

THE PRESS STANDARDS BOARD OF FINANCE LIMITED

**Editors' Code of Practice
Committee**

Agenda

Editors' Code of Practice Committee meeting

NS/NPA offices, 8th Floor, St Andrew's House,
18-20 St Andrew's Street London EC4 3AY
10.30 a.m., Tuesday, April 15, 2008

1. Election of Chairman
2. New members
3. Apologies
4. Minutes of October 11, 2007 (circulated).
Minutes of 14 March 2007 also to be signed
5. Business arising:
 6. Profile of Code committee
 7. Code Committee survey
 8. Code website
 9. Irish Press Council
 10. Coroners' courts
 11. Annual Code review - Appendix A
 12. Other business
 13. Next meeting

Appendix A: Code Review 2008

Appendix B: The current Code contained in one page of A4 is attached separately.

6. Code committee profile: The appointment of a new chairman and the website launch have increased pressure on the committee to raise its profile. There have been calls for the minutes to be published online and for Code committee meetings to be public. A newspaper has asked to photograph the Committee meeting. There have been two requests to

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interview the Chairman. It may be timely to consider the committee's attitude to increased transparency.

7. Code Committee/PCC surveys: Solicitors Swan Turton, in a submission to the Code Review (see Appendix A, paras 2, 8, 49) copied to the Select Committee on Culture, Media and Sport, also urges research into public expectations of the Code and PCC. Their sample questions:

- Should corrections be more prominent, less or equivalent to the original? Should the press speak to children under 16, on current terms, or only with parental consent, or not at all?
- Should the Code committee comprise press only? Or equal numbers of press and experts representing complainants? Or majority of press, minority of the public? Majority of press, minority of experts? Majority of experts, minority press? Majority of public, minority press?
- Should PCC adjudications be recorded by transcript or staff minute? Ought complainants or their representatives to be allowed to attend adjudications? Should there be appeals? Should there be financial sanctions, awarding fines, compensation and/or legal costs?
- Should the Code state as its priority the interests of the press and freedom of expression? Or the interests of the individual? Or equal emphasis on both?

8. Code Committee website: The website was launched on December 13. It received 10,734 hits in January - the majority from the US - and 7,179 hits in February, where users from the US and UK each accounted for a third of the total. The number of unique users was under 300 in the first month and 200 in the second. Most popular areas of the site were The Code itself and *The Editors' Codebook*, which were both frequently downloaded. The online Codebook will be revised during 2008 to include landmark adjudications since 2004. Secretary to update.

9. The Irish Press Code, launched in a statutory context in January, borrows from the British, Australian, and German Codes. However, it diverges from the Editors' Code in two major areas:

- It urges disclosure of any major media financial interests that might influence content;
- Its Incitement to Hatred rule (equivalent to a Discrimination clause) outlaws material *intended or likely* to cause grave offence or stir up hatred against an individual, or group. The Irish Code also includes in its discrimination categories, age and marital status.

The Incitement rule is potentially problematic for the UK, especially by protecting groups as well as individuals. The Code Committee routinely rejects such demands as an infringement of free expression. As UK publishers have signed up to the Irish Code, the NUJ - also a signatory - might attempt to exploit the precedent and renew its campaign for a similar rule here.

10. Coroners' Courts: The Government, having scrapped proposals to curb press reporting of inquests, has launched a public consultation on a non-statutory alternative. A key element is that the Editors' Code might be amended to ensure "appropriate emphasis on the need for sensitive reporting" of inquests. Tim Toulmin and Ian Beales met Justice Ministry officials ahead of the consultation and stressed that the Code already required sensitivity in publication and that the PCC was very proactive on this, publishing advice leaflets for the bereaved.

Families' distress at reports seems due in part to public ignorance of what to expect at inquests, which are now less widely reported in the local press. We urged that coroners should make clear to relatives that reporting of inquests is both legitimate and desirable in the interests of open justice. Rather than overstating the need for changes, publicity should be given to the existing Code and the PCC's enforcement of it.

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Despite this, the Ministry's consultation papers make little reference to open justice, cite cases of distress apparently caused by media without a context, and suggest repetitive Code amendments. Although the NPA/NS and Society of Editors are likely to argue against changes, the Committee is free to submit in its own formal evidence.

11. **Annual Code Review:** The Review is separately numbered as Appendix A. The secretary's notes are included for background only.

