field MP v The Independent* (Report 51, 2000).
- *A. J. Crompton v The Sun*, (Report 41, 1998).
- *Taikien family v Sunday Mercury* (Report 62, 2003).
- *McGuinness v Sunday World* (Report 74, 2006).
- *Attard v Sunday Mirror* (Report 55, 2001).
- *A man v The Voice* (Report 72, 2005-6).
- *Mahmoud v Isle of Wight County Press* (Report 75, 2007).
- *Kirby and Co. v The Guardian*, (Report 46, 1999).
- *McQueen and Givenchy SA v Time Out* (Report 46, 1999).

KEY QUESTIONS

- **Was the alleged error significant?** Trivial errors are not covered.
- **Was the story inaccurate, misleading or distorted?** A technically accurate story could still be misleading. Has a picture been manipulated?
- **Was sufficient care taken to establish accuracy ahead of publication?** Were proper checks made? Was the complainant offered a chance to comment?
- **Did the story confuse comment or conjecture and fact?** Presentation is important.
- **Was a suitable remedy offered?**
- **Was the outcome of a defamation case reported?**

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Section Two: Getting it right

OPPORTUNITY TO REPLY

Reasonable responses

THE CODE SAYS...

Clause Two — OPPORTUNITY TO REPLY

A fair opportunity for reply to inaccuracies must be given when reasonably called for.

As the Opportunity to Reply is to inaccuracies, it would be difficult to breach Clause 2 without first contravening the rules laid down for correcting significant errors in Clause 1. Complaints therefore are rarely, if ever, considered under Clause 2 alone. But the clause is important because it sets out the precise obligation on editors. They must give a fair opportunity to reply... when reasonably called for.

It means that where it is reasonable — as in cases of significant inaccuracy where little or no redress has been offered — an opportunity to reply may offer a remedy beyond a simple correction.

Circumstances and timing can themselves add significance to an error and therefore add urgency to the need for an opportunity to reply.

A front page splash in a London newspaper headed *Terror And Hatred For Sale Just Yards From Baker Street* would be a strong story in the public interest at any time, but when published only weeks after the July 2005 London bombings both its relevance and the need to be accurate were heightened.

The story highlighting the sale of allegedly extremist literature in Islamic outlets was accompanied by a picture and contact details of

the Dar Al-Taqwa bookshop, as an example of the sort of premises selling titles that advocated terrorism. But the shop did not sell any of the books or DVDs featured in the article. It did sell a pamphlet that was quoted, but this did not corroborate the allegations of incitement to terror or hatred.

The newspaper offered to publish an abridged letter from the shop's managing director, with an editorial footnote apologising for any misunderstanding. But the bookshop — which had sought police protection, following abuse and threats to its staff — said this was not enough.

The PCC agreed. It said the misleading allegations could have had extremely serious consequences in the climate of anxiety following the London bombings and the remedies offered were inadequate. The complaint of inaccuracy and failing to offer a fair opportunity to reply were both upheld. (*Samir El-Atar v Evening Standard: Report 72, 2005*).

However, it would not normally be reasonable to call for an opportunity to reply if one has already been offered, especially if accepted. A complaint from Esther Rantzen against a Sunday newspaper failed because the editor — although disputing the inaccuracies — had already published prominently a letter addressing her main points. The PCC decided this was enough. (*Rantzen v The Sunday Telegraph: Report 37, 1997*).

The opportunity to reply has occasionally been criticised as falling short of an absolute right of reply. However in the context of a regulatory system built on conciliation, any term dealing in absolute

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BRIEFING

Reporting people accused of crime

Allegations that named individuals have committed — or are suspected of — a crime can raise important issues under the Code. This applies particularly to allegations from third parties or police sources, or at the time of an arrest.

In a *Guidance Note*, the PCC reminds editors that, because allegations may prove unfounded, there is particular need to take care to see that the Code is not breached. Key areas affected include:

- **Accuracy:** It is important to distinguish fact from conjecture (Clause 1). In some cases, it is difficult to substantiate allegations from third parties, yet publication of the allegations, if true, would be in the public interest. Editors might need to consider publication without identifying the accused as a way of complying with the Code.
If a complaint is made about accuracy, editors should investigate the story — and, if necessary put right any wrong impression — swiftly to avoid the error being reproduced elsewhere and gaining credibility.
- **Privacy and harassment:** The fact that someone has been accused of crime should not be used to justify intrusions, unless relevant or in the public interest (Clause 3). Editors are reminded that telephoning, questioning, pursuing or photographing individuals once asked to desist would breach the harassment rules (Clause 4), unless in the public interest.
- **Sex cases:** Editors are advised to take care that publication of details about the accused cannot lead to identification of the alleged victims (Clause 7 and Clause 11). If it is likely to do so, editors should report such allegations without naming the accused until a charge is brought.
- **Innocent relatives:** Under the Code, innocent relatives or friends should not be identified without consent, unless relevant to the story — for example, when the relationship is already in the public domain — or it is in the public interest to do so (Clause 9).

rights on either side — whether they be reasonable or otherwise — could be counter-productive and raise false expectations. The Code definition relies on what is reasonable in the circumstances, which is decided by the PCC.

KEY RULINGS

- *Samir El-Atar v Evening Standard* (Report 72, 2005).
- *Rantzen v The Sunday Telegraph* (Report 37, 1997)

KEY QUESTIONS

- Was there a significant inaccuracy?
- Was an adequate remedy offered?

Section Three: intrusion

PRIVACY

Privacy, not invisibility

Privacy is always a hot issue. Complaints about intrusion account for a quarter of the PCC's cases, and cover the whole spectrum of national and regional newspapers and magazines in almost equal proportion.

This reflects the genuine and widespread conflict over where legitimate public exposure ends and public prurience begins. When dealing with public figures, there can be a further dimension: how much is this prurience encouraged by celebrities themselves? There is no definitive answer to these questions. It is a matter of balance and judgment according to all the circumstances. The Code attempts to embrace that and manage the conflicts in Clause 3, by two means.

First, in setting out the zones of privacy, it echoes the language of

the Human Rights Act — the entitlement to *respect for private and family life, home, health and correspondence*. In June 2004, the Code added to this digital communications, thus underlining Clause 10's strictures on the use of bugging devices.

Second, the Code's ban on intrusive photography makes clear that consent would be needed to take pictures of individuals on *public or private property where there is a reasonable expectation of privacy*.

This attempts to protect individuals by introducing a test of what was reasonable, with each case judged on its merits — the final arbiter of which would be the PCC with its lay majority. As this clause offers the possibility of a public interest defence, that too is often factored into the equation.

The wide discretion the clause gives to the PCC makes its decisions vital in influencing editorial judgments and setting public expectations of the press. Among the guiding principles it considers in reaching those decisions:

- **Privacy is not an absolute right** — it can be compromised by conduct or consent. For example, when considering complaints of alleged intrusions, the PCC has traditionally had regard for any relevant previous disclosures by the complainant. Since October 2009, that has been codified in Clause 3ii, which states: *'Account will be taken of the complainant's own public disclosures of information.'*
- **Privacy is not a commodity** which can be sold on one person's

THE CODE SAYS...

Clause Three — **PRIVACY***

- i) *Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
- ii) *Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.*
- iii) *It is unacceptable to photograph individuals in private places without their consent.*

Note — *Private places are public or private property where there is a reasonable expectation of privacy.*

* A public interest exemption may be available: See Section Six

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- terms — the Code is not designed to protect commercial deals.
- **Privacy does not mean invisibility** — pictures taken in genuinely public places and information already in the public domain can be legitimate.
- **Privacy may be against the public interest** — such as when used to keep secret conduct that might reflect on a public figure or role model. The PCC has ruled in several cases where people have effectively invaded their own privacy by selling their story, or talking publicly about private matters — or not complaining when someone else does.

The Commission's view is that those people should expect consequential media comment, but that it should be proportionate.

COMPROMISING PRIVACY

The parents of a sole surviving conjoined twin sold picture rights to the story, but complained that it was intrusive and damaging to the child's welfare when another paper published *unauthorised* photographs of the baby. The Commission disagreed. First, a photograph of the infant's face did not concern her welfare, and, second, the parents had put the material into the public domain. Privacy, said the PCC, was "not a commodity which can be sold on one person's terms". (*Attard v Manchester Evening News: Report 55, 2001*).

The principle here is that people must, in part at least, have due regard for protecting their own privacy. Under the Code, information cannot be private if it is already genuinely in the public domain, and people cannot complain if they themselves have put it there.

Similarly, their scope for complaint is also limited if they have failed to complain about a previous allegation to prevent repetition.

Nailing rumours: In 2002, Mr David Maclean MP, the Conservative Chief Whip, did not challenge a Sunday newspaper's diary items suggesting he had had an affair with a senior civil servant in the 1990s. But when in 2004, Mr Maclean had occasion to warn fellow

Tory Boris Johnson on the danger of lying about an alleged affair with Petronella Wyatt, the same newspaper ran a bigger story headed *Top Tory Who Quizzed Boris Over Petsy Affair Cheated On His Own Wife With Chief Of Staff To Duncan Smith*. Mr Maclean complained to the PCC that two small diary items published two years before had not placed the matter into the public domain sufficiently to justify publication of the story.

Sounding a warning to both editors and potential complainants, the Commission said that, even though the diary items were small, the information was undeniably in the public domain (*Maclean MP v Mail on Sunday: Report 72, 2005*): "It is important for editors to be aware that the Code applies as much to material contained in diary pieces as to the rest of a newspaper," said the Commission.

"It is also important for people who are the subject of such pieces to realise that not to complain about them may limit their ability to complain about future articles which repeat the same thing."

PUBLIC FIGURES

The PCC accepts that people such as show business celebrities or sports stars may need to create a professional image of themselves in the media. This does not undermine their right as individuals to privacy or mean the press could justify publishing articles on any subject about them. Their "private and family life, home, health and correspondence" all fall within the Code, unless there is a public interest in publication.

Address code: Publishing details about a celebrity's home without consent, for example, could constitute a breach, especially because of security problems and the threat from stalkers. The key test in such cases is not whether the precise location has been disclosed, but whether the information published would be sufficient to enable people to find the whereabouts of the home.

A complaint from singer Ms Dynamite was upheld after a local paper revealed that she had moved into a property near her mother,

picturing the home and naming the street. (*Ms Dynamite v Islington Gazette: Report 63, 2003*).

But the PCC judges each case individually, according to the threat posed. So when the author J. K. Rowling, who guards her privacy closely, complained about disclosure of details of her homes in London and Scotland, she had mixed success.

The PCC upheld her complaint that a *Daily Mirror* article, picturing the London house and naming the road in which it was located was sufficient to identify it. However, details the paper had given of two of the author's Scottish properties were not judged intrusive. In one, her Edinburgh house was pictured, but only the name of the suburb was given. In the other, an aerial photograph of Ms Rowling's country home, its name and the county — Perthshire — in which it was located were not regarded as a giveaway that might attract unwanted visitors. (*Rowling v Daily Mirror: Report 72, 2005*).

In 2008, Ms Rowling complained that three more newspaper stories had identified her country home by saying it was close to a farm she had bought, running more pictures and naming a nearby town. But the PCC ruled that the information given was not sufficiently different to that already in the public domain, especially on the internet — including a listing in *Wikipedia* — to contravene the Code. Significantly, the articles did not give the precise whereabouts of the house, or name the road, nor where the property was in relation to the nearby town, and the photographs showing the surrounding countryside did not pinpoint the location. (*Rowling v The Mail on Sunday Scottish Edition, Daily Mirror, Daily Record: Report 77, 2008*).

The Code's protection for people genuinely at risk from stalkers or obsessive fans does not automatically carry over to non-celebrities. Ms Helen Edmonds, former wife of Noel Edmonds, complained that a Sunday paper story headlined *A Far Cry From Crinkley Bottom* identified the location of her new home, making her and her children vulnerable to criminals. But the PCC ruled that the piece did not contain information — such as security arrangements or the times

when the house would be unoccupied — that would expose her home to greater risk than for other similar properties. (*Edmonds v The Mail on Sunday: Report 72, 2005*).

Pregnant pause: As with homes, so with health. There are limits on what can be said about celebrities, even though they are constantly in the public eye. Pregnancy, even for non-public figures, can rarely be kept secret for long, but the PCC has ruled that early speculation on whether someone is expecting a baby can be intrusive.

The actress Joanna Riding complained that a diary item disclosed that she had withdrawn from a theatre role because she was expecting a baby — before she had even told her family. She subsequently suffered a miscarriage.

In a landmark adjudication protecting all mothers-to-be, whether public figures or not, the PCC said that revealing the pregnancy at such an early stage was a serious intrusion (*Riding v The Independent: Report 73, 2006*). And, setting out guidelines for the future, the Commission ruled:

- *The press should not reveal news of an individual's pregnancy without consent before the 12-week scan unless the information is known to such an extent that it would be perverse not to refer to it.*
- *This is because of the risk of complications or miscarriages, and because it should be down to the mother to share the news with her family and friends at an early stage.*

The PCC has made clear that it will not accept attempts by journalists to get around its guidelines by running speculative stories. It upheld a complaint against a national tabloid which, having received firm information that the singer Charlotte Church was not more than 12 weeks pregnant, published a piece headlined *Baby Rumours For Sober Church*. The Commission said that trying to circumvent privacy provisions by presenting the story as speculation was against the spirit of the Code. (*Church v The Sun: Report 75, 2007*).

Private health details of public figures, or their families, are generally protected under the Code unless there is some public interest in revealing them — such as when they might significantly affect the performance of a senior politician. But when a Sunday newspaper revealed specific health details of Government Minister David Miliband's wife, in a story discussing their adoption of a child, the PCC judged it to be highly intrusive. Such details should not have been published, it said, without explicit consent or some convincing public interest reason. It was a serious breach of the Code. (*Miliband v The Mail on Sunday*; Report 69, 2005).

Famous or infamous? The rules that protect the famous from unjustified intrusions into privacy reply equally to the infamous. Even notorious criminals do not automatically forfeit their rights under the Code. The judgment, as ever, is whether publication would be in the public interest.

So when Peter Coonan — formerly Peter Sutcliffe, the Yorkshire Ripper — complained about publication of a private telephone conversation secretly taped from Broadmoor Special Hospital, where he was a patient, the PCC had to judge whether his rights had been breached.

The Commission decided that, as a result of Coonan's crimes, his criminal career, medical condition and the circumstances of his treatment and detention were properly matters for public scrutiny and discussion. And, although the conversation — run by the *News of the World* as the Ripper Tapes — referred to his mental state, medical condition and treatment, the information was not particularly revealing, much of it was already in the public domain and it was not sufficiently private to be protected under the Code. The PCC rejected both the privacy complaint and another that the taping of the conversation had breached the Code's provisions on the use of clandestine listening devices. (*Coonan v News of the World*; Report 74, 2007).

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In response to a complaint from Sir Paul McCartney, the PCC decided that Notre Dame cathedral, although a great public monument thronged with tourists, was also a private place for a person at prayer. It deprecated the publication of pictures in *Hello!* magazine showing Sir Paul praying inside the cathedral soon after his wife's death. While not privately owned, the cathedral was clearly a place where a person would have a reasonable expectation of privacy. (*McCartney v Hello!*; Report 43, 1998)

Holiday pictures: When supermodel Elle Macpherson was taking her family on holiday, she chose a private villa on the private island of Mustique, which has no public beaches, and therefore provided a reasonable expectation of privacy for her children. So when a celebrity magazine published shots of the family relaxing, her complaint to the PCC was upheld. (*Macpherson v Hello!*; Report 74, 2007).

However, the PCC decided that, in the middle of summer, a publicly accessible Majorcan beach overlooked by holiday apartments was not a place where newsreader Anna Ford and her partner might reasonably expect privacy as they relaxed in their swimwear. It also said publication of the pictures did not show disrespect for her private life. The adjudication was challenged on judicial review, but upheld by the Divisional Court. (*Ford/Scott v Daily Mail I OK! Magazine*; Report 52, 2000).

A crowded beach is one thing, a quiet tearoom in Dorking, another. A diner complained that a picture of him tucking into a butterscotch fart was taken without consent and used in a newspaper. The PCC said customers should reasonably expect to sit inside a quiet café without having to worry about surreptitious photographs being taken and published in newspapers. (*Tunbridge v Dorking Advertiser*; Report 58, 2002).

Similarly, bank cashier Mark Kisby did not expect his photograph to appear, without consent, in a men's magazine simply because he was snapped while serving a 'lottery lout' millionaire who was

Public servants, including politicians, are also entitled to privacy — although they are inevitably subject to extra scrutiny in the public interest. The PCC upheld a complaint about the story of a wife who left her husband for a relationship with a policewoman. The fact that the WPC was a public servant was not sufficient grounds for intrusion. (*Charters v The Scottish Sun*; Report 48, 1999).

Royal Family: There is a delicate balancing act between the fulfilment of the Royal Family's public role and their private lives. But while they are not entitled to any special provision, they are entitled to the protection of the Code. The PCC issued a guidance note on the Royal Princes, particularly protecting them from unnecessary intrusion during their time at school. Pictures of Prince William hiking and crossing a river during a gap-year visit to Chile were held to breach both privacy and harassment rules.

The PCC condemned publication and the 'persistent pursuit' involved. "The ability of all young people to go about their lives without physical intimidation is hugely important." (*Prince William v OK! Magazine*; Report 52, 2000).

REASONABLE EXPECTATION OF PRIVACY

The Prince William pictures, in the PCC's view, clearly breached the rule that photographs should not be taken without consent in a private place where the individual has a reasonable expectation of privacy. Mid-river in a South American wilderness was an example of just such a private place. In fact, the elements that contribute to a reasonable expectation of privacy have been delineated in a series of Commission rulings. Before publication, editors must decide:

- Was the person photographed out of the public view — not visible or identifiable with the naked eye to someone in a public place?
- Was he or she engaged in a private activity at the time?

If the answer to either question is Yes, there are serious risks that the pictures could breach the Code.

making a large withdrawal. So, when it did, Mr Kisby complained that it was an intrusion on his privacy that could have led to security problems for him and his family.

The magazine argued that the cashier was the public face of the bank and could not expect his identity to be concealed. However, the PCC ruled that publishing a photograph of a person, without consent, at his workplace was in this instance a clear breach of the Code. (*Kisby v Loaded*; Report 73, 2006).

Public or private space? While the interiors of publicly accessible buildings such as cathedrals, cafés, banks or offices can constitute a private place within the Code, the exterior of a person's own home may not always do so.

Mrs Gail Sheridan, the high-profile wife of a prominent Scottish politician, objected to a tabloid newspaper's photograph, taken with a long lens, of her in her back garden. She claimed she had a reasonable expectation of privacy. The newspaper disagreed. It said Mrs Sheridan was a public figure, standing on her driveway, visible from the street — even without a long lens camera — and was not engaged in any private activity, other than holding her keys.

The PCC, in an adjudication pulling together many of the factors upon which such issues hinge, said that had Mrs Sheridan been hidden from view in an enclosed back garden, she might have been protected. But here she was clearly visible from the street and engaged in an innocuous activity.

The fact that the photograph was taken with a long lens was immaterial: what was important was not the means by which the picture was taken but that she was identifiable to ordinary passers-by. The complaint was not upheld. (*Sheridan v Scottish Sun*; Report 75, 2007).

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THE PUBLIC INTEREST

No judgment is more difficult than when weighing the privacy of the individual against freedom of expression and intrusion in the wider public interest (See Section Six, Public Interest). The two principal issues in making such a judgment are:

- Is publication of the private information genuinely in the public interest? And —
- Is the degree of intrusion proportionate to the public interest served?

Sometimes editors surmount the first hurdle, only to fall at the second.

There were no such problems in identifying the public interest when the then Tory MP Rupert Allason's affair with a married woman was splashed in a newspaper. He complained that it was his private business. But the PCC ruled that as his election literature had led constituents to believe he was a family man — an impression that had not been corrected — publication was justified. (*Allason v Daily Mirror: Report 37, 1996*).

The Commission also found a public interest in the *Evening Standard* naming a council worker who had warned a friend that a care-worker was a paedophile — but had done nothing to alert the wider public (*Robson v Evening Standard: Report 42, 1998*).

And a convicted drug smuggler's complaint about a newspaper which published interior pictures of her home was rejected because it was in the public interest to show how she had spent the proceeds of crime. (*Tomlinson v Peterborough Evening Telegraph: Report 60, 2002*).

Attending police raids: By contrast, a newspaper came unstuck when it joined a police drugs raid on local homes. It posted a video clip of one raid, where a small amount of cannabis was found, on its website and used still pictures in the paper, headlined *Drugs And Cash Seized In Raid*. But the homeowner denied any knowledge of the drugs and had not been charged with an offence.

The PCC agreed that identifying her house and showing the interiors in such circumstances without consent involved a degree of intrusion way out of proportion to any public interest served by highlighting the police raid or exposing a specific criminal offence. (*Popple v Scarborough Evening News: Report 77, 2008*).

The warning about the dangers of relying on police invitations to join such exercises was strongly reinforced when another weekly newspaper accompanied a raid on a house suspected of having stolen satellite navigation systems. No stolen goods were found, nor charges brought, but the newspaper published interior shots of the house including a teenager handcuffed in his bedroom.

Although the boy's face had been pixellated and no exterior pictures of the house were used, the Commission ruled that this was a serious intrusion: it made clear that, as no stolen goods had been found, there was no public interest in publishing the pictures. (*A woman v Barking and Dagenham Recorder: Report 78, 2008*).

The PCC also reminded editors that under both the Code and current guidance from the Association of Chief Police Officers, it is the media's responsibility when attending such raids to obtain permission from the owner to enter the property before doing so. ACPO Guidance says: "Consent should be in a form which is capable of proof, i.e. in writing, filmed or taped verbal comment."

Undercover, over the top: The Commission took a similar line about a snatched photograph of Christopher Bourne, dubbed by a regional Sunday paper "the greediest man in Britain". He had bought 30 Xbox games consoles so that he could exploit a pre-Christmas shortage and auction them at a profit on eBay. After refusing to be pictured himself, Mr Bourne was secretly photographed when he let his son pose with the consoles. The picture was published with the headline *Dad Cashes In On Xbox Misery*.

The PCC said that, while the paper was entitled to its strong views, there was no evidence of crime or impropriety by Mr Bourne. The intrusion into his privacy by photographing him surreptitiously

BRIEFING

Coverage of lottery winners

The PCC has revised its advice, first issued in 1995, on the reporting of winners of the National Lottery. The *Guidance Note* covers four main areas:

- **Winners who opt for anonymity:** Editors should generally respect a winner's wish for no publicity, unless there is a public interest in publication. The sheer scale of the win is not, itself, a justification. Publications should beware of seeking information about such winners by any means which might breach the Code — such as harassment.
- **Winners who opt for publicity** are still protected by the Code. They are entitled to expect journalists to take care not to publish inaccurate material about them, or harass them. Their privacy is protected by Clause 3 — although the PCC would take into account whether similar material had been put into the public domain with the winner's consent.
- **Vulnerable winners:** The very young, or old, or the sick or recently bereaved may make particularly good copy, but they are still entitled to strong protection under the Code — regardless of the sums involved.
- **Rewards and inducements:** Offering rewards to people to identify anonymous lottery winners is banned, unless it is in the public interest. The PCC also bars journalists from seeking information from Camelot staff which would breach the duty of confidence to the winners under the lottery organisers' licence.

in his own home was out of proportion to any conceivable public interest in publishing his picture. The complaint was upheld. (*Bourne v Sunday Mercury: Report 72, 2006*).

Gratuitous humiliation: Proportionality was the key to compliance when two newspapers reported on an affair between an aristocrat's wife — who it later emerged suffered from mental illness — and a former prisoner. One story breached the Code, the other did not.

The *Daily Mail* account — headlined *The Aristocrat's Wife, The Jobless Jailbird And The 'Lady Chatterley' Affair That Put Her Marriage Under Threat* — was based on information from the girlfriend of the man involved. It spoke of text messages and revealed where sexual encounters had taken place. But the newspaper deliberately omitted more intimate details about the relationship. A second story was published in the *News of the World*, based on the confessions of the adulterous boyfriend himself, under the headline *Lady Mucky Wanted Me Rough And Ready*. It included intimate details of sexual activity.

In each case, the PCC said the key issue was the balance of one person's freedom of expression versus another person's right to privacy. In the *Mail*, the girlfriend's right to give her side of the story had been maintained, without including "humiliating and gratuitously intrusive detail" about the wife. The complaint of an intrusion into privacy was therefore not upheld. (*A woman v Daily Mail: Report 74, 2007*).

However the *News of the World* story failed the PCC proportionality test. The Commission ruled that the public interest involved in exposing adultery by someone who had married into an aristocratic family was insufficient to justify the level of intimate detail that had been given. (*A woman v News of the World: Report 74, 2007*).

A similar test of *gratuitous humiliation* was applied when two newspapers published images that had led to the suspension of a woman teacher at a military college. The explicit photographs had

KEY QUESTIONS

- Was consent given for publication — formally or by implication?
- Has the entitlement to privacy been compromised? For example, by the subject courting publicity or selling it on their own terms?
- Is the individual a public figure, or role model — and does the material reveal conduct reflecting on their public or professional status or image?
- Was the information already in the public domain — would it be reasonable for it to be retrieved and made private?
- Did individuals photographed without consent have a reasonable expectation of privacy? Were they out of public view and engaged in private activity?
- Was publication in the public interest?
- Was the breach proportionate to the public interest served?

been sent between the teacher and her partner, but were discovered by her employers. The *Daily Mirror* published one picture of the teacher as a headshot only, and the *Workshop Guardian* published a topless picture, but duly censored to preserve her modesty.

The PCC cleared both newspapers. It said while the publication of the story was legitimate, this was not sufficient to deprive the teacher of all rights to privacy. The pictures themselves were intimate and taken in the context of a relationship. By cropping the picture, the *Mirror* had avoided gratuitously humiliating the teacher. (*A woman v Daily Mirror*: Report 70, 2005).

Similarly, for the *Workshop Guardian* to have published its picture in full would have caused unnecessary embarrassment. Censoring it showed some respect for the woman's privacy, ensuring no breach of the Code. (*A woman v Workshop Guardian*: Report 70, 2005).

The Commission has also issued guidance (See *Briefing panel*) that those National Lottery winners who request anonymity should not be identified. The sheer scale of the sum involved could not justify publication in the public interest.

KEY RULINGS

- *Attard v Manchester Evening News* (Report 55, 2001).
- *Maclean MP v Mail on Sunday* (Report 72, 2005).
- *Rowling v Daily Mirror* (Report 72, 2005).
- *Rowling v Mail on Sunday Scottish Edition, Daily Mirror, Daily Record* (Report 77, 2008).
- *Edmonds v The Mail on Sunday* (Report 72, 2005).
- *Riding v The Independent* (Report 73, 2006).
- *Church v The Sun* (Report 75, 2007).
- *Miliband v The Mail on Sunday* (Report 69, 2005).
- *Coonan v News of the World* (Report 74, 2007).
- *Ms Dynamite v Islington Gazette* (Report 63, 2003).
- *Charters v The Scottish Sun* (Report 48, 1999).
- *Prince William v OK! Magazine* (Report 52, 2000).
- *McCartney v Hello* (Report 43, 1998).
- *Macpherson v Hello!* (Report 74, 2007).
- *Ford/Scott v Daily Mail / OK! Magazine* (Report 52, 2000).
- *Tunbridge v Dorking Advertiser* (Report 58, 2002).
- *Kisby v Loaded* (Report 73, 2006).
- *Sheridan v The Scottish Sun* (Report 75, 2007).
- *Allason v Daily Mirror* (Report 37, 1996).
- *Robson v Evening Standard* (Report 42, 1998).
- *Tomlinson v Peterborough Evening Telegraph* (Report 60, 2002).
- *Popple v Scarborough Evening News* (Report 77, 2008).
- *A woman v Barking and Dagenham Recorder* (Report 78, 2008).
- *Bourne v Sunday Mercury* (Report 72, 2006).
- *A woman v Daily Mail* (Report 74, 2007).
- *A woman v News of the World* (Report 74, 2007).
- *A woman v Workshop Guardian* (Report 70, 2005).

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Section Three: Intrusion

HARASSMENT

When persistence doesn't pay

This Clause, formulated following the death of Diana Princess of Wales, is one of the toughest and most explicit in the Code, yet relatively few cases go to adjudication. This is largely down to the success of informal guidance.

Complaints, when they come — often via the PCC's 24-hour Helpline for the public (See *Contact Numbers*) — are usually from people who want the physical removal of journalists, perhaps from their doorstep. The Commission staff will either advise complainants what they should say to journalists who they believe are harassing

them, or alert editors directly to the fact that a complaint has been received.

As Clause 4 requires *journalists* — which under the Code covers all editorial staff, including contributors — not to *persist in questioning, telephoning, pursuing or photographing individuals once asked to desist nor remain on their property when asked to leave*, they usually comply. In most cases, the matter is resolved and no complaint follows.

Since October 2009, the Code has required that journalists in such situations should — if requested — identify themselves and those they represent. In reality, this underwrites standard practice. It would be unusual for journalists not to identify themselves to the person they wanted to interview or photograph, unless there was a legitimate public interest reason for not doing so.

Media scrums: The PCC has been particularly effective in dealing with media scrums, which are often the most high profile instances of persistent pursuit, caused by particularly intense cross-media interest in a major story.

The PCC and the Editors' Code Committee have taken the lead in trying to co-ordinate efforts to avoid this form of collective harassment. The PCC agreed to act as a clearing house for 'desist' requests by passing them on not only to print media, but to broadcasting organisations not covered by the Code. PCC advice to journalists to pull out of areas affected by tragedy — such as

THE CODE SAYS...

Clause Four — Harassment*

- Journalists must not engage in intimidation, harassment or persistent pursuit.*
- They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.*
- Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.*

* A public interest exemption may be available: See Section Six

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Dunblane, Omagh and the Paddington rail disaster — is usually heeded by press and broadcasters alike.

Often, the PCC will, proactively, offer its services to those suddenly caught in the media spotlight. It did so, for example, in the Soham murder inquiry, when the killing of two schoolgirls shocked the nation; and again in the case of the Ipswich murders, where a serial killer preyed on prostitutes. It routinely assists families of military personnel killed or wounded on active service, or captured.

Royal siege: Most notably, the Commission intervened when Kate Middleton, girlfriend of Prince William, found herself under virtual siege by press and TV cameras when rumours were rife of an imminent royal engagement. PCC officials were in touch with Ms Middleton's lawyers from the outset, offering to assist as soon as requested.

That situation was defused without need for a formal complaint. But just months later a photograph of Ms Middleton in the *Daily Mirror* led to a complaint that it had been taken in circumstances that amounted to harassment. The PCC launched a formal investigation and the newspaper issued a public expression of regret for the error on the same day. (*Middleton v Daily Mirror: Report 75, 2007*).

While formal complaints are therefore rare, adjudications are even less common. And they are often difficult as there tends to be wide discrepancy between the accounts of complainants and journalists of the contact between them.

Desist means stop: However, if it is demonstrable that the journalist persisted, having been asked to desist, then the Commission will usually find a breach of the Code, unless there is a public interest involved. A BBC radio weather girl complained of harassment over a story that she was involved in a 'D-I-Y pregnancy' with her female partner.

The reporter admitted making three approaches to the complainant, but denied being asked on the first approach to desist.

On the second approach, via the BBC, the reporter was assured by an official — acting on the woman's instructions — that the presenter did not wish to speak.

The newspaper admitted making a direct approach to the complainant herself the next day. The PCC, in this case, accepted the BBC's representation as a request to desist, which made the third approach a breach. The complaint was upheld. (*A Woman v News of the World: Report 59/60, 2002*).

The PCC also found against a Sunday newspaper, which — after twice being told a young woman did not want to be contacted — then approached her with an offer to write a column, and followed up with another visit from a reporter and photographer. While the newspaper may not have been acting in bad faith, it was in breach. (*Swire v Mail on Sunday: Report 54, 2001*).

Even without a request to desist, repeated unwelcome approaches could be against the spirit of the Code and amount to harassment. A couple whose daughter, aged 16, committed suicide declined a weekly newspaper's offer to publish a tribute, saying they would be in touch if they changed their minds.

But the reporter, with deadline pressing, called four times in a few days. The PCC said commonsense should have dictated that repeated calls in a short time to recently-bereaved parents were inappropriate. The complaint was upheld. (*Kimble v Bucks Herald: Report 53, 2001*).

Time limit: A desist request does not last forever. The passage of time may lessen the risk of harassment. Circumstances can alter, sometimes rapidly, and a fresh approach may then be legitimate. There can be no set formula for deciding this. These are difficult judgment calls for journalists and the Commission assesses each case on merit. But it would normally require editors to show reasonable grounds, such as a material change in circumstances, for a renewed approach.

Kimberly Fortier (Quinn) complained that a picture taken of her

BRIEFING

Judiciary and harassment

Guidance on the conventions surrounding the circumstances where judges can make comments to the press has been issued by the PCC.

It warns that:

- Judges cannot comment outside a courtroom on any case over which they are presiding, or have presided, or discuss any decision they have made, or any sentence they have imposed.
- They are equally prohibited from commenting on or discussing other judges' decisions.

The PCC advises that as there are no circumstances in which judges can speak to the press about such matters, there is a risk that approaches to them, or their family, by reporters could breach Clause 4 (Harassment) of the Code.

The PCC suggests editors should make sure that their staff — and any freelance contributors — are aware of the issues this sort of approach to judges could raise under the Code.

in August 2004 walking with her son in Los Angeles and published in the *Sunday Mirror* breached a 'desist' request issued by her lawyers ten days before, when the story broke of her affair with the then Home Secretary, David Blunkett.

The complaint was rejected. The PCC said it was artificial not to recognise that situations change. There had been major developments in the story, since the desist request had been made, including the revelation that Ms Fortier had contacted Mr Blunkett to end the relationship. The picture was taken in a public place, without physical intimidation and — while Ms Fortier denied being a public figure — her relationship with a senior politician had been put into the public domain, without complaint. (*Fortier v Sunday Mirror: Report 68/69, 2004-5*).

Similar issues arose when Greater Manchester Police complained that the *Daily Telegraph* had breached a request not to approach either the family of ten-year-old Jordan Lyons, who drowned in a pond, or two Police Community Support Officers who had arrived at the scene soon after, but did not enter the water to rescue him.

The PCC accepted that following the police 'desist' request, the story had moved on as it had been highlighted by Opposition leader David Cameron in a speech to his party's annual conference. It said the newspaper's approach had been proportionate to that development and the complaint was rejected. (*Greater Manchester Police v Daily Telegraph: Report 77, 2008*).

Approaching judges: The PCC has highlighted the problems of approaching members of the judiciary for comment on cases. In a Guidance Note, the Commission warns that because judges are not allowed to speak about cases outside court, approaches to them or their families could lead to complaints of harassment. (See *Briefing panel: Judiciary and harassment*).

Other sources: The Code puts the onus on editors to take care to ensure that the rules are observed not only by their own staff, but

The panel
colour code

■ What the
Code says

■ Key
questions
editors need
to ask
themselves
when Code
issues arise

■ Briefings
on specific
areas where
the Code
applies

KEY QUESTIONS

- Was there a request to desist? Subsequent pursuit, etc, would need to be justified in the public interest or by changed circumstances.
- Was a request for identification complied with? If not, was there a public interest reason for not doing so?
- Did non-staff contributors comply?
- Was there a public interest?

also by their contributors, such as agencies. That responsibility is underlined here. Pictures and stories from freelance contributors obtained by harassment would not comply with the Code.

If a complaint arose, the PCC would expect an editor to show how reasonable care had been taken to ensure that such material complied with the Code. Extra checks might be advisable, for example, when taking potentially sensitive material from previously untried sources, such as 'citizen journalists'.

The public interest: It would be possible to claim that a degree of harassment — such as persistent questioning and pursuit — is necessary in the public interest. In such cases, the Commission would normally expect that the harassment was not disproportionate to the public interest involved.

A magazine that published pictures of Prince William on an adventure break in South America claimed they were in the public interest as they showed him being groomed for kingship. The PCC rejected any notion that the public interest was served. (*Prince William v OK! Magazine: Report 52, 2000*).

KEY RULINGS

- *Middleton v Daily Mirror* (Report 75, 2007).
- *A woman v News of the World* (Report 59/60, 2002).
- *Swire v Mail on Sunday* (Report 54, 2001).

- *Kimble v Bucks Herald* (Report 53, 2001).
- *Fortier v Sunday Mirror* (Report 68/69, 2004-5).
- *Greater Manchester Police v Daily Telegraph*. (Report 77, 2008).
- *Prince William v OK! Magazine* (Report 52, 2000).

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Section Three: Intrusion

INTRUSION INTO GRIEF

Sense and sensitivity

Journalism is an occupation conducted on the front line of life and, too often, of death. But while tragedy and suffering may go with the journalistic territory, insensitivity for its victims should not. The Code's strictures on intrusion into grief or shock are designed to protect those victims at their most vulnerable moments.

Newspapers have a job to do at such times and most do it well. It is a myth that approaches by the press are inherently intrusive. Reporters making inquiries sensitively are often welcomed by the bereaved, who see an obituary or story as a final public memorial, and they would prefer the facts to be given first-hand.

Also, as deaths are a matter of public record, the information is in the public domain and newspapers have a right to publish. Again,

THE CODE SAYS...

Clause Five — Intrusion into grief or shock

i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.

*ii) *When reporting suicide, care should be taken to avoid excessive detail about the method used.*

* A public interest exemption may be available: See Section Six

a balance has to be struck. The key, as expressed by the Code, lies in making inquiries with *sympathy and discretion* and in *publishing sensitively*.

That does not mean newspapers should not publish sensitive material; it means that they should not do so insensitively. Nor does it amount to a ban on covering tragic stories unless all parties consent, as the PCC made clear in an adjudication in 2005 when it gave examples of some of the elements likely to constitute a lack of sensitivity in publication. They were:

- *The use of gratuitously gory information in pictures or stories at a time of grief;*
- *Unnecessarily ridiculing the manner of death;*
- *Publishing a picture showing the subject engaged in obviously private, or embarrassing, activity.*

The Commission was adjudicating in a case where a picture of a woman missing in the 2004 tsunami appeared in a national tabloid against her family's wishes. The father's request that no photograph of his daughter be used was not passed on, due to a miscommunication, and an image from a website was published.

While regretting the lapse in communications, the PCC ruled that publication of an innocuous image — obtained from a public resource such as the internet — of someone caught up in such a shocking event was not insensitive. (*The family of Alice Claypoole v Daily Mirror: Report 71, 2005*).

