

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., Thursday, November 26, 2009

1. Apologies:
2. New member: Hannah Walker, Editor in chief, *South London Press* (NS)
3. Membership: Leaving: Adrian Faber (NS); Doug Melloy (NS); David Pollington (SDNS); Neil Wallis (NPA).
Nominated: Colin Grant, *Cambridge Evening News* (NS); Mike Sassi, *The Sentinel*, Stoke (NS).
4. Minutes of Thursday, April 16, 2009 (circulated).
5. Matters arising (*if not dealt with below*):
6. Code changes ratified
7. Privacy: ECtHR judgment
8. DCMS Select committee
9. Code Committee website
10. Online Codebook
11. Suggested Codebook guidance
12. Codebook update
13. Suggested Code amendment
14. Annual Code Review
15. Other business
16. Next meeting

Appendix A: The Code in A4 format is attached as a separate pdf for easy reference.

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Agenda items:

6. **Code changes ratified:** Members will recall that, following a failure to achieve the traditional consensus at the 16 April Code committee meeting, reworked amendments to the privacy and public interest clauses were agreed unanimously by email in June. These also benefited from having been reworded on legal advice so that they would be compatible with the current law, which might encourage judges hearing privacy cases to take into account compliance with the Code. The amendments were ratified by the PCC in September and took effect from 19 October. The online version of *The Editors' Codebook* was also revised to reflect those amendments from that date. For the record, the three clause changes were:

Clause 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.

Clause 4 *Harassment

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

THE PUBLIC INTEREST exceptions

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

7. **Privacy:** (for report) A European Court of Human Rights ruling involving the French singer Johnny Hallyday has - unusually - allowed freedom of expression to trump the right to privacy, by taking into account the star's previous disclosures. Hallyday claimed damages for infringement of his private life in 1996 after a piece in the weekly magazine *Ici Paris* spotlighted his financial difficulties and extravagant tastes. It included a photograph of him on stage and others in advertising material with which he had allowed his name and image to be associated. Two French courts rejected Hallyday's claims, but the Versailles Court of Appeal overturned their rulings in 2002 and awarded him €20,000. After a higher French court upheld the Versailles verdict, the magazine appealed to the ECtHR on the grounds that the judgment breached the right to freedom of expression.

In July 2009, the ECtHR ruled that the pictures had not been obtained by contentious or covert methods and that Hallyday's previous disclosures of his lavish lifestyle - including in his autobiography - *weakened the degree of protection to which he was entitled with regards to his privacy.* Hachette Filipacchi Associates, the *Ici Paris* publishers, won €20,000 in compensation for the damages they had paid, plus costs. Whether this will be a landmark ruling cited in UK courts remains to be seen, but it does reflect similar reasoning to that behind the latest Code changes.

8. **Select Committee:** The DCMS Select Committee report on press standards, privacy and libel, having been extended following *The Guardian's* allegations of widespread phone hacking at the *News of the World*, is now expected next month. Meanwhile, in earlier oral evidence to

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the committee, the new Information Commissioner, Christopher Graham, answered a question on how the press was putting its house in order:

" We started off by a general call to the industry which, was indeed heeded to some extent in that the Editors' Code Committee eventually amended the Code, made it much tougher, and we have done a lot of work with the Press Complaints Commission in training editors ... I saw a copy of *The Editors' Codebook the other day and it makes it very clear that you mix with the Data Protection Act at your peril and you had better have a very solid public interest story very well documented in order to do that.*" However, this did not prevent him from calling for custodial penalties to be activated for journalists breaching the DPA.

9. Code Committee website: The website was updated following the latest Code amend-ments. We also added a downloadable version of the Code that can be printed out on a single A4 sheet (*Attached for reference as Appendix A*), as well as A3. Other design tweaks have been introduced to increase readability of print-outs.

The total of website hits from December 2008 to November 2009 inclusive is heading for nearly 240,000, more than double the figure for 2008. Usage appears to be rising steadily, with occasional spikes. There was a big increase in hits in March, linked to the relaunch of *The Editors' Codebook*. A smaller rise followed September's announcement of changes to the Code. A major spike in mid-October, prompted by the Jan Moir row, was given an extra nudge a couple of days later by the publication of new online versions of the revised Code. These figures are still modest, but are picking up. The subscription list remains tiny, but that may be due to the fact that many visitors come via the PCC website, which has an established subscriber base.