APPENDIX A

Code Review 2008

ACCURACY

1. **Clause liii**

Due Prominence

From Swan Turton, solicitors. (See also Children, Public Interest defences)

2. Swan Turton, in a wide-ranging submission, say that as publication of apologies, corrections or adjudications are the PCC's sole sanction, precedence on the issue of prominence should be given to the complainant. This should be equivalent to the offending article, or part of article, in order to provide a remedy to the complainant and to prevent other readers being misled.

3. They say the fact that advertising space in newspapers is priced by position is proof that prominence is important and quote both Sir Christopher Meyer (in 2003) and the European Parliament as supporting the concept of equally prominent corrections.

Swan Turton's proposal: Clause liii:

Delete "due prominence", substitute: "no less prominence than the offending article, or the part of that article which is inaccurate."

4. Page One apologies/corrections

From Malcolm Speed, former managing editor the Scottish Sun

5. Mr Speed suggests *significant* errors made in front page stories should be acknowledged on P1, at least by a P1 cross reference to the correction or apology.

6. *IB note: The Committee has always held that due prominence does not necessarily imply*

equal prominence. However, any decision on what prominence is due would ultimately be for the PCC, which could already - in serious cases - decide that equal prominence was appropriate. This Code change could raise false expectations, making conciliation more difficult. It might also signal an end to Readers' Editors correction columns.

7. **Clause liv**

Reporting of defamation cases

from Marcus Partington, Trinity Mirror legal department

8. Following a prolonged debate about the wording of the clause covering reports of defamation cases, Trinity Mirror suggests a new wording that would allow for a unilateral correction/apology to be published:

Trinity Mirror proposed new wording: Clause liv:

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 has been published.

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9. Last year the committee decided that any change to this clause would need to be agreed by industry lawyers. The Trinity Mirror wording has been sent to Alastair Brett, of the Fleet St Lawyers Association, and a reply is still awaited. Secretary to report on progress.

CHILDREN

10. Clause 6ii
A child's welfare

From Swan Turton, solicitors

8. Swan Turton claim the concept of a 'child's welfare' - the threshold for deciding whether children can be interviewed or photographed without parental consent - is too difficult for the press, complainants or legal advisors to understand and should be dropped. They find it hard to conceive a situation in which it was in the public interest that a child under 16 is interviewed on any subject without parental consent, but if such a situation arose it would be covered by the public interest exemption.

Swan Turton's proposal: Clause 6ii - delete the words as indicated:

~~"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."~~

9. IB note: Swan Turton confuse the child's welfare and the public interest, which aren't the

same. It would rarely be against the public interest to picture children in a Premiership crowd or at a pop concert, even without consent. Nor would it be against the public interest to conduct vox pops of children's views on a boy band or Harry Potter book. This amendment could outlaw all these and much else.

The child's welfare threshold was designed to allow harmless interviews or photographs without consent. Harry Potter vox pops might be fine; but perhaps not surveys on drug use or underage sex. Pictures of young fans at a soccer match, or an unidentified baby in a pram might be OK; shots identifying children breaking the law might not be (unless in the public interest).

The PCC occasionally has problems interpreting this clause, due to the awkward linkage of photographs with child welfare. There may be a case for revision, but perhaps not on Swan Turton lines.

HOSPITALS

10. Clause 8
Reporting on hospitals

From Communications officer, Swindon and Marlborough NHS Trust

11. a journalist, says newspapers often run unsubstantiated stories without checking the facts and do not give hospitals and health professionals proper time to investigate claims before publication. He says relatives' knee-jerk reactions ('My father would still be alive if the hospital hadn't...etc') are often untrue, through misunderstandings or hysteria, and damage trust in the NHS. He wants the Code amended to make proper checks obligatory and to ensure that before a story is run reasonable time is allowed for responses that provide balance.

12. Reporting of health-related research

From the General Chiropractic Council

13. The GCC, a statutory regulator, claims the Code's accuracy clauses - stating that the press must take care not to publish inaccurate,

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misleading or distorted information - are negative. This means the Code will be used only when things have gone wrong, which is too late in the case of science and health research. The press's role in publicising associated risks and benefits influences people's life choices, making it vital to get it right first time. The GCC urges that the Code should - as suggested in 2000 by the Select Committee on Science and Technology - provide 'positive' good practice guidance on reporting outcomes of science and health research.

14. The GCC suggestion follows reports that Australian medical research had said chiropractic treatment for lower back pain was a waste of time and money, even though the research did not mention chiropractors.