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In a similar case, a widow complained about an evening newspaper's coverage after her husband was killed in a boat disaster. One story, headlined *Shattered Lives And Lost Dreams*, projected the feelings of her two-year-old son. Another — using information and a picture of mother and son supplied by the grandparents — revealed against her expressed wishes that she had since given birth to a daughter. The PCC, while sympathising with the widow's distress, felt the newspaper's attempts to illustrate the human consequences of tragedy were not inherently insensitive. Although the widow had not wanted publicity for the birth of her baby, there were competing rights of others to speak to the media, and for the public to receive information. (*Grady v Evening Courier, Halifax, Report 73, 2006*).

Breaking the news: The Commission has upheld a newspaper's right to publish a story as soon as the death is confirmed, but not before. *The PCC sees it as no part of the journalist's role to inform close relatives or friends of the death.*

A complaint from a mother who read about her daughter's death — ahead of positive identification — in a story headlined *Body-in-Bath Probe* was upheld. The mother had still been hoping it was not her daughter. The Commission said the newspaper should have checked that the family knew before publishing. (*Oliver v Manchester Evening News, Report 43, 1998*).

The PCC upheld a similar complaint from parents whose first intimation that their missing son was dead came from a reporter. (*McKeown v Newcastle Evening Chronicle, Report 40, 1997*).

But, while expressing sympathy, the Commission rejected a complaint from a widow whose husband's tragic death was reported the same day, before his parents knew or the facts were established. The PCC said the story, which presented some details of the incident as conjecture, was otherwise a straight-forward report of the death of a leading local figure. (*Thornhill v News and Star, Report 55, 2001*).

personal matter and it was insensitive to name him or the dead child. The PCC agreed that the public interest would have been served just as well without naming the family and upheld the complaint. (*A couple v Esher News, Report 61, 2002*). (See also Section Six, *Public Interest*).

Photography at funerals without consent usually involves a balance of sensitivity versus publication in the public interest. But a Sunday paper's picture of a boy of 14 at the funeral of his father, an asylum seeker who killed himself in a detention centre, raised wider issues. The story, headlined *The Ultimate Sacrifice*, included a CCTV image of the father at the detention centre with a sheet tied around his neck, and an extract from a suicide note — addressed to, and featuring, the son. The CCTV pictures had been shown at the inquest, but the boy had been unaware of them.

His solicitors claimed this was unnecessarily intrusive and amounted to 'excessive detail' of the suicide method under Clause 5. Also, the funeral picture was taken without proper consent when the boy had a reasonable expectation of privacy (Clause 3); affected his welfare as a child; and was published only because of his association with his father (Clause 6).

The lawyers said the boy should expect a suicide note addressed to him to be private: any public interest in the story could have been served by omitting his name and the pictures.

The complaint was rejected on all counts. The PCC said the sensitivity rule did not provide automatic anonymity for those affected by tragedy, especially where they were central to it. The story had legitimate public interest and the CCTV pictures were relevant because of the inquest and raised no issues under the 'excessive detail' rules. While the funeral picture was taken without formal consent, the Commission accepted that that newspaper had not known this and relied on the fact that it had been published elsewhere. An offer to delete it from the file was a proportionate response. (*A boy v The Sunday Times, Report 74, 2007*).

It also ruled that a newspaper that broke the news to neighbours of the death of a toddler through meningitis did not breach the Code. It was an important matter of public health and legitimate for a paper to seek comment from local people who were not relatives of the child. (*Maude v Derby Evening Telegraph, Report 42, 1997*).

Insensitive or unnecessary detail (See also *Reporting Suicide, below*): A magazine that staged a mock-up of a murder scene and published the picture — with a headshot of the victim — on the anniversary of the death trampled through both the 'sensitivity' and accuracy rules. It was not made clear that the picture of a female body wrapped in bin liners, which caused much distress, was actually a reconstruction, based on the court reports of the murder. The PCC condemned the magazine's 'cavalier approach', aggravated by the timing of publication, which had shown a total disregard for the victim's family. (*A man v Chat magazine, Report 76, 2007*).

A woman claimed a local newspaper's story about her brother's death following a collapse at home — headlined *Starving Pet Starts To Devour Pensioner* — was distressing and sensationalist. The PCC agreed, rejecting the editor's claim that the story was handled sympathetically. (*Yeoman v Rhondda Leader, Report 65, 2004*). It ruled that the story was not sufficiently sensitive, bearing in mind that it was published immediately after the death and neither the funeral nor the inquest had taken place. The complaint was upheld — as was a similar case in which parents complained about 'cruel' references to their son's "guts hanging out" in a report on his death. The editor regretted the excessive detail. (*Harvey v Rochdale Observer, Report 45, 1999*).

The Commission ruled that it was not necessary to identify a father who twice in two years lost a newborn baby at the same maternity unit. The man, who had also lost his previous partner in the earlier tragedy, agreed there was a public interest in apparent problems at the hospital, but believed the second baby death was a

By contrast, the funeral of TV personality Carol Smillie's mother was not a public event and a Sunday newspaper's prominent coverage of it was an intrusion, the Commission ruled. The paper's photographers had been asked to leave the funeral, but ran a three-page story using a freelance's pictures taken with a long lens at the crematorium. The PCC said the newspaper knew it was a time of grief and that photographers were unwelcome. The prominence given to the article added to its insensitivity and the result was a breach of the Code. (*Smillie v Sunday Mail, Report 50, 2000*).

Humorous or insensitive reports: Although the Code does not cover the privacy of the dead, a critical obituary in the *British Medical Journal*, describing a doctor as "the greatest snake-oil salesman of his age", brought a complaint from the man's family. The PCC said it was not unacceptable to publish criticisms of the dead — but that the sensitivity of the family had to be taken into account. No adjudication was necessary as the editor offered to publish an apology for the distress caused. (*Kelliher v British Medical Journal, Report 63, 2003*).

A magazine which ran a jokey student guide to suicide fell foul of the Code when it referred flippantly to two unconnected student deaths, one of which happened only months earlier. The PCC ruled that for the two tragedies to be treated with gratuitous humour was a serious breach of the Code. (*Napuk and Gibson v FHM, Report 48, 1999*).

Timing: While timing can add to the insensitivity, each case is decided on the circumstances. The PCC has upheld a claim of insensitive publication more than a year after the death.

REPORTING SUICIDE

The rule introduced in 2006 (See *Briefing*) requiring care to be taken to avoid 'excessive detail' of suicide methods followed a powerful submission by the Samaritans to the Code Committee highlighting

the risk of imitative acts. In fact, it codified a practice already followed by many editors.

It meant, for example, that while it might be perfectly proper to report that death was caused by an overdose of Paracetamol, it would probably be excessive to state the number of tablets used. Exceptions could be made if editors could demonstrate that publication was in the public interest.

As the aim is to avoid copycat acts, the rule would — under the spirit of the Code — apply to reporting attempted suicide and to any article appearing to glamorise suicide. The PCC has indicated it will accept complaints from third parties, as well as from close families or friends.

Tougher than the law: The Commission used its first adjudication under the new sub-clause to make clear that, while newspapers were entitled to report on proceedings such as inquests, the Code's requirements were over and above those allowed by the law. It ruled that newspaper reports of an inquest into the death of a teacher who had electrocuted himself contained too much detail about the method.

"Inquests are held in public and newspapers are free to report their proceedings," said the PCC, "but to abide by the terms of the Code — which sets out standards over and above the legal framework — the papers should on this occasion have been less specific about the method used." (*A woman v Wigan Evening Post*: Report 76, 2007).

In that case, the complainant was the dead man's widow. But consent from a relative would not necessarily absolve editors from responsibility under the 'excessive detail' rule. The PCC accepted a third party complaint that a magazine article contained too much detail, even though it was written by the sister of a man who had taken his own life. The case was resolved without going to adjudication. (*Brown v She magazine*: Report 77, 2008).

Graphic images: Photographs depicting the act of suicide would not contravene the rules requiring sensitivity in publication, if they involved only subjective matters of taste, which are outside the Code. But risks of a breach could arise if the pictures broke the news of the death to the families; or contained excessive detail of the method used; or could be taken to glamorise suicide.

In 2006, before the introduction of the 'excessive detail' clause, three newspapers published pictures of a woman who threw herself from the fourth floor of a London hotel in front of a crowd gathered below. The PCC ruled that the simple fact of publishing pictures of what was a public incident did not, in itself, constitute a failure to be sensitive.

That did not mean the press was free to publish the pictures in an insensitive manner — for example, by making light of the incident, publishing unnecessarily explicit details, or presenting the images in a gratuitously graphic way. The newspapers had not done that, and the complaints were not upheld. (*Palomba v The Sun*: Report 72, 2006); (*Palomba v Evening Standard*: Report 72, 2006). (*Petelin v The Times*: Report 72, 2006).

The PCC accepted complaints from the Scottish NHS that graphic images of a girl involved in a suicide attempt in Germany, published by two UK tabloids, would have encouraged copycat acts. The complaints were resolved without going to adjudication. (*Choose Life v The Sun*: Report 77, 2008); (*Choose Life v Daily Star*: Report 77, 2008).

Graphic imagery of another kind was the subject of a complaint by Mrs Madeleine Moon MP, representing relatives of young people who hanged themselves in a spate of suicides in and around her constituency in Bridgend, South Wales (See also Page 41). She claimed a Sunday paper's presentation in May 2008 of an otherwise balanced and well-researched piece was insensitive and could have encouraged copycat cases in that it showed photographs of those who had died juxtaposed with a large picture of a noose under the headline *Death Valleys*. The newspaper, while accepting that

KEY QUESTIONS

- Did journalists break the news of the death to close relatives?
- Were insensitive and unnecessary details published about the death?
- Were photographs taken at a private funeral without consent?
- Were humorous or insensitive obituaries or reports of death published?
- Were the details of the method used to commit suicide excessive?
- Was the coverage likely to glamorise suicide?

relatives might have been upset, said the whole point of the presentation was to highlight the apparent happiness of the young people with the harsh reality of what they had done, and had dramatically portrayed that without glamorising suicide.

The PCC ruled that, given the massive national and international coverage identifying hanging as a common feature of the deaths, the use of the noose picture to depict a serious and sensitive article was not excessive detail, and was not insensitive within the Code. The complaint was not upheld.

However, the Commission acknowledged that the pictures would "be an upsetting and stark reminder to the families about how their relatives had died", and regretted the distress caused. The PCC also drew attention to a private advisory note it had issued alerting editors to a request from some of the families that photographs of their relatives should not be used in future stories about Bridgend. (*Moon MP v Sunday Times*: Report 78, 2008).

Glamorising suicide: The PCC takes a dim view of reports that trivialise tragedy and has made clear that they can breach the rules requiring sensitive publication. However, when the *Daily Sport* published a list to Britain's most popular suicide 'hotspots', headlined *The Top Yourself 10*, the Commission ruled that it had breached the rules on excessive detail. A Scottish NHS official complained that vulnerable people might be encouraged to visit the places shown and take their own lives. The newspaper claimed the article was fair,

balanced and based on information already in the public domain. But the PCC said that, while articles investigating the pattern of suicides are usually acceptable, this "entirely gratuitous" guide stated explicitly a number of options about how and where to attempt suicide. It was clearly excessive in the context.

Also, the light-hearted presentation of the piece could have glamorised suicide for some people, thus further breaching the Code, which is designed to minimise the risk of imitative acts. (*Choose Life v Daily Sport*: Report 77, 2008).

KEY RULINGS

- The family of Alice Claypoole v *Daily Mirror* (Report 71, 2005).
- Grady v *Evening Courier, Halifax* (Report 73, 2006).
- Oliver v *Manchester Evening News* (Report 43, 1998).
- McKeown v *Newcastle Evening Chronicle* (Report 40, 1997).
- Thornhill v *News and Star* (Report 65, 2001).
- Maude v *Derby Evening Telegraph* (Report 42, 1998).
- A man v *Chat* magazine (Report 76, 2007).
- Yeoman v *Rhondda Leader* (Report 65, 2004).
- Harvey v *Rochdale Observer* (Report 45, 1999).
- A couple v *Esher News* (Report 61, 2003).
- A boy v *The Sunday Times* (Report 74, 2007).
- Smillie v *Sunday Mail* (Report 50, 2000).
- Kelliher v *British Medical Journal* (Report 63, 2003).
- Napuk and Gibson v *FHM* (Report 48, 1999).
- A woman v *Wigan Evening Post* (Report 76, 2007).
- Brown v *She magazine* (Report 77, 2008).
- Palomba v *The Sun* (Report 72, 2006).
- Palomba v *Evening Standard* (Report 72, 2006).
- Petelin v *The Times* (Report 72, 2006).
- Choose Life v *The Sun* (Report 77, 2008).
- Choose Life v *Daily Star* (Report 77, 2008).
- Choose Life v *Daily Sport* (Report 77, 2008).
- Moon MP v *Sunday Times* (Report 78, 2008).

BRIEFING

Suicide: a sensitive issue

Suicide has always been covered by the Code's rules on intrusion into grief, stressing the need for sympathy and discretion and sensitivity in publication. But there is a dimension to reporting suicide that sets it apart from other tragedies: the inherent risk of 'social contagion'.

Research has demonstrated that media portrayals of suicide — as in news reports or fictional TV or films — can influence suicidal behaviour and lead to multiple imitative acts, particularly among the young. Instances of self-poisoning increased by 17% in the week after it was featured in a TV drama.

In 2006, faced with real evidence that over-explicit reporting could lead to copycat cases, the Code Committee introduced a new sub-clause: *When reporting suicide, care should take to avoid excessive detail of the method used.* So editors face a twin test: they must both publish with sensitivity and avoid excessive detail. (See Page 38)

The Bridgend experience

A series of more than 20 suicides of young people in and around Bridgend in South Wales thrust all this into the spotlight. Some politicians, police and parents blamed media speculation about possible links between the deaths for possibly triggering later cases.

A PCC survey revealed a complex web of public anxieties in Bridgend that often went far beyond the scope of press self-regulation, embracing concerns about broadcasters and foreign media, and sometimes involving wider societal issues. These apart, the picture that emerged was less a case of repeated individual breaches of the Code, than a cumulative jigsaw effect of collective media activity, which became a problem only when the individual pieces were put together.

While the Code covered many public concerns, it was clear that others might be more appropriately — and effectively — addressed not by over-prescriptive rules but by editors modifying their activities voluntarily.

Important areas of public concern where the Code already applies include:

- **Graphic images** illustrating suicide methods were often upsetting to relatives and friends. *Under the Code, such images would normally have to pass the 'excessive detail' test.*
- **The cumulative effect** of repeated media inquiries to family members also caused unintended distress. *Here, too, the PCC can help by passing on 'desist' messages via its arrangements for handling media scrums.*
- **Glorification of suicide:** Stories presented in a way likely to romanticise suicide could have a serious influence, especially on vulnerable young people. *But, within the spirit of the Code, most coverage of this sort would again risk breaching the 'excessive detail' rule.*

Possible areas where editors might voluntarily mitigate the effects of legitimate publicity include:

- **Helpline numbers:** When reporting the Bridgend deaths, many newspapers voluntarily published contact details of charities that work with people with suicidal feelings. This was widely welcomed as directing those most at risk — especially vulnerable young people — into the arms of those who could offer them most help.
- **Republication of photographs:** Each new death often prompted reprinting of images of others who had taken their own life, adding to families' distress. Sometimes it might be necessary, others not.
- **Publications of photographs without family consent:** Using pictures supplied by friends or from social networking sites, without the close family's consent, can cause unintentional distress.

There can be no hard rules in such subjective areas. These and similar measures can only be discretionary. But the lessons of Bridgend are that, by bearing them in mind, editors faced with difficult judgments at critical times could avoid causing unintended offence or exposure to accusations of insensitivity.

Section Three: Intrusion

CHILDREN

Children: Treat with care

The Code goes to exceptional lengths to safeguard children by raising the thresholds on disclosure and defining tightly the circumstances in which press coverage would be legitimate.

For the most part, this applies up to the age of 16 — but the requirement that they should be free from unnecessary intrusion at school provides a measure of protection into the sixth-form.

THE CODE SAYS...

Clause Six — Children*

- Young people should be free to complete their time at school without unnecessary intrusion.*
- A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.*
- Pupils must not be approached or photographed at school without the permission of the school authorities.*
- Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.*
- Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.*

* A public interest exemption may be available. See Section Six

In the majority of cases, children under 16 cannot be approached at school, or photographed or interviewed about their own or another child's welfare, or offered payment unless consent is forthcoming from the suitable responsible authority, be it the parent, guardian, school, or other responsible adult.

The welfare of the child includes the effect publication might have. A complaint from an asylum seeker who had been given two homes to accommodate his 15 children was upheld after a newspaper interviewed and identified some of them.

The PCC said the article was likely to provoke a strong reaction in readers, which might affect the children's welfare. (*Kenwa v Sunday Mercury: Report 50, 2000*).

Questions of consent: The press has to establish which is the competent authority to grant consent in each case. A photograph taken of a boy on school property broke the rules even though his mother had approved it. The school authorities had not been asked. (*Brecon High School v Brecon and Radnor Express: Report 57, 2002*).

Similarly, a newspaper's "informal" approaches to pupils on their way to a school where there had been suicide attempts were ruled as a breach. (*Black v Bedfordshire on Sunday: Report 43, 1998*).

When a Scottish weekly newspaper published a schoolgirl's mobile phone video of unruly class-mates, the school complained that no consent had been sought. The newspaper claimed it was in

BRIEFING

Complaints about court reporting

It may be a cardinal rule that justice should be seen to be done, but the PCC receives complaints about court reporting. The most common relate to:

- **Privacy:** Complainants — often defendants — argue that the report of a case in which they were involved intruded on their privacy. The PCC upholds the right to publish fair, accurate and contemporaneous reports of proceedings and would act only if complainants could demonstrate a breach of this principle.
- **Inaccuracy:** If any significant inaccuracy is demonstrated in a completed or current case, the PCC raises the complaint with the editor with the request that it be resolved by a printed correction. Such complaints are usually resolved or disproved.
- **Lack of balance:** Complainants suggest reports highlight the prosecution case, with inadequate space given to either the defence case or an acquittal verdict. No complaint has been of sufficient gravity to warrant a PCC investigation.

the public interest to demonstrate poor supervision of the pupils, all of whom were over 16.

The PCC agreed it was legitimate to use the video material to spotlight classroom conditions — but it was not necessary to identify the pupils. It upheld the complaint against the weekly newspaper, but rejected complaints against two national tabloids that had used the material without identifying the students. (*Gaddis v Hamilton Advertiser: Report 75, 2007*); (*Gaddis v Scottish Daily Mirror: Report 75, 2007*); (*Gaddis v Scottish Sun: Report 75, 2007*).

There was no question of parental consent when a topless photograph of a 14-year-old girl appeared in a lad's magazine's gallery of mobile phone shots sent in by readers. The magazine's defence that the girl looked older and that they believed her to be living with the person who submitted the picture, did not impress the PCC. It said the magazine had not taken adequate care to establish the provenance of the photograph or whether it was appropriate to publish it. (*A couple v FHM magazine: Report 75, 2007*).

A local newspaper fell into a similar trap when it publicised a charity event while relying solely on information from the fundraiser. It pictured a 16-year-old boy and a girl of 14, saying they were both seriously ill and that the girl suffered from a muscle-wasting disease.

But the girl's mother said the paper had ignored her request to contact her prior to publication. In fact, her daughter was not seriously ill and was only giving moral support to the boy, who was her cousin. The PCC upheld her complaints of intrusion into a child's privacy and inaccuracy. (*A woman v Kent Messenger: Report 70, 2005*).

Implied consent: A father complained when Zoo magazine published, without consent, a photograph of him and his 10-year-old daughter making offensive gestures on the terraces of Old Trafford following Chelsea's defeat to Liverpool in the FA Cup. The father said the picture ridiculed his daughter and should have been pixilated.

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The PCC decided that while the father had not actively consented to the picture, he and his daughter were making anti-social gestures at a major sporting event in front of the mass media. It was not unreasonable to assume he was unconcerned about publication. Consent was therefore implied. The complaint was rejected. (*Quigley v Zoo magazine: Report 73, 2005*).

Payment to children: Even where consent is forthcoming, there could be pitfalls — especially if money is involved. The Code puts an obligation on the press not to make payments to minors — or their parents — unless it is clearly in the child's interest.

Technically, this could mean that a payment to an unscrupulous or greedy parent, if it were demonstrably not in the child's interest, would be a breach.

Children of the famous: The rules apply equally to children of parents from all walks of life. The rule that made it a breach for a 15-year-old Accrington boy to be approached by a reporter at school (*Livesey v Accrington Observer and Times: Report 30, 1995* — see note in margin) was used to protect Princes William and Harry at Eton.

While the Princes are public figures in their own right — and therefore must expect appropriate publicity — the same is not true of the children of most other public figures, who are entitled to normal levels of privacy.

The Code therefore stipulates that the celebrity or notoriety of the parent cannot be a sole justification for publishing details of the private lives of children.

Tony and Cherie Blair complained about a story containing allegations that their daughter Kathryn was receiving special treatment by obtaining a place in an elite school. The PCC said there was no public interest in making Kathryn the centre of the story, particularly as no misdemeanour had been proved. (*Blair v Mail on Sunday: Report 47, 1999*).

A story revealing that Euan Blair had applied for a place at Oxford University was also ruled to be an unnecessary intrusion, with no exceptional public interest. (*Blair v Daily Telegraph: Report 57, 2002*).

But a national tabloid's story about former Education Secretary Ruth Kelly sending one of her children to a private school for pupils with learning difficulties did pass the PCC's public interest test.

In an attempt to concentrate on the legitimate public debate about a Minister removing her child from the state education system, the newspaper had named Ms Kelly but not revealed the name, sex or age of the child, nor identified his new school. The story was about the parents — one of whom had been responsible for national education policy — and not the child. The complaint was rejected. (*Kelly v Daily Mirror: Report 74, 2007*).

Sheltered lives: The extent to which parents keep children out of the limelight should also be taken into account. The PCC has said it is difficult to protect any individual once they begin to acquire a public profile in their own right.

The author J. K. Rowling had gone to great lengths to protect the privacy of her eight-year-old daughter, who was nonetheless pictured in a magazine while on a private beach on holiday. The complaint was upheld because the unsolicited publicity would affect the child's welfare and the picture was published only because of the fame of her mother. (*Rowling v OK! Magazine: Report 55, 2001*).

Pictures which do not need consent: However, not all pictures of children need consent — only those that involve the welfare of the child, or which are taken in a private place. The PCC has ruled that mere publication of a child's image cannot breach the Code when it is taken in a public place and is unaccompanied by any private details or material that might embarrass or inconvenience the child, which is particularly unlikely in the case of babies or very young children.

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CHILDREN
Famous parents

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A magazine picture of a toddler in a pushchair in a public street was acceptable as it was an innocuous image, devoid of personal details other than a forename. (*Donald v Hello magazine: Report 52, 2000*).

Court reports: The PCC has ruled that the privacy of children is an area where the Code's constraints *may be tighter than those imposed by law*. It upheld a complaint from a woman whose evidence in open court mentioning the mental health problems of her schoolboy son were reported in the local newspaper. (*A woman v Hastings and St Leonard's Observer: Report 41, 1998*).

However, the Commission did not believe any such constraints were appropriate when dealing with a Scottish tabloid's story of a teenager convicted of taking his father's powerful car without permission and driving it the wrong way down a one-way street in a residential area. Under Scottish law, even though the offence was committed when he was 15, the press was free to name the boy once he was 16.

His father, a prominent businessman, complained that this breached Clause 6 — which includes protection for children of the

famous — and Clause 9, which covers innocent relatives. But the PCC said the Code should not shield young people from publicity about their criminal or anti-social behaviour. It also ruled that the father was central to the story as it was his car that was used. So there was no breach of Clause 9. (*Souter and son v Scottish Sun: Report 76, 2007*).

KEY RULINGS

- *Kenewa v Sunday Mercury* (Report 50, 2000).
- *Brecon High School v Brecon and Radnor Express* (Report 57, 2002).
- *Black v Bedfordshire on Sunday* (Report 43, 1998).
- *Gaddis v Hamilton Advertiser* (Report 75, 2007).
- *Gaddis v Scottish Daily Mirror* (Report 75, 2007).
- *Gaddis v Scottish Sun* (Report 75, 2007).
- *A couple v FHM magazine* (Report 75, 2007).
- *A woman v Kent Messenger* (Report 70, 2005).
- *Quigley v Zoo magazine* (Report 73, 2006).
- *Livesey v Accrington Observer and Times* (Report 30, 1995 — see note in margin).
- *Rowling v OK! Magazine* (Report 55, 2001).
- *Blair v Mail on Sunday* (Report 47, 1999).
- *Blair v Daily Telegraph* (Report 57, 2002).
- *Kelly v Daily Mirror* (Report 74, 2007).
- *Donald v Hello magazine* (Report 52, 2000).
- *A woman v Hastings and St Leonard's Observer* (Report 41, 1998).
- *Souter and son v Scottish Sun* (Report 76, 2007).

KEY QUESTIONS

- Is the child under 16 or still at school? If so, Clause 6 applies.
- Could the interview or photograph involve or affect a child's welfare? If so, consent will be needed.
- Has consent been given by the appropriate responsible adult or school?
- Is a payment to either a child or parents/guardian in the child's interest?
- Is there a justification for publication other than the fame etc of parents or guardians?
- Is there an exceptional public interest in publication? No such defence has yet succeeded.

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Section Three: Intrusion

CHILDREN IN SEX CASES

Innocents at risk

All children in sex cases, including defendants, are protected from identification under the Code. An essential element is its insistence on a common formula to end 'jigsaw identification' — which can occur if media organisations observe in different ways the law intended to protect the anonymity of incest victims.

Although the law prohibits identification of any alleged victim of a sex offence, it leaves the method unspecified. In incest cases, the media is faced with a choice. It can describe the offence as

incest, but not name the defendant, or name the defendant — but omit the exact nature of the offence.

Until the formula was harmonised under the Code — and adopted by broadcast media organisations — there was a risk that both approaches were used, equally validly, with the result that when two accounts were read together the victim could be identified.

The Code effectively removed the choice by opting for the approach largely taken by the regional press, which meant the defendant was named — and, if guilty, shamed — but all references to incest were omitted, which meant victims were not identified.

It is vital to the working of the arrangement that nothing is said in the report which might imply the family relationship between the defendant and the child victim.

While this clause is used principally to protect victims, it applies equally to young defendants. In 1996, the Commission warned that reports in a number of newspapers about a 15-year-old boy accused of sexual assault had, without naming him, given sufficient details to identify him in breach of the Code.

Exceptional public interest: As always in cases affecting children, the public interest would need to be exceptional to justify identification. However, there are instances where the names of children who have been involved in sex cases, or are technical

THE CODE SAYS...

Clause Seven — Children in sex cases*

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
2. In any press report of a case involving a sexual offence against a child —
 - i) The child must not be identified.
 - ii) The adult may be identified.
 - iii) The word "incest" must not be used where a child victim might be identified.
 - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

* A public interest exemption may be available. See Section Six

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victims under the law, are put into the public domain lawfully and the public interest justification is included in the Code to cover these.

If, for example, a court ordered that the legal ban on naming a child defendant convicted of a sex offence could — because of the extreme seriousness of the offence — be lifted, then it would be legitimately in the public domain and there would be a public interest in publication.

Also, there have been occasions where *technical victims of a sexual offence*, such as under-age mothers in a consensual relationship, have put themselves into the public domain, to discuss their problems with the approval of their parents or guardians. This has happened in stories concerning teenage pregnancies, abortions and parenthood where examples of cases can assist in developing public policy.

Legitimate identification: In one Northern town identified as having Europe's highest incidence of under-age mothers, several girls told their stories to national newspapers — some in return for payment — with parental consent. No complaints were received by the PCC.

If the identification in these circumstances met with the Code's other restrictions — such as being approved by parents and, if payment was involved, being clearly in the child's interest — then it would be legitimate.

KEY RULING

- A man v *News of the World* (Report 34, 1996 — see note in margin).

KEY QUESTION

- Could the report lead to the identification of a child in the case, including a defendant?

• Cases adjudicated before 1996 are available in hard-copy format from the PCC on application to Tonia Milton, Information and Events Manager, on tonia.milton@pcc.org.uk

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Section Three: Intrusion

HOSPITALS

Patients are paramount

THE CODE SAYS...

Clause Eight — Hospitals*

- i) *Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.*
- ii) *The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.*

* A public interest exemption may be available: See Section Six.

The Code is at its strictest when protecting vulnerable groups, and never more so than when dealing with patients in hospital or similar institutions. The clause on hospitals is rigorously enforced and the PCC has warned that it will take a harsh view of any unnecessary intrusion into the privacy of those who are ill. This tough line has resulted in very few breaches.

The requirement on journalists to identify themselves and obtain permission from a responsible executive to enter non-public areas applies to *all editorial staff, including photographers*. Both the identification and the permission need to be clearly established.

A journalist, who attended a London hospital after the Canary Wharf terrorist bomb attack, photographed an injured victim in the company of relatives who he thought had obtained permission from

hospital staff. The PCC ruled that while he acted in good faith and that coverage of a terror incident included victims, the patient's well-being was paramount. It was not enough for the journalist to assume his identity was known or to rely on the comment of an individual who was clearly not a responsible executive. The complaint was upheld. (*Hutchinson v News of the World: Report 37, 1997*).

As this clause covers the news-gathering process, a breach can occur even if nothing is published as a result.

In 2002, a reporter who went to the hospital bedside of the victim of a car accident, without identifying himself to the relevant authorities, was quickly sacked by his newspaper, which recognised that the Code had been breached. Although the editor apologised to the complainant and no story was published, the newspaper was rebuked for a serious breach of the Code. (*Jennings v Eastbourne Gazette: Report 59/60, 2002*).

Non-public areas: In most cases, what constitutes a non-public area would be clear and would certainly include areas where patients were receiving treatment. But what if the hospital itself is not open to the public?

A private hospital, which the singer Pete Doherty had been ordered by a court to attend, complained that a reporter broke the rules by going into the grounds and reporting to the reception desk, which was a non-public area.

But the PCC ruled that as the security gate was unmanned, and

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BRIEFING

Detained mental health patients

The PCC has warned that terms used to describe patients detained under Mental Health Act of 1983 are frequently wrong and could breach the Code's rules on accuracy (Clause 1) or discrimination (Clause 6). In a Guidance Note, the Commission issued clarifications to be borne in mind by editors when running stories about people detained under the Act:

- **They are detained in hospitals** — not prisons. The terms "jail", "cell" or "cage" would be inaccurate, said the PCC.
- **Most have not appeared before the courts:** Eight out of ten such patients are detained because mental health professionals decided they needed hospital care.
- **Those who are detained following conviction** have also been found to be in need of treatment and have the same rights under the Patients' Charter as other NHS users.
- **High Security establishments** such as Rampton and Broadmoor provide care and treatment. Nurses, not prison officers, staff them. The Commission also raised concerns about terms such as "nutter" and "basket case" to describe people who are mentally ill — whether detained or not. This could create a climate of fear or rejection, and cause distress to patients and their families, by interfering with their care and treatment.

the reporter had not attempted to speak to anyone other than the receptionist, and had not concealed her identity, visiting the reception area was not a breach of the Code.

However, it noted with approval that the hospital had amended its security procedures — and that the newspaper had accepted that the preferred approach would have been by telephone. (*Croft v Daily Mail: Report 74, 2006*).

Similar institutions: The PCC has held that, in the spirit of the Code, the vulnerability of the patient or individual should be taken into account when deciding what constitutes a similar institution. When Countess Spencer was photographed at a clinic, where she was receiving treatment for health problems, it was seen as a clear breach (*Spencer v News of the World: Report 29, 1995* — see note in margin).

But the Commission has ruled that a residential home for the elderly could also be a *similar institution*, if a number of residents needed medical supervision. It urged journalists to think hard before approaching people in such establishments, especially if their state of health made them vulnerable. (*A man v Daily Mail: Report 58, 2002*).

The public interest: While newspapers should always proceed with caution, there are cases where otherwise proscribed action can be justified in the public interest. In 2001 the parents of a comatose woman brain-damaged by domestic violence desperately wanted publicity to expose what they saw as the inadequate sentence on the attacker. They invited a cameraman to accompany them on a hospital visit to photograph the pitiful plight of the victim.

The NHS Trust complained that the photographer had not sought permission from a responsible executive. However the PCC ruled that it was in the public interest that the parents should be able to demonstrate their disgust at the leniency of the sentence — and that readers might not have been able to appreciate the gravity of the

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Public interest defence

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BRIEFING

Co-operating with the PCC

There is a strong obligation on editors under the Code to co-operate swiftly with the PCC in trying to resolve complaints.

It is one of the Commission's targets to reach rulings in 35 days, and currently — with the co-operation of editors — it averages 34 days.

In practice, this means replying to the PCC's initial request for a response to the complaint within seven days and then reacting promptly to any new PCC questions or suggestions of a remedy to the dispute.

Failure to act promptly can aggravate the problem. One newspaper, which repeatedly failed to reply to a reader who complained that a table in a report on currency values was flawed, similarly lost letters from the PCC.

In view of the pattern of lapses, the case went to adjudication, where the PCC found the paper to be in breach of its obligation to co-operate swiftly with the resolution of complaints.

In other cases, newspapers and magazines — while denying a complaint — have simply failed to provide any evidence to support their case. The PCC has then upheld the complaint by default — usually taking the opportunity to remind to all editors of their responsibilities under the Code.

situation had the picture not been published. (*Taunton and Somerset NHS Trust v The Mirror: Report 54, 2001*).

The clause also requires that in making inquiries from hospitals and similar institutions editors need to be mindful of the general restrictions on privacy, which include specific reference to health matters.

KEY RULINGS

- *Hutchinson v News of the World* (Report 37, 1997).
- *Jennings v Eastbourne Gazette* (Report 59/60, 2002).
- *Spencer v News of the World* (Report 29, 1995 — see note in margin).
- *Croft v Daily Mail* (Report 74, 2006).
- *A man v Daily Mail* (Report 58, 2002).
- *Taunton and Somerset NHS Trust v The Mirror* (Report 54, 2001).

KEY QUESTIONS

- Were editorial staff in a non-public area?
- Did they identify themselves to a responsible executive? The term executive was introduced to ensure appropriate seniority.
- Was there a public interest in publication?

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GUIDANCE
Co-operating with the PCC

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Section Four: News Gathering

REPORTING OF CRIME

Guilt by association

This clause is designed to protect the innocent from being caught unnecessarily in the publicity spotlight focused on the guilty. Relatives or friends should not normally be named unless they are genuinely relevant to the story — or there is reason to publish in the public interest. Child witnesses or victims of crime need special consideration.

Complaints usually hinge on *genuine relevance* to the story or whether there is a public interest in them being mentioned or whether identification is gratuitous.

The PCC has taken a commonsense line. If a relationship were well known and established in the public domain, then it would be perverse to expect editors to omit reference to it.

Similarly if a parent, for example, publicly accompanied the

accused person to court or made public statements on the case, that would add genuine relevance.

Tone and proportion: However, the Commission would also take account of the tone of the article — how much the story focused on the relationship — and whether that was relevant or in the public interest.

A complaint from a councillor, named in a report when his son was arrested for bootlegging, was rejected. The PCC decided the simple factual identification of an important community figure did not breach the Code. (*Sihota v Daily Express: Report 40, 1997*).

Likewise, Mrs Ann Gloag, widely known as the owner of a Scottish castle, objected when she was named in stories reporting her son-in-law's arrest for allegedly assaulting her daughter. But the daughter lived at the castle — and the accused husband had been banned from it as part of the bail conditions.

The PCC said Mrs Gloag's relevance to the story had been established by her ownership of the castle named in the court papers. Being related to the accused did not give her rights to anonymity that would otherwise not exist. (*Gloag v Perthshire Advertiser: Report 75, 2007*).

But another case, where a front-page report named and pictured a councillor whose son was accused of a serious drink-driving offence, was upheld. While the PCC accepted there was a public interest in naming the councillor, because of her local prominence and the fact that she had attended court with her son, it ruled that no

THE CODE SAYS...

Clause Nine — Reporting of crime*

- i) *Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.*
- ii) *Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.*

* A public interest exemption may be available: See Section Six

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KEY QUESTIONS

- **Did relatives or friends consent to identification?** Consent might be implied by being publicly involved or pictured with the defendant.
- **Are they genuinely relevant to the story?** Do they have a role, either in the case, or through a close involvement with the defendant? Could they be personally or professionally affected by the case or its outcome?
- **Is mention in the public interest?** Is the relationship in the public domain, could the case affect the public life of the relative or friend?
- **Is the focus proportionate to the involvement of relative or friend?**
- **Has sufficient care been taken to protect vulnerable children?**

public interest had been served by the story being focused so predominantly on her. (*Lacey v Eastbourne Gazette: Report 44, 1998*).

Protecting children's welfare: The special protection given to children in sub-clause 9ii is a continuation of the spirit of the Clause 6 provisions and amounts to a duty of care aimed at preventing them from becoming further damaged, or their welfare affected, by their innocent involvement as witnesses or victims of crime.

A local newspaper, which named a 12-year-old witness to an attempted kidnap, breached the Code — even though it believed the girl's mother had authorised the disclosure. The mother said she had not realised that the reporter's telephone call was an interview or what would be published. The PCC ruled that the newspaper had not paid sufficient regard to the girl's vulnerability. (*Hall v Eastbourne Argus: Report 59/60, 2002*).

Legal freedom: The Code is clear (9ii) that this alone should not affect the right to report legal proceedings. However, in cases involving the identification of children or victims of sex crimes, the Code's requirements may be stiffer than those in law. (See Clause 6. Children and Clause 11: Victims of Sexual Assault).

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- *Sihota v Daily Express (Report 40, 1997)*.
- *Gloag v Perthshire Advertiser (Report 75, 2007)*.
- *Lacey v Eastbourne Gazette (Report 44, 1998)*.
- *Hall v Eastbourne Argus (Report 59/60, 2002)*.

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Section Four: News Gathering

CLANDESTINE DEVICES AND SUBTERFUGE

Undercover, or underhand?

Consideration of the public interest, a core theme through much of the Code, is seldom more important than here. There is often a fine line to be drawn at the point where genuine investigative journalism ceases and intrusive reporting begins. The public interest is crucial in judging whether the ends justify the means and deciding whether undercover was merely underhand.

The speed of technological innovation puts this area constantly into the public spotlight, with concerns over the misuse of private data and the use of inquiry agents or others to circumvent the Code — and the law.

