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THE PRESS STANDARDS BOARD OF FINANCE LIMITED
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Editors' Code of Practice Committee

CHAIRMAN: LESLIE HINTON

email: editorscode@fsmail.net

SECRETARY: IAN BEALES
PO BOX 235
STONEHOUSE, GL10 3UF

AGENDA

Editors' Code of Practice Committee meeting
at the Newspaper Society offices*

8th floor, St Andrew's House, 18-20 St Andrew Street,

(Just off Holborn Circus), London, EC4A 3AY

Thursday, October 12, at 10.30am

**The Newspaper Society has moved and is no longer at
Great Russell Street. The nearest Tube station is
Chancery Lane, or alternatively Blackfriars Bridge*

1. **Apologies** (from David Pollington, Adrian Faber, Mike Gilson, Paul Potts, Lindsay Nicholson)
 2. **Minutes** of 27 April 2006 (circulated)
 3. **Business arising.**
 4. **Accuracy and headlines**
 5. **The Code Committee website**
 6. **Mental Health Guidance Note:**
 7. **Audio Visual Guidance Note:**
 8. **What Price Privacy? DCA Consultation**
 9. **Representations from the industry and the public:**
 7. **Annual Code Review:**
 8. **Other business;**
 9. **Next meeting**
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4. Accuracy and headlines

4.1 The Committee agreed, as part of the annual Code Review, to amend Clause 1i to say: *The Press must take care not to publish inaccurate.....information including pictures and headlines.* The Telegraph Group, via John Bryant, the Editor in Chief, objected that this could allow complaints against headlines taken in isolation from the text. The Secretary suggested a revised wording might state *and headlines in context.* However, while acceptable to the Telegraph and the Code Committee, this wording was felt by the PCC to be confusing and likely to dilute the effect. After consulting with the Chairman, the Secretary postponed seeking ratification by the PCC, to allow the Code Committee to decide how to proceed.

5. Code Committee Website

5.1. PressBoF has supported the principle - agreed by the Code Committee in April - that an Editor's Code Committee Website would be a logical extension to *The Editors' Codebook.* PressBoF agreed on the basis that an online codebook and frequently asked questions could be incorporated as an adjunct to the current PCC website at low cost.

5.2. Ian Beales and Tim Toulmin will meet the PCC website designer to progress matters. The initial plan is that the site should include a Home page, details of the Code Committee's role and membership; an online version of the updated Codebook; and include answers to frequently asked questions on the Code. The Editors' Committee would approve the Q&As.

5.3. Other options: should the website list the public's suggestions for revisions made to the Code Committee (and often rejected? Should Minutes of Code Committee meetings be posted? The Committee would need to decide on these and any other suggestions.

6. Mental Health Guidance Note (see attachment below)

6.1 A potential dilemma has arisen over the PCC's new Mental Health Guidance Note. At the PCC's Charter Compliance Panel's suggestion, the Commission's secretariat conducted a review of mental health reporting and produced a revised Guidance Note (attached). This was formally approved by the PCC and circulated to the Code Committee for information. One member had serious concerns about the thrust of the Guidance, which he felt was unnecessarily restrictive and should be discussed first by the Code Committee.

6.2 At the Secretary's request, the PCC secretariat delayed release of the Guidance Note, pending the Code Committee meeting. However, constitutionally PCC Guidance Notes do not need Code Committee approval or ratification – which might be seen as undermining the independence of the PCC (which of course has seven editorial members). That would need to be borne in mind when discussing the Guidance.

6.3 To avoid this in future, Tim Toulmin has agreed it would be better for the Code Committee to be consulted on Guidance Notes before they go to the PCC for approval rather than after. Thus, the Editors' Committee could make legitimate and constructive comments without appearing to challenge the PCC's independence.

7. Audio-Visual Guidance Note (see attachment below)

7.1 PressBoF has approved the general principle that the Code's remit of covering newspaper and magazine websites embraces audio-visual content and asked the PCC and the Code Committee to co-operate in producing a Guidance Note to cover online material. Tim Toulmin and Ian Beales held consultations with online editors to produce a preliminary draft, which is attached for the Code Committee's input. The Guidance will be revised in the light of the Committee's comments and then go to the industry for consultation. Any substantive changes would be circulated to the Code Committee for comment, before being approved by PressBoF and the PCC later this autumn.