15. *IB note: Accuracy is accuracy, whether for science, health or anything else. The Committee has not previously felt it appropriate to give timescales for allowing official responses on medical matters or 'positive' guidance on reporting in any specialist area. Even the rules on financial journalism are limited in their scope. It might be possible for the PCC, or The Editors' Codebook, to publish advisory (non-binding) guidance on science reporting, but that could risk opening the floodgates to calls for similar treatment from a range of professional groups, from judges (see below) to estate agents.*

REPORTING OF CRIME

16. **Clause 9**

Naming of innocent defendants

From [] - response to a previous rejection

17. [] suggestion that defendants in court cases should not be named in press reports until or unless they were found guilty were rejected as: against the principle of open justice; likely to make court reporting difficult or impossible; potentially damaging to an innocent person in need of publicity for their defence; and because members of the public could report matters by word of mouth without any of the media's obligations to accuracy.

18. [] refutes this. He says the press could report cases, withholding names as in juvenile cases; names could be published if the defendant consented; and any problems of misreporting by members of the public would be minor compared to the damage from media publicity. The guilty would not escape, as names would be published if a defendant were found guilty. If they were not, they, their family and their business would have escaped harmful publicity. He will not take No for an answer. If rejected again - as he expects - he vows to take the matter further.

19. *IB: It appears impossible to accommodate [] who - when the hypothesis was put to him - believed that if Tony Blair had been accused in the cash-for-honours case and cleared, the public would not need to have been told..*

20. Reporting of judges

Select Committee on the Constitution - response to a previous rejection

21. The Select Committee's earlier call for the Code to be changed - to prevent 'distorted and irresponsible' reporting that blamed judges for laws promulgated by politicians - was rejected by the Code Committee as inconsistent with press freedom, and unnecessary, given the Code's comprehensive rules on accuracy and opportunity to reply.

22. Lord Goodlad, the Select Committee's new chairman, disagrees and asks us to reconsider. He says a change is necessary because the Code isn't working and cites a *Daily Express* leader accusing one judge of 'a judicial coup against Parliament' and the judiciary in general of using the Human Rights Act to assert their will over elected MPs. Secondly, he

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says the Code's opportunity to reply is not a satisfactory remedy as judges are not allowed to discuss judgments or sentencing decisions outside a courtroom. They cannot engage with the media as do politicians, businessmen or other individuals and should be treated as a 'special case.'

23. As making the judges a 'special case' would risk putting them above normal public scrutiny, the secretary wrote asking Lord Goodlad if the Select Committee believed the Code should ban all criticism of judges and, if not, what exceptions it would make, and who would decide. We also asked whether the Judicial Communications Office might have an intermediary role, and whether this specific protection had been sought by judges themselves (it hasn't surfaced as a significant issue in meetings with the PCC). The secretary will report on any response.

DISCRIMINATION

24. Clause 12

Inclusion of groups - various

25. Calls for the Discrimination clause to be extended to embrace groups as well as individuals continue to be the single most frequent suggestion to the Code Review. In addition, there has been a call for the gender category - included in protected groups since 2005 - to be redefined as *Gender Identity*.

26. Reporting of Muslims

From the Mayor of London

Mr Livingstone commissioned *The Search for Common Ground*, a 150-page report on the interaction of Muslims, non-Muslims and the UK media. It claims the media presents a generally negative view of Muslims with distorted - and even invented - stories, in breach of the Code.

27. The report recommended: media codes generally should include guidance on terminology (citing 'inaccurate' usage of *fundamentalist*, *radical*, *jihad*, *Islamist*, *extremist* and *moderate*); and that the Editors' Code specifically should be amended to permit complaints of distortion and inaccuracy from groups and third parties, as well as individuals.

28. The latter suggestion appears based on a misreading of the Code. Complaints of inaccuracy and distortion involving groups can already be accepted under Accuracy rules, but complaints of discrimination cannot. Complaints about reporting prejudicial to individual Muslims are covered by the Code's religion provisions. The Committee will need to decide whether it wishes to:

- Extend the Discrimination clause to embrace groups generally;
- Include terminology guidance about Muslims in the Code or elsewhere.