THE CODE SAYS...

Clause Ten — Clandestine devices and subterfuge*

- 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 unauthorised 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.*

* A public interest exemption may be available: See Section Six

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the provenance of documents obtained in this way but could still be justified in publishing.

Public interest or fishing expedition? The PCC has consistently ruled that journalistic fishing expeditions — where, for example, hidden cameras or clandestine listening devices are used simply on the off-chance of discovering some wrong-doing — are not sufficient justification. There should be reasonable grounds for the inquiry.

The PCC censured a newspaper which put a writer into a London primary school for a week, posing as a would-be teacher, and ran the story of his experiences, including the shortcomings of the educational system. The newspaper's claim of a public interest justification failed because the school had been chosen at random. The exercise was condemned as a fishing expedition. (*Munro v Evening Standard: Report 54, 2001*).

In the same way, a complaint that a Sunday newspaper's undercover reporters filmed guests at a private party for people working on the TV soap *Emmerdale* was upheld after the PCC roundly rejected the newspaper's explanation that the journalists *might* have discovered people behaving in a way which would have justified publication in the public interest. That would have given newspapers *carte blanche* to intrude on any private gathering of high profile figures, said the Commission. (*Ryle v News of the World: Report 53, 2001*).

But the same newspaper did not make the same mistake when it investigated controversial lifestyle advisor Carole Caplin. This time it was acting on information that she was using her relationship with Tony and Cherie Blair to promote her business. Its reporters, posing as clients, recorded Ms Caplin speaking about the Blairs' private life, thus justifying the subterfuge.

Both the story and a picture taken secretly to authenticate it focused on Ms Caplin's professional, rather than personal, life and opinions, which the PCC ruled was justified in the public interest. Had the picture involved some gratuitous humiliation or intruded into

her private life, it might have been very different. (*Caplin v News of the World: Report 72, 2005*).

- The Code Committee has been quick to react, with the introduction of new measures to prevent abuse. They include wide ranging curbs on intrusive activity *unless it can be demonstrated to be in the wider public interest*. They cover:
- *Hacking into digitally-held private information;*
 - *The use of hidden cameras;*
 - *Interception of mobile phones, text messages and emails;*
 - *Bugging or electronic eavesdropping;*
 - *The use of agents or intermediaries to obtain material intended for publication.*

Additionally, the PCC and the newspaper and magazine industry have launched their own initiatives to ensure that both the Code and the law — such as the Data Protection Act and the Regulation of Investigatory Powers Act — are properly observed (*See Briefing*).

Seeking or finding? The Code's rules apply to pre-publication news gathering as much as to publication itself. It would be a breach simply to seek material that was against the Code, or to *engage in misrepresentation or subterfuge* — even if nothing was published as a result — unless there was a reasonable expectation that some legitimate public interest would be served.

However, there is a distinction to be made between information which a newspaper or magazine has sought or obtained itself, or has commissioned, and that which comes unsolicited — via a leak or from a whistleblower, perhaps. The newspaper might not know

her private life, it might have been very different. (*Caplin v News of the World: Report 72, 2005*).

So the existence of a public interest in a story does not automatically justify the indiscriminate use of clandestine methods. It has to be appropriate and proportionate to the public interest served.

There was obvious public interest in a story that a supermarket worker convicted of possessing pornographic images of children was making deliveries to a nursery school kitchen. But while a photograph of the man at the nursery was legitimate, secretly filmed footage of him at the supermarket shown on a tabloid newspaper's website was not.

The PCC upheld a complaint by the man's mother that the clandestine filming had breached the Code. The public interest element of the story related only to the nursery deliveries. There was no dispute that he worked at the supermarket, and the footage was not necessary to prove it. (*A woman v The Sun: Report 77, 2008*).

Identification: Even if subterfuge is not used, failure to identify oneself as a journalist could amount to misrepresentation. A woman reporter who visited Gill Faldo's home while she was out, did not reveal herself as a journalist and was let in by a housekeeper who spoke freely about Mrs Faldo.

The PCC ruled that the reporter had allowed a misleading impression to develop and obtained information from the housekeeper as a result. (*Faldo v The Sun: Report 53, 2001*).

The use of freelance journalists or agents does not minimise any breach. A freelance reporter, approaching a victim of a fraudster who duped women with offers of marriage, posed as a true life feature writer for women's magazines. In fact, he sold the story to a Sunday tabloid, which — while accepting it in good faith — became responsible for a series of breaches under the Code.

The Commission said there was no public interest defence for the

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deception and reminded editors that they must take care to ensure that contributors' material has been obtained in compliance with the Code. (*Noble v News of the World: Report 65, 2004*).

Unauthorised removal: A weekly newspaper reporter used a false identity to join a community website and download a picture of a policeman charged with possessing indecent images of children. The policeman complained that this was unauthorised removal of a photograph, obtained by subterfuge. He also claimed the newspaper's reporting and publication of his address had distressed his mother — with whom he lived — thus intruding into shock, in breach of Clause 5.

However, the PCC decided that downloading a picture that could be accessed simply by logging on to a public website did not amount to removal, and the relatively minor subterfuge used was justified in the public interest.

The Commission sympathised with the mother but said her vulnerability did not entitle her son to greater privacy than might be expected by others accused of a serious offence. (*Bretherick v County Times: Report 75, 2007*).

To joke or not to joke: The Code says misrepresentation and subterfuge can *generally* only be justified in the public interest, which leaves room for exceptions. This is designed to allow for harmless journalistic spoofs — such as April Fool stories — intended to amuse rather than mislead.

But when a tabloid ran a stunt 'signed confession' on Page One suggesting that Stan Collymore had admitted lying about being attacked by rugby players, the soccer star did not find it funny. While the inside page story made clear that he thought he was signing an autograph, rather than a confession invented by the paper, the front page was entirely misleading.

The PCC ruled that employing subterfuge to obtain a material that was used in a misleading way could not be in the public interest and

breached the Code. (*Collymore v The Sun: Report 68, 2004*).

Humour misfired again when a journalist rang companies asking if any of them would pay a retainer in return for favourable publicity, in order to run a light-hearted piece on their responses. The subsequent article said that a Railtrack spokeswoman had sounded shocked, but agreed to get back to the journalist.

The PCC upheld the complaint — ruling that, while humorous, the article might have left the impression that Railtrack had not entirely rejected the proposal. The press office had been misled and there was no public interest in doing so. (*Railtrack plc v The Independent: Report 57, 2002*).

Back door, or front: Another test is whether undercover methods are actually necessary, or whether the material could be obtained via the front door rather than the back. The Code is clear that generally subterfuge or misrepresentation should be used only when information in the public interest *cannot be obtained by other means*.

When a Sunday broadsheet ran a story that a Saudi-owned company printed the British National Party's publication *Voice of Freedom*, the firm complained that the newspaper's use of an undercover reporter posing as a potential client to confirm the information was unnecessary. The firm said that — when later approached formally — it had openly acknowledged the arrangement.

The PCC rejected the complaint. It said the degree of subterfuge was minor; the information was commercial and not private, and this was not a fishing expedition, but following up specific information about the company. The potential commercial embarrassment involved supported the newspaper's view that the firm would not have volunteered the information. (*HH Saudi Research v The Sunday Telegraph: Report 74, 2005*).

However, another Sunday newspaper's use of subterfuge to get a story about a gun expert was rejected because the PCC decided that the information could have been obtained by direct means: the

complainant had already been interviewed by a journalist on a related subject. (*A man v The Observer: Report 44, 1998*).

KEY RULINGS

- *Munro v Evening Standard* (Report 54, 2001).
- *Ryle v News of the World* (Report 53, 2001).
- *Caplin v News of the World* (Report 72, 2005).
- *A woman v The Sun* (Report 77, 2008).
- *Faldo v The Sun* (Report 53, 2001).
- *Noble v News of the World* (Report 65, 2004).
- *Bretherick v County Times* (Report 75, 2007).
- *Collymore v The Sun* (Report 68, 2004).
- *Railtrack plc v The Independent* (Report 57, 2002).
- *HH Saudi Research v The Sunday Telegraph* (Report 74, 2005).
- *A man v The Observer* (Report 44 1998).

KEY QUESTIONS

- Did the publication seek to obtain or publish the material? Genuinely unsolicited material may not be affected.
- If the publication used undercover methods was there reason to believe it was in the public interest? Fishing expeditions don't count.
- Was the clandestine activity related directly to the public interest?
- Could the material have been obtained by other means?
- Were agents or intermediaries used to acquire confidential information not in the public interest, without consent? If so it would breach both the Code and the law.

BRIEFING

Dangerously exposed

Investigative reporting in the public interest is in the very best tradition of British journalism. However, uncovering information that the public ought to know but others wish to remain secret is not easy. It sometimes requires the use of techniques that might otherwise be intrusive, or even illegal.

For that reason, the proper use of subterfuge and clandestine devices has always been tightly defined by the Code of Practice, which stresses the need for an appropriate public interest exemption for such activities.

Increasingly, the law covers these areas too, but it does not always offer the same public interest defences for journalists. And, while the Code assumes that compliance with the law would normally be required to uphold the highest standards of journalism, it is essential that journalists working in these areas are fully aware of both their legal and ethical obligations.

Two entirely separate developments underlined the dangers. First, the Information Commissioner suggested that journalists, or their agents, were routinely 'blagging' private information in breach of section 55 of the Data Protection Act. Then a reporter and an inquiry agent were convicted — under the Regulation of Investigatory Powers Act 2000 — of hacking into royal telephones.

As a result, the Code Committee, the PCC and the press industry collectively acted to improve training and tighten procedures in these areas.

The Code was amended to cover, specifically, hacking into digitally-held private information, and the use of agents to obtain private material by subterfuge. It means that without a public interest justification, the use by journalists — or their agents or intermediaries — of hidden cameras or bugging devices, computer hacking or of interception of mobile phones,

text messages or emails would all risk causing a breach of the Code. (See Page 53).

The PCC introduced comprehensive guidelines on the use of subterfuge and newsgathering. The Commission, in a survey following the royal phone bugging case, found no inadequacy in the Code of Practice, but made a series of recommendations of good practice. They included:

- Strengthening contractual obligations to follow both the Code and Data Protection Act;
- Improving internal training; and
- Introducing rigorous audit controls for cash payments, where these were unavoidable.

Industry bodies produced a Guidance Note specifically aimed at raising awareness among Britain's journalists of the importance of operating in compliance with section 55 of the Data Protection Act. (See Briefing).

This answers the key questions facing members of the press:

- What does the Act do?
- What happens if I breach the Act?
- Are there any journalistic exemptions or defences?
- What should I do if I am unsure about my actions?

At the same time, the PCC — which in 2005 produced guidelines for journalists on the Data Protection Act — stepped up its work on training journalists in the use of undercover newsgathering methods.

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BRIEFING

issued by the Press Standards Board of Finance on behalf of the newspaper and magazine industry

The Data Protection Act — and why it's important to you

The use of personal information about people stored on computer, or in some manual files, is regulated by the Data Protection Act 1998. As a journalist's job can often be about using such information it is vital that you are aware of the problems the DPA presents. Knowing about the Act, and in particular section 55 of that Act, which is to have an enhanced public interest defence following discussion between media representatives and the Ministry of Justice, is important because breaches of it can lead to prosecution in the Crown Court, a criminal record and the imposition of a heavy fine. The Q+As in this note are designed to tell you a little more. Please make sure you read it.

What does the Act do?

It provides legal controls over the collection, use and disclosure of personal data, mostly held electronically. It gives rights to an individual about whom information is stored. And it imposes legal obligations on a person or organisation looking after the data — known in the Act as the "data controller."

The Act prohibits the obtaining or disclosure of personal data without the consent of the data controller — a practice often known as "blagging". For example, it could be an offence to deceive an organisation into providing you with personal details about an individual taken from its computer records — such as ex-directory phone numbers — that they would not otherwise agree to supply. It could also be an offence to ask private investigators to do it for you, if you knew that they were going to obtain it by deception or other unlawful means.

You could also be breaching other laws, both criminal and civil, as well as the Editor's Code upheld by the Press Complaints Commission.

What happens if I breach the Act?

The Information Commissioner can take enforcement action, including criminal prosecution. Conviction is punishable by a fine. "Blagging" personal information and phone numbers from BT, account details from banks, and

income tax information from HMRC have already led to criminal convictions.

I sometimes need to get such personal information. In the Act are there any exemptions or defences for journalists from the criminal offences of unlawfully obtaining and disclosing information?

In particular reference to section 55, the Act recognises the importance of journalism and provides some special exemptions and defences to avoid conviction. But these are very limited. To escape breaching the Act's unlawful obtaining and disclosing offences you would, for instance, have to prove your actions were in the interests of national security, were preventing or detecting a crime, or were in the public interest in the particular circumstances.

When in force, the new defence will also protect you if you can show that you acted for journalistic, literary or artistic purposes, and in the reasonable belief that in the particular circumstances your action was justified as being in the public interest.

You would also avoid conviction if you could show that you were acting in accordance with the law or a court order, or in the reasonable belief that the data controller would have consented in the circumstances had he/she known, or was legally entitled to act as he/she did.

The Act sounds very wide ranging. What should I do if I am unsure about my own actions?

The Act is complicated. If you are in any doubt about whether something you are intending to do involving personal data breaches the Act, you must consult your in-house lawyers and a senior editor for advice. Failure to do this before you act could put you and your employer at risk of prosecution or other legal action.

How do I find out more?

You can find out more information from the Information Commissioner's website www.ica.gov.uk. Also use the link to the PCC's guidance note for editors on "The Data Protection Act, journalism and the Code".

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Section Four: News Gathering

VICTIMS OF SEXUAL ASSAULT

Danger in the detail

THE CODE SAYS...

Clause Eleven — Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

Preservation of the anonymity of victims of sexual assault is regarded as paramount under the Code and this clause is not subject to the defence that publication is in the public interest.

There are cases where a victim may waive his or her anonymity or where identification has been permitted by the courts, and the Code provides for these. But the PCC has made clear that it is unlikely to recognise the legitimacy of any other claims that the identity of a sex victim is already in the public domain.

Breaches are uncommon and almost always inadvertent. They fall into two main categories:

- Those caused by poor training, carelessness — or both; and
- Those resulting from the inclusion of some seemingly innocuous detail.

Lack of training can lead to the most blatant breaches. A woman victim of an office sex pest was distressed and embarrassed when a local newspaper report of the man's conviction broke all the rules and included her name, employment details and sexually explicit

evidence. The editor, also deeply embarrassed, apologised swiftly. Because of staff holidays, an inexperienced reporter had prepared the story and sub-editors had missed the error. But apologies and promises to tighten up procedures were not enough. The PCC censured the newspaper for a breach so serious that any remedial action would have been inadequate. (*A woman v Macclesfield Express: Report 74, 2006*).

Even when newspapers follow the fundamental rules about not naming sex assault victims without consent, risks arise if they are identifiable by some detail in the story.

For that reason the PCC has warned of the onerous burden this puts on editors and insists on 'scrupulous construction' of stories about sex crimes to ensure strict adherence to the Code.

Beware of the evidence: Assessing likelihood of identification is a potential minefield when reporting both the original crime and any subsequent trial. Details apparently insignificant to an outsider could be revealing to people living in a local community, who might otherwise not make the connection.

A report of a rape, which gave details of the victim's age, her health record and specific details of the attack, as well as the town where the offence occurred, was ruled by the PCC to have been likely to identify her. (*Thames Valley Police v The London Metro: Report 59, 2002*).

Adequate justification: As there is no public interest defence, it is

difficult to establish adequate justification unless a court lifts the automatic ban on identification of the victim, in the interests of justice, or the victim waives their rights to anonymity.

Even where they do — perhaps to warn others of dangers — that cannot necessarily be taken as permitting continuing publicity unless the victim maintains consent.

In those rare cases where courts permit the naming of sex victims, there are usually substantial grounds for doing so and these would constitute adequate justification under the Code.

Legal freedom to publish may appear relatively easy to establish, but it is not always enough under the Code, which applies in the spirit as well as the letter.

The PCC upheld a complaint against a newspaper whose report of a rape trial referred to evidence of what the victim was wearing at the time of the attack and to her hobby.

The combination of details was sufficient to identify her to local residents and — even though the evidence had been given in open court — the PCC held that the Code bound editors to rules over and above those stipulated by law and that anonymity should have been preserved. (*A woman v Clydebank Post: Report 41, 1998*).

In a similar case — involving an assault on an under-age girl — a weekly newspaper's court report reference to the victim's visible injury was sufficient to cause a breach, even though no third party had actually identified her.

The Commission ruled that while the mention of the injury might

have appeared insignificant, "it was a superfluous but specific detail which could have been sufficient to identify her, or confirm the suspicions of those who already knew something about the case." The editor could have taken greater care by omitting the reference. The complaint, and corresponding breaches in Clause 5 (Intrusion into Grief or Shock) and Clause 6 (Children), were upheld. (*A woman v Strathspey & Badenoch Herald: Report 75, 2007*).

KEY RULINGS

- *A woman v Macclesfield Express* (Report 74, 2006).
- *Thames Valley Police v London Metro* (Report 59, 2002).
- *A woman v Clydebank Post* (Report 41, 1998).
- *A woman v Strathspey & Badenoch Herald* (Report 75, 2007).

KEY QUESTIONS

- Is the material published likely to contribute to identification?
- Is there adequate justification?
- Is it legal to publish — and is that enough under the Code?

Section Four: News Gathering

DISCRIMINATION

Personal and prejudiced

THE CODE SAYS...

Clause Twelve — Discrimination

- i) *The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.*
- ii) *Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.*

The aim of Clause 12 is to protect individuals from discriminatory coverage and no public interest defence is available. However, the Code does not cover generalised remarks about groups or categories of people, which would involve subjective views, often based on political correctness or taste, and be difficult to adjudicate upon without infringing the freedom of expression of others.

As always, the Code is striking a balance between the rights of the public to freedom of speech and the rights of the individual — in this case not to face personal discriminatory abuse. Freedom of expression must embrace the right to hold views that others might find distasteful and sometimes offensive.

The Code Committee's approach has always been that, in a free

society with a diverse press, subjective issues of taste and decency should be a matter for editors' discretion. And with newspapers and magazines constantly answerable in the court of public opinion, there is ample evidence that editors exercise that discretion on a daily basis.

For example, although British newspapers and magazines were free under the Code to publish the controversial Danish cartoons of the Prophet Mohammed, none chose to do so. It was the exercise of discretionary editorial judgment.

By the same standard, a national newspaper columnist was free to suggest, wryly, that piano wire should be strung across country lanes to decapitate cyclists. His comments caused widespread outrage, but did not breach the Code because they were not aimed at any named individuals. However, faced with the wrath of hundreds of readers, the writer voluntarily apologised for any unintended offence caused.

The PCC has always upheld the press's right to make robust, generalised remarks, when clearly presented as comment, in the name of free speech.

However, the same does not apply to pejorative or prejudicial attacks directed at named individuals. So when a lad's mag published a sticker poking fun at the disabled son of Katie Price — the glamour model Jordan — the PCC received 143 complaints, including from Ms Price and her husband, Peter Andre. The issue

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BRIEFING

Unsporting reporting

The PCC has issued cautionary advice to the press stressing the importance of not allowing patriotic fervour to get out of hand when covering high profile international sporting events.

After widespread criticism of press coverage of the Euro 96 soccer tournament — where the England v Germany match had been represented as a re-run of World War Two — Lord Wakeham, then PCC chairman, sounded a warning ahead of the 1998 Soccer World Cup.

The press had a responsibility not to encourage British sports fans to behave in a disorderly manner, he said. This covered not just comment about other nations' competitors, but also practical advice about how fans should participate in, or seek to attend, events.

It was part of the press's role to reflect robustly and in partisan fashion the nation's support for British sportsmen and women representing their country, but they should do nothing to —

- incite violence, disorder or other unlawful behaviour, or to —
- Foster xenophobia that could contribute directly to such incitement.

Lord Wakeham's warning has been widely credited with the toning down of coverage since then and avoiding repetitions of the sort of jingoistic journalism which had been a feature of international events before 1998.

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was swiftly resolved when the magazine published an apology online and in the magazine and made a donation to charity. (*Price and Andre v Heat magazine: Report 76, 2007*).

Individuals only: One of the strengths of the Code is the protection that it gives specifically to personally affected individuals. But inevitably that means that some third party complaints cannot succeed. The PCC will not proceed with a third-party complaint without the subject's consent.

Although the Code does not cover complaints about groups of people, where the main objection is often against the tenor of reporting, the PCC sometimes addresses these wider issues via rulings on individual cases and guidance notes.

It has made clear that even if there may be no claim under the discrimination clauses, there may be a case under other sections of the Code, such as Accuracy — if statements are incorrect or comment is passed off as fact.

Its guidance note on asylum seekers, for example, (*See Briefing panel: Asylum Seekers*) suggested it was inaccurate to describe people as *illegal asylum seekers*. They could not be illegal unless they had been refused asylum — which, by definition, asylum seekers had not. It has suggested some stories risked breaching the Code's privacy rules, and publication in other cases could involve a threat to children's welfare.

The Commission has also warned against the gratuitous use of insensitive language — such as referring to mental health patients (*See Briefing panel: Mental Health*) as *basket-cases*, *nutters* or *psychos* — which could be discriminatory or inaccurate.

Prejudicial or pejorative: Not all references to an individual's race, colour, religion, gender, sexual orientation, or to any physical or mental illness or disability, need to be avoided under the Code. To be in breach of sub-clause 12i, they must not only be prejudicial or pejorative — but also in a discriminatory manner.

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KEY QUESTIONS

- **Is the reference to an individual?** This would normally mean a named or readily identifiable person.
- **Is the reference prejudicial or pejorative in a discriminatory way?** Sub-clause 12i.
- **Is the reference genuinely relevant?** Sub-Clause 12ii.

For example, a satirical cartoon depicting Israeli premier Ariel Sharon eating a baby — while undeniably pejorative — was cleared by the PCC of being racist as it referred to him in his capacity as a head of government, rather than as a Jew. (*Sharon v The Independent: Report 62, 2003*).

Genuine relevance: In sub-clause 12ii, the restriction relates only to details of race, colour, religion, sexual orientation, or physical or mental illness or disability, which are not genuinely relevant to the story. It does *not* cover the individual's sex, mention of which is not itself discriminatory.

The PCC has held that it was relevant to mention, factually and non-pejoratively, the sexuality of a pregnant lesbian in the context of a story that included comparisons with parenting by other same-sex couples. (*BBC Scotland v Scottish News of the World: Report 59/60, 2002*).

It was, however, not relevant to give details of religion in an interview with a tie-manufacturer, especially in terms which might have appeared pejorative. (*Bishko v Evening Standard: Report 40, 1997*).

Gender recognition: A Code change to cover discriminatory reporting of transgender people was introduced in 2005, after the passing of the Gender Recognition Act. In Clause 12i the word 'gender' was substituted for 'sex'. This meant that individuals undergoing — or who had undergone — treatment for gender

reassignment were included in the categories offered protection from prejudicial or pejorative references.

The Code Committee decided against a change to the accompanying subclause 12ii — which covers publication of discriminatory details that aren't relevant to a story — because trans individuals, having suffered from gender dysphoria, would be protected under existing rules covering physical illness.

KEY RULINGS

- *Price and Andre v Heat magazine (Report 76, 2007)*.
- *Sharon v The Independent (Report 62, 2003)*.
- *BBC Scotland v Scottish News of the World (Report 59/60, 2002)*.
- *Bishko v Evening Standard (Report 40, 1997)*.

BRIEFING

Complaints about websites

Online versions of newspapers and magazines have been covered by the Editors' Code since 1997. But in a PressBoF statement in 2007, covering online content and user-generated material, the remit was extended to embrace audio-visual images. It means that UK newspaper and magazine websites are subject to a form of regulation rarely available in online media internationally.

The emerging pattern of complaints in this rapidly developing area has been set out in the PCC's policy note on *Online Complaints*. The trend is similar to that of print versions, with many complaints relating to issues outside the Code, such as taste and decency. These are often resolved by the websites' take-down procedures.

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 ensure it would comply with the Code in its current form, or modified to remove intrusive elements that could not be justified in the public interest — e.g. by pixelating faces — or not at all. 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 from such sites published without consent can raise privacy issues. The PCC will take into account a variety of factors under the Code: 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.

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.

Section Four: News Gathering

FINANCIAL JOURNALISM

The market rules

THE CODE SAYS...

Clause Thirteen — Financial journalism

- i) *Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.*
- ii) *They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.*
- iii) *They 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.*

It is notable that even in a world of increasing corporate accountability, the Clause 13 rules on financial reporting have remained unchanged since 1991. They have stood the test of time well and been recognised by the Government and European Union as an acceptable Code within the field of financial services regulation.

They have survived one major test, when the PCC launched its own investigation into the "Mirrorgate" scandal, where two business journalists had been tipping shares that they had previously bought — in clear contravention of the rules.

The journalists concerned were dismissed, as their contracts of employment required them to comply with the Code. The Editor,

while cleared of personal involvement in the scandal, was found guilty of breaching the Code by not enforcing it rigorously and had to publish a damning 4,000-word adjudication across pages 6-7 of the paper.

The PCC helped produce a Best Practice Guidance Note on financial journalism (See Briefing panel: *The Code and the Law*) which enhances the Code's provisions, and which has been used as a basis for in-house regulation. An essential element is its emphasis on the spirit of the Code as set out in the Preamble, which means that it does not rely on narrow definitions, which would create instant loopholes.

KEY RULING

- PCC and *Mirror City Slickers* (Report 50, 2000).

KEY QUESTION

One commonsense test which underpins the financial journalism rules:

- **Would it survive the Private Eye test?** If it would damage the integrity of the journalist or his newspaper, if his or her actions were reported in *Private Eye* — then don't do it.

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Section Four: News Gathering

CONFIDENTIAL SOURCES

A matter of trust

THE CODE SAYS...

Clause Fourteen — Confidential Sources

Journalists have a moral obligation to protect confidential sources of information.

The obligation on journalists to protect their confidential sources is deeply ingrained in the culture of British journalism. Perhaps for that reason, this clause, one of the shortest in the Code, rarely attracts complaints.

The PCC usually considers cases of alleged breach of agreements of confidentiality only when another Code issue is involved. However, the Commission has issued specific guidance concerning confidential sources:

- The clause should not be interpreted as preventing the publication of confidential information.
- Journalists should take special care when dealing with members of the public unversed in media matters who may not appreciate that at the start of a conversation they should make clear that it is non-attributable.
- A journalist who induces a member of the public to talk off the record, and then publishes the remarks on the record could be in breach under the Code.
- The obligation of confidence should not be used by

journalists as a shield to defend inaccurate reporting. Wherever possible, efforts should be made to obtain on-the-record corroboration of a story from unnamed sources.

- If a complaint hinged on material from an unnamed source, the PCC would expect the newspaper either to produce corroborative material to substantiate the allegations — or to demonstrate that the complainant had a suitable opportunity to comment on them.
- There would be a particular responsibility on editors to give a reasonable opportunity of reply to complainants who felt they were victim of allegations from an unnamed source.

Blowing cover: On the rare occasions that complaints arise, they are unlikely to be deliberate, but due to carelessness or inexperience. However, that is no excuse under the Code.

An ex-employee of the Government's Rural Payments Agency complained that an e-mail that she had sent to an evening newspaper, criticising her former bosses, was forwarded to the RPA for comment. She had asked for anonymity, but her details were not deleted.

The paper apologised, explaining that it was a mistake by a trainee, who had been disciplined.

The PCC ruled that this was a serious and thoughtless error that could not pass without censure. The complaint was

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upheld. (*A woman v Evening Chronicle, Newcastle; Report 73, 2006*).

The cover of another employee was similarly blown when a newspaper quoted him anonymously in a story about plans to close the mortuary where he worked. The paper described him as a mortuary worker. But the establishment had only two employees and the other one was his boss. So he was quickly identified, and his comments to the newspaper earned him the sacked for gross misconduct.

The editor said it had not realised there were only two employees. The PCC ruled that the onus was on the newspaper to establish the correct form of words to protect the source. (*A man v Lancashire Telegraph; Report 76, 2007*).

KEY RULINGS:

- Guidance Note on Court Reporting
- *A woman v Evening Chronicle, Newcastle* (Report 73, 2006).
- *A man v Lancashire Telegraph* (Report 76, 2007).

KEY QUESTIONS

- Is the source confidential?
- Could an unnamed source be identified?

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Section Five: Payments for information

WITNESS PAYMENTS IN CRIMINAL TRIALS, PAYMENTS TO CRIMINALS

To pay, or not to pay

Payments for information or pictures are normally not affected by the Code. They are matters for the editor's discretion, except where they might threaten the integrity of the judicial process — which the Code committee recognises as paramount — or where they appear to encourage or condone crime.

It therefore imposes strict rules on payments to:

- Witnesses in criminal trials (Clause 15) to avoid the risk of their evidence becoming, or appearing, tainted in the eyes of a jury (civil cases are not affected, even where a jury is involved); and to —
- Criminals or their family or associates (Clause 16), so that these

people are not effectively glamorising, glorifying or profiting from crime.

While payments in either instance are relatively rare, they usually occur in controversial or high-profile cases, which means this is an area where the PCC has sometimes instituted its own investigations without a complaint being received. However, there is widespread agreement that there are occasions where such payments are necessary in the public interest — as when helping to expose or detect crime, for example.

The risks and the need for payment have to be weighed together and in Clauses 15 and 16 the Code sets out to balance one with the other.

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THE CODE SAYS...

Clause Fifteen — Witness payments in criminal trials

- (i) *No payment or offer of payment to a witness — or any person who may reasonably be expected to be called as a witness — should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.*
- (ii)* *Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.*
- (iii)* *Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.*

* A public interest exemption may be available: See Section Six

In 2002, the Lord Chancellor's department announced a plan to introduce laws covering witness payments in criminal trials that would have exposed the media and journalists to the risk of fines and imprisonment.

Within months, the Editors' Code Committee persuaded the Government that changes to the self-regulatory Code would be more effective, and the legislative threat was dropped. The resulting Code revisions, introduced in 2003, severely limited the circumstances in which payments could be made.

The Code effectively creates two categories of restriction on payments or offers to witnesses or potential witnesses — one a qualified ban where payments may be defended in the public interest, and the other where there should be no payment in any circumstance: a total ban. The deciding factor is timing.

The total ban applies once proceedings are deemed active, using the threshold of the Contempt Court Act of 1981. Effectively, this is when an *arrest has been made, or an arrest warrant or summons issued, or a person is charged.*

It means there can be no payment or offer to anyone who is, or is likely to be called as, a witness. The total prohibition lasts until the question of guilt ceases to be a legal issue — such as when the trial is over, or the suspect is either freed unconditionally or has entered a guilty plea.

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The qualified ban applies where proceedings may not yet be active — but are likely and foreseeable. Here no payments or offers can be made — *unless there is a public interest in the information being published and an over-riding need to make a payment for this to be done.*

This begs several questions for editors.

Active proceedings: The first question to resolve is whether proceedings are active. If the answer is Yes, then the principal remaining issue under Clause 15i, when considering making offers of payment, is: *Could the potential payee reasonably be expected to be called as a witness?* If so, payment is prohibited.

In some cases it might be obvious that the prospective payee is a likely witness. In others, less so. In the absence of reliable police or other guidance, editors would need to make their own judgment — usually with legal advice — on what might be considered reasonable, before approaches were made.

Proceedings not yet active: If the judgment is that proceedings are not active, then there is the possibility of payment in the public interest. But the situation is not necessarily clear-cut.

Restrictions apply only if proceedings are *likely and foreseeable* — and if the potential payee *may be reasonably expected to be a witness*. It is again a crucial judgment. If the answer to either question is No, then restrictions do not apply under the Code.

However, if the answer to both questions is Yes, then a new set of conditions kicks in to comply with Clause 15ii:

The public interest: For now the only basis upon which a payment or offer may be made is that the information concerned *ought demonstrably to be published in the public interest* and that there is an *over-riding need to make or promise payment for this to be done.*

The editor would need to demonstrate both *how the public interest would be served* and why the necessity for payment was

over-riding, a particularly high threshold under the Code. But the responsibility does not end there.

Influencing witnesses: Editors have a duty of care not to allow their financial dealings to lead witnesses to change their testimony. The risks include witnesses withholding information in an attempt to preserve exclusivity or for other reasons, or exaggerating evidence to talk up the value of their story. Editors also need to be alive to the danger of journalists — intentionally or not — coaching or rehearsing witnesses or introducing to them extraneous information, which might later colour their evidence.

Conditional payments: Potentially the most dangerous deal, in terms of tainting witnesses, is one in which payment is conditional on a guilty or not guilty verdict. The PCC has made clear that any deal linked to the outcome of the trial would be strictly prohibited as it might affect the witness's evidence or credibility.

Finally, if all other hurdles have been cleared, there is one further obligation on editors.

Disclosure: Once an editor is satisfied that the Code's requirements can be met, and payment or offer of payment is made, the payee should be told that *if they are cited to give evidence*, the deal must be disclosed to the prosecution and defence. This transparency is a deliberate safeguard against miscarriages of justice. It puts extra onus on potential witnesses to tell the truth, since they know they are likely to be cross-examined on the payment.

The PCC has laid down guidelines for compliance. It advises that:

- The payee should be informed in writing that, *should he or she be cited to give evidence*, the press is bound under the Code to disclose the deal to the relevant authorities.
- The prosecution and defence should be notified promptly, with full details of a payment or contract given in writing. The requirement to inform both sides may be satisfied, where appropriate, by

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KEY QUESTIONS

- **Are proceedings active?** Has there been an arrest, a warrant or summons issued, or charge? If so, there is a *total ban* on payments to witnesses or potential witnesses until the case is over.
- **If not active, are proceedings likely and foreseeable?** If not, restrictions don't apply. If they are foreseeable, then —
- **Could the potential payee reasonably be expected to be a witness?** If not, no restrictions apply. If he/she is a potential witness, then —
- **Is there a clear need to publish information in the public interest?** This would have to be demonstrable in order to proceed.
- **Is there an over-riding need for payment?** Would it be possible to obtain and publish the information in any other way?
- **Could the deal influence the evidence the potential witnesses give?**
- **Is payment conditional on the verdict?** This is totally prohibited.
- **Has the payee been told the deal will be disclosed to the court?**

notification to the prosecution for onward transmission to the defence.

There has been only one adjudication since the new rules were introduced, and it underlined the importance of timing of approaches. A prosecution witness in the trial of Kate Knight — who was later jailed for 30 years for attempting to murder her husband by lacing his food with anti-freeze — told the court that during an overnight break in her testimony she had been approached by a magazine offering a fee for an interview, once the trial was over. Although she had received other requests for an interview this was the only one that mentioned a fee.

The PCC launched its own investigation — as it often does with 'victimless' cases — and although there had been no impact on the trial, censured the magazine for its premature approach. The Commission said it was never acceptable for witnesses to be approached with offers of payment while giving evidence. (*PCC investigation, Full House Magazine: Report 73, 2008*).

Lessons from the past: Only one complaint had been upheld under the previous rules — revised in the wake of the Rosemary West trial in 1996 — and that was an inadvertent breach relating to the case of Gary Glitter.

An ambiguity in the contract in 1997 between the *News of the World* and a woman who had previously claimed to have been an underage partner of the pop singer appeared to suggest the payment was conditional on the outcome of the trial. In fact, at the time of the contract, the woman was neither a witness nor potential witness in the case. (*Taylor v News of the World, PCC Report 48, 1999*.)

The PCC launched an investigation into the case of Army Gehring, a former teacher accused of intimate liaisons with pupils in 2002. It found that although payments had been made to former pupils, all complied with the requirements of the then Code and none was conditional on the outcome of the trial. (*A reader v News of the World, The Mail on Sunday, Daily Mail, Sunday People, Sunday Mirror: Report 57, 2002*).

However, the PCC has indicated that a newspaper's payment to an informant who was a potential witness in the case of an alleged plot to kidnap Victoria Beckham, which had not breached the Code in 2002, would probably have been a breach under the new rules. (*PCC investigation into News of the World: Report 63, 2003*).

KEY RULINGS

Under the rules introduced in 2003:

- PCC investigation into *Full House* magazine (Report 73, 2008).

Relevant earlier rulings:

- *Taylor v News of the World* (Report 48, 1999).
- *A reader v News of the World, The Mail on Sunday, Daily Mail, Sunday People, Sunday Mirror* (Report 57, 2002).
- PCC investigation into *News of the World* (Report 63, 2003).



Section Five: Payments for Information

PAYMENTS TO CRIMINALS

Criminals: stories, not glories

The Code, from its inception in 1991, has taken a tough line on payments to criminals, with a blanket ban on deals unless they could be justified in the public interest. While that approach reflected public concerns over criminals being seen to profit from their actions, or glamorising or glorifying crime, the Code has never assumed *all* such payments to be inherently undesirable.

PCC rulings had made clear that a lifetime ban would be unfair on reformed criminals or those whose convictions were spent. It was also a potential violation of their human rights.

In 2003, the PCC produced guidance on the sort of cases most likely to breach the rule on payments to criminals — and those which generally would not.

THE CODE SAYS...

Clause Sixteen — Payments to criminals*

(i) *Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates — who may include family, friends and colleagues.*

(ii) *Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.*

* A public interest exemption may be available. See Section Six

Least likely offenders included:

- Book serialisations, which were anyway in the public domain;
- Cases where no direct payment was made to a criminal or associate — i.e. when a payment was made to a charity to secure the material;
- Payments where publication was in the public interest;
- Articles which made significant new information available to the public.

Most likely offenders included:

- Articles glorifying crime — no complaint about an article that did so had ever been rejected;
- Payment for kiss-and-tell stories about romance or sex;
- Payments for irrelevant gossip, which intrudes on the privacy of others.

The Code Committee reflected these realities by introducing in June 2004 an additional defence, permitting payment to a criminal without the necessity for it to be in the public interest — but only if the material published *did not seek to exploit a particular crime, or glorify or glamorise crime in general*.

Exploitation and glamorising crime: The burden would be on the editor to prove that there was genuinely no intentional exploitation of a particular crime or of glamorising or glorifying crime generally, and demonstrate that it was not reasonable to expect that to be the outcome.

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Was a criminal or associate paid? Friends, neighbours and family members fall within this group. A picture of a criminal bought from her boyfriend has been held to breach the Code.

To justify payment, the publication would need to be able to satisfy the PCC on each of these counts. If it felt confident of doing so it could proceed, *even if no public interest justification existed.*

In 2006, a magazine article headlined *Why I Slept With My Own Son* was the first to fail both these tests. A mother convicted of unlawful sex with her teenage son had described the offence in the article and said the only thing she regretted was being caught. That was evidence of exploiting a particular crime and justifying it.