10. Online Codebook: The PCC is improving its website guidance on *Understanding the Code and Key Rulings*. It has asked that there should be direct links from the PCC site to the online Codebook's case studies, clause by clause. Full acknowledgement would be given. This would seem a sensible way of improving both the PCC service to the public and the traffic to the online Codebook, which carries a www.editorscod.org.uk hyperlink on each page: The secretary has given provisional approval, subject to the Code Committee's agreement.

11. Suggested Codebook guidance: Following his evidence to the DCMS select committee in the wake of *The Guardian's* allegations of wide-scale phone-hacking at the *News of the World*, Alan Rusbridger has suggested that *The Editors' Codebook* should provide specific guidance in connection with intrusions into privacy (Clause Three). He suggests:

There are five questions an editor should ask him/herself in deciding whether or not there is a public interest in intruding into someone's privacy for journalistic reasons.

1. There must be sufficient *cause* — ~~the intrusion needs to be justified by the scale of potential harm which might result from it.~~ *proportionality* — both the intrusion and methods used need to be justified by the scale of potential harm which might result from it in relation to the public good that might be achieved.
2. ~~There must be *integrity of motive* — the intrusion must be justified in terms of the public good which would follow from publication.~~
3. ~~The methods used must be *in proportion* to the seriousness of the story and its public interest, using the minimum possible intrusion.~~
4. There must be *proper authority* — any intrusion must be authorised at a sufficiently senior level and with appropriate oversight.
5. There must be a *reasonable prospect of success*: fishing expeditions are not justified.

IB note: To preserve the independence of the PCC as the adjudicating authority, the Code Committee has always endeavoured to ensure that the Codebook sets the Code in context. It does not add to, or subtract from.

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the Code itself and nor does it bind the PCC. Current Codebook guidance is based either on specific policy statements from the Commission, or on the lessons of precedent that emerge from PCC adjudications or inquiries. Therefore, any guidance from the Code Committee would need to be agreed with the PCC. That would be unlikely to pose a problem in this case as much of what is suggested reflects current PCC policy.

In essence, Questions 1,2 and 3 all deal with the single issue of proportionality, on which the PCC has already made pronouncements. Question 4 is not strictly a PCC issue: the Code assumes the editor is ultimately responsible for editorial activities. However, a prerequisite of that is an implicit requirement that he/she should be properly informed of what is being done in the paper's name. Question 5 relates to fishing expeditions, which the PCC has long opposed. If the Committee – in conjunction with the PCC - decided to include such guidance, it might consider whether the issues of proportionality could be covered in a single question, and whether these rules should apply solely to privacy or generally, wherever the public interest is invoked.

12. **Codebook update:** It is intended that the online Codebook should be updated with relevant cases annually – or more often where urgent landmark issues are involved. The current list for potential revisions includes:

Accuracy: When it is - or is not - necessary to seek comment ahead of publication in order to give all relevant sides of a story. *Latest PCC guidance.*

Due prominence: The dangers of Corrections columns or similar regular slots – such as the *Sunday Times* Letters page – which might not be sufficiently prominent in every instance. *Recent PCC adjudications.*

Payments to children: Update following the Alfie Patten case. *PCC's guidance.*

Use of subterfuge: Why the Mirror was right to sign an agreement with a murderer. *PCC adjudication.*

Freedom of expression: Snippy and snide may not be pejorative: *Iain Dale adjudication.*

Reporting of crime and police raids: John Terry's shoplifting mother and when it is reasonable to photograph and name a crime suspect who was not charged. *PCC adjudications.*

13. **Suggested amendments to the Code:**

Racially pejorative terms in headlines and articles From

a PCC Commissioner, wrote – apparently on his own behalf – following a case in which a *LondonLite* headline *Now Brucie Defends TV 'Paki' Joke* was found not to breach the Code because it accurately reported what had been said. He says: 'I do think the publication of such terms (in this case "P**I") is at odds with our over-riding commitment to high standards. Perhaps this is something the Committee may wish to consider in the near future?'

IB note: The fact that could not make his suggestion without using the offending term in some – albeit asterisked – form demonstrates some of the dangers of trying to be over-definitive in this area and explains why such matters have traditionally been left to the editor's judgment, according to the circumstances.

14. **Annual Code Review:** The Code Review will be announced at the beginning of December, with 31 January 2010 as the deadline for suggestions.

15. **Other business**

16. **Next meeting**

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