29. IB: *It has always been the Committee's view that, while individuals should be protected*

from prejudicial references, any extension to include groups would limit freedom of expression. Arguably, jokes about Germans and beach towels, Scots and meanness, and Jeremy Clarkson (see below) and Anne Robinson-style comments on the Welsh would be barred. Such issues of taste are outside the Committee's remit. Guidance on terminology might also stray into taste, although the PCC has given advice on terminology in the case of mental health patients and warned of the dangers of inaccurate or distorted reporting on asylum seekers. Another option might be for The Editors' Codebook to make clear that issues of taste are left to editors' discretion - and that they do exercise it. The non-publication in Britain of the Danish cartoons could be an example.

30. Reporting of Gipsies and Travellers

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From Irish Traveller Movement in Britain

The Traveller Movement says gipsy and traveller groups report persistent refusal by the press to correct inaccuracies or curb abusive and dangerous reporting, contributing to an atmosphere of fear and suspicion. The movement wants newspapers to promote equality and social cohesion, via a change in the Code. It suggests that the Code should be amended to say:

In exercising its functions, the PCC shall have due regard to the need to eliminate unlawful discrimination; to promote equality of opportunity and to promote good relations between people of different racial or other groups.

31. IB: *The PCC will already have due regard for the law: the Code is predicated on the principle that journalists are not above the law and should only break it in the wider public interest. The difficulty would be in placing on journalists an obligation to promote any ideal, especially loose and politically subjective concepts such as equality and good relations, which would be impossible for the PCC to police.*

32. Discrimination against communities

From [redacted]

[redacted] complained to the PCC that a Sunday Times piece by Jeremy Clarkson, which said "it is entirely unfair that some people are born fat or ugly or disabled or ginger or small or Welsh", was pejorative and a breach of the Code's Discrimination rules. The PCC rejected the complaint as no individuals were mentioned. [redacted] complained to his MP, [redacted] who believes discriminatory language is used "particularly towards communities as a whole with the reference about persons from Wales." [redacted] suggests Clause 12i should be amended to say:

The press must avoid prejudicial or pejorative references to an individual's or community's race, colour etc....

33. IB: *The arguments against covering groups are set out in 29 above. Also, if we*

wanted the clause to embrace groups, it would be better to delete the words 'an individual's'. Adding 'community' creates confusion. To describe the Welsh as a 'community' might itself sound vaguely pejorative ...

34. Reporting of cyclists

From [redacted]

[redacted] and 500 others complained to the PCC about Matthew Parris's comment in *The Times* that cyclists should be decapitated by stringing piano wire across country lanes. The complaints were rejected. Cyclists are not in the Discrimination categories - race, colour, religion, gender, sexual orientation, physical or mental illness or disability - and, anyway, no individuals were named. [redacted] believes the Code should be amended to prevent such 'disgusting and threatening journalism'.

35. IB: *The Committee has always regarded taste and decency (29 above) as issues for editors*

and their readers, not the PCC. [redacted] subsequent apology tends to confirm the power of public opinion as an effective sanction.

36. Discrimination against Kosovan women

From [redacted]

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An Inverness paper published Forces slang describing Kosovan women as BOBFOCs - 'Body off Baywatch, Face off Crimewatch'. [redacted] complaint that this was discriminatory, since it branded all Kosovan women as ugly, was rejected by the PCC because no individuals were named. He says a distinction between individuals and groups is bogus when a sneering remark about a group would apply equally to all the individuals within the group.

37. IB: See 29 above.

38. Gender identity etc

From Stonewall Scotland

39. In 2005, after representations from the Parliamentary Forum on Transsexualism and the trans organisation Press for Change, Clause 12i was altered to substitute the word *gender* for *sex* in the Discrimination categories. This followed the passing of the Gender Recognition Act and was intended to cover specifically individuals undergoing, or who had undergone, treatment for gender reassignment.

40. Stonewall Scotland, representing lesbian, gay, bisexual and trans people, say the amend-ment is inadequate: transgender issues are still seen as a source of fun and tabloid coverage is even more prurient than on gay coverage. Trans people are often 'outed' in the press, even though European and UK law make it clear that a person's gender identity is a private matter.

41. They believe this is partly because differences in meaning of the terms *gender* and *sex* are not immediately apparent. They suggest the Code is changed to:

- Make clear that revealing, without consent, that a person is undergoing or has undergone gender reassignment is an invasion of privacy;
- Substitute the words gender identity for *gender*.

42. They also suggest the PCC should, in certain circumstances, consider complaints from third parties, as in many cases the individuals concerned would be too distressed to do so and may have lost faith in the press self-regulatory system.