She and her son were paid by an agency, which was paid by the magazine. The PCC ruled that while the mother had a right to express her view, there was no conceivable public interest in her being paid. (*Moffat MP v Chat magazine: Report 73, 2006*)

But when a Sunday newspaper paid £460 to a petty criminal who claimed — falsely — to have served community service at the same time as the then Lord Chief Justice conducted undercover research into non-custodial sentences, it was cleared of a breach.

The Commission ruled that, while some people might object to

payment to someone with a criminal record, he was not exploiting a particular crime, nor did he glorify crime in general. Expressing honest views about experiences on a community service scheme was not sufficient to engage the terms of the Code. Had it done so, it would be unduly restrictive of stories about prison life from the perspective of a criminal. (*Thames Valley Probation Area v Mail on Sunday: Report 74, 2007*)

The public interest defence remains in Clause 16ii for relevant cases — and can be used with Clause 16i or alone — but has been revised to cover both the act of payment to criminals and the subsequent publication.

This means a newspaper which pays a criminal, in the genuine and reasonable belief that it would be the only way to elicit information of public interest, is covered. However if, once the deal is done, no such material of public interest emerges, nothing should be published as a result.

The rule was tightened in June 2004 after a Scottish paper (*McInnes v Daily Record: Report 62, 2003*) paid a convicted criminal for an interview, expecting him to reveal vital, and undisclosed, details of the crime. But he did not — and the paper published the interview, regardless. It was not a breach then. It would be now. It is a further safeguard against fishing expeditions, which are not allowed under the Code and which now — if fruitless — could also prove expensive.

KEY RULINGS

- *Moffat MP v Chat magazine* (Report 73, 2006).
- *Thames Valley Probation Area v Mail on Sunday* (Report 74, 2007).
- *McInnes v Daily Record* (Report 62, 2003).

KEY QUESTIONS

In clause 16i:

- Does this information seek to exploit a particular crime?
- Does it seek to glamorise or glorify crime in general?

In Clause 16ii, the test ahead of a payment or offer:

- Is there good reason to believe payment will elicit material which ought to be published in the public interest?
- Could it have been obtained in any other way?

The test after payment or offer and ahead of publication:

- Is the material which has emerged genuinely in the public interest? If not, publication should be cancelled — even if payment has been made.

Section Six: The Public Interest

Private lives and public interest

If the Code of Practice lies at the heart of self-regulation of the press, then serving the public interest lies at the heart of the Code, and of the very best of journalism, synthesising its democratic role

THE CODE SAYS...

The Public Interest

There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.

1. The public interest includes, but is not confined to:
 - i) Detecting or exposing crime or serious impropriety.
 - ii) Protecting public health and safety.
 - iii) Preventing the public from being misled by an action or statement of an individual or organisation.
2. There is a public interest in freedom of expression itself.
3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.
4. The PCC will consider the extent to which material is already in the public domain, or will become so.
5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

and providing its moral base. Yet the public interest is impossible to define. So the Code does not attempt to do so. Instead, it provides a flavour of what it regards as the public interest — a non-exhaustive list that attempts to reflect the values of the society the British press serves:

- Detection or exposure of crime or serious impropriety;
- Protection of public health and safety;
- Prevention of the public from being misled;
- Upholding freedom of expression.

The Code also makes clear that if the information is already available in the public domain — or likely to be so — that too is a factor.

The list could go on, but it deliberately does not. The spirit of the Code, set out in the Preamble, requires that these areas should not be interpreted too widely; the Code does not work, for example, on the basis that the public interest is essentially whatever the public is interested in. But nor should the list be interpreted too narrowly, so as to discourage or prevent investigative journalism or exposure of serious wrongdoing, for instance. That would itself be against the public interest.

It was to protect such investigative journalism that the Code's test for invoking the public interest was changed in October 2009. Previously, editors were required to *demonstrate fully how the public interest was served*. But this did not specifically allow for publication or investigative activity that genuinely appeared to be in the public interest, even where none actually emerged.

So the Code committee introduced the test that editors would

need to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.

Under the spirit of the Code, the PCC would always have been likely to take into consideration whether such activity or publication would have seemed reasonable. Now that has been codified. It means editors must convince the PCC that their belief that their action was in the public interest, was genuine and based on reasonable grounds. It is a stiff test. Fishing expeditions, or pretexts for them, won't do.

The Public Interest defence is available for all or part of nine of the 16 clauses and is marked by an asterisk.

The areas where it does NOT apply are:

Accuracy and opportunity to reply — it would not be in the public interest to fail to take care to avoid inaccuracy, or to deny a reasonable request to put something right;

Intrusion into grief or shock and victims of sexual assault — it could not be in the public interest not to show due sensitivity at such times;

Discrimination against individuals — which the Code assumes could not be in the public interest;

Financial journalism, confidential sources — which are clauses, by their nature, designed to uphold the public interest.

Payments to witnesses once proceedings are active — when any possible risk to the judicial process would be potentially at its most potent.

The areas where the public interest exemption can apply:

In judging publications' claims that otherwise prohibited information or methods were justifiable in the public interest, both the Code and

the PCC set high thresholds. The burden is on the editor to demonstrate fully how the public interest was served.

Protecting children: That burden is particularly onerous in cases involving children under 16, where the Code insists that it would take an exceptional public interest to over-ride the normally paramount interests of the child.

It is a very tough test. A newspaper which identified schoolboys expelled for fighting and racial abuse (*Colgan v Manchester Evening News: Report 43, 1998*) and another which named a schoolgirl whose mother committed suicide (*Brown v Salisbury Journal: Report 46, 1999*) were each found to be in breach. So far, the Commission has accepted no such claim of exceptional justification.

To succeed, any justification of the public interest must be clearly primary and not just an excuse to try to sneak a story in under the Code radar. The PCC will usually require evidence that any supporting pictures and personal details were necessary elements to the main thrust of the story.

Exposing crime: Use of a private photograph was thus accepted as an essential part of a Sunday newspaper's exposure of a plot where an individual offered an undercover reporter money to kill his mistress. A complaint of intrusion was rejected. (*Khare v News of the World: Report 48, 1999*).

The father of a 15-year-old boy who had posted on YouTube images of himself and other teenagers firebombing a freight train, complained when the video was uploaded onto a local newspaper website. He said the interests of the youths outweighed any public interest in showing their faces.

The PCC disagreed. It ruled that material showing anti-social or criminal acts committed in a public place by individuals over the age of criminal responsibility could not be considered private. The Code should not shield the perpetrators from public scrutiny. Also, the complainant's son had put the material into the public domain

voluntarily. The complaint was rejected. (*A man v Northwich Guardian: Report 75, 2007*).

Protecting public health and safety: A reporter used subterfuge to see CCTV pictures which substantiated claims that a dying man had been badly treated by a hospital. That was ruled by the PCC to be in the public interest. (*Northwick Park Hospital v Evening Standard: Report 57, 2002*).

So too was the naming, without consent, of a teacher at the centre of a school tuberculosis scare. Her complaint against an evening newspaper was rejected because she was widely known to parents and pupils as the source of the TB outbreak and as such some otherwise private matters would become a necessary part of the public debate. (*A woman v The News, Portsmouth: Report 66, 2004*).

However, it was not appropriate for a local newspaper to identify a boy admitted to hospital suffering from meningitis. The legitimate public interest in alerting the local community to the case could have been met without disclosing the name — especially as he was a child — said the Commission. (*King v Reading Evening Post: Report 37, 1997*).

Preventing the public from being misled: The PCC has held that it is fair to expose hypocrisy in public life by contrasting private behaviour and public pronouncements and responsibility. A Sunday newspaper's use of subterfuge to obtain photographs of a Nazi shrine at the home of a policewoman married to a member of the British National Party, was supported by the PCC. (*Daniels v The Sunday Telegraph: Report 65, 2004*).

It was justifiable to put into the public domain the question of whether the wife's specific police role as an investigator of racially-motivated crimes was compatible with living in a home containing Nazi memorabilia, said the Commission.

But any intrusion needs to be in reasonable proportion to the

exposure. The PCC regards bugging private telephone conversations and publishing transcripts as one of the most serious forms of physical intrusion into privacy — and therefore sets a particularly stiff public interest test to justify it.

A national daily investigating the Cheriegate Affair — where the Prime Minister's wife used Peter Foster as a go-between to buy property in Bristol — failed that test. It published transcripts of intercepted calls between Foster and his mother, claiming they clarified events surrounding Cheriegate.

The PCC said no significant new information had been provided and upheld Mr Foster's complaint. Not to have done so would have exposed anyone involved in high profile stories to unjustified physical intrusion. (*Foster v The Sun: Report 52, 2000*).

The public's right to information: The twin rights of freedom of speech and the public's right to know are enshrined in both the Preamble to the Code and the Public Interest defences.

The Commission, in a landmark decision, ruled that a serialisation of Gitta Sereny's book about child-killer Mary Bell was not a breach of the Code's rules on payments to criminals and their associates because it had ensured that important information was made widely available. If no payment had been made, the wider public would have been deprived of information that was in the public interest. (*The Times and Mary Bell serialisation: Report 43, 1998*).

The same was not true, however, for an article by Victoria Aitken about her father's crimes. The PCC said the piece added nothing in the public interest, but merely glorified Jonathan Aitken — in a manner that breached the Code. (*Barlow v Daily Telegraph: Report 47, 1999*).

The public's right to information is vital in covering major events such as terrorist attacks or natural disasters — and may sometimes justify publication of graphic images of the victims without consent. But the same is not usually true of a routine car accident and

KEY QUESTIONS

- Was it *reasonable* to believe that publication or journalistic activity would have served the public interest? The PCC would require a full explanation showing that the grounds were genuine and sound in the circumstances.
- If clandestine methods, subterfuge, harassment or payments to criminals or witnesses are involved, could the information have been obtained by other means?
- Is the information in the public domain, or likely to become so?
- If children are involved, is the public interest in publication exceptional?

caution is needed when publishing images of people receiving medical treatment, even in public places.

So when a local newspaper website uploaded pictures of an elderly crash victim being treated at the scene, before her condition was known, or her family told, the PCC ruled that there was insufficient public interest to override her privacy.

However, the newspaper's speedy action in taking down the material and apologising, was a proportionate remedy. (*Kirkland v Wiltshire Gazette*: Report 77, 2008).

Upholding freedom of expression: Council officers using a 15-year-old boy in an undercover 'sting' operation to curb alcohol sales to underage customers complained when an angry shopkeeper's CCTV image of him appeared in a local paper. They claimed this infringed his privacy and rights as a child under the Code. But the shopkeeper, whose staff sold the boy alcohol, wanted to demonstrate publicly that he looked at least 18.

The PCC rejected the complaint. It said that the boy's welfare wasn't involved and the story of possible entrapment rested entirely on his physical appearance.

To have found that the picture breached the Code would have

interfered with the shopkeeper's ability to conduct his arguments freely in public — and could have been incompatible with his rights to free expression. (*Cornwall County Council v The Packet, Falmouth*: Report 74, 2007).

Could the information have been obtained by other means? A key test of the validity of the public interest defence is whether the information could have been obtained without intrusion or other breach. This applies particularly in cases involving clandestine listening devices, subterfuge, harassment, or payments to witnesses or criminals.

KEY RULINGS

- *Coigan v Manchester Evening News* (Report 43, 1998).
- *Brown v Salisbury Journal* (Report 46, 1999).
- *Khare v News of the World* (Report 48, 1999).
- *A man v Northwich Guardian* (Report 75, 2007).
- *Northwick Park Hospital v Evening Standard* (Report 57, 2002).
- *A woman v The News, Portsmouth* (Report 66, 2004).
- *King v Reading Evening Post* (Report 37, 1997).
- *Daniels v The Sunday Telegraph* (Report 65, 2004).
- *Foster v The Sun* (Report 52, 2000).
- *The Times and Mary Bell* serialisation (Report 43, 1998).
- *Barlow v Daily Telegraph* (Report 47, 1999).
- *Kirkland v Wiltshire Gazette* (Report 77, 2008).
- *Cornwall County Council v The Packet, Falmouth* (Report 74, 2007).

The Code in full

Newspaper and Magazine Publishing in the UK

Editors' Code of Practice 2007

The Press Complaints Commission is charged with enforcing the following Code of Practice which was framed by the newspaper and periodical industry and was ratified by the PCC on 13 June 2007 to include changes which took effect from 1 August 2007.

THE CODE

All members of the press have a duty to maintain the highest professional standards. 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. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.

It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary

interference with freedom of expression or prevents publication in the public interest.

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, in printed and online versions of publications.

Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.

1 Accuracy

- i) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.
- ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and — where appropriate — an apology published.
- iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

2 Opportunity to reply

A fair opportunity for reply to inaccuracies must be given when reasonably called for.

3 *Privacy

- i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.
- iii) It is unacceptable to photograph individuals in private places without their consent.

Note — Private places are public or private property where there is a reasonable expectation of privacy.

4 *Harassment

- i) Journalists must not engage in intimidation, harassment or persistent pursuit.

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

- ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.
- iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

5 Intrusion into grief or shock

- i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.
- *ii) When reporting suicide, care should be taken to avoid excessive detail about the method used.

6 *Children

- i) Young people should be free to complete their time at school without unnecessary intrusion.
- ii) A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.
- iii) Pupils must not be approached or photographed at school without the permission of the school authorities.
- iv) Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.
- v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

7 *Children in sex cases

- 1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
- 2. In any press report of a case involving a sexual offence against a child —
 - i) The child must not be identified.
 - ii) The adult may be identified.
 - iii) The word "incest" must not be used where a child victim might be identified.
 - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

8 *Hospitals

- i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.
- ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

9 *Reporting of Crime

- i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.
- ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

10 *Clandestine devices and subterfuge

- 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 unauthorised 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.

11 Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

12 Discrimination

- i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.
- ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13 Financial journalism

- i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.
- ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.
- iii) They 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.

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

14 Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

15 Witness payments in criminal trials

- i) No payment or offer of payment to a witness — or any person who may reasonably be expected to be called as a witness — should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.
- *ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise

payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

- *iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

16 *Payment to criminals

- i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates — who may include family, friends and colleagues.
- ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

The Public Interest

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

1. The public interest includes, but is not confined to:

- i) *Detecting or exposing crime or serious impropriety.*
- ii) *Protecting public health and safety.*
- iii) *Preventing the public from being misled by an action or statement of an individual or organisation.*

2. There is a public interest in freedom of expression itself.

3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.

4. The PCC will consider the extent to which material is already in the public domain, or will become so.

5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

BRIEFING

Online guide to the PCC

The PCC website contains every adjudication published since 1996. These can be searched by newspaper, clause of the Code, date or keyword.

The site also contains summaries of resolutions, which make clear the issues raised in — and the action required to conclude — each resolved complaint.

However, each case is judged on its merits and the circumstances in one may not always be a suitable precedent for another.

Cases adjudicated before 1996 are available in hard-copy format from the PCC on application to Tonia Milton, Information and Events Manager, on tonia.milton@pcc.org.uk

Other useful features of the site include:

- Advice to potential complainants
- Details of the PCC's 24-hour Advice and Helplines
- A brief history of how the Code and the PCC has evolved
- Annual reports on the PCC's work
- Membership of the Press Complaints Commission
- Membership of the Editors' Code of Practice Committee
- News updates from the PCC
- Links to press codes from other countries

The home page is at www.pcc.org.uk

Contact Numbers

Press Complaints Commission

Halton House,
20/23 Holborn,
London EC1N 2JD

Helpline: 0845 600 2757
(Local rate call charge throughout the UK)

Switchboard: 020 7831 0022

Facsimile: 020 7831 0025

Textphone: 020 7831 0123
(For deaf or hard of hearing people)

E-mail: complaints@pcc.org.uk

Website: www.pcc.org.uk

Scottish Helpline: 0131 220 6652

Welsh Helpline: 029 2039 5570

24-hour Press Office line: 07659 158536

24-hour advice line: 07659 152656
(Leave a message and you will be phoned back)

NB: This is for use in emergencies only

The Press Standards Board of Finance Ltd

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EDITORS' CODE OF PRACTICE COMMITTEE

The Editors' Codebook

Ian Beales

REVISED
SECOND
EDITION

The handbook to the Editors' Code of Practice

The Editors' Codebook

PUBLISHED BY THE NEWSPAPER PUBLISHERS ASSOCIATION, THE NEWSPAPER SOCIETY, THE PERIODICAL PUBLISHERS ASSOCIATION,
THE SCOTTISH DAILY NEWSPAPER SOCIETY AND THE SCOTTISH NEWSPAPER PUBLISHERS ASSOCIATION

The Editors' Codebook is an essential guide to how the PCC interprets the press Code of Practice. By highlighting relevant Commission rulings, it fleshes out the Code's requirements on key subjects such as harassment; the protection of children; intrusion into privacy; and how to receive complaints. It also includes a series of helpful briefing notes such as how to approach the reporting of suicide. As such, it is required reading for editors, journalists and anyone who needs to use the PCC's numerous services — and will help to raise standards in British journalism further.

TIM TOULMIN, DIRECTOR, PCC

This book is a must-have for every newsroom. It is a map through the ethical minefield. It will not make you bombproof — but it demonstrates that if you use the code carefully and with common sense you can get to where you need to be with all your best journalistic principles intact. It also shows just how seriously editors and journalists view the code which is at the heart of the PCC system.

BOB SATCHWELL, EXECUTIVE DIRECTOR, SOCIETY OF EDITORS

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Ian Beales, a former regional newspaper editor, has served on the Editors' Code of Practice Committee since it was formed in 1990 and is now Secretary to the Committee.

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Colour codes are used to highlight different areas of extra information:

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Freedom in the balance

by Paul Dacre

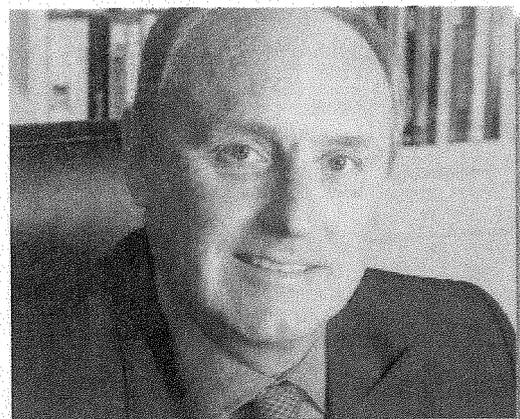
Chairman, Editors' Code of Practice Committee and Editor, the Daily Mail

In the era of 24-hour rolling news, it is not just the press that does not sleep. Our critics too have wakeful nights dreaming up new and more ingenious ways to constrain the media. As a result, the Open Society is constantly under threat.

We can count among the principal offenders: an authoritarian Government with an increasing desire for secrecy; judges with an incomprehension of and an animus against the popular press creating a back-door privacy law under the guise of Human Rights legislation; no-win, no-fee lawyers charging monstrous fees that make it almost impossible for many newspapers to defend actions; Parliamentary Select committees with their seemingly ceaseless inquiries; and axe-grinding politicians and a supporting army of quangocrats and often self-appointed "protectors" of society. Individually, any of these can be contained. Together — especially in a period when much of the press is fighting for its commercial life — they demand greater vigilance than ever.

This leaves the media challenged on two fronts. First, to combat those who threaten the vitally important role the media plays in a healthy democracy and, with it, the public's right to know. Second, we must ensure that our own defences are sound, that the press's house is in order and that, in judging the competing freedoms of the right to know and the right to privacy, we have the balance right.

The roles of the Editors' Code of Practice Committee, which sets out the rules for achieving that balance, and the Press Complaints



Commission — which ensures the rules are observed and that there are adequate remedies for breaches — are key to this.

As Code Committee Chairman, as a former Commissioner on the PCC and, of course, as an editor, I know how difficult it is to achieve that balance. We in the media all walk that tightrope every day. Sometimes we get it wrong — and here in *The Editors' Codebook* are cases that will make all good editors and journalists wince. They

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FOREWORD

remind us that there is never room for complacency. We must learn by our mistakes. Where there are legitimate public concerns, we must respond to them. Indeed, getting that balance right is a constant theme that runs through the Codebook and demonstrates how we have listened to and responded to criticism.

On the protection of personal data, for example, the Code Committee has confronted the Information Commissioner's concerns about wholesale breaches of the law — and, indeed, of the existing Code. We have strengthened the rules to explicitly ban hacking into digitally-held private information unless there is a demonstrable public interest. We have also expressly barred the use of agents or intermediaries, such as private detectives, to circumvent the rules.

At the same time, the PCC has issued comprehensive guidelines and conducted seminars on investigative journalism. The industry too has produced its own guidance on Data Protection compliance and is conducting a survey of the measures — such as contractual obligations on staff and tighter auditing processes — introduced in-house by publishers to combat abuse. To underline the message, the Codebook has drawn all these actions together in its own Briefing note.

This has been a considerable commitment by all concerned and it is now imperative that the industry, if it is to safeguard itself from tighter legal penalties, continues to demonstrate its dedication to compliance with both the law and the Code.

The reporting of suicide was another area that provoked some criticism, especially following the series of deaths of young people in South Wales. By any standards, this was a tragedy of national importance and media coverage reflected that. But though it was a legitimate subject to address, issues of insensitivity arose. We have addressed those here in the Codebook, with important new guidance that highlights press activities that can cause unintentional distress

and shows how editors can avoid this not just by following the Code but by discretionary measures, too.

Harassment is an issue that can also get the media a bad press (though we should never forget there are double standards at work here and that some celebrities who complain of the media's attention actually seek it to promote themselves). The media scrum that closed in on Prince William's girlfriend Kate Middleton when there was speculation on an impending engagement was a subject for concern. Although that was resolved very quickly, the Code Committee investigated to see if it indicated a deeper problem.

We concluded that the Code's rules on harassment — among the strictest in Western Europe — were working well. This is where people who do not wish to be pursued alert the PCC, which passes on the request to editors.

As I have stressed, this Codebook shows that there is no cause for complacency on the part of the newspapers but, equally, it has important lessons for our detractors. First, it shows that we are in the business of learning — why else would a constantly revised Codebook exist? Second, it demonstrates that the self-regulatory system is *genuinely* responsive to public concerns. And third, I hope it kills the myth that the balance that we attempt to strike is a shabby compromise between individual rights and a self-serving media waving the flag of press freedom.

Indeed, the words *press freedom* appear nowhere in the Editors' Code of Practice. What is mentioned is *freedom of expression* and *the public's right to know*, neither of which is the exclusive preserve of the press. Certainly, the balance between that public right to know, on the one hand, and the rights of the individual on the other, lead to genuine tensions, but they are inherent in any truly free system.

A democracy as a whole, not just the media, has to get the balance right. Go too far in either direction and it is members of the public — collectively or singly — who suffer. And constantly at risk is the Open Society itself.

Introduction

How the system works

The Press Complaints Commission came into force in January 1991 as the UK's new system of press self-regulation. It was a cultural step-change; it would be founded on conciliation, offer more streamlined investigations and swifter redress than the Press Council, which it replaced.

Its centrepiece, and the document that gave it a unique authority within the newspaper and magazine industry, was Britain's first universally accepted Code of Practice for the press — written by the editors themselves.

For the first time, the Code would define the rules, spell out the obligations of the press, and show the public what they were entitled to expect. It set out to balance the rights of the individual and the public's right to know. It was non-legalistic in tone or approach and required editors to comply in spirit as well as to the letter.

The simple aim then, as now, was to offer a speedy, effective system for providing remedies to individuals with grievances against the press, by working to a set of rules which the editors had themselves created, and could not contest.

The Code covers 16 causes of complaint — including accuracy and privacy, protection of vulnerable groups, financial reporting and the use of clandestine devices. It does not cover taste and decency, which is regarded as too subjective and could be an interference with freedom of expression.

THE PLAYERS

There are four main pillars of the self-regulatory regime:

The Press Standards Board of Finance, representing the

publishers, who co-ordinate and fund the newspaper and magazine industry's actions on self-regulation. Pressbof comprises representatives of the Newspaper Publishers Association, The Newspaper Society, the Periodical Publishers Association, The Scottish Daily Newspaper Society and the Scottish Newspaper Publishers Association.

The Press Complaints Commission, the independent adjudicating body: ten senior figures from outside the industry, including the chairman, and seven editors. The Commission's role is to oversee the system and adjudicate on complaints.

The PCC secretariat, which operates the system, processes complaints and acts as a conciliator wherever possible to find remedies for grievances which are acceptable to complainant and editor alike.

The Editors' Code of Practice Committee, comprises 13 editors from national and regional newspapers and magazines, representing all parts of the UK. Their job is to write, review and revise the Code to ensure it remains relevant and responsive to changing circumstances. It ensures flexibility: changes that would take many months or years to introduce in a legalistic or statutory system can be agreed and implemented within weeks.

THE SYSTEM

The PCC prides itself on providing a service which is fast, free and fair. It has a target of resolving complaints within 35 days, with no charge to the complainant.

Complaints should usually relate to articles published within the

BRIEFING

Key points to remember

- The Code does not replace the law or diminish legal responsibility. Always ask: *Is it legal?*
- The Public Interest defences do not apply to the whole of the Code. Appropriate clauses are marked by an asterisk.
- The PCC judges each case on its merits — so the circumstances in one case may not always be an appropriate precedent in another.
- Past adjudications are archived at the PCC website www.pcc.org.uk
- The PCC is always willing to give advice on the Code.
- It is usually the editor's responsibility to demonstrate compliance with the Code, rather than for the complainant to prove a breach.
- The Code applies to all editorial staff, including photographers, and to contributed editorial material, such as agency copy, citizen journalists — and readers' letters.
- Failure to co-operate with a PCC investigation can itself be a breach.
- The Code should be honoured in the spirit as well as the letter.
- This Codebook is for guidance only — it does not expand on the Code and is not binding on the PCC.

previous two months — although that is extended in special circumstances.

If the PCC regards the complaint as raising a possible issue under the Code, the editor will be approached and given seven days to formulate an initial response. The PCC will then try to see if there is a basis for conciliation, acting as a go-between to find a suitable remedy (See *Briefing*).

If conciliation fails, or is inappropriate, or if the case involves a

major policy issue, the Commission will publish an adjudication. When a complaint is upheld, then the newspaper or magazine *must* publish the adverse adjudication.

This is one of the main sanctions. There are no fines or compensation, since these would inevitably involve lawyers, making the system legalistic, slow and expensive — and less accessible to ordinary people seeking swift redress.

Adverse adjudications are effective. Editors dislike having to publish them. It means their mistakes are exposed to their own readers, and often to criticism and ridicule in the columns of their commercial rivals, which is doubly damaging.

In cases of very serious breaches of the Code, the PCC can draw the adjudication to the attention of the publisher, which could lead to a further public rebuke. Also, as adherence to the Code of Practice is written into many journalists' contracts of employment, breaches can — and do — result in dismissal, although this is a matter for individual publishers.

THE CODE AND THE LAW

While the Code has had legal recognition — under the Human Rights and Data Protection Acts, for example — it does not attempt to duplicate the law. The Code and the law are distinct. Compliance with one will not guarantee compliance with the other.

Journalists must remember that they remain, as ever, subject to the same legal constraints as every other citizen — such as the laws of defamation, contempt, trespass, harassment and a hundred others. The Code will often require more of journalists than that demanded by law, but it will never require less.

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BRIEFING

How complaints can be resolved

The PCC system of resolving complaints is based on conciliation. There are many ways of breaking the deadlock between complainant and editor, without going to adjudication, although that is always a final option. This list is not exhaustive — resolutions might involve a combination of different remedies.

- **Clarification.** A clarification might be appropriate where something has been omitted from the original article or if it is ambiguous or arguably misleading. It stops short of an admission by the editor that the article was wrong.
- **Corrections and apologies.** Straightforward factual errors are usually dealt with most cleanly and simply by the publication of a correction. In the case of serious errors, this might include an apology. The Code states that an apology should be published where appropriate.
- **Letter for publication.** An editor's offer to publish a complainant's letter can be appropriate when: the complainant has an alternative point of view but no substantive factual objections to the piece; where there are a number of minor inaccuracies; where the newspaper has an anonymous and reliable source but no other corroborative material; or where a complainant might for reasons of privacy wish to make anonymous objections to a piece.
- **Follow-up article.** An editor might offer to publish an interview with, or article by, a complainant, if there are sufficient points to be made in response to a previous story.
- **Tagging newspaper records.** This is an increasingly popular way of resolving complaints and is offered in conjunction with the above remedies or on its own. The publication's electronic database and cuttings library is tagged with the complainant's objection to ensure the mistake is not repeated.
- **Taking down online material.** Many complaints about material on newspaper or magazine websites are resolved by the editor removing it on receiving a complaint. This applies especially to user-generated material that has not been edited.
- **Private letter of apology.** Further publicity is often not an attractive option for a complainant, particularly in privacy cases or intrusion into grief. A private apology, often drafted with the help of a complaints officer, and perhaps tagged to the file as outlined above, is sometimes a more suitable remedy.
- **Private undertaking.** Similarly, undertakings by the editor about the future conduct of the newspaper and its staff might also give a complainant some peace of mind. Complaints have been resolved on this basis.

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GUIDANCE
Resolving complaints

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Section One: The Preamble

The philosophy and spirit of the Code

The Preamble is the key to understanding the Editors' Code of Practice. It is the part of the Code which defines the rest. It sets out not only the balance of rights and responsibilities of editors and publishers in a free press regime, but also the underpinning philosophy of self-regulation and the spirit of the Code — the glue that holds it together.

THE CODE SAYS...

- All members of the press have a duty to maintain the highest professional standards. 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. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.
- It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.
- 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.
- Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.

The spirit of the Code, the voluntary will and commitment to making the system work not just to the letter, is an essential element and one rarely available to any statutory or legalistic system.

It is only by invoking that spirit of flexibility that the balance — protecting both the rights of the individual and the public's right to know — upon which the success of a self-regulatory system relies, can be struck.

Although the Code does not try to set Olympian ethics likely to be more honoured in the breach, it is committed to the highest standards and sees these guidelines as the starting point.

The spirit of the Code is embodied in the editors' commitment to honour it neither too narrowly nor too broadly — and not just to the letter. This is a clear message to the industry, the PCC and to the public that this is an even-handed, practical Code based on solid principles rather than abstruse definitions buried in the fine print. It should not be abused either by editors trying to tiptoe around the rules, or by complainants playing the system to the detriment of the public's right to know.

The commitment to freedom of expression and publication in the public interest is at the core of the philosophy. Taken with the previous commitment, and the Public Interest defences (See Section Six), it demonstrates the balance to be struck:

- No compromises on the rights of the individual, but —
- No unnecessary interference either with freedom of expression or with publication in the public interest.

Both sides need to be weighed when taking a decision to publish and when adjudicating on complaints.

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Universal compliance: The Preamble places on publishers and editors the ultimate duty of care to ensure that the rules are implemented. It also ends uncertainty over who is covered by the Code by abolishing outdated distinctions between journalists and photographers, or other suppliers or providers of editorial services.

In the context of the Code, the rules for journalists apply to all editorial staff, external contributors or suppliers of editorial material.

For example, in cases covering clandestine devices and subterfuge, this would normally include information supplied by intermediaries or agents.

Online publications: Editorial material in online versions of newspapers and magazines is covered specifically. The rules apply to online versions of the newspapers and magazines — as opposed to freestanding online publications — and, as with the print versions, embrace *editorial material only*.

Increasingly, newspapers' and magazines' online content is very different from that in the print versions, including, for example, user-generated blogs and chatrooms, and audio visual material, some of which would not normally be subject to editorial control.

Therefore, in 2007, the Press Standards Board of Finance issued a guidance note extending the remit to cover audio visual editorial material and the Preamble was amended to reflect that. (See also *Complaints about websites*).

Editorial material was defined as *that for which the editor was responsible and could reasonably have been expected to apply the terms of the Code*.

User-generated content such as blogs and chatrooms continues to be excluded, as does audio visual material that had been produced to conform to the standards of another regulator — such as live or syndicated TV or radio

programmes. This reflects the traditional approach applied to print versions, where for example, Letters to the Editor are covered by the Code, but advertising and marketing material is not.

Co-operation with the PCC is the first test of the spirit of the Code in action. The voluntary system cannot work without universal compliance by the industry, and swift co-operation is the surest example of compliance.

Once the PCC is involved in a case, there is renewed pressure for a speedy resolution. First, the Code requires of editors swift co-operation with the PCC in trying to resolve the dispute. Second, the PCC's target is to resolve cases within 35 days.

Failure of publications to co-operate swiftly is, as the Preamble makes clear, itself a breach of the Code, which may result in censure. This happened when a Sunday paper, while standing by its story about a pop festival organiser who complained of inaccuracies, simply failed to produce any evidence.

The PCC upheld the complaint by default, reminding editors that it was their Code, and self-regulation could work only by the voluntary participation of the industry (*McIntosh v Sunday World: Report 60, 2002*).

If failing to act swiftly is one form of non-co-operation, acting precipitately can be another, especially once the PCC is involved.

When an author complained that his book about the death of Pope John Paul I had been misrepresented in a Sunday magazine section in 2005, the PCC tried to negotiate a mutually acceptable correction. But the magazine jumped the gun, publishing its own correction — despite being asked by the PCC not to do so — and without due prominence.

The wording of the correction itself would have been

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adequate, but the PCC felt the magazine's unilateral action ran counter to the spirit of the Code. "Publishing a correction which has not been agreed with the complainant, despite a request from the Commission not to do so, was neither within the spirit of the system of self-regulation nor within the letter of the Code of Practice," said the Commission in an adjudication censuring the editor. (*Yallop v The Sunday Times Magazine: Report 71, 2005*).

So while bad practice is rare, when it occurs the PCC always takes a grave view. In 2007, it censured the *Sunday Mail* for failing to hold to an undertaking given in 2003 to keep on file a complainant's denial of allegations it had made against him.

The paper had repeated the claims without recording the denials. The PCC regarded this as a serious matter and upheld a complaint that the report was misleading under Clause 1. (*Lothian v Sunday Mail: Report 76, 2008*).

When, a few months later, the same paper unilaterally changed the wording of an agreed letter resolving a complaint, it earned another stern rebuke. While the revised wording was still a proportionate response, the PCC warned that the paper's approach was highly unusual, disappointing — and should not be repeated (*Forrester v Sunday Mail: Report 76, 2008*).

Due prominence: The second test of co-operation is the requirement that publications print adverse adjudications against them in full and with due prominence. This is the PCC's principal sanction against offending newspapers. In fact, no editor has ever failed to publish an adverse adjudication, even though they have occasionally run to 4,000 words.

While there is an excellent record of compliance on publication of adjudications, the PCC is equally insistent that

the obligation of due prominence is properly met. It has made clear it will tolerate nothing less (*See also Page 17*).

So an editor is free to decide the prominence, but the PCC is also free to decide that it was not sufficient — and that could lead to a further breach of the Code. For this reason newspapers often consult the PCC in advance for advice on prominence.

As with the placing of corrections (*See Page 18*) due prominence does not mean *equal* prominence. A breach of the Code in the front page lead does not necessarily mean the adjudication should be on Page One — although it might be. It depends on what would be appropriate, according to the gravity of the case.

For example, the PCC ruled that an *Evening Standard* lead story suggesting that climate change activists were planning to cause chaos at Heathrow Airport by placing hoax bomb packages and attacking the security fence was based on flimsy evidence, misleading and was a serious breach of the Code.

The newspaper published the adjudication prominently on an early inside page — with a Page One reference to it. (*The Camp for Climate Action v Evening Standard: Report 76, 2008*).

Burying adjudications: "Due prominence" implies a proportionate response to the original breach. In the spirit of the Code, that would not normally mean burying an adjudication in an obscure part of the newspaper — unless the story in question had first appeared there.

A regional evening newspaper found itself in double trouble in 2008 when it ran a critical PCC adjudication about a Page 8 picture story breaching children's privacy — on Page 32. The editor contended that although the adjudication was 24 pages later in the paper than the original article, a difference

in daily paginations meant they were each a similar distance from the back page.

But this arithmetic did not add up for the PCC, which ruled that the paper had failed to give due prominence. The Commission ordered that another adjudication, detailing both breaches, should be published — *prominently*. It was duly run on Page 14. (*The PCC, Nicholas Soames MP and The Argus: Report, 77, 2008*).

Headline reference: Since June 2004, there has been an additional requirement that there should be a *headline reference to the PCC*. Although there would be no objection to spelling out the *Press Complaints Commission* in full in a headline, the strict requirement is only to use the acronym PCC. This is intended to provide more visible "branding" for adjudications.

Preamble and public interest: Although separate from the numbered clauses, both the Preamble and the Public Interest exceptions have always been important integral components of the Code. The Preamble was amended in 2007 to stress this.

KEY QUESTIONS

- Was the Code followed in the spirit as well as to the letter?
- Was it observed by contributors and agents as well as staff?
- Is the publication co-operating swiftly to resolve a complaint?
- Has an adverse adjudication been published with due prominence?
- If so, did the headline refer to the PCC?

KEY RULINGS

- *Yallop v The Sunday Times Magazine* (Report 71, 2005).
- *Lothian v Sunday Mail* (Report 76, 2008).
- *Forrester v Sunday Mail* (Report 76, 2008).
- *The Camp for Climate Action v Evening Standard* (Report 76, 2008).
- *The PCC, Nicholas Soames MP and The Argus* (Report 77, 2008).

BRIEFING

The Code and the law

The Code of Practice does not attempt to duplicate the law. Journalists are bound by the same legal constraints as every other citizen — and, increasingly, by a few extra, media-specific, laws, too.

So editors and journalists are assumed to recognise their accountability under both criminal and civil law. The Code places an extra burden of responsibility on them, beyond the requirements of the usual laws of contempt, defamation, trespass, discrimination and the rest.

The golden rule, therefore, when applying any of the key tests under the Code, is to ask: Is it safe legally? The Code may require more than the law, but never less.

Nor does a complaint under the Code inhibit legal redress. Complainants do not sign a legal waiver, but merely undertake not to pursue legal action concurrently with a PCC investigation. In general, complainants rarely take both the legal and self-regulatory route.