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8. What Price Privacy?/ DCA Consultation on jail terms for journalists

8.1 In May, the Information Commissioner's Office issued a Report - *What Price Privacy?* – detailing the trade in private information, which was illegal under the Data Protection Act. The report identified several industrial procurers of this information, including banks, insurance companies suspecting fraud, councils and other businesses tracing debtors – and the media, especially newspapers. It claimed that raids on private detective agencies had identified 305 journalists who had paid for confidential information, often on a regular basis.

8.2 The Commissioner, Richard Thomas, suggested current penalties for these offences - £5,000 on summary conviction and unlimited fines in Crown Court - were inadequate and proposed that sentences of up to two years' jail should be introduced. He challenged regulators of alleged prime offending industries, including private detectives, the legal profession and the Code Committee and PCC, to demonstrate by the end of October what they would do to curb this traffic in confidential information. The Department of Constitutional Affairs later supported the proposed jail sentences and issued a consultation document, to which responses are also required by the end of October. (*Copies of What Price Privacy and the DCA consultation are not attached, as they are large files and many members already have them. The secretary will send digital copies to committee members on request to*

[Redacted]

8.3. The newspaper industry is organising a concerted response to the proposed sentences on a broad front, including that, in the case of journalists, such sentences would be disproportionate, unnecessary and a possible threat to press freedom under Human Rights legislation by creating a chilling effect on investigative journalism. The Code Committee Secretary has been involved in these discussions and has separately discussed the issues at length with Mr Thomas. IB will report to the Committee on these and later meetings,

8.4 Meanwhile, the Committee has to consider its response to both the ICO and DCA (who make distinctly different cases). The Information Commissioner would like to see changes to the Code and has suggested what he sees as a basis for an amendment. It is unclear whether a positive media response would affect the threat to introduce jail terms. The official line is that the media have nothing to fear if they are acting in the public interest, as this is protected under law. The unofficial line is that, given the judiciary's supposed uneasiness about jailing journalists, they would be unlikely to impose prison sentences except for the most serious and blatant breaches, (The DCA consultation says only "serious, violent or dangerous" offenders would go to jail.)

8.5 A twin track approach from the Code Committee in its responses may make sense:

- Attack very hard the jail proposals as unnecessary, disproportionate and damaging to freedom of expression – the DCA case is unimpressive and badly argued – which might convince the Government that it is on unsafe ground and likely to be damaged.
- Make conciliatory noises on how self-regulation is better placed to deal with any perceived mischief and show readiness to demonstrate that. This would mean that if the Government were forced into a corner it would have a face-saving escape route.

9. Representations from the industry and the public

Industry representation: Clause 1 iv Via the PCC

9.1 This clause requires newspapers to publish the outcome of an action for defamation to which they are party, *unless an agreed settlement states otherwise*. Its origins are hazy, but it was probably intended to cover *contested* actions – actual trials - on the basis that matters settled out of court would be by mutual agreement between the parties, and failure of either side to uphold the deal would itself be actionable in courts. The original rule performed two functions: it enshrined the moral obligation of the newspaper to publish the conclusions of an

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action in which it had been a defendant, but at the same time limited that obligation to details of the outcome, rather than requiring the paper to report on the case itself.

9.2 However, the clause was extended to include the reference to agreed settlements after the PCC upheld a complaint in 1999 when Time Out failed to report on the outcome of a case, in the belief that it had no obligation to do so because the matter had been resolved by a settlement that included a statement into open court. Recently, there was a complex but similar case involving The Guardian and Boris Berezovsky – where an out-of-court offer of amends resolution unusually involved a statement into court. Damages had not been agreed at the time of the court statement and The Guardian did not allude to them. Berezovsky's solicitors complained to the PCC. The Guardian, while insisting it had discharged its obligation under the Code, finally agreed to publish a correction including the amount of damages paid – but said the wording of the Code should be reviewed. The PCC has now passed the issue to the Code Committee.

9.3. The problem is that the law and the Code are two entirely different cultures that clash when mixed. They require the parties to follow both the letter of a legal agreement, and the spirit of the Code. There is a strong case for resolving this by confining the Code to covering *contested court actions for defamation only* – other out-of-court settlements could then be a matter for the lawyers who agreed them and not for the PCC. The committee would need to decide whether to specifically exclude agreed statements into court, (which are clearly not contested). In that case, any accompanying narrative explaining the Code change should make clear that such statements were a matter for agreement between the lawyers.