43. IB: Arguably, Gender identity might convey more than *gender* alone. However, this

change was agreed with other trans organisations, and we have had no complaint from them. Also, if the new term were adopted, we would have to reinstate the word sex alongside. It might be better to give the current change time to settle down and review it later. Meanwhile, the PCC can already consider third party complaints - where the first party agrees. Admittedly, such consent might be unlikely if, as Stonewall Scotland suggest, the individual concerned is already distressed. However, clearly it would be dangerous - and possibly intrusive - for the PCC to proceed without such consent.

PAYMENTS TO WITNESSES

44. Clause 15i

From the PCC

45. The Witness payments rules were introduced in 2002 after some gun barrel diplomacy by the then Lord Chancellor Derry Irvine. He believed payments to witnesses in criminal trials fatally tainted their evidence in the eyes of juries, making it difficult to secure proper convictions. He threatened legislation with criminal penalties if the Code was not changed.

46. The Code was therefore amended to ban, once proceedings are active,

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any payments or offers to potential witnesses - without any public interest exception - until guilt or otherwise has been determined, or the case dropped. Technically, bids cannot be submitted until the end of a trial. Broadcasters adopted similar rules.

47. However, editors have suggested to the PCC that this is over-restrictive, leads to a chaotic bidding war at the end of a trial, and that the ban should remain only until the witnesses concerned conclude their own evidence to the court.

48. IB: There is a powerful case for change. But given the history, the Justice Ministry would

probably need to be involved. Initial soundings might be prudent. A possible sticking point is that, even after giving evidence, the risk of a witness being 'tainted' exists, in theory, until it is certain they will not be recalled to the stand. Such certainty is difficult to determine before the end of a trial. However, if consultations are held, it would be timely to press for restoration of the public interest defence, the absence of which means that, technically, it would breach the Code to pay a witness, even where payment was demonstrably in the interests of justice itself.

PUBLIC INTEREST EXCEPTIONS

49. Balancing freedom of expression and privacy

From Swan Turton, solicitors

50. Swan Turton claim the wording of the Public Interest panel is unbalanced. It gives greater weight to protecting freedom of expression than protecting intrusions on privacy and reputation, contrary to the ECHR. They suggest either:

- Deleting: "There is a public interest in freedom of expression itself"; Or
- Adding: '...and an equal public interest in protecting both the privacy
and reputation of individuals'.

51. IB: The public interest panel should not be read in isolation. The Code balances privacy

and freedom of expression from the outset. The Preamble states:

... This Code sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It goes on to add: 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.

There is also a specific clause devoted to protection of privacy, but no such clause dedicated to freedom of expression. So the Public Interest panel actually maintains the symmetry, rather than distorts it. No change seems necessary.

OTHER PROPOSALS

52. Readers' letters

From

53. is concerned that her two local newspapers in Prestatyn often print letters - sometimes abusive - aimed at named individuals, while withholding the writers' names. She accepts that it is occasionally necessary to protect a writer's identity, but objects to the press 'shielding a writer in order that they can have a go at someone with whom they happen to disagree'. She complained to one editor, but received no reply.

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54. **IB:** The Code Committee had always held that the publication of letters should be at the editor's discretion. A victim of inaccurate remarks in a letter could seek a fair opportunity to reply under Clause 2 of the Code. It is unlikely to satisfy anyone seriously victimised anonymously, but it would be difficult to find an alternative that would not infringe an editor's right to edit.

55. General review:

The secretary's general review also considered two issues that had not been specifically referred to the Committee - Harassment, in the wake of the Select Committee comments on the Kate Middleton incidents, and Suicide reporting following the Bridgend deaths.

56. **Harassment:** Although the Select Committee's report had been critical of invasive media attention in the Middleton affair, no specific changes in the rules were indicated. Any issues arising were over whether they are followed and policed by the PCC (which has been dealing with Ms Middleton's lawyers and Clarence House). The rules are in fact among the toughest in the Code and no change is recommended.

57. **Bridgend suicides:** Again, while there has been police and other criticism of the press, the Samaritans have not suggested any change in the Code, nor is any change suggested by a recent Shift publication on reporting mental illness and suicides. In fact, the sheer number of cases in South Wales has demonstrated the genuine public interest in reporting suicide, albeit responsibly. The Code's current requirements of sensitivity and curbs on excessive detail seem adequate safeguards. No change is recommended.