However, while the Code does not replace the law, its authority is recognised by the courts in several areas:

- **Data Protection:** An exemption for some journalistic, literary or artistic work in specific circumstances was included in the Data Protection Act 1998. In hearing cases, judges may take account of a number of designated codes of practice — including the Editors' Code. (See *Briefing*.)
- **Human Rights:** There was a risk as the Human Rights Bill was going through Parliament, that it could become a backdoor privacy law, accessible only to the rich and famous, and undermining the more publicly accessible PCC. The Bill was amended to include a clause requiring judges to pay

particular regard to the importance of the ECHR right of freedom of expression. In proceedings related to journalism, literary or artistic matters, judges were also required to take into account any relevant privacy code — which includes the Editors' Code, with its emphasis on the importance of freedom of expression.

- **Financial services:** Plans to include financial journalism within the stringent disclosure rules of the Financial Services and Markets Act 2000 were dropped after it was agreed they would be totally impractical to implement.

Instead, the Code's provisions on financial journalism were supplemented by a PCC best practice note which gave guidance on the type of disclosure required by the Code.

- **EU Market Abuse Directive:** The PCC and the Editors' Code are also recognised by the Committee of European Securities Regulators, responsible for drawing up the Market Abuse Directive.

This avoided the need to change the PCC Code when the directive was implemented in the UK — although the financial journalism best practice note was updated, effective from April 2005.

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Section Two: Getting it right

ACCURACY, COMMENT, CONJECTURE AND FACT

Errors and judgments

If the Preamble embraces the spirit of the Code, then Clause 1 goes to the heart of good practice. The Code does not demand infallibility; it requires that care should be taken. It is about getting the story right in the first place, putting it right if mistakes are made and — where appropriate — saying Sorry.

This clause accounts for the majority of complaints to the PCC. That will surprise no-one familiar with the pace at which newspapers and magazines are produced, but it should not excuse reckless or sloppy journalism.

The PCC has reminded editors that accuracy is particularly

important in dealing with emotive topics such as asylum seekers or mental health, where there is danger of creating fear and hostility not borne out by facts, and where allegations are made, ahead of formal proceedings, suggesting an individual has committed — or is suspected of — a criminal offence.

The absence of a public interest exception to justify inaccuracy increases the burden on editors. (See *Section Six, Public Interest*.)

As with all else in the Code, it is a question of balance. Care must be taken to minimise both errors and their impact. Mistakes may be inevitable, but it is important that they are put right swiftly and clearly.

The Code rules on accuracy break down into two main areas, covering pre-publication and post-publication.

THE PRE-PUBLICATION REQUIREMENT

The Code is careful not to demand perfect accuracy, which would be impossible to achieve. Instead, sub-clause 1i obliges publications to take care not to publish inaccurate, misleading or distorted material, including pictures.

That is a simple, practical and deliverable requirement, applying to all they do ahead of publication. If sufficient care were taken, then that would be a defence to any subsequent complaint. The tests to apply would include such issues as:

- Are there reasonable grounds for believing the piece is accurate?
- Have proper checks been made?

THE CODE SAYS...

Clause One — ACCURACY

- The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.*
- A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and — where appropriate — an apology published.*
- The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.*
- A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.*

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- Have likely complainants been given an adequate opportunity to respond?

Proving sufficient care: A complaint by the European Commission (*Marlin v Mail on Sunday: Report 53, 2000*) was rejected because the PCC decided the paper had taken sufficient care to check the accuracy of a story suggesting an EC summit was to discuss a £30-a-year levy on telephone lines.

First, the story was based on a report on an official EC website which gave no indication that it was out of date; second, the paper had twice asked the EC press office to comment, but received no response; and third, it had made clear this was a proposal for consideration which had not been adopted. These checks showed that the paper had taken sufficient care on all points.

The case demonstrates that editors are not always responsible for potentially misleading reports. There can be factors over which they can have no control, and there can be occasions when the error is caused by contributory negligence on the part of the complainant.

Conversely, a complaint against a Sunday tabloid was upheld because the paper failed to put details of an uncorroborated kiss-and-tell story to the subject of the piece prior to publication. The PCC ruled (*Harkishin v Sunday Sport: Report 58, 2002*) that this amounted to insufficient care to establish the truth.

THE POST-PUBLICATION REQUIREMENT

This requires publications to offer a suitable remedy if the story, including pictures, was *significantly inaccurate, misleading or distorted*. The burden of proof, as always in the PCC system, falls on the editors. If they wish to claim the story was true, then they will need to demonstrate that there were no *significant* inaccuracies or distortions and that it was not misleading. Even if the story was not entirely correct, the newspaper would be exonerated if it could demonstrate that it had taken sufficient care to avoid inaccuracy, or that it had offered a suitable remedy.

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Was it significant? The spirit of the Code protects a substantially true story from failing due to a trifling error. The PCC's commonsense test of significance is simple: How much does it *really* matter? Getting a name wrong could be merely irritating — or wholly fundamental. The context would be crucial. The PCC might need to decide if the alleged error, taken alone, was of consequence, or even if a series of relatively minor errors, taken together, were likely to mislead or distort.

In 1998 (*Hunt v The Guardian: Report 45, 1999*) a man who had written critically about *The Guardian*, complained that a piece it had published in response was littered with inaccuracies, including a claim that he had a "shouting, screaming, vein-busting dislike" for *The Guardian*. The PCC decided the newspaper had a right to investigate a critic who had made serious allegations against it. In the context of the piece *all* the points were minor — except for an error over VAT repayment. That was significant, but had already been corrected by the newspaper. The complaint was rejected.

Was it true? If the point is significant, the next test is whether it is true. The PCC will expect from editors supporting evidence for a story, wherever possible, demonstrating that it wasn't inaccurate, misleading or distorted. However, the truth is not always easy to establish, especially if a newspaper or magazine is relying for its information on a single, confidential source, which it has a duty to protect under the Code (*See Clause 14, Confidential sources*).

The PCC has no powers of sub-poena, or of verifying unsupported evidence and in rare cases it has proved impossible to decide whether a story was accurate or not. In such situations, the Commission will often negotiate on whether it is reasonable for the complainant to be given an opportunity to reply.

In 2002 Cabinet Minister Charles Clarke accused a newspaper of inventing a story that he had 'told friends' he regarded the Speaker of the House of Commons as a liability. (*Clarke MP v The Times: Report 58, 2002*).

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BRIEFING

Reporting of cases involving paedophiles

Editors are urged by the PCC to think carefully before embarking on high-profile campaigns in which details of convicted sex offenders are published. In a Guidance Note the Commission recommended:

- **Consultation:** It would be advisable to talk with representatives of the probation service and local police before publication. Both services had expressed fears that identifying sex-offenders could hamper their work and endanger public safety.
- **Accuracy:** Particular care needed to be taken to comply with the Code's rules (Clause 1), given the scale of problems created for innocent people that could follow an inaccuracy.
- **Corrections:** Where there is an acknowledged inaccuracy, it should be corrected as soon as possible (Clauses 1 and 2), with an apology if necessary.
- **Privacy:** People convicted of crime do have protection under Clause 3 — although reporting of convictions would not normally breach the Code.
- **Relatives and friends:** They have a right of privacy and should not be identified without consent (Clause 9) unless they are relevant to the case or there is a public interest in doing so.
- **Children and victims of sexual assault:** Particular care needs to be taken to prevent identification of victims in line with the Code rules in Clauses 7 and 11.

The paper stood by its story — insisting it was from a confidential source — and offered Mr Clarke an opportunity to reply, but balked at publishing his claim that its journalist invented the quotes. The PCC could not break the deadlock.

As it could not establish the facts, it could not oblige the newspaper to accept that the quotes were invented. It decided that the editor's offer to publish a letter carrying all Mr Clarke's other claims was a suitable remedy.

Was sufficient care taken? The problems sometimes encountered in establishing the truth tend to make the test of whether sufficient care was taken at least as important as the test of accuracy. It is often easier to establish. (*See pre-publication requirements above*).

The PCC has ruled that this duty of care places a burden on editors to be pro-active, rather than relying on complainants to prove their case. A weekly newspaper's report that a man had been accused of assault was accurate, but the paper failed to report his subsequent acquittal, because its court reporter was ill. The editor then refused to publish an apology unless the defendant himself produced evidence of his acquittal.

The Commission rejected the notion that the onus of proof was entirely on the complainant and criticised the editor for doing nothing to try to establish the facts. It said failure to publish the verdict created a misleading impression for several months and breached the Code. (*Millichamp v Brecon & Radnor Express: Report 72, 2005*).

Was it misleading? Stories that are technically accurate can still be misleading or distorted leaving the reader with a false impression. Sometimes the problem is more because of what they don't say than what they do, and that — whether intentional or not — can breach the Code.

A magazine (*Brain v Hello! Report 55, 2001*) published interior pictures of actress Kate Winslett's new home — but didn't mention

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that they were taken during the occupation of a former owner, who complained. The PCC ruled that the pictures showing the former owner's furniture suggested Ms Winslett had disposed of treasured wedding gifts.

The complaint was upheld. A caption making clear that the pictures showed the interiors pre-Ms Winslett might have kept the magazine out of trouble. But only if it was made very clear.

Hidden escape-clause justifications aren't acceptable to the PCC — as a local newspaper discovered when it ran the story of a police raid, in which six refugees were arrested, under a Page One headline *The Front Line In Folkestone*, apparently illustrated by a large picture of officers in riot gear.

The fact that the picture showed an entirely separate incident was only revealed on an inside page. The PCC upheld the complaint — while reminding editors that inaccurate or misleading reporting could generate an atmosphere of fear and hostility not borne out by the facts. (*Harman and Harman v Folkestone Herald: Report 47, 1999*). (See Briefing).

Was it distortion? The PCC insists that if a picture is not what it seems, or if it has been posed or digitally manipulated, the reader should generally be told. An exception might be in publishing spoofs — such as April Fool stories — where the manipulation is the story and will ultimately be revealed. The test would be whether the reader had been significantly misled. Most are not — and they get the joke if they are.

However, a picture illustrating a genuine story of local prostitution and showing what appeared to be a vice girl on a street corner was doubly damned. The newspaper admitted it had been digitally created by combining two images — and was posed using a model. The PCC ruled that in *any case where images were significantly altered*, the caption should say so. (*A man v Luton on Sunday: Report 64, 2003*).

Again, the key word is *significantly*. The PCC does not expect

editors to chronicle each digital enhancement of every picture. The image would need to have been distorted enough to have been capable of misleading the reader.

REMEDIES: CORRECTIONS AND APOLOGIES

The need for speedy and clear corrections is set out in sub-clause 1ii which requires that a significant inaccuracy, misleading statement or distortion, *once recognised* must be corrected *promptly* and with *due prominence*. There is no hard and fast definition in either case. Promptness and prominence must be decided by what is reasonable in all the circumstances, particularly subject to any over-riding legal considerations.

Promptness: While delays in some cases may be genuinely unavoidable, the Commission takes a stern view of unnecessary delays in righting undisputed — or incontestable — errors, especially where the repercussions can be serious.

A newspaper wrongly reported that an estranged husband was involved in a knife-wielding incident with his wife's new boyfriend. It was not her boyfriend — she did not have one — but a neighbour. However, due to what the editor described as a "breakdown in communications", the paper failed to correct the error for six weeks — during which time the husband was found dead.

The PCC ruled (*A woman v South Wales Evening Post: Report 59, 2002*) that the delay, while inadvertent, was not acceptable in circumstances where the potential consequences of the mistake were serious. It also found that the correction, when eventually published, should have included an apology.

Due prominence: As with the publication of adverse PCC adjudications (See Page 11), the Commission will take into account all the circumstances to decide whether the prominence given to a correction, clarification, or apology amounts to an adequate remedy.

BRIEFING

Refugees and asylum seekers

After a number of breaches of the Code, the PCC issued Guidance aimed at ending confusion over the terminology used to describe asylum seekers and refugees.

The Commission expressed concern that misunderstandings could lead to inaccurate, misleading or distorted reporting, in breach of the Code's accuracy rules (Clause 1), and might also generate a fear and hostility that was not borne out by the facts.

Although the Code's Discrimination rules (Clause 12) — relating to pejorative, prejudicial or irrelevant references — apply only to individuals, the wider question of whether a description is accurate, misleading or distorted applies equally to groups. This means a term such as "illegal asylum seeker" would be a breach, since it is inaccurate.

The guidance suggested:

- An *asylum seeker* is a person *currently seeking* refugee status or humanitarian protection.
- A *refugee* is someone who has fled their country in fear of their life — and may have been granted asylum under the 1951 Refugee Convention, or who otherwise qualifies for humanitarian protection, discretionary leave or has been granted exceptional leave to remain in the UK.
- An *illegal immigrant* would describe a person who had been refused such status, and had failed to respond to a removal notice to quit Britain.

The PCC has also held that stories which generated fear and hostility not borne out by the facts might in certain circumstances affect the welfare of children, in breach of Clause 6.

It has always taken the view that *due prominence* does not mean *equal prominence*: an error in a Page One lead would not automatically require a Page One lead correction. However, the PCC would expect that the positioning of apologies or corrections should generally reflect the seriousness of the error — and that would include front page apologies where appropriate.

When the *Evening Standard* ran a Page One story incorrectly stating that Prince Philip had prostate cancer, the newspaper quickly acknowledged the error and within 36 hours the PCC negotiated a settlement.

This included a Page One reference to a Page 5 item apologising unreservedly to the Prince and his family for making the distressing allegation and breaching his privacy. It was a classic example of a prompt, prominent and proportionate apology working rapidly to minimise the damage of a bad error. However, when apologies are not treated in such a way it can seriously compound the problem and aggravate the damage done.

The Mayor of Totnes complained that a *Daily Express* story claiming that she had personally ordered the scrapping of civic prayers to avoid offending other faiths, was not true. The council as a whole had agreed the move and it was not in deference to other faiths.

The Express agreed to apologise but, although the original story had appeared on Page 5, the apology was relegated to Page 33. The PCC censured the newspaper for "an unfortunate example of bad practice" especially as the complainant had to wait four months for it. (*Boswell-Harper v Daily Express: Report 75, 2007*).

Apologies: In fact, the Code makes a distinction between corrections — which usually need to be published promptly and prominently — and apologies, where the same is not always true.

First, the wording of apologies often needs to be agreed with the complainant, especially if there are legal implications — as in defamation cases, for example — which may cause unavoidable

delay, affecting promptness. Secondly, a public apology, which could highlight the error and cause renewed embarrassment, may be the last thing a complainant wants.

Editors regularly find that complainants regard a personal letter, or phone call, as more suitable. An apologetic note from a genuinely regretful editor, accompanied by a bouquet of flowers, is by no means uncommon. It is an example of the spirit of the Code in action.

Yet sometimes such gestures are neither appropriate nor enough and the demand for a published apology becomes an issue. Each case is judged on its merits, but one factor when deciding if an apology is appropriate, might be whether the story had caused significant hurt or embarrassment.

A newspaper whose headline *Blair All Spin And No Delivery* — *Field*, attributed to Frank Field MP words about the Prime Minister he had not used, offered the opportunity to reply in a letter, but refused to run an apology. The PCC upheld the complaint, ruling that, as the error had been recognised at an early stage, an apology would have been appropriate (*Field MP v The Independent: Report 51, 2000*).

COMMENT, CONJECTURE AND FACT

The Code upholds in sub-clause 1iii the Press's right to be partisan, but insists on a clear distinction between comment, conjecture and fact. The rival claims of freedom of expression and freedom from prejudice can find a battleground here, especially when distinctions become blurred in personal opinion columns.

The PCC holds the ring by defending the freedom to comment — but only as long as columnists do not try to argue a false factual basis for their views. It has particularly used this to decide cases involving complaints from minority groups about being portrayed inaccurately. The tests include:

- Is the disputed material demonstrably factual? If not —
- Does the presentation make clear that it is comment or conjecture?

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Without any legal powers to investigate the suggestion — by a named former British agent — that Mr McGuinness had co-operated with MI6, the Commission was in no position to decide on its veracity.

In fact, it did not need to. For the issue was not whether the allegation was true, but whether the newspaper had clearly separated fact from comment. The PCC decided it had, as the main headline had been accompanied by another saying, *Spook's Shock Claims*.

Mr McGuinness said the other headline appeared to be separate in another box, but the PCC ruled (*McGuinness v Sunday World: Report 74, 2006*) that readers would have understood that the suggestion that he was a spy was not stated as fact, but as a claim from an intelligence source. The complaint of inaccuracy was therefore rejected.

Alternative view: The importance of presentation was stressed again in a case brought by Rina and Michelangelo Attard, the parents of conjoined twins, who had sold pictures and information to the media. (*Attard v Sunday Mirror: Report 55, 2001*).

The article was based on an interview with Mr and Mrs Hubble, who had become friends of the Attards. When the couples fell out, the Hubbles sold their story to the *Sunday Mirror*, giving their view of events.

But the PCC ruled that because the interview was presented as just one side of a complicated story, leaving readers in no doubt there would have been another point of view, it was valid. There was no breach of the Code.

Crime reporting and court stories, where accurate accounts would normally be covered by legal privilege, hold hidden dangers for newspapers when they get it wrong and confuse comment or conjecture with fact. As always, misleading headlines can be a particular problem.

The alleged rape of a 14-year-old black girl by 19 men in an Asian

In 1997, a tabloid columnist stated as fact that gay men had an average life expectancy of 43 and were 17 times more likely to be paedophiles than straight men. During the PCC inquiry, the newspaper accepted the statistics had been challenged and that, although "broadly accurate", the columnist's interpretations should not be taken as absolute.

In a key ruling, the Commission concluded that such claims should not then have been presented as fact, and upheld the complaint. (*A. J. Crompton v The Sun: Report 41, 1997*).

Importance of presentation: In news reports, too, there is a danger of passing off allegations, however strong, as fact. Presentation of the story can be crucial if by tone, display or other means it misleads the reader into interpreting as fact that which is conjecture or comment, or a mixture of both.

Soon after the death of Father John Tolkien — son of JRR Tolkien — a Sunday paper published a former altar boy's claims that the priest was a paedophile, who had abused hundreds of children. The Tolkien family, in a series of complaints under five clauses of the Code, said they had been given no chance to comment on these allegations, which were presented explicitly as fact.

The editor's suggestion that publication was justified by freedom of expression and a duty to expose crime was rejected by the PCC, which ruled that while the newspaper may have strongly believed the priest to be a paedophile, he had not been convicted of, or charged with, any offence.

The presentation of the story should have made absolutely clear that these were allegations. By publishing such extremely serious claims without sufficient qualification, the newspaper had breached Clause 1 of the Code. (*Tolkien family v Sunday Mercury: Report 62, 2003*).

The issue of presentation was doubly crucial when Sinn Fein leader Martin McGuinness complained to the PCC after a Sunday newspaper splashed with the headline *McGuinness Was A Brit Spy*.

shop was reported on the front page of a weekly newspaper under the headline *Gang Of 19 Rape Teen*. Although headlines and reports on inside pages had used the words "alleged gang rape" and "alleged attack", the word "alleged" was used only once in the short Page One story.

The PCC ruled that this was insufficient to enable readers to realise that the story was about allegations and the inside coverage did not mitigate that. It therefore breached the Code by failing to distinguish comment, conjecture and fact. (*A man v The Voice: Report 72, 2006-6*).

Unproven evidence: Similar problems can arise in court reporting of statements that are not proven facts. A plea of mitigation for an offence, untested and unproven, is not necessarily a fact, but an allegation. And that must be made clear — as the editor of a local newspaper found when he ran a story headlined *Man Attacked Girlfriend's Lesbian Lover*.

The defendant admitted in court attacking a woman, but said he was upset because he had discovered she was having an affair with his girlfriend. His victim complained to the PCC that the newspaper stated as fact in its headline and the intro to its story that the two women had been lovers, rather than making clear that this was an allegation made in mitigation. In fact, both women later said the claims were unfounded. However, the editor said he had accurately reported what was said in court and would not publish a letter of denial from the complainant because it could expose his newspaper to the risk of defamation proceedings.

The PCC said while the editor was not responsible for the accuracy of *what was said* in court, there was an important principle under the Code of *how proceedings were reported*. Readers would have been misled into believing that the court claim was an established fact. The Commission criticised the editor for not trying to find an amicable resolution and upheld the complaint. (*Mahmoud v Isle of Wight County Press: Report 75, 2007*).

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REPORTING THE OUTCOME OF DEFAMATION CASES

Publications are required by the Code in sub-clause 1iv to report fairly and accurately the outcome of a case for defamation to which they had been party — *unless an agreed settlement states otherwise, or an agreed statement is published.*

This is intended to ensure that newspapers set the record straight in their own pages. It covers only the outcome of the case and puts no onus on editors to run ongoing reports of the action — although they may choose to do so.

A case where a man who successfully sued *The Guardian* went on to complain that the paper had not run balanced reports of the trial (*Kirby and Co. v The Guardian: Report 46, 1998*) was rejected by the PCC. The Code refers only to the outcome of the case.

Agreed statements: The provision for cases where the settlement of the defamation action clearly states that there is no requirement to publish the outcome, or where an agreed statement is published, was added in June 2004 to protect publications which reached such an agreement from being guilty of a technical breach.

That happened in 1999, when a magazine did not report the

outcome of a case, believing in good faith that the settlement did not require a report of the outcome. In its adjudication (*McQueen and Givenchy SA v Time Out: Report 46, 1999*) the PCC accepted that the Code should not be used to give litigants in resolved cases further redress.

Significantly, the Commission did not censure the magazine, but urged editors and lawyers to make clear in settlements that reporting of the outcome was not an issue.

The clear lesson for both sides is that agreed legal settlements of defamation actions should include the timing and manner of any publication of the outcome and those arrangements should be enforced as part of that settlement. It should not be a matter for the PCC to referee after the event.

KEY RULINGS

- *Martin v Mail on Sunday*, (Report 53, 2000).
- *Harkishin v Sunday Sport*, (Report 58, 2002).
- *Hunt v The Guardian*, (Report 45, 1999).
- *Clarke MP v The Times*, (Report 58, 2002).
- *Millichamp v Brecon & Radnor Express* (Report 72, 2005).
- *Brain v Hello!* (Report 55, 2001).
- *Harman and Harman v Folkestone Herald* (Report 49, 2000).
- *A man v Luton on Sunday*, (Report 64, 2003).
- *A woman v South Wales Evening Post* (Report 59, 2002).
- *Boswell-Harper v Daily Express* (Report 75, 2007).
- *Field MP v The Independent* (Report 51, 2000).
- *A. J. Crompton v The Sun*, (Report 41, 1998).
- *Tolkien family v Sunday Mercury* (Report 62, 2003).
- *McGuinness v Sunday World* (Report 74, 2006).
- *Altard v Sunday Mirror* (Report 55, 2001).
- *A man v The Voice* (Report 72, 2005-6).
- *Mahmoud v Isle of Wight County Press* (Report 75, 2007).
- *Kirby and Co. v The Guardian*, (Report 46, 1999).
- *McQueen and Givenchy SA v Time Out* (Report 46, 1999).

KEY QUESTIONS

- **Was the alleged error significant?** Trivial errors are not covered.
- **Was the story inaccurate, misleading or distorted?** A technically accurate story could still be misleading. Has a picture been manipulated?
- **Was sufficient care taken to establish accuracy ahead of publication?** Were proper checks made? Was the complainant offered a chance to comment?
- **Did the story confuse comment or conjecture and fact?** Presentation is important.
- **Was a suitable remedy offered?**
- **Was the outcome of a defamation case reported?**

The panel colour code

What the Code says

Key questions editors need to ask themselves when Code issues arise

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Section Two: Getting it right

OPPORTUNITY TO REPLY

Reasonable responses

THE CODE SAYS...

Clause Two — OPPORTUNITY TO REPLY

A fair opportunity for reply to inaccuracies must be given when reasonably called for.

As the Opportunity to Reply is to inaccuracies, it would be difficult to breach Clause 2 without first contravening the rules laid down for correcting significant errors in Clause 1. Complaints therefore are rarely, if ever, considered under Clause 2 alone. But the clause is important because it sets out the precise obligation on editors. They *must give a fair opportunity to reply... when reasonably called for.*

It means that where it is reasonable — as in cases of significant inaccuracy where little or no redress has been offered — an opportunity to reply may offer a remedy beyond a simple correction.

Circumstances and timing can themselves add significance to an error and therefore add urgency to the need for an opportunity to reply.

A front page splash in a London newspaper headed *Terror And Hatred For Sale Just Yards From Baker Street* would be a strong story in the public interest at any time, but when published only weeks after the July 2005 London bombings both its relevance and the need to be accurate were heightened.

The story highlighting the sale of allegedly extremist literature in Islamic outlets was accompanied by a picture and contact details of

the Dar Al-Taqwa bookshop, as an example of the sort of premises selling titles that advocated terrorism. But the shop did not sell any of the books or DVDs featured in the article. It did sell a pamphlet that was quoted, but this did not corroborate the allegations of incitement to terror or hatred.

The newspaper offered to publish an abridged letter from the shop's managing director, with an editorial footnote apologising for any misunderstanding. But the bookshop — which had sought police protection, following abuse and threats to its staff — said this was not enough.

The PCC agreed. It said the misleading allegations could have had extremely serious consequences in the climate of anxiety following the London bombings and the remedies offered were inadequate. The complaint of inaccuracy and failing to offer a fair opportunity to reply were both upheld. (*Samir El-Atar v Evening Standard: Report 72, 2005*).

However, it would not normally be reasonable to call for an opportunity to reply if one has already been offered, especially if accepted. A complaint from Esther Rantzen against a Sunday newspaper failed because the editor — although disputing the inaccuracies — had already published prominently a letter addressing her main points. The PCC decided this was enough. (*Rantzen v The Sunday Telegraph: Report 37, 1997*).

The opportunity to reply has occasionally been criticised as falling short of an absolute right of reply. However in the context of a regulatory system built on conciliation, any term dealing in absolute

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BRIEFING

Reporting people accused of crime

Allegations that named individuals have committed — or are suspected of — a crime can raise important issues under the Code. This applies particularly to allegations from third parties or police sources, or at the time of an arrest.

In a Guidance Note, the PCC reminds editors that, because allegations may prove unfounded, there is particular need to take care to see that the Code is not breached. Key areas affected include:

- **Accuracy:** It is important to distinguish fact from conjecture (Clause 1). In some cases, it is difficult to substantiate allegations from third parties, yet publication of the allegations, if true, would be in the public interest. Editors might need to consider publication without identifying the accused as a way of complying with the Code.
If a complaint is made about accuracy, editors should investigate the story — and, if necessary put right any wrong impression — swiftly to avoid the error being reproduced elsewhere and gaining credibility.
- **Privacy and harassment:** The fact that someone has been accused of crime should not be used to justify intrusions, unless relevant or in the public interest (Clause 3). Editors are reminded that telephoning, questioning, pursuing or photographing individuals once asked to desist would breach the harassment rules (Clause 4), unless in the public interest.
- **Sex cases:** Editors are advised to take care that publication of details about the accused cannot lead to identification of the alleged victims (Clause 7 and Clause 11). If it is likely to do so, editors should report such allegations without naming the accused until a charge is brought.
- **Innocent relatives:** Under the Code, innocent relatives or friends should not be identified without consent, unless relevant to the story — for example, when the relationship is already in the public domain — or it is in the public interest to do so (Clause 9).

rights on either side — whether they be reasonable or otherwise — could be counter-productive and raise false expectations. The Code definition relies on what is reasonable in the circumstances, which is decided by the PCC.

KEY RULINGS

- *Samir El-Atar v Evening Standard* (Report 72, 2005).
- *Rantzen v The Sunday Telegraph* (Report 37, 1997).

KEY QUESTIONS

- Was there a significant inaccuracy?
- Was an adequate remedy offered?

Section Three: intrusion

PRIVACY

Privacy, not invisibility

Privacy is always a hot issue. Complaints about intrusion account for a quarter of the PCC's cases, and cover the whole spectrum of national and regional newspapers and magazines in almost equal proportion.

This reflects the genuine and widespread conflict over where legitimate public exposure ends and public prurience begins. When dealing with public figures, there can be a further dimension: how much is this prurience encouraged by celebrities themselves? There is no definitive answer to these questions. It is a matter of balance and judgment according to all the circumstances. The Code attempts to embrace that and manage the conflicts in Clause 3, by two means.

First, in setting out the zones of privacy, it echoes the language of

the Human Rights Act — the entitlement to *respect for private and family life, home, health and correspondence*. In June 2004, the Code added to this digital communications, thus underlining Clause 10's strictures on the use of bugging devices.

Second, the Code's ban on intrusive photography makes clear that consent would be needed to take pictures of individuals on *public or private property where there is a reasonable expectation of privacy*.

This attempts to protect individuals by introducing a test of what was reasonable, with each case judged on its merits — the final arbiter of which would be the PCC with its lay majority. As this clause offers the possibility of a public interest defence, that too is often factored into the equation.

The wide discretion the clause gives to the PCC makes its decisions vital in influencing editorial judgments and setting public expectations of the press. Among the guiding principles it considers in reaching those decisions:

- **Privacy is not an absolute right** — it can be compromised by conduct or consent. For example, when considering complaints of alleged intrusions, the PCC has traditionally had regard for any relevant previous disclosures by the complainant. Since October 2009, that has been codified in Clause 3ii, which states: "*Account will be taken of the complainant's own public disclosures of information.*"
- **Privacy is not a commodity** which can be sold on one person's

THE CODE SAYS...

Clause Three — PRIVACY*

- i) *Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
- ii) *Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.*
- iii) *It is unacceptable to photograph individuals in private places without their consent.*

Note — *Private places are public or private property where there is a reasonable expectation of privacy.*

* A public interest exemption may be available. See Section Six

The panel colour code
 What the Code says
 Key questions editors need to ask themselves when Code issues arise
 Briefings on specific areas where the Code applies

- terms — the Code is not designed to protect commercial deals.
- **Privacy does not mean invisibility** — pictures taken in genuinely public places and information already in the public domain can be legitimate.
- **Privacy may be against the public interest** — such as when used to keep secret conduct that might reflect on a public figure or role model. The PCC has ruled in several cases where people have effectively invaded their own privacy by selling their story, or talking publicly about private matters — or not complaining when someone else does.

The Commission's view is that those people should expect consequential media comment, but that it should be proportionate.

COMPROMISING PRIVACY

The parents of a sole surviving conjoined twin sold picture rights to the story, but complained that it was intrusive and damaging to the child's welfare when another paper published *unauthorised* photographs of the baby. The Commission disagreed. First, a photograph of the infant's face did not concern her welfare, and, second, the parents had put the material into the public domain. Privacy, said the PCC, was "not a commodity which can be sold on one person's terms". (*Attard v Manchester Evening News: Report 55, 2001*).

The principle here is that people must, in part at least, have due regard for protecting their own privacy. Under the Code, information cannot be private if it is already genuinely in the public domain, and people cannot complain if they themselves have put it there.

Similarly, their scope for complaint is also limited if they have failed to complain about a previous allegation to prevent repetition.

Nailing rumours: In 2002, Mr David Maclean MP, the Conservative Chief Whip, did not challenge a Sunday newspaper's diary items suggesting he had had an affair with a senior civil servant in the 1990s. But when in 2004, Mr Maclean had occasion to warn fellow

Tory Boris Johnson on the danger of lying about an alleged affair with Petronella Wyatt, the same newspaper ran a bigger story headed *Top Tory Who Quizzed Boris Over Petsy Affair Cheated On His Own Wife With Chief Of Staff To Duncan Smith*. Mr Maclean complained to the PCC that two small diary items published two years before had not placed the matter into the public domain sufficiently to justify publication of the story.

Sounding a warning to both editors and potential complainants, the Commission said that, even though the diary items were small, the information was undeniably in the public domain (*Maclean MP v Mail on Sunday: Report 72, 2005*): "It is important for editors to be aware that the Code applies as much to material contained in diary pieces as to the rest of a newspaper," said the Commission.

"It is also important for people who are the subject of such pieces to realise that not to complain about them may limit their ability to complain about future articles which repeat the same thing."

PUBLIC FIGURES

The PCC accepts that people such as show business celebrities or sports stars may need to create a professional image of themselves in the media. This does not undermine their right as individuals to privacy or mean the press could justify publishing articles on any subject about them. Their "private and family life, home, health and correspondence" all fall within the Code, unless there is a public interest in publication.

Address code: Publishing details about a celebrity's home without consent, for example, could constitute a breach, especially because of security problems and the threat from stalkers. The key test in such cases is not whether the precise location has been disclosed, but whether the information published would be sufficient to enable people to find the whereabouts of the home.

A complaint from singer Ms Dynamite was upheld after a local paper revealed that she had moved into a property near her mother,

picturing the home and naming the street. (*Ms Dynamite v Islington Gazette: Report 63, 2003*).

But the PCC judges each case individually, according to the threat posed. So when the author J. K. Rowling, who guards her privacy closely, complained about disclosure of details of her homes in London and Scotland, she had mixed success.

The PCC upheld her complaint that a *Daily Mirror* article, picturing the London house and naming the road in which it was located was sufficient to identify it. However, details the paper had given of two of the author's Scottish properties were not judged intrusive. In one, her Edinburgh house was pictured, but only the name of the suburb was given. In the other, an aerial photograph of Ms Rowling's country home, its name and the county — Perthshire — in which it was located were not regarded as a giveaway that might attract unwanted visitors. (*Rowling v Daily Mirror: Report 72, 2005*).

In 2008, Ms Rowling complained that three more newspaper stories had identified her country home by saying it was close to a farm she had bought, running more pictures and naming a nearby town. But the PCC ruled that the information given was not sufficiently different to that already in the public domain, especially on the internet — including a listing in *Wikipedia* — to contravene the Code. Significantly, the articles did not give the precise whereabouts of the house, or name the road, nor where the property was in relation to the nearby town, and the photographs showing the surrounding countryside did not pinpoint the location. (*Rowling v The Mail on Sunday Scottish Edition, Daily Mirror, Daily Record: Report 77, 2008*).

The Code's protection for people genuinely at risk from stalkers or obsessive fans does not automatically carry over to non-celebrities. Ms Helen Edmonds, former wife of Noel Edmonds, complained that a Sunday paper story headlined *A Far Cry From Crinkley Bottom* identified the location of her new home, making her and her children vulnerable to criminals. But the PCC ruled that the piece did not contain information — such as security arrangements or the times

when the house would be unoccupied — that would expose her home to greater risk than for other similar properties. (*Edmonds v The Mail on Sunday: Report 72, 2005*).

Pregnant pause: As with homes, so with health. There are limits on what can be said about celebrities, even though they are constantly in the public eye. Pregnancy, even for non-public figures, can rarely be kept secret for long, but the PCC has ruled that early speculation on whether someone is expecting a baby can be intrusive.

The actress Joanna Riding complained that a diary item disclosed that she had withdrawn from a theatre role because she was expecting a baby — before she had even told her family. She subsequently suffered a miscarriage.

In a landmark adjudication protecting all mothers-to-be, whether public figures or not, the PCC said that revealing the pregnancy at such an early stage was a serious intrusion (*Riding v The Independent: Report 73, 2006*). And, setting out guidelines for the future, the Commission ruled:

- *The press should not reveal news of an individual's pregnancy without consent before the 12-week scan unless the information is known to such an extent that it would be perverse not to refer to it.*
- *This is because of the risk of complications or miscarriages, and because it should be down to the mother to share the news with her family and friends at an early stage.*

The PCC has made clear that it will not accept attempts by journalists to get around its guidelines by running speculative stories. It upheld a complaint against a national tabloid which, having received firm information that the singer Charlotte Church was not more than 12 weeks pregnant, published a piece headlined *Baby Rumours For Sober Church*. The Commission said that trying to circumvent privacy provisions by presenting the story as speculation was against the spirit of the Code. (*Church v The Sun: Report 75, 2007*).

Private health details of public figures, or their families, are generally protected under the Code unless there is some public interest in revealing them — such as when they might significantly affect the performance of a senior politician. But when a Sunday newspaper revealed specific health details of Government Minister David Miliband's wife, in a story discussing their adoption of a child, the PCC judged it to be highly intrusive. Such details should not have been published, it said, without explicit consent or some convincing public interest reason. It was a serious breach of the Code. (*Miliband v The Mail on Sunday: Report 69, 2005*).

Famous or infamous? The rules that protect the famous from unjustified intrusions into privacy apply equally to the infamous. Even notorious criminals do not automatically forfeit their rights under the Code. The judgment, as ever, is whether publication would be in the public interest.

So when Peter Coonan — formerly Peter Sutcliffe, the Yorkshire Ripper — complained about publication of a private telephone conversation secretly taped from Broadmoor Special Hospital, where he was a patient, the PCC had to judge whether his rights had been breached.

The Commission decided that, as a result of Coonan's crimes, his criminal career, medical condition and the circumstances of his treatment and detention were properly matters for public scrutiny and discussion. And, although the conversation — run by the *News of the World* as the Ripper Tapes — referred to his mental state, medical condition and treatment, the information was not particularly revealing, much of it was already in the public domain and it was not sufficiently private to be protected under the Code. The PCC rejected both the privacy complaint and another that the taping of the conversation had breached the Code's provisions on the use of clandestine listening devices. (*Coonan v News of the World: Report 74, 2007*).

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In response to a complaint from Sir Paul McCartney, the PCC decided that Notre Dame cathedral, although a great public monument thronged with tourists, was also a private place for a person at prayer. It deprecated the publication of pictures in *Hello!* magazine showing Sir Paul praying inside the cathedral soon after his wife's death. While not privately owned, the cathedral was clearly a place where a person would have a reasonable expectation of privacy. (*McCartney v Hello!: Report 43, 1998*).

Holiday pictures: When supermodel Elle Macpherson was taking her family on holiday, she chose a private villa on the private island of Mustique, which has no public beaches, and therefore provided a reasonable expectation of privacy for her children. So when a celebrity magazine published shots of the family relaxing, her complaint to the PCC was upheld. (*Macpherson v Hello!: Report 74, 2007*).

However, the PCC decided that, in the middle of summer, a publicly accessible Majorcan beach overlooked by holiday apartments was not a place where newsreader Anna Ford and her partner might reasonably expect privacy as they relaxed in their swimwear. It also said publication of the pictures did not show disrespect for her private life. The adjudication was challenged on judicial review, but upheld by the Divisional Court. (*Ford/Scott v Daily Mail / OK! Magazine: Report 52, 2000*).

A crowded beach is one thing, a quiet tearoom in Dorking, another. A diner complained that a picture of him tucking into a butterscotch tart was taken without consent and used in a newspaper. The PCC said customers should reasonably expect to sit inside a quiet café without having to worry about surreptitious photographs being taken and published in newspapers. (*Tunbridge v Dorking Advertiser: Report 58, 2002*).