Suggestion: Clause 1iv is amended to say:

A publication must report fairly and accurately the outcome of a contested court action for defamation to which it has been a party.

9.4 Accuracy –

complained that after his student daughter died tragically, he gave an interview to a local newspaper on the express agreement that no home address should be given along with the time of the funeral, as this would advertise that the family home was empty. While the first newspaper honoured the undertaking, another newspaper in the same group lifted the story as pooled copy, published it under its own staffer's by-line and included the address believes this was blatant plagiarism, and should be banned under the Code.

10. Annual Code Review

The annual Code review will start in January. Suggestions for changes should be made to the Secretary as soon as possible.

11. Any other business

12. Date of next meeting

IMB/ 04/09/06

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Agenda item 6

On the reporting of mental health issues

The Commission would like to remind editors to ensure that their staff are aware of the terms of the Mental Health Act 1983 (and its Scottish equivalents: the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Criminal Procedure (Scotland) Act 1995, as amended by the Mental Health (Care and Treatment) (Scotland) Act 2003) and to take care not to describe those who are mentally ill in a way which might raise a potential breach of the Code of Practice, particularly Clause 1 (Accuracy) and Clause 12 (Discrimination).

In addition, it is important to remember that most people with mental illness - both inside hospitals and in the community - do not have any violent tendencies. Moreover, they are more likely to harm themselves than others. Those who have been detained under the Act following conviction for violent offences are in need of treatment and have the same entitlements under the Patient's Charter as other patients in the NHS.

Terminology is important. People are detained under the Mental Health Act 1983 in "hospitals" and not "prisons", and are "patients" not "prisoners". Under the terms of the Act, the words "jail", "cell" and "cage" are inaccurate when referring to their accommodation.

The four high security hospitals - Ashworth, Rampton, Broadmoor and the State Hospital at Carstairs - provide care and treatment in conditions of security. Their nursing staff serve in a nursing capacity and are not prison officers, although part of their function is to maintain security.

In some circumstances epithets such as, but not limited to, "basket case", "nutter", and "schizo" may raise a breach of Clause 12 of the Code of Practice in discriminating against individuals who are mentally ill - whether detained or not - or a breach of Clause 1 (Accuracy). Not only can such language cause distress to patients and their families, by interfering detrimentally with their care and treatment, it can also create a climate of public fear or rejection. Journalists and editors who require further information on matters relating to mental illness might like to contact relevant organisations such as Mind, Sane, See Me and Rethink. Contact details are below.

Mind - T: 0208 522 1743 or 07850 788 514 E: press@mind.org.uk

W: www.mind.org.uk A: 15-19 Broadway, London E15
4BQ

Rethink - T: 0845 456 0455 E: media@rethink.org W:
www.rethink.org

A: 5th Floor, Royal London House, 22-25 Finsbury
Square,

London, EC2A 1DX

Sane - T: 0207 422 5556 E: mediarelations@saneline.org W:
www.sane.org.uk

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A: 1st floor, Cityside House, 40 Adler Street, London
E1 1EE

See Me - T: 0131 624 8945 E: info@seemescotland.org W:
www.seemescotland.org

A: 9-13 Maritime Street, Edinburgh EH6 6SB

AGENDA ITEM 7

DRAFT

The Code of Practice and online journalism

Since 1998 the Code of Practice has made clear that its provisions extend to both printed and online versions of publications. This includes information that has appeared exclusively on a newspaper or magazine's website: its jurisdiction is not confined only to what appears in print but duplicated online, but extends to the editorial content of sites that are branded as the online version of the paper. This Guidance Note sets out the Commission's approach to online material, including audio-visual services.

What the Code covers

Not all information on a newspaper's website is covered by the Code. As with print publications, complaints about matters of taste and decency, competitions, legal matters and adverts are not accepted. Those which are unduly delayed or made by third parties will not normally be investigated unless there is a compelling reason for the Commission to do so. Complaints about bias, fairness and balance in reporting do not generally fall under the Code.