Similarly, bank cashier Mark Kisby did not expect his photograph to appear, without consent, in a men's magazine simply because he was snapped while serving a 'lottery lout' millionaire who was

Public servants, including politicians, are also entitled to privacy — although they are inevitably subject to extra scrutiny in the public interest. The PCC upheld a complaint about the story of a wife who left her husband for a relationship with a policewoman. The fact that the WPC was a public servant was not sufficient grounds for intrusion. (*Charters v The Scottish Sun: Report 48, 1999*).

Royal Family: There is a delicate balancing act between the fulfilment of the Royal Family's public role and their private lives. But while they are not entitled to any special provision, they are entitled to the protection of the Code. The PCC issued a guidance note on the Royal Princes, particularly protecting them from unnecessary intrusion during their time at school. Pictures of Prince William hiking and crossing a river during a gap-year visit to Chile were held to breach both privacy and harassment rules.

The PCC condemned publication and the 'persistent pursuit' involved. "The ability of all young people to go about their lives without physical intimidation is hugely important." (*Prince William v OK! Magazine: Report 52, 2000*).

REASONABLE EXPECTATION OF PRIVACY

The Prince William pictures, in the PCC's view, clearly breached the rule that photographs should not be taken without consent in a private place where the individual has a reasonable expectation of privacy. Mid-river in a South American wilderness was an example of just such a private place. In fact, the elements that contribute to a reasonable expectation of privacy have been delineated in a series of Commission rulings. Before publication, editors must decide:

- Was the person photographed out of the public view — not visible or identifiable with the naked eye to someone in a public place?
- Was he or she engaged in a private activity at the time?

If the answer to either question is Yes, there are serious risks that the pictures could breach the Code.

making a large withdrawal. So, when it did, Mr Kisby complained that it was an intrusion on his privacy that could have led to security problems for him and his family.

The magazine argued that the cashier was the public face of the bank and could not expect his identity to be concealed. However, the PCC ruled that publishing a photograph of a person, without consent, at his workplace was in this instance a clear breach of the Code. (*Kisby v Loaded: Report 73, 2006*).

Public or private space? While the interiors of publicly accessible buildings such as cathedrals, cafés, banks or offices can constitute a private place within the Code, the exterior of a person's own home may not always do so.

Mrs Gail Sheridan, the high-profile wife of a prominent Scottish politician, objected to a tabloid newspaper's photograph, taken with a long lens, of her in her back garden. She claimed she had a reasonable expectation of privacy. The newspaper disagreed. It said Mrs Sheridan was a public figure, standing on her driveway, visible from the street — even without a long lens camera — and was not engaged in any private activity, other than holding her keys.

The PCC, in an adjudication pulling together many of the factors upon which such issues hinge, said that had Mrs Sheridan been hidden from view in an enclosed back garden, she might have been protected. But here she was clearly visible from the street and engaged in an innocuous activity.

The fact that the photograph was taken with a long lens was immaterial: what was important was not the means by which the picture was taken but that she was identifiable to ordinary passers-by. The complaint was not upheld. (*Sheridan v Scottish Sun: Report 75, 2007*).

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THE PUBLIC INTEREST

No judgment is more difficult than when weighing the privacy of the individual against freedom of expression and intrusion in the wider public interest (See Section Six, Public Interest). The two principal issues in making such a judgment are:

- Is publication of the private information genuinely in the public interest? And —
- Is the degree of intrusion proportionate to the public interest served?

Sometimes editors surmount the first hurdle, only to fall at the second.

There were no such problems in identifying the public interest when the then Tory MP Rupert Allason's affair with a married woman was splashed in a newspaper. He complained that it was his private business. But the PCC ruled that as his election literature had led constituents to believe he was a family man — an impression that had not been corrected — publication was justified. (*Allason v Daily Mirror*: Report 37, 1996).

The Commission also found a public interest in the *Evening Standard* naming a council worker who had warned a friend that a care-worker was a paedophile — but had done nothing to alert the wider public (*Robson v Evening Standard*: Report 42, 1998).

And a convicted drug smuggler's complaint about a newspaper which published interior pictures of her home was rejected because it was in the public interest to show how she had spent the proceeds of crime. (*Tornilinson v Peterborough Evening Telegraph*: Report 60, 2002).

Attending police raids: By contrast, a newspaper came unstuck when it joined a police drugs raid on local homes. It posted a video clip of one raid, where a small amount of cannabis was found, on its website and used still pictures in the paper, headlined *Drugs And Cash Seized In Raid*. But the homeowner denied any knowledge of the drugs and had not been charged with an offence.

The PCC agreed that identifying her house and showing the interiors in such circumstances without consent involved a degree of intrusion way out of proportion to any public interest served by highlighting the police raid or exposing a specific criminal offence. (*Popple v Scarborough Evening News*: Report 77, 2008).

The warning about the dangers of relying on police invitations to join such exercises was strongly reinforced when another weekly newspaper accompanied a raid on a house suspected of having stolen satellite navigation systems. No stolen goods were found, nor charges brought, but the newspaper published interior shots of the house including a teenager handcuffed in his bedroom.

Although the boy's face had been pixelated and no exterior pictures of the house were used, the Commission ruled that this was a serious intrusion. It made clear that, as no stolen goods had been found, there was no public interest in publishing the pictures. (*A woman v Barking and Dagenham Recorder*: Report 78, 2008).

The PCC also reminded editors that under both the Code and current guidance from the Association of Chief Police Officers, it is the media's responsibility when attending such raids to obtain permission from the owner to enter the property before doing so. ACPO Guidance says: "Consent should be in a form which is capable of proof, i.e. in writing, filmed or taped verbal comment."

Undercover, over the top: The Commission took a similar line about a snatched photograph of Christopher Bourne, dubbed by a regional Sunday paper "the greediest man in Britain". He had bought 30 Xbox games consoles so that he could exploit a pre-Christmas shortage and auction them at a profit on eBay. After refusing to be pictured himself, Mr Bourne was secretly photographed when he let his son pose with the consoles. The picture was published with the headline *Dad Cashes In On Xbox Misery*.

The PCC said that, while the paper was entitled to its strong views, there was no evidence of crime or impropriety by Mr Bourne. The intrusion into his privacy by photographing him surreptitiously

BRIEFING

Coverage of lottery winners

The PCC has revised its advice, first issued in 1995, on the reporting of winners of the National Lottery. The *Guidance Note* covers four main areas:

- **Winners who opt for anonymity:** Editors should generally respect a winner's wish for no publicity, unless there is a public interest in publication. The sheer scale of the win is not, itself, a justification. Publications should beware of seeking information about such winners by any means which might breach the Code — such as harassment.
- **Winners who opt for publicity** are still protected by the Code. They are entitled to expect journalists to take care not to publish inaccurate material about them, or harass them. Their privacy is protected by Clause 3 — although the PCC would take into account whether similar material had been put into the public domain with the winner's consent.
- **Vulnerable winners:** The very young, or old, or the sick or recently bereaved may make particularly good copy, but they are still entitled to strong protection under the Code — regardless of the sums involved.
- **Rewards and inducements:** Offering rewards to people to identify anonymous lottery winners is banned, unless it is in the public interest. The PCC also bars journalists from seeking information from Camelot staff which would breach the duty of confidence to the winners under the lottery organisers' licence.

in his own home was out of proportion to any conceivable public interest in publishing his picture. The complaint was upheld. (*Bourne v Sunday Mercury*: Report 72, 2006).

Gratuitous humiliation: Proportionality was the key to compliance when two newspapers reported on an affair between an aristocrat's wife — who it later emerged suffered from mental illness — and a former prisoner. One story breached the Code, the other did not.

The *Daily Mail* account — headlined *The Aristocrat's Wife, The Jobless Jailbird And The 'Lady Chatterley' Affair That Put Her Marriage Under Threat* — was based on information from the girlfriend of the man involved. It spoke of text messages and revealed where sexual encounters had taken place. But the newspaper deliberately omitted more intimate details about the relationship. A second story was published in the *News of the World*, based on the confessions of the adulterous boyfriend himself, under the headline *Lady Mucky Wanted Me Rough And Ready*. It included intimate details of sexual activity.

In each case, the PCC said the key issue was the balance of one person's freedom of expression versus another person's right to privacy. In the *Mail*, the girlfriend's right to give her side of the story had been maintained, without including "humiliating and gratuitously intrusive detail" about the wife. The complaint of an intrusion into privacy was therefore not upheld. (*A woman v Daily Mail*: Report 74, 2007).

However the *News of the World* story failed the PCC proportionality test. The Commission ruled that the public interest involved in exposing adultery by someone who had married into an aristocratic family was insufficient to justify the level of intimate detail that had been given. (*A woman v News of the World*: Report 74, 2007).

A similar test of *gratuitous humiliation* was applied when two newspapers published images that had led to the suspension of a woman teacher at a military college. The explicit photographs had

KEY QUESTIONS

- Was consent given for publication — formally or by implication?
- Has the entitlement to privacy been compromised? For example, by the subject courting publicity or selling it on their own terms?
- Is the individual a public figure, or role model — and does the material reveal conduct reflecting on their public or professional status or image?
- Was the information already in the public domain — would it be reasonable for it to be retrieved and made private?
- Did individuals photographed without consent have a reasonable expectation of privacy? Were they out of public view and engaged in private activity?
- Was publication in the public interest?
- Was the breach proportionate to the public interest served?

been sent between the teacher and her partner, but were discovered by her employers. The *Daily Mirror* published one picture of the teacher as a headshot only, and the *Workshop Guardian* published a topless picture, but duly censored to preserve her modesty.

The PCC cleared both newspapers. It said while the publication of the story was legitimate, this was not sufficient to deprive the teacher of all rights to privacy. The pictures themselves were intimate and taken in the context of a relationship. By cropping the picture, the *Mirror* had avoided gratuitously humiliating the teacher. (*A woman v Daily Mirror*: Report 70, 2005).

Similarly, for the *Workshop Guardian* to have published its picture in full would have caused unnecessary embarrassment. Censoring it showed some respect for the woman's privacy, ensuring no breach of the Code. (*A woman v Workshop Guardian*: Report 70, 2005).

The Commission has also issued guidance (See Briefing panel) that those National Lottery winners who request anonymity should not be identified. The sheer scale of the sum involved could not justify publication in the public interest.

KEY RULINGS

- *Attard v Manchester Evening News* (Report 55, 2001).
- *Maclean MP v Mail on Sunday* (Report 72, 2005).
- *Rowling v Daily Mirror* (Report 72, 2005).
- *Rowling v Mail on Sunday Scottish Edition, Daily Mirror, Daily Record* (Report 77, 2008).
- *Edmonds v The Mail on Sunday* (Report 72, 2005).
- *Riding v The Independent* (Report 73, 2006).
- *Church v The Sun* (Report 75, 2007).
- *Milliband v The Mail on Sunday* (Report 69, 2005).
- *Coonan v News of the World* (Report 74, 2007).
- *Ms Dynamite v Islington Gazette* (Report 63, 2003).
- *Charters v The Scottish Sun* (Report 48, 1999).
- *Prince William v OK! Magazine* (Report 52, 2000).
- *McCartney v Hello* (Report 43, 1998).
- *Macpherson v Hello!* (Report 74, 2007).
- *Ford/Scott v Daily Mail / OK! Magazine* (Report 52, 2000).
- *Tunbridge v Dorking Advertiser* (Report 58, 2002).
- *Kisby v Loaded* (Report 73, 2006).
- *Sheridan v The Scottish Sun* (Report 75, 2007).
- *Allason v Daily Mirror* (Report 37, 1996).
- *Robson v Evening Standard* (Report 42, 1998).
- *Tomlinson v Peterborough Evening Telegraph* (Report 60, 2002).
- *Popple v Scarborough Evening News* (Report 77, 2008).
- *A woman v Barking and Dagenham Recorder* (Report 78, 2008).
- *Bourne v Sunday Mercury* (Report 72, 2006).
- *A woman v Daily Mail* (Report 74, 2007).
- *A woman v News of the World* (Report 74, 2007).
- *A woman v Workshop Guardian* (Report 70, 2005).

Section Three: Intrusion

HARASSMENT

When persistence doesn't pay

This Clause, formulated following the death of Diana Princess of Wales, is one of the toughest and most explicit in the Code, yet relatively few cases go to adjudication. This is largely down to the success of informal guidance.

Complaints, when they come — often via the PCC's 24-hour Helpline for the public (See Contact Numbers) — are usually from people who want the physical removal of journalists, perhaps from their doorstep. The Commission staff will either advise complainants what they should say to journalists who they believe are harassing

them, or alert editors directly to the fact that a complaint has been received.

As Clause 4 requires *journalists* — which under the Code covers all editorial staff, including contributors — not to *persist in questioning, telephoning, pursuing or photographing individuals once asked to desist nor remain on their property when asked to leave*, they usually comply. In most cases, the matter is resolved and no complaint follows.

Since October 2009, the Code has required that journalists in such situations should — if requested — identify themselves and those they represent. In reality, this underwrites standard practice. It would be unusual for journalists not to identify themselves to the person they wanted to interview or photograph, unless there was a legitimate public interest reason for not doing so.

Media scums: The PCC has been particularly effective in dealing with media scums, which are often the most high profile instances of persistent pursuit, caused by particularly intense cross-media interest in a major story.

The PCC and the Editors' Code Committee have taken the lead in trying to co-ordinate efforts to avoid this form of collective harassment. The PCC agreed to act as a clearing house for 'desist' requests by passing them on not only to print media, but to broadcasting organisations not covered by the Code. PCC advice to journalists to pull out of areas affected by tragedy — such as

THE CODE SAYS...

Clause Four — Harassment*

- Journalists must not engage in intimidation, harassment or persistent pursuit.*
- They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.*
- Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.*

* A public interest exemption may be available: See Section Six

Dunblane, Omagh and the Paddington rail disaster — is usually headed by press and broadcasters alike.

Often, the PCC will, proactively, offer its services to those suddenly caught in the media spotlight. It did so, for example, in the Soham murder inquiry, when the killing of two schoolgirls shocked the nation; and again in the case of the Ipswich murders, where a serial killer preyed on prostitutes. It routinely assists families of military personnel killed or wounded on active service, or captured.

Royal siege: Most notably, the Commission intervened when Kate Middleton, girlfriend of Prince William, found herself under virtual siege by press and TV cameras when rumours were rife of an imminent royal engagement. PCC officials were in touch with Ms Middleton's lawyers from the outset, offering to assist as soon as requested.

That situation was defused without need for a formal complaint. But just months later a photograph of Ms Middleton in the *Daily Mirror* led to a complaint that it had been taken in circumstances that amounted to harassment. The PCC launched a formal investigation and the newspaper issued a public expression of regret for the error on the same day. (*Middleton v Daily Mirror: Report 75, 2007*).

While formal complaints are therefore rare, adjudications are even less common. And they are often difficult as there tends to be wide discrepancy between the accounts of complainants and journalists of the contact between them.

Desist means stop: However, if it is demonstrable that the journalist persisted, having been asked to desist, then the Commission will usually find a breach of the Code, unless there is a public interest involved. A BBC radio weather girl complained of harassment over a story that she was involved in a 'D-I-Y pregnancy' with her female partner.

The reporter admitted making three approaches to the complainant, but denied being asked on the first approach to desist.

On the second approach, via the BBC, the reporter was assured by an official — acting on the woman's instructions — that the presenter did not wish to speak.

The newspaper admitted making a direct approach to the complainant herself the next day. The PCC, in this case, accepted the BBC's representation as a request to desist, which made the third approach a breach. The complaint was upheld. (*A Woman v News of the World: Report 59/60, 2002*).

The PCC also found against a Sunday newspaper, which — after twice being told a young woman did not want to be contacted — then approached her with an offer to write a column, and followed up with another visit from a reporter and photographer. While the newspaper may not have been acting in bad faith, it was in breach. (*Swire v Mail on Sunday: Report 54, 2001*).

Even without a request to desist, repeated unwelcome approaches could be against the spirit of the Code and amount to harassment. A couple whose daughter, aged 16, committed suicide declined a weekly newspaper's offer to publish a tribute, saying they would be in touch if they changed their minds.

But the reporter, with deadline pressing, called four times in a few days. The PCC said commonsense should have dictated that repeated calls in a short time to recently-bereaved parents were inappropriate. The complaint was upheld. (*Kimble v Bucks Herald: Report 53, 2001*).

Time limit: A desist request does not last forever. The passage of time may lessen the risk of harassment. Circumstances can alter, sometimes rapidly, and a fresh approach may then be legitimate. There can be no set formula for deciding this. These are difficult judgment calls for journalists and the Commission assesses each case on merit. But it would normally require editors to show reasonable grounds, such as a material change in circumstances, for a renewed approach.

Kimberly Fortier (Quinn) complained that a picture taken of her

BRIEFING

Judiciary and harassment

Guidance on the conventions surrounding the circumstances where judges can make comments to the press has been issued by the PCC.

It warns that:

- Judges cannot comment outside a courtroom on any case over which they are presiding, or have presided, or discuss any decision they have made, or any sentence they have imposed.
- They are equally prohibited from commenting on or discussing other judges' decisions.

The PCC advises that as there are no circumstances in which judges can speak to the press about such matters, there is a risk that approaches to them, or their family, by reporters could breach Clause 4 (Harassment) of the Code.

The PCC suggests editors should make sure that their staff — and any freelance contributors — are aware of the issues this sort of approach to judges could raise under the Code.

in August 2004 walking with her son in Los Angeles and published in the *Sunday Mirror* breached a 'desist' request issued by her lawyers ten days before, when the story broke of her affair with the then Home Secretary, David Blunkett.

The complaint was rejected. The PCC said it was artificial not to recognise that situations change. There had been major developments in the story, since the desist request had been made, including the revelation that Ms Fortier had contacted Mr Blunkett to end the relationship. The picture was taken in a public place, without physical intimidation and — while Ms Fortier denied being a public figure — her relationship with a senior politician had been put into the public domain, without complaint. (*Fortier v Sunday Mirror: Report 68/69, 2004-5*).

Similar issues arose when Greater Manchester Police complained that the *Daily Telegraph* had breached a request not to approach either the family of ten-year-old Jordan Lyons, who drowned in a pond, or two Police Community Support Officers who had arrived at the scene soon after, but did not enter the water to rescue him.

The PCC accepted that following the police 'desist' request, the story had moved on as it had been highlighted by Opposition leader David Cameron in a speech to his party's annual conference. It said the newspaper's approach had been proportionate to that development and the complaint was rejected. (*Greater Manchester Police v Daily Telegraph: Report 77, 2008*).

Approaching judges: The PCC has highlighted the problems of approaching members of the judiciary for comment on cases. In a Guidance Note, the Commission warns that because judges are not allowed to speak about cases outside court, approaches to them or their families could lead to complaints of harassment. (*See Briefing panel: Judiciary and harassment*).

Other sources: The Code puts the onus on editors to take care to ensure that the rules are observed not only by their own staff, but

The panel colour code

■ What the Code says

■ Key questions editors need to ask themselves when Code issues arise

■ Briefings on specific areas where the Code applies

KEY QUESTIONS

- **Was there a request to desist?** Subsequent pursuit, etc, would need to be justified in the public interest or by changed circumstances.
- **Was a request for identification complied with?** If not, was there a public interest reason for not doing so?
- **Did non-staff contributors comply?**
- **Was there a public interest?**

also by their contributors, such as agencies. That responsibility is underlined here. Pictures and stories from freelance contributors obtained by harassment would not comply with the Code.

If a complaint arose, the PCC would expect an editor to show how reasonable care had been taken to ensure that such material complied with the Code. Extra checks might be advisable, for example, when taking potentially sensitive material from previously untried sources, such as 'citizen journalists'.

The public interest: It would be possible to claim that a degree of harassment — such as persistent questioning and pursuit — is necessary in the public interest. In such cases, the Commission would normally expect that the harassment was not disproportionate to the public interest involved.

A magazine that published pictures of Prince William on an adventure break in South America claimed they were in the public interest as they showed him being groomed for kingship. The PCC rejected any notion that the public interest was served. (*Prince William v OK! Magazine: Report 52, 2000*).

KEY RULINGS

- *Middleton v Daily Mirror* (Report 75, 2007).
- *A woman v News of the World* (Report 59/60, 2002).
- *Swire v Mail on Sunday* (Report 54, 2001).

- *Kimble v Bucks Herald* (Report 53, 2001).
- *Fortier v Sunday Mirror* (Report 68/69, 2004-5).
- *Greater Manchester Police v Daily Telegraph*. (Report 77, 2008).
- *Prince William v OK! Magazine* (Report 52, 2000).

Section Three: Intrusion

INTRUSION INTO GRIEF

Sense and sensitivity

Journalism is an occupation conducted on the front line of life and, too often, of death. But while tragedy and suffering may go with the journalistic territory, insensitivity for its victims should not. The Code's strictures on intrusion into grief or shock are designed to protect those victims at their most vulnerable moments.

Newspapers have a job to do at such times and most do it well. It is a myth that approaches by the press are inherently intrusive. Reporters making inquiries sensitively are often welcomed by the bereaved, who see an obituary or story as a final public memorial, and they would prefer the facts to be given first-hand.

Also, as deaths are a matter of public record, the information is in the public domain and newspapers have a right to publish. Again,

a balance has to be struck. The key, as expressed by the Code, lies in making inquiries with *sympathy and discretion* and in *publishing sensitively*.

That does not mean newspapers should not publish sensitive material; it means that they should not do so insensitively. Nor does it amount to a ban on covering tragic stories unless all parties consent, as the PCC made clear in an adjudication in 2005 when it gave examples of some of the elements likely to constitute a lack of sensitivity in publication. They were:

- *The use of gratuitously gory information in pictures or stories at a time of grief;*
- *Unnecessarily ridiculing the manner of death;*
- *Publishing a picture showing the subject engaged in obviously private, or embarrassing, activity.*

The Commission was adjudicating in a case where a picture of a woman missing in the 2004 tsunami appeared in a national tabloid against her family's wishes. The father's request that no photograph of his daughter be used was not passed on, due to a miscommunication, and an image from a website was published.

While regretting the lapse in communications, the PCC ruled that publication of an innocuous image — obtained from a public resource such as the internet — of someone caught up in such a shocking event was not insensitive. (*The family of Alice Claypoole v Daily Mirror: Report 71, 2005*).

THE CODE SAYS...

Clause Five — Intrusion into grief or shock

i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.

*ii) *When reporting suicide, care should be taken to avoid excessive detail about the method used.*

* A public interest exemption may be available: See Section Six.

In a similar case, a widow complained about an evening newspaper's coverage after her husband was killed in a boat disaster. One story, headlined *Shattered Lives And Lost Dreams*, projected the feelings of her two-year-old son. Another — using information and a picture of mother and son supplied by the grandparents — revealed against her expressed wishes that she had since given birth to a daughter. The PCC, while sympathising with the widow's distress, felt the newspaper's attempts to illustrate the human consequences of tragedy were not inherently insensitive. Although the widow had not wanted publicity for the birth of her baby, there were competing rights of others to speak to the media, and for the public to receive information. (*Grady v Evening Courier, Halifax, Report 73, 2006*).

Breaking the news: The Commission has upheld a newspaper's right to publish a story as soon as the death is confirmed, but not before. *The PCC sees it as no part of the journalist's role to inform close relatives or friends of the death.*

A complaint from a mother who read about her daughter's death — ahead of positive identification — in a story headlined *Body-in-Bath Probe* was upheld. The mother had still been hoping it was not her daughter. The Commission said the newspaper should have checked that the family knew before publishing. (*Oliver v Manchester Evening News, Report 43, 1998*).

The PCC upheld a similar complaint from parents whose first intimation that their missing son was dead came from a reporter. (*McKeown v Newcastle Evening Chronicle, Report 40, 1997*).

But, while expressing sympathy, the Commission rejected a complaint from a widow whose husband's tragic death was reported the same day, before his parents knew or the facts were established. The PCC said the story, which presented some details of the incident as conjecture, was otherwise a straight-forward report of the death of a leading local figure. (*Thornhill v News and Star, Report 55, 2001*).

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personal matter and it was insensitive to name him or the dead child. The PCC agreed that the public interest would have been served just as well without naming the family and upheld the complaint. (*A couple v Esher News, Report 61, 2002*). (See also Section Six, *Public Interest*).

Photography at funerals without consent usually involves a balance of sensitivity versus publication in the public interest. But a Sunday paper's picture of a boy of 14 at the funeral of his father, an asylum seeker who killed himself in a detention centre, raised wider issues. The story, headlined *The Ultimate Sacrifice*, included a CCTV image of the father at the detention centre with a sheet tied around his neck, and an extract from a suicide note — addressed to, and featuring, the son. The CCTV pictures had been shown at the inquest, but the boy had been unaware of them.

His solicitors claimed this was unnecessarily intrusive and amounted to 'excessive detail' of the suicide method under Clause 5. Also, the funeral picture was taken without proper consent when the boy had a reasonable expectation of privacy (Clause 3); affected his welfare as a child; and was published only because of his association with his father (Clause 6).

The lawyers said the boy should expect a suicide note addressed to him to be private: any public interest in the story could have been served by omitting his name and the pictures.

The complaint was rejected on all counts. The PCC said the sensitivity rule did not provide automatic anonymity for those affected by tragedy, especially where they were central to it. The story had legitimate public interest and the CCTV pictures were relevant because of the inquest and raised no issues under the 'excessive detail' rules. While the funeral picture was taken without formal consent, the Commission accepted that that newspaper had not known this and relied on the fact that it had been published elsewhere. An offer to delete it from the file was a proportionate response. (*A boy v The Sunday Times, Report 74, 2007*).

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It also ruled that a newspaper that broke the news to neighbours of the death of a toddler through meningitis did not breach the Code. It was an important matter of public health and legitimate for a paper to seek comment from local people who were not relatives of the child. (*Maude v Derby Evening Telegraph, Report 42, 1997*).

insensitive or unnecessary detail (See also *Reporting Suicide, below*): A magazine that staged a mock-up of a murder scene and published the picture — with a headshot of the victim — on the anniversary of the death trampled through both the 'sensitivity' and accuracy rules. It was not made clear that the picture of a female body wrapped in bin liners, which caused much distress, was actually a reconstruction, based on the court reports of the murder. The PCC condemned the magazine's "cavalier approach", aggravated by the timing of publication, which had shown a total disregard for the victim's family. (*A man v Chat magazine, Report 76, 2007*).

A woman claimed a local newspaper's story about her brother's death following a collapse at home — headlined *Starving Pet Starts To Devour Pensioner* — was distressing and sensationalist. The PCC agreed, rejecting the editor's claim that the story was handled sympathetically. (*Yeoman v Rhondda Leader, Report 65, 2004*). It ruled that the story was not sufficiently sensitive, bearing in mind that it was published immediately after the death and neither the funeral nor the inquest had taken place. The complaint was upheld — as was a similar case in which parents complained about 'cruel' references to their son's "guts hanging out" in a report on his death. The editor regretted the excessive detail. (*Harvey v Rochdale Observer, Report 45, 1999*).

The Commission ruled that it was not necessary to identify a father who twice in two years lost a newborn baby at the same maternity unit. The man, who had also lost his previous partner in the earlier tragedy, agreed there was a public interest in apparent problems at the hospital, but believed the second baby death was a

By contrast, the funeral of TV personality Carol Smillie's mother was not a public event and a Sunday newspaper's prominent coverage of it was an intrusion, the Commission ruled. The paper's photographers had been asked to leave the funeral, but ran a three-page story using a freelance's pictures taken with a long lens at the crematorium. The PCC said the newspaper knew it was a time of grief and that photographers were unwelcome. The prominence given to the article added to its insensitivity and the result was a breach of the Code. (*Smillie v Sunday Mail, Report 50, 2000*).

Humorous or insensitive reports: Although the Code does not cover the privacy of the dead, a critical obituary in the *British Medical Journal*, describing a doctor as "the greatest snake-oil salesman of his age", brought a complaint from the man's family. The PCC said it was not unacceptable to publish criticisms of the dead — but that the sensitivity of the family had to be taken into account. No adjudication was necessary as the editor offered to publish an apology for the distress caused. (*Kelliher v British Medical Journal, Report 63, 2003*).

A magazine which ran a jokey student guide to suicide fell foul of the Code when it referred flippantly to two unconnected student deaths, one of which happened only months earlier. The PCC ruled that for the two tragedies to be treated with gratuitous humour was a serious breach of the Code. (*Napuk and Gibson v FHM, Report 48, 1999*).

Timing: While timing can add to the insensitivity, each case is decided on the circumstances. The PCC has upheld a claim of insensitive publication more than a year after the death.

REPORTING SUICIDE

The rule introduced in 2006 (See *Briefing*) requiring care to be taken to avoid 'excessive detail' of suicide methods followed a powerful submission by the Samaritans to the Code Committee highlighting

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the risk of imitative acts. In fact, it codified a practice already followed by many editors.

It meant, for example, that while it might be perfectly proper to report that death was caused by an overdose of Paracetamol, it would probably be excessive to state the number of tablets used. Exceptions could be made if editors could demonstrate that publication was in the public interest.

As the aim is to avoid copycat acts, the rule would — under the spirit of the Code — apply to reporting attempted suicide and to any article appearing to glamorise suicide. The PCC has indicated it will accept complaints from third parties, as well as from close families or friends.

Tougher than the law: The Commission used its first adjudication under the new sub-clause to make clear that, while newspapers were entitled to report on proceedings such as inquests, the Code's requirements were over and above those allowed by the law. It ruled that newspaper reports of an inquest into the death of a teacher who had electrocuted himself contained too much detail about the method.

"Inquests are held in public and newspapers are free to report their proceedings," said the PCC, "but to abide by the terms of the Code — which sets out standards over and above the legal framework — the papers should on this occasion have been less specific about the method used." (*A woman v Wigan Evening Post*: Report 76, 2007).

In that case, the complainant was the dead man's widow. But consent from a relative would not necessarily absolve editors from responsibility under the 'excessive detail' rule. The PCC accepted a third party complaint that a magazine article contained too much detail, even though it was written by the sister of a man who had taken his own life. The case was resolved without going to adjudication. (*Brown v She magazines*: Report 77, 2008).

Graphic images: Photographs depicting the act of suicide would not contravene the rules requiring sensitivity in publication, if they involved only subjective matters of taste, which are outside the Code. But risks of a breach could arise if the pictures broke the news of the death to the families; or contained excessive detail of the method used; or could be taken to glamorise suicide.

In 2006, before the introduction of the 'excessive detail' clause, three newspapers published pictures of a woman who threw herself from the fourth floor of a London hotel in front of a crowd gathered below. The PCC ruled that the simple fact of publishing pictures of what was a public incident did not, in itself, constitute a failure to be sensitive.

That did not mean the press was free to publish the pictures in an insensitive manner — for example, by making light of the incident, publishing unnecessarily explicit details, or presenting the images in a gratuitously graphic way. The newspapers had not done that, and the complaints were not upheld. (*Palomba v The Sun*: Report 72, 2006); (*Palomba v Evening Standard*: Report 72, 2006). (*Petetin v The Times*: Report 72, 2006).

The PCC accepted complaints from the Scottish NHS that graphic images of a girl involved in a suicide attempt in Germany, published by two UK tabloids, would have encouraged copycat acts. The complaints were resolved without going to adjudication. (*Choose Life v The Sun*: Report 77, 2008); (*Choose Life v Daily Star*: Report 77, 2008).

Graphic imagery of another kind was the subject of a complaint by Mrs Madeleine Moon MP representing relatives of young people who hanged themselves in a spate of suicides in and around her constituency in Bridgend, South Wales (See also Page 41). She claimed a Sunday paper's presentation in May 2008 of an otherwise balanced and well-researched piece was insensitive and could have encouraged copycat cases in that it showed photographs of those who had died juxtaposed with a large picture of a noose under the headline *Death Valleys*. The newspaper, while accepting that

KEY QUESTIONS

- Did journalists break the news of the death to close relatives?
- Were insensitive and unnecessary details published about the death?
- Were photographs taken at a private funeral without consent?
- Were humorous or insensitive obituaries or reports of death published?
- Were the details of the method used to commit suicide excessive?
- Was the coverage likely to glamorise suicide?

relatives might have been upset, said the whole point of the presentation was to highlight the apparent happiness of the young people with the harsh reality of what they had done, and had dramatically portrayed that without glamorising suicide.

The PCC ruled that, given the massive national and international coverage identifying hanging as a common feature of the deaths, the use of the noose picture to depict a serious and sensitive article was not excessive detail, and was not insensitive within the Code. The complaint was not upheld.

However, the Commission acknowledged that the pictures would "be an upsetting and stark reminder to the families about how their relatives had died", and regretted the distress caused. The PCC also drew attention to a private advisory note it had issued alerting editors to a request from some of the families that photographs of their relatives should not be used in future stories about Bridgend. (*Moon MP v Sunday Times*, Report 78, 2008).

Glamorising suicide: The PCC takes a dim view of reports that trivialise tragedy and has made clear that they can breach the rules requiring sensitive publication. However, when the *Daily Sport* published a list to Britain's most popular suicide 'hotspots', headlined *The Top Yourself 10*, the Commission ruled that it had breached the rules on excessive detail. A Scottish NHS official complained that vulnerable people might be encouraged to visit the places shown and take their own lives. The newspaper claimed the article was fair,

balanced and based on information already in the public domain. But the PCC said that, while articles investigating the pattern of suicides are usually acceptable, this "entirely gratuitous" guide stated explicitly a number of options about how and where to attempt suicide. It was clearly excessive in the context.

Also, the light-hearted presentation of the piece could have glamorised suicide for some people, thus further breaching the Code, which is designed to minimise the risk of imitative acts. (*Choose Life v Daily Sport*: Report 77, 2008).

KEY RULINGS

- The family of Alice Claypoole v *Daily Mirror* (Report 71, 2005).
- Grady v *Evening Courier, Halifax* (Report 73, 2006).
- Oliver v *Manchester Evening News* (Report 43, 1998).
- McKaown v *Newcastle Evening Chronicle* (Report 40, 1997).
- Thornhill v *News and Star* (Report 55, 2001).
- Maude v *Derby Evening Telegraph* (Report 42, 1998).
- A man v *Chat magazine* (Report 76, 2007).
- Yeoman v *Rhondda Leader* (Report 65, 2004).
- Harvey v *Rochdale Observer* (Report 45, 1999).
- A couple v *Esher News* (Report 61, 2003).
- A boy v *The Sunday Times* (Report 74, 2007).
- Smillie v *Sunday Mail* (Report 50, 2000).
- Keilher v *British Medical Journal* (Report 63, 2003).
- Napuk and Gibson v *FHM* (Report 48, 1999).
- A woman v *Wigan Evening Post* (Report 76, 2007).
- Brown v *She magazine* (Report 77, 2008).
- Palomba v *The Sun* (Report 72, 2006).
- Palomba v *Evening Standard* (Report 72, 2006).
- Petetin v *The Times* (Report 72, 2006).
- Choose Life v *The Sun* (Report 77, 2008).
- Choose Life v *Daily Star* (Report 77, 2008).
- Choose Life v *Daily Sport* (Report 77, 2008).
- Moon MP v *Sunday Times* (Report 78, 2008).

BRIEFING

Suicide: a sensitive issue

Suicide has always been covered by the Code's rules on intrusion into grief, stressing the need for sympathy and discretion and sensitivity in publication. But there is a dimension to reporting suicide that sets it apart from other tragedies: the inherent risk of 'social contagion'.

Research has demonstrated that media portrayals of suicide — as in news reports or fictional TV or films — can influence suicidal behaviour and lead to multiple imitative acts, particularly among the young. Instances of self-poisoning increased by 17% in the week after it was featured in a TV drama.

In 2006, faced with real evidence that over-explicit reporting could lead to copycat cases, the Code Committee introduced a new sub-clause: *When reporting suicide, care should take to avoid excessive detail of the method used.* So editors face a twin test: they must both publish with sensitivity and avoid excessive detail. (See Page 36)

The Bridgend experience

A series of more than 20 suicides of young people in and around Bridgend in South Wales thrust all this into the spotlight. Some politicians, police and parents blamed media speculation about possible links between the deaths for possibly triggering later cases.

A PCC survey revealed a complex web of public anxieties in Bridgend that often went far beyond the scope of press self-regulation, embracing concerns about broadcasters and foreign media, and sometimes involving wider societal issues. These apart, the picture that emerged was less a case of repeated individual breaches of the Code, than a cumulative jigsaw effect of collective media activity, which became a problem only when the individual pieces were put together.

While the Code covered many public concerns, it was clear that others might be more appropriately — and effectively — addressed not by over-prescriptive rules but by editors modifying their activities voluntarily.

Important areas of public concern where the Code already applies include:

- **Graphic images** illustrating suicide methods were often upsetting to relatives and friends. *Under the Code, such images would normally have to pass the 'excessive detail' test.*
- **The cumulative effect** of repeated media inquiries to family members also caused unintended distress. *Here, too, the PCC can help by passing on 'desist' messages via its arrangements for handling media scrums.*
- **Glorification of suicide:** Stories presented in a way likely to romanticise suicide could have a serious influence, especially on vulnerable young people. *But, within the spirit of the Code, most coverage of this sort would again risk breaching the 'excessive detail' rule.*

Possible areas where editors might voluntarily mitigate the effects of legitimate publicity include:

- **Helpline numbers:** When reporting the Bridgend deaths, many newspapers voluntarily published contact details of charities that work with people with suicidal feelings. This was widely welcomed as directing those most at risk — especially vulnerable young people — into the arms of those who could offer them most help.
- **Republication of photographs:** Each new death often prompted reprinting of images of others who had taken their own life, adding to families' distress. Sometimes it might be necessary, others not.
- **Publications of photographs without family consent:** Using pictures supplied by friends or from social networking sites, without the close family's consent, can cause unintentional distress.

There can be no hard rules in such subjective areas. These and similar measures can only be discretionary. But the lessons of Bridgend are that, by bearing them in mind, editors faced with difficult judgments at critical times could avoid causing unintended offence or exposure to accusations of insensitivity.

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Section Three: intrusion

CHILDREN

Children: Treat with care

The Code goes to exceptional lengths to safeguard children by raising the thresholds on disclosure and defining tightly the circumstances in which press coverage would be legitimate.

For the most part, this applies up to the age of 16 — but the requirement that they should be free from unnecessary intrusion at school provides a measure of protection into the sixth-form.

THE CODE SAYS...

Clause Six — Children*

- Young people should be free to complete their time at school without unnecessary intrusion.*
- A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.*
- Pupils must not be approached or photographed at school without the permission of the school authorities.*
- Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.*
- Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.*

* A public interest exemption may be available: See Section Six

In the majority of cases, children under 16 cannot be approached at school, or photographed or interviewed about their own or another child's welfare, or offered payment unless consent is forthcoming from the suitable responsible authority, be it the parent, guardian, school, or other responsible adult.

The welfare of the child includes the effect publication might have. A complaint from an asylum seeker who had been given two homes to accommodate his 15 children was upheld after a newspaper interviewed and identified some of them.

The PCC said the article was likely to provoke a strong reaction in readers, which might affect the children's welfare. (*Kenewa v Sunday Mercury: Report 50, 2000*).

Questions of consent: The press has to establish which is the competent authority to grant consent in each case. A photograph taken of a boy on school property broke the rules even though his mother had approved it. The school authorities had not been asked. (*Brecon High School v Brecon and Radnor Express: Report 57, 2002*).

Similarly, a newspaper's "informal" approaches to pupils on their way to a school where there had been suicide attempts were ruled as a breach. (*Black v Bedfordshire on Sunday: Report 43, 1998*).

When a Scottish weekly newspaper published a schoolgirl's mobile phone video of unruly class-mates, the school complained that no consent had been sought. The newspaper claimed it was in

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BRIEFING

Complaints about court reporting

It may be a cardinal rule that justice should be seen to be done, but the PCC receives complaints about court reporting. The most common relate to:

- **Privacy:** Complainants — often defendants — argue that the report of a case in which they were involved intruded on their privacy. The PCC upholds the right to publish fair, accurate and contemporaneous reports of proceedings and would act only if complainants could demonstrate a breach of this principle.
- **Inaccuracy:** If any significant inaccuracy is demonstrated in a completed or current case, the PCC raises the complaint with the editor with the request that it be resolved by a printed correction. Such complaints are usually resolved or disproved.
- **Lack of balance:** Complainants suggest reports highlight the prosecution case, with inadequate space given to either the defence case or an acquittal verdict. No complaint has been of sufficient gravity to warrant a PCC investigation.

the public interest to demonstrate poor supervision of the pupils, all of whom were over 16.

The PCC agreed it was legitimate to use the video material to spotlight classroom conditions — but it was not necessary to identify the pupils. It upheld the complaint against the weekly newspaper, but rejected complaints against two national tabloids that had used the material without identifying the students. (*Gaddis v Hamilton Advertiser: Report 75, 2007*); (*Gaddis v Scottish Daily Mirror: Report 75, 2007*); (*Gaddis v Scottish Sun: Report 75, 2007*).

There was no question of parental consent when a topless photograph of a 14-year-old girl appeared in a lad's magazine's gallery of mobile phone shots sent in by readers. The magazine's defence that the girl looked older and that they believed her to be living with the person who submitted the picture, did not impress the PCC. It said the magazine had not taken adequate care to establish the provenance of the photograph or whether it was appropriate to publish it. (*A couple v FHM magazine: Report 75, 2007*).

A local newspaper fell into a similar trap when it publicised a charity event while relying solely on information from the fundraiser. It pictured a 16-year-old boy and a girl of 14, saying they were both seriously ill and that the girl suffered from a muscle-wasting disease.

But the girl's mother said the paper had ignored her request to contact her prior to publication. In fact, her daughter was not seriously ill and was only giving moral support to the boy, who was her cousin. The PCC upheld her complaints of intrusion into a child's privacy and inaccuracy. (*A woman v Kent Messenger: Report 70, 2005*).

Implied consent: A father complained when Zoo magazine published, without consent, a photograph of him and his 10-year-old daughter making offensive gestures on the terraces of Old Trafford following Chelsea's defeat to Liverpool in the FA Cup. The father said the picture ridiculed his daughter and should have been pixillated.

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The PCC decided that while the father had not actively consented to the picture, he and his daughter were making anti-social gestures at a major sporting event in front of the mass media. It was not unreasonable to assume he was unconcerned about publication. Consent was therefore implied. The complaint was rejected. (*Quigley v Zoo magazine: Report 73, 2006*).

Payment to children: Even where consent is forthcoming, there could be pitfalls — especially if money is involved. The Code puts an obligation on the press not to make payments to minors — or their parents — unless it is clearly in the child's interest.

Technically, this could mean that a payment to an unscrupulous or greedy parent, if it were demonstrably not in the child's interest, would be a breach.

Children of the famous: The rules apply equally to children of parents from all walks of life. The rule that made it a breach for a 15-year-old Accrington boy to be approached by a reporter at school (*Livesey v Accrington Observer and Times: Report 30, 1995* — see note in margin) was used to protect Princes William and Harry at Eton.

While the Princes are public figures in their own right — and therefore must expect appropriate publicity — the same is not true of the children of most other public figures, who are entitled to normal levels of privacy.

The Code therefore stipulates that the celebrity or notoriety of the parent cannot be a sole justification for publishing details of the private lives of children.

Tony and Cherie Blair complained about a story containing allegations that their daughter Kathryn was receiving special treatment by obtaining a place in an elite school. The PCC said there was no public interest in making Kathryn the centre of the story, particularly as no misdemeanour had been proved. (*Blair v Mail on Sunday: Report 47, 1999*).

A story revealing that Euan Blair had applied for a place at Oxford University was also ruled to be an unnecessary intrusion, with no exceptional public interest. (*Blair v Daily Telegraph: Report 57, 2002*).

But a national tabloid's story about former Education Secretary Ruth Kelly sending one of her children to a private school for pupils with learning difficulties did pass the PCC's public interest test.

In an attempt to concentrate on the legitimate public debate about a Minister removing her child from the state education system, the newspaper had named Ms Kelly but not revealed the name, sex or age of the child, nor identified his new school. The story was about the parents — one of whom had been responsible for national education policy — and not the child. The complaint was rejected. (*Kelly v Daily Mirror: Report 74, 2007*).

Sheltered lives: The extent to which parents keep children out of the limelight should also be taken into account. The PCC has said it is difficult to protect any individual once they begin to acquire a public profile in their own right.

The author J. K. Rowling had gone to great lengths to protect the privacy of her eight-year-old daughter, who was nonetheless pictured in a magazine while on a private beach on holiday. The complaint was upheld because the unsolicited publicity would affect the child's welfare and the picture was published only because of the fame of her mother. (*Rowling v OK! Magazine: Report 55, 2001*).

Pictures which do not need consent: However, not all pictures of children need consent — only those that involve the welfare of the child, or which are taken in a private place. The PCC has ruled that mere publication of a child's image cannot breach the Code when it is taken in a public place and is unaccompanied by any private details or material that might embarrass or inconvenience the child, which is particularly unlikely in the case of babies or very young children.

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Famous parents

● Cases adjudicated before 1996 are available in hard-copy format from the PCC on application to Tonia Milton, Information and Events Manager, on tonia.milton@pcc.org.uk

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A magazine picture of a toddler in a pushchair in a public street was acceptable as it was an innocuous image, devoid of personal details other than a forename. (*Donald v Hello magazine*: Report 52, 2000).

Court reports: The PCC has ruled that the privacy of children is an area where the Code's constraints may be tighter than those imposed by law. It upheld a complaint from a woman whose evidence in open court mentioning the mental health problems of her schoolboy son were reported in the local newspaper. (*A woman v Hastings and St Leonard's Observer*: Report 41, 1998).

However, the Commission did not believe any such constraints were appropriate when dealing with a Scottish tabloid's story of a teenager convicted of taking his father's powerful car without permission and driving it the wrong way down a one-way street in a residential area. Under Scottish law, even though the offence was committed when he was 15, the press was free to name the boy once he was 16.

His father, a prominent businessman, complained that this breached Clause 6 — which includes protection for children of the

famous — and Clause 9, which covers innocent relatives. But the PCC said the Code should not shield young people from publicity about their criminal or anti-social behaviour. It also ruled that the father was central to the story as it was his car that was used. So there was no breach of Clause 9. (*Souter and son v Scottish Sun*: Report 76, 2007).

KEY RULINGS

- *Kenewa v Sunday Mercury* (Report 50, 2000).
- *Brecon High School v Brecon and Radnor Express* (Report 57, 2002).
- *Black v Bedfordshire on Sunday* (Report 43, 1998).
- *Gaddis v Hamilton Advertiser* (Report 75, 2007).
- *Gaddis v Scottish Daily Mirror* (Report 75, 2007).
- *Gaddis v Scottish Sun* (Report 75, 2007).
- *A couple v FHM magazine* (Report 75, 2007).
- *A woman v Kent Messenger* (Report 70, 2005).
- *Quigley v Zoo magazine* (Report 73, 2006).
- *Livesey v Accrington Observer and Times* (Report 30, 1995 — see note in margin).
- *Rowling v OK! Magazine* (Report 55, 2001).
- *Blair v Mail on Sunday* (Report 47, 1999).
- *Blair v Daily Telegraph* (Report 57, 2002).
- *Kelly v Daily Mirror* (Report 74, 2007).
- *Donald v Hello magazine* (Report 52, 2000).
- *A woman v Hastings and St Leonard's Observer* (Report 41, 1998).
- *Souter and son v Scottish Sun* (Report 76, 2007).

KEY QUESTIONS

- Is the child under 16 or still at school? If so, Clause 8 applies.
- Could the interview or photograph involve or affect a child's welfare? If so, consent will be needed.
- Has consent been given by the appropriate responsible adult or school?
- Is a payment to either a child or parents/guardian in the child's interest?
- Is there a justification for publication other than the fame etc of parents or guardians?
- Is there an exceptional public interest in publication? No such defence has yet succeeded.

• Cases adjudicated before 1996 are available in hard-copy format from the PCC on application to Tonia Milton, Information and Events Manager, on tonia.milton@pcc.org.uk

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Section Three: Intrusion

CHILDREN IN SEX CASES

Innocents at risk

All children in sex cases, including defendants, are protected from identification under the Code. An essential element is its insistence on a common formula to end 'jigsaw identification' — which can occur if media organisations observe in different ways the law intended to protect the anonymity of incest victims.

Although the law prohibits identification of any alleged victim of a sex offence, it leaves the method unspecified. In incest cases, the media is faced with a choice. It can describe the offence as

incest, but not name the defendant, or name the defendant — but omit the exact nature of the offence.

Until the formula was harmonised under the Code — and adopted by broadcast media organisations — there was a risk that both approaches were used, equally validly, with the result that when two accounts were read together the victim could be identified.

The Code effectively removed the choice by opting for the approach largely taken by the regional press, which meant the defendant was named — and, if guilty, shamed — but all references to incest were omitted, which meant victims were not identified.

It is vital to the working of the arrangement that nothing is said in the report which might imply the family relationship between the defendant and the child victim.

While this clause is used principally to protect victims, it applies equally to young defendants. In 1996, the Commission warned that reports in a number of newspapers about a 15-year-old boy accused of sexual assault had, without naming him, given sufficient details to identify him in breach of the Code.

Exceptional public interest: As always in cases affecting children, the public interest would need to be exceptional to justify identification. However, there are instances where the names of children who have been involved in sex cases, or are technical

THE CODE SAYS...

Clause Seven — Children in sex cases*

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
2. In any press report of a case involving a sexual offence against a child —
 - i) The child must not be identified.
 - ii) The adult may be identified.
 - iii) The word "incest" must not be used where a child victim might be identified.
 - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

* A public interest exemption may be available: See Section Six

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victims under the law, are put into the public domain lawfully and the public interest justification is included in the Code to cover these.

If, for example, a court ordered that the legal ban on naming a child defendant convicted of a sex offence could — because of the extreme seriousness of the offence — be lifted, then it would be legitimately in the public domain and there would be a public interest in publication.

Also, there have been occasions where *technical victims of a sexual offence*, such as under-age mothers in a consensual relationship, have put themselves into the public domain, to discuss their problems with the approval of their parents or guardians. This has happened in stories concerning teenage pregnancies, abortions and parenthood where examples of cases can assist in developing public policy.

Legitimate identification: In one Northern town identified as having Europe's highest incidence of under-age mothers, several girls told their stories to national newspapers — some in return for payment — with parental consent. No complaints were received by the PCC.

If the identification in these circumstances met with the Code's other restrictions — such as being approved by parents and, if payment was involved, being clearly in the child's interest — then it would be legitimate.

KEY RULING

- A man v *News of the World* (Report 34, 1996 — see note in margin).

KEY QUESTION

- Could the report lead to the identification of a child in the case, including a defendant?

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Section Three: Intrusion

HOSPITALS

Patients are paramount

THE CODE SAYS...

Clause Eight — Hospitals*

- i) *Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.*
- ii) *The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.*

* A public interest exemption may be available. See Section Six.

The Code is at its strictest when protecting vulnerable groups, and never more so than when dealing with patients in hospital or similar institutions. The clause on hospitals is rigorously enforced and the PCC has warned that it will take a harsh view of any unnecessary intrusion into the privacy of those who are ill. This tough line has resulted in very few breaches.

The requirement on journalists to identify themselves and obtain permission from a responsible executive to enter non-public areas applies to *all editorial staff, including photographers*. Both the identification and the permission need to be clearly established.

A journalist, who attended a London hospital after the Canary Wharf terrorist bomb attack, photographed an injured victim in the company of relatives who he thought had obtained permission from

hospital staff. The PCC ruled that while he acted in good faith and that coverage of a terror incident included victims, the patient's well-being was paramount. It was not enough for the journalist to assume his identity was known or to rely on the comment of an individual who was clearly not a responsible executive. The complaint was upheld. (*Hutchinson v News of the World: Report 37, 1997*).

As this clause covers the news-gathering process, a breach can occur even if nothing is published as a result.

In 2002, a reporter who went to the hospital bedside of the victim of a car accident, without identifying himself to the relevant authorities, was quickly sacked by his newspaper, which recognised that the Code had been breached. Although the editor apologised to the complainant and no story was published, the newspaper was rebuked for a serious breach of the Code. (*Jennings v Eastbourne Gazette: Report 59160, 2002*).

Non-public areas: In most cases, what constitutes a non-public area would be clear and would certainly include areas where patients were receiving treatment. But what if the hospital itself is not open to the public?

A private hospital, which the singer Pete Doherty had been ordered by a court to attend, complained that a reporter broke the rules by going into the grounds and reporting to the reception desk, which was a non-public area.

But the PCC ruled that as the security gate was unmanned, and

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BRIEFING

Detained mental health patients

The PCC has warned that terms used to describe patients detained under Mental Health Act of 1983 are frequently wrong and could breach the Code's rules on accuracy (Clause 1) or discrimination (Clause 6). In a Guidance Note, the Commission issued clarifications to be borne in mind by editors when running stories about people detained under the Act:

- **They are detained in hospitals** — not prisons. The terms "jail", "cell" or "cage" would be inaccurate, said the PCC.
- **Most have not appeared before the courts:** Eight out of ten such patients are detained because mental health professionals decided they needed hospital care.
- **Those who are detained following conviction** have also been found to be in need of treatment and have the same rights under the Patients' Charter as other NHS users.
- **High Security establishments** such as Rampton and Broadmoor provide care and treatment. Nurses, not prison officers, staff them. The Commission also raised concerns about terms such as "nutter" and "basket case" to describe people who are mentally ill — whether detained or not. This could create a climate of fear or rejection, and cause distress to patients and their families, by interfering with their care and treatment.

the reporter had not attempted to speak to anyone other than the receptionist, and had not concealed her identity, visiting the reception area was not a breach of the Code.

However, it noted with approval that the hospital had amended its security procedures — and that the newspaper had accepted that the preferred approach would have been by telephone. (*Croft v Daily Mail: Report 74, 2006*).

Similar institutions: The PCC has held that, in the spirit of the Code, the vulnerability of the patient or individual should be taken into account when deciding what constitutes a similar institution. When Countess Spencer was photographed at a clinic, where she was receiving treatment for health problems, it was seen as a clear breach (*Spencer v News of the World: Report 29, 1995 — see note in margin*).

But the Commission has ruled that a residential home for the elderly could also be a *similar institution*, if a number of residents needed medical supervision. It urged journalists to think hard before approaching people in such establishments, especially if their state of health made them vulnerable. (*A man v Daily Mail: Report 58, 2002*).

The public interest: While newspapers should always proceed with caution, there are cases where otherwise proscribed action can be justified in the public interest. In 2001 the parents of a comatose woman brain-damaged by domestic violence desperately wanted publicity to expose what they saw as the inadequate sentence on the attacker. They invited a cameraman to accompany them on a hospital visit to photograph the pitiful plight of the victim.

The NHS Trust complained that the photographer had not sought permission from a responsible executive. However the PCC ruled that it was in the public interest that the parents should be able to demonstrate their disgust at the leniency of the sentence — and that readers might not have been able to appreciate the gravity of the

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BRIEFING

Co-operating with the PCC

There is a strong obligation on editors under the Code to co-operate swiftly with the PCC in trying to resolve complaints.

It is one of the Commission's targets to reach rulings in 35 days, and currently — with the co-operation of editors — it averages 34 days.

In practice, this means replying to the PCC's initial request for a response to the complaint within seven days and then reacting promptly to any new PCC questions or suggestions of a remedy to the dispute.

Failure to act promptly can aggravate the problem. One newspaper, which repeatedly failed to reply to a reader who complained that a table in a report on currency values was flawed, similarly lost letters from the PCC.

In view of the pattern of lapses, the case went to adjudication, where the PCC found the paper to be in breach of its obligation to co-operate swiftly with the resolution of complaints.

In other cases, newspapers and magazines — while denying a complaint — have simply failed to provide any evidence to support their case. The PCC has then upheld the complaint by default — usually taking the opportunity to remind to all editors of their responsibilities under the Code.

situation had the picture not been published. (*Taunton and Somerset NHS Trust v The Mirror: Report 54, 2001*).

The clause also requires that in making inquiries from hospitals and similar institutions editors need to be mindful of the general restrictions on privacy, which include specific reference to health matters.

KEY RULINGS

- *Hutchinson v News of the World* (Report 37, 1997).
- *Jennings v Eastbourne Gazette* (Report 59/60, 2002).
- *Spencer v News of the World* (Report 29, 1995 — see note in margin).
- *Croft v Daily Mail* (Report 74, 2006).
- *A man v Daily Mail* (Report 58, 2002).
- *Taunton and Somerset NHS Trust v The Mirror* (Report 54, 2001).

KEY QUESTIONS

- Were editorial staff in a non-public area?
- Did they identify themselves to a responsible executive? The term executive was introduced to ensure appropriate seniority.
- Was there a public interest in publication?

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Section Four: News Gathering

REPORTING OF CRIME

Guilt by association

This clause is designed to protect the innocent from being caught unnecessarily in the publicity spotlight focused on the guilty. Relatives or friends should not normally be named unless they are genuinely relevant to the story — or there is reason to publish in the public interest. Child witnesses or victims of crime need special consideration.

Complaints usually hinge on *genuine relevance* to the story or whether there is a public interest in them being mentioned or whether identification is gratuitous.

The PCC has taken a commonsense line. If a relationship were well known and established in the public domain, then it would be perverse to expect editors to omit reference to it.

Similarly if a parent, for example, publicly accompanied the

accused person to court or made public statements on the case, that would add genuine relevance.

Tone and proportion: However, the Commission would also take account of the tone of the article — how much the story focused on the relationship — and whether that was relevant or in the public interest.

A complaint from a councillor, named in a report when his son was arrested for bootlegging, was rejected. The PCC decided the simple factual identification of an important community figure did not breach the Code. (*Sihota v Daily Express: Report 40, 1997*).

Likewise, Mrs Ann Gloag, widely known as the owner of a Scottish castle, objected when she was named in stories reporting her son-in-law's arrest for allegedly assaulting her daughter. But the daughter lived at the castle — and the accused husband had been banned from it as part of the bail conditions.

The PCC said Mrs Gloag's relevance to the story had been established by her ownership of the castle named in the court papers. Being related to the accused did not give her rights to anonymity that would otherwise not exist. (*Gloag v Perthshire Advertiser: Report 75, 2007*).

But another case, where a front-page report named and pictured a councillor whose son was accused of a serious drink-driving offence, was upheld. While the PCC accepted there was a public interest in naming the councillor, because of her local prominence and the fact that she had attended court with her son, it ruled that no

THE CODE SAYS...

Clause Nine — Reporting of crime*

- i) *Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.*
- ii) *Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.*

* A public interest exemption may be available. See Section Six

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KEY QUESTIONS

- **Did relatives or friends consent to identification?** Consent might be implied by being publicly involved or pictured with the defendant.
- **Are they genuinely relevant to the story?** Do they have a role, either in the case, or through a close involvement with the defendant? Could they be personally or professionally affected by the case or its outcome?
- **Is mention in the public interest?** Is the relationship in the public domain, could the case affect the public life of the relative or friend?
- **Is the focus proportionate to the involvement of relative or friend?**
- **Has sufficient care been taken to protect vulnerable children?**

public interest had been served by the story being focused so predominantly on her. (*Lacey v Eastbourne Gazette: Report 44, 1998*).

Protecting children's welfare: The special protection given to children in sub-clause 9ii is a continuation of the spirit of the Clause 6 provisions and amounts to a duty of care aimed at preventing them from becoming further damaged, or their welfare affected, by their innocent involvement as witnesses or victims of crime.

A local newspaper, which named a 12-year-old witness to an attempted kidnap, breached the Code — even though it believed the girl's mother had authorised the disclosure. The mother said she had not realised that the reporter's telephone call was an interview or what would be published. The PCC ruled that the newspaper had not paid sufficient regard to the girl's vulnerability. (*Hall v Eastbourne Argus: Report 59/60, 2002*).

Legal freedom: The Code is clear (9ii) that this alone should not affect the right to report legal proceedings. However, in cases involving the identification of children or victims of sex crimes, the Code's requirements may be stiffer than those in law. (See *Clause 6: Children* and *Clause 11: Victims of Sexual Assault*).

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KEY RULINGS

- *Sihota v Daily Express* (Report 40, 1997).
- *Gloag v Perthshire Advertiser* (Report 75, 2007).
- *Lacey v Eastbourne Gazette* (Report 44, 1998).
- *Hall v Eastbourne Argus* (Report 59/60, 2002).

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Section Four: News Gathering

CLANDESTINE DEVICES AND SUBTERFUGE

Undercover, or underhand?

Consideration of the public interest, a core theme through much of the Code, is seldom more important than here. There is often a fine line to be drawn at the point where genuine investigative journalism ceases and intrusive reporting begins. The public interest is crucial in judging whether the ends justify the means and deciding whether undercover was merely underhand.

The speed of technological innovation puts this area constantly into the public spotlight, with concerns over the misuse of private data and the use of inquiry agents or others to circumvent the Code — and the law.

THE CODE SAYS...

Clause Ten — Clandestine devices and subterfuge*

- 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 unauthorised 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.*

* A public interest exemption may be available: See Section Six

The Code Committee has been quick to react, with the introduction of new measures to prevent abuse. They include wide ranging curbs on intrusive activity *unless it can be demonstrated to be in the wider public interest*. They cover:

- *Hacking into digitally-held private information;*
- *The use of hidden cameras;*
- *Interception of mobile phones, text messages and emails;*
- *Bugging or electronic eavesdropping;*
- *The use of agents or intermediaries to obtain material intended for publication.*

Additionally, the PCC and the newspaper and magazine industry have launched their own initiatives to ensure that both the Code and the law — such as the Data Protection Act and the Regulation of Investigatory Powers Act — are properly observed (See *Briefing*).

Seeking or finding? The Code's rules apply to pre-publication news gathering as much as to publication itself. It would be a breach simply to seek material that was against the Code, or to *engage in misrepresentation or subterfuge* — even if nothing was published as a result — unless there was a reasonable expectation that some legitimate public interest would be served.

However, there is a distinction to be made between information which a newspaper or magazine has sought or obtained itself, or has commissioned, and that which comes unsolicited — via a leak or from a whistleblower, perhaps. The newspaper might not know

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the provenance of documents obtained in this way but could still be justified in publishing.

Public interest or fishing expedition? The PCC has consistently ruled that journalistic fishing expeditions — where, for example, hidden cameras or clandestine listening devices are used simply on the off-chance of discovering some wrong-doing — are not sufficient justification. There should be reasonable grounds for the inquiry.

The PCC censured a newspaper which put a writer into a London primary school for a week, posing as a would-be teacher, and ran the story of his experiences, including the shortcomings of the educational system. The newspaper's claim of a public interest justification failed because the school had been chosen at random. The exercise was condemned as a fishing expedition. (*Munro v Evening Standard: Report 54, 2001*).

In the same way, a complaint that a Sunday newspaper's undercover reporters filmed guests at a private party for people working on the TV soap *Emmerdale* was upheld after the PCC roundly rejected the newspaper's explanation that the journalists *might* have discovered people behaving in a way which would have justified publication in the public interest. That would have given newspapers *carte blanche* to intrude on any private gathering of high profile figures, said the Commission. (*Ryle v News of the World: Report 53, 2001*).

But the same newspaper did not make the same mistake when it investigated controversial lifestyle advisor Carole Caplin. This time it was acting on information that she was using her relationship with Tony and Cherie Blair to promote her business. Its reporters, posing as clients, recorded Ms Caplin speaking about the Blairs' private life, thus justifying the subterfuge.

Both the story and a picture taken secretly to authenticate it focused on Ms Caplin's professional, rather than personal, life and opinions, which the PCC ruled was justified in the public interest. Had the picture involved some gratuitous humiliation or intruded into

her private life, it might have been very different. (*Caplin v News of the World: Report 72, 2005*).

So the existence of a public interest in a story does not automatically justify the indiscriminate use of clandestine methods. It has to be appropriate and proportionate to the public interest served.

There was obvious public interest in a story that a supermarket worker convicted of possessing pornographic images of children was making deliveries to a nursery school kitchen. But while a photograph of the man at the nursery was legitimate, secretly filmed footage of him at the supermarket shown on a tabloid newspaper's website was not.

The PCC upheld a complaint by the man's mother that the clandestine filming had breached the Code. The public interest element of the story related only to the nursery deliveries. There was no dispute that he worked at the supermarket, and the footage was not necessary to prove it. (*A woman v The Sun: Report 77, 2008*).

Identification: Even if subterfuge is not used, failure to identify oneself as a journalist could amount to misrepresentation. A woman reporter who visited Gill Faldo's home while she was out, did not reveal herself as a journalist and was let in by a housekeeper who spoke freely about Mrs Faldo.

The PCC ruled that the reporter had allowed a misleading impression to develop and obtained information from the housekeeper as a result. (*Faldo v The Sun: Report 53, 2001*).

The use of freelance journalists or agents does not minimise any breach. A freelance reporter, approaching a victim of a fraudster who duped women with offers of marriage, posed as a true life feature writer for women's magazines. In fact, he sold the story to a Sunday tabloid, which — while accepting it in good faith — became responsible for a series of breaches under the Code.

The Commission said there was no public interest defence for the

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deception and reminded editors that they must take care to ensure that contributors' material has been obtained in compliance with the Code. (*Noble v News of the World: Report 65, 2004*).

Unauthorised removal: A weekly newspaper reporter used a false identity to join a community website and download a picture of a policeman charged with possessing indecent images of children. The policeman complained that this was unauthorised removal of a photograph, obtained by subterfuge. He also claimed the newspaper's reporting and publication of his address had distressed his mother — with whom he lived — thus intruding into shock, in breach of Clause 5.

However, the PCC decided that downloading a picture that could be accessed simply by logging on to a public website did not amount to removal, and the relatively minor subterfuge used was justified in the public interest.

The Commission sympathised with the mother but said her vulnerability did not entitle her son to greater privacy than might be expected by others accused of a serious offence. (*Bretherick v County Times: Report 75, 2007*).

To joke or not to joke: The Code says misrepresentation and subterfuge can generally only be justified in the public interest, which leaves room for exceptions. This is designed to allow for harmless journalistic spoofs — such as April Fool stories — intended to amuse rather than mislead.

But when a tabloid ran a stunt 'signed confession' on Page One suggesting that Stan Collymore had admitted lying about being attacked by rugby players, the soccer star did not find it funny. While the inside page story made clear that he thought he was signing an autograph, rather than a confession invented by the paper, the front page was entirely misleading.

The PCC ruled that employing subterfuge to obtain a material that was used in a misleading way could not be in the public interest and

breached the Code. (*Collymore v The Sun: Report 68, 2004*).

Humour misfired again when a journalist rang companies asking if any of them would pay a retainer in return for favourable publicity, in order to run a light-hearted piece on their responses. The subsequent article said that a Railtrack spokeswoman had sounded shocked, but agreed to get back to the journalist.

The PCC upheld the complaint — ruling that, while humorous, the article might have left the impression that Railtrack had not entirely rejected the proposal. The press office had been misled and there was no public interest in doing so. (*Railtrack plc v The Independent: Report 57, 2002*).

Back door, or front: Another test is whether undercover methods are actually necessary, or whether the material could be obtained via the front door rather than the back. The Code is clear that generally subterfuge or misrepresentation should be used only when information in the public interest *cannot be obtained by other means*.

When a Sunday broadsheet ran a story that a Saudi-owned company printed the British National Party's publication *Voice of Freedom*, the firm complained that the newspaper's use of an undercover reporter posing as a potential client to confirm the information was unnecessary. The firm said that — when later approached formally — it had openly acknowledged the arrangement.

The PCC rejected the complaint. It said the degree of subterfuge was minor; the information was commercial and not private, and this was not a fishing expedition, but following up specific information about the company. The potential commercial embarrassment involved supported the newspaper's view that the firm would not have volunteered the information. (*HH Saudi Research v The Sunday Telegraph: Report 74, 2005*).

However, another Sunday newspaper's use of subterfuge to get a story about a gun expert was rejected because the PCC decided that the information could have been obtained by direct means: the

complainant had already been interviewed by a journalist on a related subject. (*A man v The Observer: Report 44, 1998*).

KEY RULINGS

- *Munro v Evening Standard* (Report 54, 2001).
- *Ryle v News of the World* (Report 53, 2001).
- *Caplin v News of the World* (Report 72, 2005).
- *A woman v The Sun* (Report 77, 2008).
- *Falco v The Sun* (Report 53, 2001).
- *Noble v News of the World* (Report 65, 2004).
- *Bretherick v County Times* (Report 75, 2007).
- *Collymore v The Sun* (Report 68, 2004).
- *Railtrack plc v The Independent* (Report 57, 2002).
- *HH Saudi Research v The Sunday Telegraph* (Report 74, 2005).
- *A man v The Observer* (Report 44 1998).

KEY QUESTIONS

- Did the publication seek to obtain or publish the material? Genuinely unsolicited material may not be affected.
- If the publication used undercover methods was there reason to believe it was in the public interest? Fishing expeditions don't count.
- Was the clandestine activity related directly to the public interest?
- Could the material have been obtained by other means?
- Were agents or intermediaries used to acquire confidential information not in the public interest, without consent? If so it would breach both the Code and the law.

BRIEFING

Dangerously exposed

Investigative reporting in the public interest is in the very best tradition of British journalism. However, uncovering information that the public ought to know but others wish to remain secret is not easy. It sometimes requires the use of techniques that might otherwise be intrusive, or even illegal.

For that reason, the proper use of subterfuge and clandestine devices has always been tightly defined by the Code of Practice, which stresses the need for an appropriate public interest exemption for such activities.

Increasingly, the law covers these areas too, but it does not always offer the same public interest defences for journalists. And, while the Code assumes that compliance with the law would normally be required to uphold the highest standards of journalism, it is essential that journalists working in these areas are fully aware of both their legal and ethical obligations.

Two entirely separate developments underlined the dangers. First, the Information Commissioner suggested that journalists, or their agents, were routinely 'blagging' private information in breach of section 55 of the Data Protection Act. Then a reporter and an inquiry agent were convicted — under the Regulation of Investigatory Powers Act 2000 — of hacking into royal telephones.

As a result, the Code Committee, the PCC and the press industry collectively acted to improve training and tighten procedures in these areas.

The Code was amended to cover, specifically, hacking into digitally-held private information, and the use of agents to obtain private material by subterfuge. It means that without a public interest justification, the use by journalists — or their agents or intermediaries — of hidden cameras or bugging devices; computer hacking or of interception of mobile phones,

text messages or emails would all risk causing a breach of the Code. (See Page 53).

The PCC introduced comprehensive guidelines on the use of subterfuge and newsgathering. The Commission, in a survey following the royal phone bugging case, found no inadequacy in the Code of Practice, but made a series of recommendations of good practice. They included:

- Strengthening contractual obligations to follow both the Code and Data Protection Act;
- Improving internal training; and
- Introducing rigorous audit controls for cash payments, where these were unavoidable.

Industry bodies produced a Guidance Note specifically aimed at raising awareness among Britain's journalists of the importance of operating in compliance with section 55 of the Data Protection Act. (See Briefing).

This answers the key questions facing members of the press:

- What does the Act do?
- What happens if I breach the Act?
- Are there any journalistic exemptions or defences?
- What should I do if I am unsure about my actions?

At the same time, the PCC — which in 2005 produced guidelines for journalists on the Data Protection Act — stepped up its work on training journalists in the use of undercover newsgathering methods.

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BRIEFING

issued by the Press Standards Board of Finance on behalf of the newspaper and magazine industry

The Data Protection Act — and why it's important to you

The use of personal information about people stored on computer, or in some manual files, is regulated by the Data Protection Act 1998. As a journalist's job can often be about using such information it is vital that you are aware of the problems the DPA presents. Knowing about the Act, and in particular section 55 of that Act, which is to have an enhanced public interest defence following discussion between media representatives and the Ministry of Justice, is important because breaches of it can lead to prosecution in the Crown Court, a criminal record and the imposition of a heavy fine. The Q+As in this note are designed to tell you a little more. Please make sure you read it.

What does the Act do?

It provides legal controls over the collection, use and disclosure of personal data, mostly held electronically. It gives rights to an individual about whom information is stored. And it imposes legal obligations on a person or organisation looking after the data — known in the Act as the "data controller."

The Act prohibits the obtaining or disclosure of personal data without the consent of the data controller — a practice often known as "blagging". For example, it could be an offence to deceive an organisation into providing you with personal details about an individual taken from its computer records — such as ex-directory phone numbers — that they would not otherwise agree to supply. It could also be an offence to ask private investigators to do it for you, if you knew that they were going to obtain it by deception or other unlawful means.

You could also be breaching other laws, both criminal and civil, as well as the Editor's Code upheld by the Press Complaints Commission.

What happens if I breach the Act?

The Information Commissioner can take enforcement action, including criminal prosecution. Conviction is punishable by a fine. "Blagging" personal information and phone numbers from BT, account details from banks, and

income tax information from HMRC have already led to criminal convictions.

I sometimes need to get such personal information. In the Act are there any exemptions or defences for journalists from the criminal offences of unlawfully obtaining and disclosing information?

In particular reference to section 55, the Act recognises the importance of journalism and provides some special exemptions and defences to avoid conviction. But these are very limited. To escape breaching the Act's unlawful obtaining and disclosing offences you would, for instance, have to prove your actions were in the interests of national security, were preventing or detecting a crime, or were in the public interest in the particular circumstances.

When in force, the new defence will also protect you if you can show that you acted for journalistic, literary or artistic purposes, and in the reasonable belief that in the particular circumstances your action was justified as being in the public interest.

You would also avoid conviction if you could show that you were acting in accordance with the law or a court order, or in the reasonable belief that the data controller would have consented in the circumstances had he/she known, or was legally entitled to act as he/she did.

The Act sounds very wide ranging. What should I do if I am unsure about my own actions?

The Act is complicated. If you are in any doubt about whether something you are intending to do involving personal data breaches the Act, you must consult your in-house lawyers and a senior editor for advice. Failure to do this before you act could put you and your employer at risk of prosecution or other legal action.

How do I find out more?

You can find out more information from the Information Commissioner's website www.ico.gov.uk. Also use the link to the PCC's guidance note for editors on 'The Data Protection Act, journalism and the Code'.

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Section Four: News Gathering

VICTIMS OF SEXUAL ASSAULT

Danger in the detail

THE CODE SAYS...

Clause Eleven — Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

Preservation of the anonymity of victims of sexual assault is regarded as paramount under the Code and this clause is not subject to the defence that publication is in the public interest.

There are cases where a victim may waive his or her anonymity or where identification has been permitted by the courts, and the Code provides for these. But the PCC has made clear that it is unlikely to recognise the legitimacy of any other claims that the identity of a sex victim is already in the public domain.

Breaches are uncommon and almost always inadvertent. They fall into two main categories:

- Those caused by poor training, carelessness — or both; and
- Those resulting from the inclusion of some seemingly innocuous detail.

Lack of training can lead to the most blatant breaches. A woman victim of an office sex pest was distressed and embarrassed when a local newspaper report of the man's conviction broke all the rules and included her name, employment details and sexually explicit

evidence. The editor, also deeply embarrassed, apologised swiftly. Because of staff holidays, an inexperienced reporter had prepared the story and sub-editors had missed the error. But apologies and promises to tighten up procedures were not enough. The PCC censured the newspaper for a breach so serious that any remedial action would have been inadequate. (*A woman v Macclesfield Express*: Report 74, 2006).

Even when newspapers follow the fundamental rules about not naming sex assault victims without consent, risks arise if they are identifiable by some detail in the story.

For that reason the PCC has warned of the onerous burden this puts on editors and insists on 'scrupulous construction' of stories about sex crimes to ensure strict adherence to the Code.

Beware of the evidence: Assessing likelihood of identification is a potential minefield when reporting both the original crime and any subsequent trial. Details apparently insignificant to an outsider could be revealing to people living in a local community, who might otherwise not make the connection.

A report of a rape, which gave details of the victim's age, her health record and specific details of the attack, as well as the town where the offence occurred, was ruled by the PCC to have been likely to identify her. (*Thames Valley Police v The London Metro*: Report 59, 2002).

Adequate justification: As there is no public interest defence, it is

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difficult to establish adequate justification unless a court lifts the automatic ban on identification of the victim, in the interests of justice, or the victim waives their rights to anonymity.

Even where they do — perhaps to warn others of dangers — that cannot necessarily be taken as permitting continuing publicity unless the victim maintains consent.

In those rare cases where courts permit the naming of sex victims, there are usually substantial grounds for doing so and these would constitute adequate justification under the Code.

Legal freedom to publish may appear relatively easy to establish, but it is not always enough under the Code, which applies in the spirit as well as the letter.

The PCC upheld a complaint against a newspaper whose report of a rape trial referred to evidence of what the victim was wearing at the time of the attack and to her hobby.

The combination of details was sufficient to identify her to local residents and — even though the evidence had been given in open court — the PCC held that the Code bound editors to rules over and above those stipulated by law and that anonymity should have been preserved. (*A woman v Clydebank Post*: Report 41, 1998).

In a similar case — involving an assault on an under-age girl — a weekly newspaper's court report reference to the victim's visible injury was sufficient to cause a breach, even though no third party had actually identified her.