A website will carry more user-generated material than a printed version. But whereas complaints about letters pages in print publications may be accepted - as they are subject to the editorial process - the position with regard to user-generated content online is somewhat different. Much of the user-generated material on a website will not be solicited or edited. Third party blogs, the content of other websites to which there may be a link from the publication's site, chatrooms and any other material that is not generated by a journalist who works for a media outlet that subscribes to the Code will usually fall outside the scope of the Code. The test here is who is responsible for the material, and what type of information it is. If it is editorial information to which an objection could be made under the Code, and is commissioned, used or generated by a journalist or editor who works for a publication that subscribes to the Code, it is likely to fall within the Commission's jurisdiction.

Resolution and adjudication

Complaints about exclusively online editorial material are relatively scarce. This may be because the online environment is naturally self-regulatory, with potential complainants being able swiftly to reply to perceived mistakes, and problems resolved quickly. As with any complaint about a newspaper or magazine, the Commission would urge complainants to approach the website editor in the first instance to give them the opportunity to resolve the matter directly.

When the Commission does receive complaints about online material that falls within the Code, its approach is to try to resolve them amicably. As with print publications, this might involve private apologies, amending records, publication of an apology or clarification, undertakings, opportunities to reply or follow-up pieces. The appropriate form of resolution is the subject of dialogue between the editor, Commission and complainant.

The Commission will take any offer of amends into account when considering whether any further action is required, but if the complaint is nonetheless upheld, the Commission would expect its

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ruling to be published with 'due prominence' online. There can of course be no precise formula for what constitutes 'due prominence'. This will vary from case to case depending on the nature of the breach of the Code and where and for how long the original information appeared. As with adjudications in print versions of publications, it may therefore make sense for the prominence of an online adjudication to be discussed with the Commission in advance of publication. This is not a requirement of the Code however. Best practice would then be to archive the adjudication.

There may be occasions where there is only a light element of editorial involvement in material that is published. It would only be fair for the Commission's response to be proportionate to the degree of editorial involvement in the publication of any information that breached the Code. As a matter of common sense, for the Commission to become engaged the following conditions would have to apply:

- there would have to be some degree of editorial involvement in the publication of the material;
- the complaint would have to be made by someone directly affected by the item, rather than someone with general observations and objections;
- it would have to fall under the Code (the clauses concerning accuracy, privacy, news gathering and so on, or the preamble); and
- it would have to be made within two months of the item being published or transmitted.

Audio-visual material

Some websites offer news videos and audio services (AV material) on demand. The Code applies to these, but again only if they contain editorial information which is generated or commissioned by a publication which subscribes to the Code. The same principles outlined above apply - objections to taste and decency, to adverts or competitions and complaints from third parties or about third party websites are not matters for the Commission. Neither is user-generated audio-visual information over which there is no editorial control.

But where a complaint which falls under the Code is made within two months of transmission, and by someone affected by the material, the Commission will investigate the matter in the normal way. There will be a variety of common-sense resolutions to such complaints which may not necessarily involve corrections and apologies appearing in moving images or sound. For instance, a correction to an inaccurate audio-visual news item might involve a written online correction, with questions about prominence decided on a case by case basis by the editor concerned, following discussions with the Commission if necessary. It may be appropriate - or mutually desirable - in some circumstances for any correction or resolution to a complaint to be in an audio-visual format. But it should not be assumed that all complaints about AV material have to be resolved by such means.

For instance, some websites use audio-visual news services commissioned by the editor but generated by third parties such as news agencies or broadcasters. This is a situation analogous to the use of agency copy in a print edition: an error may be someone else's fault, but the disseminator of the information is ultimately responsible for what is published. It would therefore fall to the disseminator to take steps to remedy any breach of the Code. However, the most straightforward resolution in such a case, where all parties accept that there has been a breach of the Code, may be for the editor to offer a written remedy as outlined in paragraph 4 (above).

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It follows from the above that if the Commission upholds a complaint against audio-visual material, the publication with due prominence of its adjudication may involve either a written ruling or one in an audio-visual format, depending on what is proportionate to the complaint and appropriate in the particular circumstances

General

This guidance is not intended to be prescriptive but to indicate how the Commission approaches complaints about online material, including audio-visual material. The Commission takes a common sense approach to the investigation and resolution of complaints, and it considers that - to a large extent - custom and practice will dictate the most appropriate means of remedying complaints about AV material. With such services constantly evolving, the Commission anticipates that this guidance may have to change to accommodate developments in technology. The ability of the regulatory framework to respond swiftly to such innovations is one of the hallmarks of a flexible system of light-touch regulation such as that overseen by the PCC.