The Commission ruled that while the mention of the injury might

have appeared insignificant, "it was a superfluous but specific detail which could have been sufficient to identify her, or confirm the suspicions of those who already knew something about the case." The editor could have taken greater care by omitting the reference. The complaint, and corresponding breaches in Clause 5 (Intrusion into Grief or Shock) and Clause 6 (Children), were upheld. (*A woman v Strathspey & Badenoch Herald*: Report 75, 2007).

KEY RULINGS

- *A woman v Macclesfield Express* (Report 74, 2006).
- *Thames Valley Police v London Metro* (Report 59, 2002).
- *A woman v Clydebank Post* (Report 41, 1998).
- *A woman v Strathspey & Badenoch Herald* (Report 75, 2007).

KEY QUESTIONS

- Is the material published likely to contribute to identification?
- Is there adequate justification?
- Is it legal to publish — and is that enough under the Code?

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Unnecessary detail

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DISCRIMINATION

Personal and prejudiced

THE CODE SAYS...

Clause Twelve — Discrimination

- i) *The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.*
- ii) *Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.*

The aim of Clause 12 is to protect individuals from discriminatory coverage and no public interest defence is available. However, the Code does not cover generalised remarks about groups or categories of people, which would involve subjective views, often based on political correctness or taste, and be difficult to adjudicate upon without infringing the freedom of expression of others.

As always, the Code is striking a balance between the rights of the public to freedom of speech and the rights of the individual — in this case not to face personal discriminatory abuse. Freedom of expression must embrace the right to hold views that others might find distasteful and sometimes offensive.

The Code Committee's approach has always been that, in a free

society with a diverse press, subjective issues of taste and decency should be a matter for editors' discretion. And with newspapers and magazines constantly answerable in the court of public opinion, there is ample evidence that editors exercise that discretion on a daily basis.

For example, although British newspapers and magazines were free under the Code to publish the controversial Danish cartoons of the Prophet Mohammed, none chose to do so. It was the exercise of discretionary editorial judgment.

By the same standard, a national newspaper columnist was free to suggest, wryly, that piano wire should be strung across country lanes to decapitate cyclists. His comments caused widespread outrage, but did not breach the Code because they were not aimed at any named individuals. However, faced with the wrath of hundreds of readers, the writer voluntarily apologised for any unintended offence caused.

The PCC has always upheld the press's right to make robust, generalised remarks, when clearly presented as comment, in the name of free speech.

However, the same does not apply to pejorative or prejudicial attacks directed at named individuals. So when a lad's mag published a sticker poking fun at the disabled son of Katie Price — the glamour model Jordan — the PCC received 143 complaints, including from Ms Price and her husband, Peter Andre. The issue

BRIEFING

Unsporting reporting

The PCC has issued cautionary advice to the press stressing the importance of not allowing patriotic fervour to get out of hand when covering high profile international sporting events.

After widespread criticism of press coverage of the Euro 96 soccer tournament — where the England v Germany match had been represented as a re-run of World War Two — Lord Wakeham, then PCC chairman, sounded a warning ahead of the 1998 Soccer World Cup.

The press had a responsibility not to encourage British sports fans to behave in a disorderly manner, he said. This covered not just comment about other nations' competitors, but also practical advice about how fans should participate in, or seek to attend, events.

It was part of the press's role to reflect robustly and in partisan fashion the nation's support for British sportsmen and women representing their country, but they should do nothing to —

- Incite violence, disorder or other unlawful behaviour, or to —
- Foster xenophobia that could contribute directly to such incitement.

Lord Wakeham's warning has been widely credited with the toning down of coverage since then and avoiding repetitions of the sort of jingoistic journalism which had been a feature of international events before 1998.

was swiftly resolved when the magazine published an apology online and in the magazine and made a donation to charity. (*Price and Andre v Heat magazine: Report 76, 2007*).

Individuals only: One of the strengths of the Code is the protection that it gives specifically to personally affected individuals. But inevitably that means that some third party complaints cannot succeed. The PCC will not proceed with a third-party complaint without the subject's consent.

Although the Code does not cover complaints about groups of people, where the main objection is often against the tenor of reporting, the PCC sometimes addresses these wider issues via rulings on individual cases and guidance notes.

It has made clear that even if there may be no claim under the discrimination clauses, there may be a case under other sections of the Code, such as Accuracy — if statements are incorrect or comment is passed off as fact.

Its guidance note on asylum seekers, for example, (*See Briefing panel: Asylum Seekers*) suggested it was inaccurate to describe people as *illegal asylum seekers*. They could not be illegal unless they had been refused asylum — which, by definition, asylum seekers had not. It has suggested some stories risked breaching the Code's privacy rules, and publication in other cases could involve a threat to children's welfare.

The Commission has also warned against the gratuitous use of insensitive language — such as referring to mental health patients (*See Briefing panel: Mental Health*) as *basket-cases, nutters or psychos* — which could be discriminatory or inaccurate.

Prejudicial or pejorative: Not all references to an individual's race, colour, religion, gender, sexual orientation, or to any physical or mental illness or disability, need to be avoided under the Code. To be in breach of sub-clause 12i, they must not only be prejudicial or pejorative — but also in a discriminatory manner.

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KEY QUESTIONS

- Is the reference to an individual? This would normally mean a named or readily identifiable person.
- Is the reference prejudicial or pejorative in a discriminatory way? Sub-clause 12i.
- Is the reference genuinely relevant? Sub-Clause 12ii.

For example, a satirical cartoon depicting Israeli premier Ariel Sharon eating a baby — while undeniably pejorative — was cleared by the PCC of being racist as it referred to him in his capacity as a head of government, rather than as a Jew. (*Sharon v The Independent: Report 62, 2003*).

Genuine relevance: In sub-clause 12ii, the restriction relates only to details of race, colour, religion, sexual orientation, or physical or mental illness or disability, which are not genuinely relevant to the story. It does *not* cover the individual's sex, mention of which is not itself discriminatory.

The PCC has held that it was relevant to mention, factually and non-pejoratively, the sexuality of a pregnant lesbian in the context of a story that included comparisons with parenting by other same-sex couples. (*BBC Scotland v Scottish News of the World: Report 59/60, 2002*).

It was, however, not relevant to give details of religion in an interview with a tie-manufacturer, especially in terms which might have appeared pejorative. (*Bishko v Evening Standard: Report 40, 1997*).

Gender recognition: A Code change to cover discriminatory reporting of transgender people was introduced in 2005, after the passing of the Gender Recognition Act. In Clause 12i the word 'gender' was substituted for 'sex'. This meant that individuals undergoing — or who had undergone — treatment for gender

reassignment were included in the categories offered protection from prejudicial or pejorative references.

The Code Committee decided against a change to the accompanying subclause 12ii — which covers publication of discriminatory details that aren't relevant to a story — because trans individuals, having suffered from gender dysphoria, would be protected under existing rules covering physical illness.

KEY RULINGS

- *Price and Andre v Heat magazine* (Report 76, 2007).
- *Sharon v The Independent* (Report 62, 2003).
- *BBC Scotland v Scottish News of the World* (Report 59/60, 2002).
- *Bishko v Evening Standard* (Report 40, 1997).

BRIEFING

Complaints about websites

Online versions of newspapers and magazines have been covered by the Editors' Code since 1997. But in a PressBoF statement in 2007, covering online content and user-generated material, the remit was extended to embrace audio-visual images. It means that UK newspaper and magazine websites are subject to a form of regulation rarely available in online media internationally.

The emerging pattern of complaints in this rapidly developing area has been set out in the PCC's policy note on *Online Complaints*. The trend is similar to that of print versions, with many complaints relating to issues outside the Code, such as taste and decency. These are often resolved by the websites' take-down procedures.

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 ensure it would comply with the Code in its current form, or modified to remove intrusive elements that could not be justified in the public interest — e.g. by pixellating faces — or not at all. 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 from such sites published without consent can raise privacy issues. The PCC will take into account a variety of factors under the Code: 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.

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.

Section Four: News Gathering

FINANCIAL JOURNALISM

The market rules

THE CODE SAYS...

Clause Thirteen — Financial journalism

- i) *Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.*
- ii) *They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.*
- iii) *They 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.*

It is notable that even in a world of increasing corporate accountability, the Clause 13 rules on financial reporting have remained unchanged since 1991. They have stood the test of time well and been recognised by the Government and European Union as an acceptable Code within the field of financial services regulation.

They have survived one major test, when the PCC launched its own investigation into the "Mirrorgate" scandal, where two business journalists had been tipping shares that they had previously bought — in clear contravention of the rules.

The journalists concerned were dismissed, as their contracts of employment required them to comply with the Code. The Editor,

while cleared of personal involvement in the scandal, was found guilty of breaching the Code by not enforcing it rigorously and had to publish a damning 4,000-word adjudication across pages 6-7 of the paper.

The PCC helped produce a Best Practice Guidance Note on financial journalism (See Briefing panel: *The Code and the Law*) which enhances the Code's provisions, and which has been used as a basis for in-house regulation. An essential element is its emphasis on the spirit of the Code as set out in the Preamble, which means that it does not rely on narrow definitions, which would create instant loopholes.

KEY RULING

- PCC and *Mirror City Slickers* (Report 50, 2000).

KEY QUESTION

One commonsense test which underpins the financial journalism rules:

- **Would it survive the Private Eye test?** If it would damage the integrity of the journalist or his newspaper, if his or her actions were reported in *Private Eye* — then don't do it.

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CONFIDENTIAL SOURCES

A matter of trust

THE CODE SAYS...

Clause Fourteen — Confidential Sources

Journalists have a moral obligation to protect confidential sources of information.

The obligation on journalists to protect their confidential sources is deeply ingrained in the culture of British journalism. Perhaps for that reason, this clause, one of the shortest in the Code, rarely attracts complaints.

The PCC usually considers cases of alleged breach of agreements of confidentiality only when another Code issue is involved. However, the Commission has issued specific guidance concerning confidential sources:

- The clause should not be interpreted as preventing the publication of confidential information.
- Journalists should take special care when dealing with members of the public unversed in media matters who may not appreciate that at the start of a conversation they should make clear that it is non-attributable.
- A journalist who induces a member of the public to talk off the record, and then publishes the remarks on the record could be in breach under the Code.
- The obligation of confidence should not be used by

journalists as a shield to defend inaccurate reporting. Wherever possible, efforts should be made to obtain on-the-record corroboration of a story from unnamed sources.

- If a complaint hinged on material from an unnamed source, the PCC would expect the newspaper either to produce corroborative material to substantiate the allegations — or to demonstrate that the complainant had a suitable opportunity to comment on them.
- There would be a particular responsibility on editors to give a reasonable opportunity of reply to complainants who felt they were victim of allegations from an unnamed source.

Blowing cover: On the rare occasions that complaints arise, they are unlikely to be deliberate, but due to carelessness or inexperience. However, that is no excuse under the Code.

An ex-employee of the Government's Rural Payments Agency complained that an e-mail that she had sent to an evening newspaper, criticising her former bosses, was forwarded to the RPA for comment. She had asked for anonymity, but her details were not deleted.

The paper apologised, explaining that it was a mistake by a trainee, who had been disciplined.

The PCC ruled that this was a serious and thoughtless error that could not pass without censure. The complaint was

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upheld. (*A woman v Evening Chronicle, Newcastle; Report 73, 2006*).

The cover of another employee was similarly blown when a newspaper quoted him anonymously in a story about plans to close the mortuary where he worked. The paper described him as a mortuary worker. But the establishment had only two employees and the other one was his boss. So he was quickly identified, and his comments to the newspaper earned him the sacked for gross misconduct.

The editor said it had not realised there were only two employees. The PCC ruled that the onus was on the newspaper to establish the correct form of words to protect the source. (*A man v Lancashire Telegraph; Report 76, 2007*).

KEY RULINGS:

- Guidance Note on Court Reporting.
- *A woman v Evening Chronicle, Newcastle* (Report 73, 2006).
- *A man v Lancashire Telegraph* (Report 76, 2007).

KEY QUESTIONS

- Is the source confidential?
- Could an unnamed source be identified?

Section Five: Payments for information

WITNESS PAYMENTS IN CRIMINAL TRIALS, PAYMENTS TO CRIMINALS

To pay, or not to pay

Payments for information or pictures are normally not affected by the Code. They are matters for the editor's discretion, except where they might threaten the integrity of the judicial process — which the Code committee recognises as paramount — or where they appear to encourage or condone crime.

It therefore imposes strict rules on payments to:

- Witnesses in criminal trials (Clause 15) to avoid the risk of their evidence becoming, or appearing, tainted in the eyes of a jury (civil cases are not affected, even where a jury is involved); and to —
- Criminals or their family or associates (Clause 16), so that these

people are not effectively glamorising, glorifying or profiting from crime.

While payments in either instance are relatively rare, they usually occur in controversial or high-profile cases, which means this is an area where the PCC has sometimes instituted its own investigations without a complaint being received. However, there is widespread agreement that there are occasions where such payments are necessary in the public interest — as when helping to expose or detect crime, for example.

The risks and the need for payment have to be weighed together and in Clauses 15 and 16 the Code sets out to balance one with the other.

Section Five: Payments for Information

WITNESS PAYMENTS IN CRIMINAL TRIALS

Witnesses: timing is crucial

THE CODE SAYS...

Clause Fifteen — Witness payments in criminal trials

- (i) *No payment or offer of payment to a witness — or any person who may reasonably be expected to be called as a witness — should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.*
- (ii)* *Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.*
- (iii)* *Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.*

* A public interest exemption may be available. See Section Six

In 2002, the Lord Chancellor's department announced a plan to introduce laws covering witness payments in criminal trials that would have exposed the media and journalists to the risk of fines and imprisonment.

Within months, the Editors' Code Committee persuaded the Government that changes to the self-regulatory Code would be more effective, and the legislative threat was dropped. The resulting Code revisions, introduced in 2003, severely limited the circumstances in which payments could be made.

The Code effectively creates two categories of restriction on payments or offers to witnesses or potential witnesses — one a qualified ban where payments may be defended in the public interest, and the other where there should be no payment in any circumstance: a total ban. The deciding factor is timing.

The total ban applies once proceedings are deemed active, using the threshold of the Contempt Court Act of 1981. Effectively this is when an *arrest has been made, or an arrest warrant or summons issued, or a person is charged.*

It means there can be no payment or offer to anyone who is, or is *likely to be called as, a witness.* The total prohibition lasts until the question of guilt ceases to be a legal issue — such as when the trial is over, or the suspect is either freed unconditionally or has entered a guilty plea.

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The qualified ban applies where proceedings may not yet be active — but are likely and foreseeable. Here no payments or offers can be made — *unless there is a public interest in the information being published and an over-riding need to make a payment for this to be done.*

This begs several questions for editors.

Active proceedings: The first question to resolve is whether proceedings are active. If the answer is Yes, then the principal remaining issue under Clause 15i, when considering making offers of payment, is: *Could the potential payee reasonably be expected to be called as a witness?* If so, payment is prohibited.

In some cases it might be obvious that the prospective payee is a likely witness. In others, less so. In the absence of reliable police or other guidance, editors would need to make their own judgment — usually with legal advice — on what might be considered reasonable, before approaches were made.

Proceedings not yet active: If the judgment is that proceedings are not active, then there is the possibility of payment in the public interest. But the situation is not necessarily clear-cut.

Restrictions apply only if proceedings are *likely and foreseeable* — and if the potential payee *may be reasonably expected to be a witness.* It is again a crucial judgment. If the answer to either question is No, then restrictions do not apply under the Code.

However, if the answer to both questions is Yes, then a new set of conditions kicks in to comply with Clause 15ii:

The public interest: For now the only basis upon which a payment or offer may be made is that the information concerned *ought demonstrably to be published in the public interest* and that there is an *over-riding need to make or promise payment for this to be done.*

The editor would need to demonstrate both *how the public interest would be served* and why the necessity for payment was

over-riding, a particularly high threshold under the Code. But the responsibility does not end there.

Influencing witnesses: Editors have a duty of care not to allow their financial dealings to lead witnesses to change their testimony. The risks include witnesses withholding information in an attempt to preserve exclusivity or for other reasons, or exaggerating evidence to talk up the value of their story. Editors also need to be alive to the danger of journalists — intentionally or not — coaching or rehearsing witnesses or introducing to them extraneous information, which might later colour their evidence.

Conditional payments: Potentially the most dangerous deal, in terms of tainting witnesses, is one in which payment is conditional on a guilty or not guilty verdict. The PCC has made clear that any deal linked to the outcome of the trial would be strictly prohibited as it might affect the witness's evidence or credibility.

Finally, if all other hurdles have been cleared, there is one further obligation on editors.

Disclosure: Once an editor is satisfied that the Code's requirements can be met, and payment or offer of payment is made, the payee should be told that *if they are cited to give evidence, the deal must be disclosed to the prosecution and defence.* This transparency is a deliberate safeguard against miscarriages of justice. It puts extra onus on potential witnesses to tell the truth, since they know they are likely to be cross-examined on the payment.

The PCC has laid down guidelines for compliance. It advises that:

- The payee should be informed in writing that, *should he or she be cited to give evidence, the press is bound under the Code to disclose the deal to the relevant authorities.*
- The prosecution and defence should be notified promptly, with full details of a payment or contract given in writing. The requirement to inform both sides may be satisfied, where appropriate, by

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KEY QUESTIONS

- **Are proceedings active?** Has there been an arrest, a warrant or summons issued, or charge? If so, there is a *total ban* on payments to witnesses or potential witnesses until the case is over.
- **If not active, are proceedings likely and foreseeable?** If not, restrictions don't apply. If they *are* foreseeable, then —
- **Could the potential payee reasonably be expected to be a witness?** If not, no restrictions apply. If he/she is a potential witness, then —
- **Is there a clear need to publish information in the public interest?** This would have to be demonstrable in order to proceed.
- **Is there an over-riding need for payment?** Would it be possible to obtain and publish the information in any other way?
- **Could the deal influence the evidence the potential witnesses give?**
- **Is payment conditional on the verdict?** This is totally prohibited.
- **Has the payee been told the deal will be disclosed to the court?**

notification to the prosecution for onward transmission to the defence.

There has been only one adjudication since the new rules were introduced, and it underlined the importance of timing of approaches. A prosecution witness in the trial of Kate Knight — who was later jailed for 30 years for attempting to murder her husband by lacing his food with anti-freeze — told the court that during an overnight break in her testimony she had been approached by a magazine offering a fee for an interview, once the trial was over. Although she had received other requests for an interview this was the only one that mentioned a fee.

The PCC launched its own investigation — as it often does with 'victimless' cases — and although there had been no impact on the trial, censured the magazine for its premature approach. The Commission said it was never acceptable for witnesses to be approached with offers of payment while giving evidence. (*PCC investigation, Full House Magazine: Report 73, 2008*).

Lessons from the past: Only one complaint had been upheld under the previous rules — revised in the wake of the Rosemary West trial in 1996 — and that was an inadvertent breach relating to the case of Gary Glitter.

An ambiguity in the contract in 1997 between the *News of the World* and a woman who had previously claimed to have been an underage partner of the pop singer appeared to suggest the payment was conditional on the outcome of the trial. In fact, at the time of the contract, the woman was neither a witness nor potential witness in the case. (*Taylor v News of the World, PCC Report 48, 1999*.)

The PCC launched an investigation into the case of Amy Gehring, a former teacher accused of intimate liaisons with pupils in 2002. It found that although payments had been made to former pupils, all complied with the requirements of the then Code and none was conditional on the outcome of the trial. (*A reader v News of the World, The Mail on Sunday, Daily Mail, Sunday People, Sunday Mirror: Report 57, 2002*).

However, the PCC has indicated that a newspaper's payment to an informant who was a potential witness in the case of an alleged plot to kidnap Victoria Beckham, which had not breached the Code in 2002, would probably have been a breach under the new rules. (*PCC investigation into News of the World: Report 63, 2003*).

KEY RULINGS

Under the rules introduced in 2003:

- PCC investigation into *Full House* magazine (Report 73, 2008).

Relevant earlier rulings:

- *Taylor v News of the World* (Report 48, 1999).
- *A reader v News of the World, The Mail on Sunday, Daily Mail, Sunday People, Sunday Mirror* (Report 57, 2002).
- PCC investigation into *News of the World* (Report 63, 2003).

Section Five: Payments for Information

PAYMENTS TO CRIMINALS

Criminals: stories, not glories

The Code, from its inception in 1991, has taken a tough line on payments to criminals, with a blanket ban on deals unless they could be justified in the public interest. While that approach reflected public concerns over criminals being seen to profit from their actions, or glamorising or glorifying crime, the Code has never assumed *all* such payments to be inherently undesirable.

PCC rulings had made clear that a lifetime ban would be unfair on reformed criminals or those whose convictions were spent. It was also a potential violation of their human rights.

In 2003, the PCC produced guidance on the sort of cases most likely to breach the rule on payments to criminals — and those which generally would not.

THE CODE SAYS...

Clause Sixteen — Payments to criminals*

(i) *Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates — who may include family, friends and colleagues.*

(ii) *Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.*

* A public interest exemption may be available: See Section Six

Least likely offenders included:

- Book serialisations, which were anyway in the public domain;
- Cases where no direct payment was made to a criminal or associate — i.e. when a payment was made to a charity to secure the material;
- Payments where publication was in the public interest;
- Articles which made significant new information available to the public.

Most likely offenders included:

- Articles glorifying crime — no complaint about an article that did so had ever been rejected;
- Payment for kiss-and-tell stories about romance or sex;
- Payments for irrelevant gossip, which intrudes on the privacy of others.

The Code Committee reflected these realities by introducing in June 2004 an additional defence, permitting payment to a criminal without the necessity for it to be in the public interest — but only if the material published *did not seek to exploit a particular crime, or glorify or glamorise crime in general*.

Exploitation and glamorising crime: The burden would be on the editor to prove that there was genuinely no intentional exploitation of a particular crime or of glamorising or glorifying crime generally, and demonstrate that it was not reasonable to expect that to be the outcome.

The panel colour code

What the Code says

Key questions editors need to ask themselves when Code issues arise

Briefings on specific areas where the Code applies

Was a criminal or associate paid? Friends, neighbours and family members fall within this group. A picture of a criminal bought from her boyfriend has been held to breach the Code.

To justify payment, the publication would need to be able to satisfy the PCC on each of these counts. If it felt confident of doing so it could proceed, *even if no public interest justification existed.*

In 2006, a magazine article headlined *Why I Slept With My Own Son* was the first to fail both these tests. A mother convicted of unlawful sex with her teenage son had described the offence in the article and said the only thing she regretted was being caught. That was evidence of exploiting a particular crime and justifying it.

She and her son were paid by an agency, which was paid by the magazine. The PCC ruled that while the mother had a right to express her view, there was no conceivable public interest in her being paid. (*Moffat MP v Chat magazine: Report 73, 2006*).

But when a Sunday newspaper paid £460 to a petty criminal who claimed — falsely — to have served community service at the same time as the then Lord Chief Justice conducted undercover research into non-custodial sentences, it was cleared of a breach.

The Commission ruled that, while some people might object to

payment to someone with a criminal record, he was not exploiting a particular crime, nor did he glorify crime in general. Expressing honest views about experiences on a community service scheme was not sufficient to engage the terms of the Code. Had it done so, it would be unduly restrictive of stories about prison life from the perspective of a criminal. (*Thames Valley Probation Area v Mail on Sunday: Report 74, 2007*).

The public interest defence remains in Clause 16ii for relevant cases — and can be used with Clause 16i or alone — but has been revised to cover both the act of payment to criminals and the subsequent publication.

This means a newspaper which pays a criminal, in the genuine and reasonable belief that it would be the only way to elicit information of public interest, is covered. However if, once the deal is done, no such material of public interest emerges, nothing should be published as a result.

The rule was tightened in June 2004 after a Scottish paper (*McInnes v Daily Record: Report 62, 2003*) paid a convicted criminal for an interview, expecting him to reveal vital, and undisclosed, details of the crime. But he did not — and the paper published the interview, regardless. It was not a breach then. It would be now. It is a further safeguard against fishing expeditions, which are not allowed under the Code and which now — if fruitless — could also prove expensive.

KEY RULINGS

- *Moffat MP v Chat magazine (Report 73, 2006).*
- *Thames Valley Probation Area v Mail on Sunday (Report 74, 2007).*
- *McInnes v Daily Record (Report 62, 2003).*

KEY QUESTIONS

In clause 16i:

- Does this information seek to exploit a particular crime?
- Does it seek to glamorise or glorify crime in general?

In Clause 16ii, the test ahead of a payment or offer:

- Is there good reason to believe payment will elicit material which ought to be published in the public interest?
- Could it have been obtained in any other way?

The test after payment or offer and ahead of publication:

- Is the material which has emerged genuinely in the public interest? If not, publication should be cancelled — even if payment has been made.

Section Six: The Public Interest

Private lives and public interest

If the Code of Practice lies at the heart of self-regulation of the press, then serving the public interest lies at the heart of the Code, and of the very best of journalism, synthesising its democratic role

THE CODE SAYS...

The Public Interest

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

1. *The public interest includes, but is not confined to:*
 - i) *Detecting or exposing crime or serious impropriety.*
 - ii) *Protecting public health and safety.*
 - iii) *Preventing the public from being misled by an action or statement of an individual or organisation.*
2. *There is a public interest in freedom of expression itself.*
3. *Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.*
4. *The PCC will consider the extent to which material is already in the public domain, or will become so.*
5. *In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.*

and providing its moral base. Yet the public interest is impossible to define. So the Code does not attempt to do so. Instead, it provides a flavour of what it regards as the public interest — a non-exhaustive list that attempts to reflect the values of the society the British press serves:

- Detection or exposure of crime or serious impropriety;
- Protection of public health and safety;
- Prevention of the public from being misled,
- Upholding freedom of expression.

The Code also makes clear that if the information is already available in the public domain — or likely to be so — that too is a factor.

The list could go on, but it deliberately does not. The spirit of the Code, set out in the Preamble, requires that these areas should not be interpreted too widely; the Code does not work, for example, on the basis that the public interest is essentially whatever the public is interested in. But nor should the list be interpreted too narrowly, so as to discourage or prevent investigative journalism or exposure of serious wrongdoing, for instance. That would itself be against the public interest.

It was to protect such investigative journalism that the Code's test for invoking the public interest was changed in October 2009. Previously, editors were required to *demonstrate fully how the public interest was served*. But this did not specifically allow for publication or investigative activity that genuinely appeared to be in the public interest, even where none actually emerged.

So the Code committee introduced the test that editors would

need to *demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.*

Under the spirit of the Code, the PCC would always have been likely to take into consideration whether such activity or publication would have seemed reasonable. Now that has been codified. It means editors must convince the PCC that their belief that their action was in the public interest, was genuine and based on reasonable grounds. It is a stiff test. Fishing expeditions, or pretexts for them, won't do.

The Public Interest defence is available for all or part of nine of the 16 clauses and is marked by an asterisk.

The areas where it does NOT apply are:

Accuracy and opportunity to reply — it would not be in the public interest to fail to *take care to avoid inaccuracy*, or to deny a *reasonable* request to put something right;

Intrusion into grief or shock and victims of sexual assault — it could not be in the public interest not to show due *sensitivity* at such times;

Discrimination against individuals — which the Code assumes could not be in the public interest;

Financial journalism, confidential sources — which are clauses, by their nature, designed to *uphold* the public interest.

Payments to witnesses once proceedings are active — when any possible risk to the judicial process would be potentially at its most potent.

The areas where the public interest exemption can apply:

In judging publications' claims that otherwise prohibited information or methods were justifiable in the public interest, both the Code and

the PCC set high thresholds. The burden is on the editor to *demonstrate fully* how the public interest was served.

Protecting children: That burden is particularly onerous in cases involving children under 16, where the Code insists that it would take an *exceptional public interest to over-ride the normally paramount interests of the child.*

It is a very tough test. A newspaper which identified schoolboys expelled for fighting and racial abuse (*Colgan v Manchester Evening News: Report 43, 1998*) and another which named a schoolgirl whose mother committed suicide (*Brown v Salisbury Journal: Report 46, 1999*) were each found to be in breach. *So far, the Commission has accepted no such claim of exceptional justification.*

To succeed, any justification of the public interest must be clearly primary and not just an excuse to try to sneak a story in under the Code radar. The PCC will usually require evidence that any supporting pictures and personal details were necessary elements to the main thrust of the story.

Exposing crime: Use of a private photograph was thus accepted as an essential part of a Sunday newspaper's exposure of a plot where an individual offered an undercover reporter money to kill his mistress. A complaint of intrusion was rejected. (*Khare v News of the World: Report 45, 1999*).

The father of a 15-year-old boy who had posted on YouTube images of himself and other teenagers firebombing a freight train, complained when the video was uploaded onto a local newspaper website. He said the interests of the youths outweighed any public interest in showing their faces.

The PCC disagreed. It ruled that material showing anti-social or criminal acts committed in a public place by individuals over the age of criminal responsibility could not be considered private. The Code should not shield the perpetrators from public scrutiny. Also, the complainant's son had put the material into the public domain

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voluntarily. The complaint was rejected. (*A man v Northwick Guardian: Report 75, 2007*).

Protecting public health and safety: A reporter used subterfuge to see CCTV pictures which substantiated claims that a dying man had been badly treated by a hospital. That was ruled by the PCC to be in the public interest. (*Northwick Park Hospital v Evening Standard: Report 57, 2002*).

So too was the naming, without consent, of a teacher at the centre of a school tuberculosis scare. Her complaint against an evening newspaper was rejected because she was widely known to parents and pupils as the source of the TB outbreak and as such some otherwise private matters would become a necessary part of the public debate. (*A woman v The News, Portsmouth: Report 66, 2004*).

However, it was not appropriate for a local newspaper to identify a boy admitted to hospital suffering from meningitis. The legitimate public interest in alerting the local community to the case could have been met without disclosing the name — especially as he was a child — said the Commission. (*King v Reading Evening Post: Report 37, 1997*).

Preventing the public from being misled: The PCC has held that it is fair to expose hypocrisy in public life by contrasting private behaviour and public pronouncements and responsibility. A Sunday newspaper's use of subterfuge to obtain photographs of a Nazi shrine at the home of a policewoman married to a member of the British National Party, was supported by the PCC. (*Daniels v The Sunday Telegraph: Report 65, 2004*).

It was justifiable to put into the public domain the question of whether the wife's specific police role as an investigator of racially-motivated crimes was compatible with living in a home containing Nazi memorabilia, said the Commission.

But any intrusion needs to be in reasonable proportion to the

exposure. The PCC regards bugging private telephone conversations and publishing transcripts as one of the most serious forms of physical intrusion into privacy — and therefore sets a particularly stiff public interest test to justify it.

A national daily investigating the Cheriegate Affair — where the Prime Minister's wife used Peter Foster as a go-between to buy property in Bristol — failed that test. It published transcripts of intercepted calls between Foster and his mother, claiming they clarified events surrounding Cheriegate.

The PCC said no significant new information had been provided and upheld Mr Foster's complaint. Not to have done so would have exposed anyone involved in high profile stories to unjustified physical intrusion. (*Foster v The Sun: Report 52, 2000*).

The public's right to information: The twin rights of freedom of speech and the public's right to know are enshrined in both the Preamble to the Code and the Public Interest defences.

The Commission, in a landmark decision, ruled that a serialisation of Gitta Sereny's book about child-killer Mary Bell was not a breach of the Code's rules on payments to criminals and their associates because it had ensured that important information was made widely available. If no payment had been made, the wider public would have been deprived of information that was in the public interest. (*The Times and Mary Bell serialisation: Report 43, 1998*).

The same was not true, however, for an article by Victoria Aitken about her father's crimes. The PCC said the piece added nothing in the public interest, but merely glorified Jonathan Aitken — in a manner that breached the Code. (*Barlow v Daily Telegraph: Report 47, 1999*).

The public's right to information is vital in covering major events such as terrorist attacks or natural disasters — and may sometimes justify publication of graphic images of the victims without consent. But the same is not usually true of a routine car accident and

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KEY QUESTIONS

- Was it reasonable to believe that publication or journalistic activity would have served the public interest? The PCC would require a full explanation showing that the grounds were genuine and sound in the circumstances.
- If clandestine methods, subterfuge, harassment or payments to criminals or witnesses are involved, could the information have been obtained by other means?
- Is the information in the public domain, or likely to become so?
- If children are involved, is the public interest in publication exceptional?

caution is needed when publishing images of people receiving medical treatment, even in public places.

So when a local newspaper website uploaded pictures of an elderly crash victim being treated at the scene, before her condition was known, or her family told, the PCC ruled that there was insufficient public interest to override her privacy.

However, the newspaper's speedy action in taking down the material and apologising, was a proportionate remedy. (*Kirkland v Wiltshire Gazette*: Report 77, 2008).

Upholding freedom of expression: Council officers using a 15-year-old boy in an undercover 'sting' operation to curb alcohol sales to underage customers complained when an angry shopkeeper's CCTV image of him appeared in a local paper. They claimed this infringed his privacy and rights as a child under the Code. But the shopkeeper, whose staff sold the boy alcohol, wanted to demonstrate publicly that he looked at least 18.

The PCC rejected the complaint. It said that the boy's welfare wasn't involved and the story of possible entrapment rested entirely on his physical appearance.

To have found that the picture breached the Code would have

interfered with the shopkeeper's ability to conduct his arguments freely in public — and could have been incompatible with his rights to free expression. (*Cornwall County Council v The Packet*, Falmouth: Report 74, 2007).

Could the information have been obtained by other means? A key test of the validity of the public interest defence is whether the information could have been obtained without intrusion or other breach. This applies particularly in cases involving clandestine listening devices, subterfuge, harassment, or payments to witnesses or criminals.

KEY RULINGS

- *Colgan v Manchester Evening News* (Report 43, 1998).
- *Brown v Salisbury Journal* (Report 46, 1999).
- *Khare v News of the World* (Report 48, 1999).
- *A man v Northwich Guardian* (Report 75, 2007).
- *Northwick Park Hospital v Evening Standard* (Report 57, 2002).
- *A woman v The News*, Portsmouth (Report 66, 2004).
- *King v Reading Evening Post* (Report 37, 1997).
- *Daniels v The Sunday Telegraph* (Report 65, 2004).
- *Foster v The Sun* (Report 52, 2000).
- *The Times* and Mary Bell serialisation (Report 43, 1998).
- *Barlow v Daily Telegraph* (Report 47, 1999).
- *Kirkland v Wiltshire Gazette* (Report 77, 2008).
- *Cornwall County Council v The Packet*, Falmouth (Report 74, 2007).



The Code in full

Newspaper and Magazine Publishing in the UK

Editors' Code of Practice 2007

The Press Complaints Commission is charged with enforcing the following Code of Practice which was framed by the newspaper and periodical industry and was ratified by the PCC on 13 June 2007 to include changes which took effect from 1 August 2007.

THE CODE

All members of the press have a duty to maintain the highest professional standards. 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. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.

It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary

interference with freedom of expression or prevents publication in the public interest.

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, in printed and online versions of publications.

Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.



1 Accuracy

- i) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.
- ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and — where appropriate — an apology published.
- iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

2 Opportunity to reply

A fair opportunity for reply to inaccuracies must be given when reasonably called for.

3 *Privacy

- i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.
- iii) It is unacceptable to photograph individuals in private places without their consent.

Note — Private places are public or private property where there is a reasonable expectation of privacy.

4 *Harassment

- i) Journalists must not engage in intimidation, harassment or persistent pursuit.

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

- ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.
- iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

5 Intrusion into grief or shock

- i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.
- *ii) When reporting suicide, care should be taken to avoid excessive detail about the method used.

6 *Children

- i) Young people should be free to complete their time at school without unnecessary intrusion.
- ii) A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.
- iii) Pupils must not be approached or photographed at school without the permission of the school authorities.
- iv) Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.
- v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

7 *Children in sex cases

- 1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
- 2. In any press report of a case involving a sexual offence against a child –
 - i) The child must not be identified.
 - ii) The adult may be identified.
 - iii) The word "incest" must not be used where a child victim might be identified.
 - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

8 *Hospitals

- i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.
- ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

9 *Reporting of Crime

- i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.
- ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

10 *Clandestine devices and subterfuge

- 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 unauthorised 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.

11 Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

12 Discrimination

- i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.
- ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13 Financial journalism

- i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.
- ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.
- iii) They 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.

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

14 Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

15 Witness payments in criminal trials

- i) No payment or offer of payment to a witness — or any person who may reasonably be expected to be called as a witness — should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.
- *ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise

payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

- *iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

16 *Payment to criminals

- i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates — who may include family, friends and colleagues.
- ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

The Public Interest

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

1. The public interest includes, but is not confined to:

- i) *Detecting or exposing crime or serious impropriety.*
 ii) *Protecting public health and safety.*
 iii) *Preventing the public from being misled by an action or statement of an individual or organisation.*

2. There is a public interest in freedom of expression itself.

3. *Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.*

4. *The PCC will consider the extent to which material is already in the public domain, or will become so.*

5. *In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.*

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BRIEFING

Online guide to the PCC

The PCC website contains every adjudication published since 1996. These can be searched by newspaper, clause of the Code, date or keyword.

The site also contains summaries of resolutions, which make clear the issues raised in — and the action required to conclude — each resolved complaint.

However, each case is judged on its merits and the circumstances in one may not always be a suitable precedent for another.

Cases adjudicated before 1996 are available in hard-copy format from the PCC on application to Tonia Milton, Information and Events Manager, on tonia.milton@pcc.org.uk

Other useful features of the site include:

- Advice to potential complainants
- Details of the PCC's 24-hour Advice and Helplines
- A brief history of how the Code and the PCC has evolved
- Annual reports on the PCC's work
- Membership of the Press Complaints Commission
- Membership of the Editors' Code of Practice Committee
- News updates from the PCC
- Links to press codes from other countries

The home page is at www.pcc.org.uk

Contact Numbers

Press Complaints Commission

Halton House,
20/23 Holborn,
London EC1N 2JD

Helpline: 0845 600 2757
(Local rate call charge throughout the UK)

Switchboard: 020 7831 0022

Facsimile: 020 7831 0025

Textphone: 020 7831 0123
(For deaf or hard of hearing people)

E-mail: complaints@pcc.org.uk

Website: www.pcc.org.uk

Scottish Helpline: 0131 220 6652

Welsh Helpline: 029 2039 5570

24-hour Press Office line: 07659 158536

24-hour advice line: 07659 152656
(Leave a message and you will be phoned back)

NB: This is for use in emergencies only

The Press Standards Board of Finance Ltd

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