

PRESS COMPLAINTS COMMISSION

The Minutes of the 179th Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 25 May 2011

Present: Baroness Buscombe Chairman
Matti Alderson
Michael Grade
John Home Robertson
Anthony Longden
Ian MacGregor
John McLellan
Ian Nichol Deputy Chairman
Simon Reynolds
Esther Robertson
Simon Sapper
Michael Smyth
Julie Spence
Ian Walden
Tina Weaver
Peter Wright

In attendance: Stephen Abell Director

The following members of the secretariat attended the meeting as observers: Hannah Beveridge, Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Rebecca Hales, Scott Langham, Ben Milloy, Amber Mun, and Catherine Speller.

1. Apologies

Apologies were received from Lindsay Nicholson.

The Chairman welcomed Michael Grade and Michael Smyth to their first meeting. The Chairman also welcomed Jeremy Roberts, who will be joining the Commission in June, as an observer, and Sir Michael Willcocks, the Independent Reviewer, who was to discuss his Annual Report and his work generally, later in the meeting.

2. Minutes

The minutes of the meeting held on 13th April were approved as a correct record of the meeting and for publication.

3. Matters arising

There were none.

4. Oral briefing from PressBof

Lord Black, Chairman of PressBof, and Jim Raeburn, Secretary of PressBof, were welcomed to the meeting. Lord Black proceeded to give Commissioners an update on efforts being made by the newspaper and magazine industry to bring Northern & Shell titles back into the system of self-regulation. The Commission urged PressBof to do all it could to resolve the dispute.

The establishment of a PCC sub-committee to examine matters relating to phone-hacking by journalists was welcomed by Lord Black. He acknowledged that the whole newspaper and magazine industry had been damaged by the illegal activities of some journalists and other individuals.

The point was raised that PressBof should give careful consideration to the possibility of the PCC needing more resources in the future.

5. Complaints

(i) Complaint No. 11-1212 A woman v The Daily Telegraph

Ian MacGregor took no part in – and was not present for – the consideration of this case. In any case, the Commission did not come to a ruling on the matter because it was informed by the office that the case had been resolved amicably between the parties following further mediation work.

(ii) Complaint No. 10-5902 A woman v The Star (Sheffield)

John McLellan and Simon Reynolds did not take part in discussion of this case (and absented themselves from the meeting) because of a close connection to the editor of the newspaper involved.

Although there was a discussion of the facts of this case the Commission was informed that the matter had been resolved amicably. Therefore, while the complainant was keen for Commissioners to consider her concerns, she did not wish for them to make a formal adjudication.

(iii) Complaint No. 11-1048 A woman v Southern Daily Echo

After discussion the Commission ruled that the newspaper had breached the terms of the Code. It made the following adjudication:

A woman complained to the Press Complaints Commission that an article published in the Southern Daily Echo in early 2011 contained material that had identified her daughter as a victim of sexual assault in breach of Clause 7 (Children in sex cases) and Clause 11 (Victims of sexual assault) of the Editors' Code of Practice.

The complaint was upheld on the basis that details in the article were likely to contribute to the identification of the victim. This adjudication is written in broad terms to avoid repeating any of the identifying information.

The article reported a court hearing in which a man had admitted a charge of having unlawful sexual activity with the complainant's teenage daughter. The report included the age of the victim and the dates of the offence. It also alluded to the man's profession, named his place of work, and reported another charge against him. The complainant said that the combination of details in the report had alerted the girl's peers and others in their small town to her identity. She had been subjected to gossip and bullying as a result.

The newspaper said that it had given a great deal of consideration to protecting the complainant's daughter, as it did with all such cases, while adhering to the accepted practice that accused criminals and their occupations should be identified. It had been at pains to avoid reporting the relationship between the accused and victim.

Adjudication

The terms of the Editors' Code in relation to the reporting of sex cases are stringent. Child victims of sex offences are protected by both Clause 7 (Children in sex cases) – which states that “the press must not...identify children under 16 who are victims in cases involving sex offences” – and Clause 11 (Victims of sexual assault) which prohibits the publication of information “likely to contribute to” their identification. Clause 7 also says that care must be taken that nothing in a report implies the relationship between the accused and the child. The combination of these requirements provides a powerful shield for victims and imposes substantial restrictions on coverage of such cases. Any inessential piece of information must be scrutinised for its ability to identify a victim to those in a position to understand its significance.

The Commission appreciated that attention had been paid by the editor to the need to protect the victim and made clear that the newspaper had been entitled to identify the accused, in accordance with the principle of open justice. Nonetheless, on balance, it considered that the published report had included information that was likely to contribute to the identification of the victim. In particular, the Commission was concerned about the decision to include the dates of the offence in a context that may have implied the relationship between the accused and the victim. The complaint was therefore upheld.

(iv) Complaint No. 10-4635 A man v British Medical Journal

Tina Weaver took no part in discussion of this case and left the room because the complainant had a connection to MGN.

Michael Smyth declared an interest in the topic under discussion in his role as Chairman of Public Concern at Work. The Director also declared an interest, having known the complainant some years ago. Neither left the meeting.

After discussion, the Commission concluded that the complaint should not be upheld and it made the following ruling:

A man complained to the Press Complaints Commission through his son that an article published in the British Medical Journal in 2009 had failed to protect him as a confidential source of information in breach of Clause 14 (Confidential Sources) of the Editors' Code of Practice. The complainant's son was engaged in direct correspondence on various issues with the journal from November 2009 until the complaint to the PCC was formalised in late December 2010.

The complaint was not upheld.

The article examined the issue of gagging clauses in NHS contracts, using the complainant's case as its primary focus. The complainant had left his employment with an NHS Trust after raising a number of concerns about its working practices. He had signed a compromise agreement with the Trust, which included a confidentiality clause that prohibited all communication with the media. The Trust had made a severance payment but reserved the right to sue for its return if the complainant breached the terms of the agreement.

Following related legal proceedings, the compromise agreement and other documentation had been made public. Concerns had been raised at an early stage, on numerous occasions, through the complainant's son, that publication of direct quotes from the complainant – rather than, for example, extracts from the documents which appeared to have

entered the public domain – would risk a breach of the confidentiality clause. The complainant had entered into dialogue against this background.

The article, when it appeared, included direct quotes attributed to the complainant. The complainant said that the “rules of engagement” had been established at an early stage of the conversation with the reporter: “These were that I was happy to speak openly, honestly and fully... The reciprocation of this ‘goodwill’ was that my interests would be protected”, with particular reference to the severance payment. The complainant considered that the inclusion of direct quotes “could have been” very damaging to his interests: “Had this happened, I would very definitely have considered this to have been a breach of the faith I had shown”. He asked for the article to be removed from the journal’s website and to receive a private letter of apology.

The journal did not agree that it had failed in its obligations under Clause 14: the complainant’s identity as a “whistle-blower” had previously been established publicly as a consequence of the related legal proceedings, and the quotes did not identify him as the source of the information in the article. Moreover, it denied that any agreement had been in place not to quote the complainant, although it was aware of his concerns in this regard. The journal had initially attempted to write the article without direct quotations from the complainant, but had been advised that the article was potentially defamatory of him. It had, therefore, invited the complainant to provide comments.

In the conversation with the reporter (a recording of which was provided to the Commission) the complainant, who did not specify that his comments were provided off the record, had asked how the information he was providing was to be used. The reporter had said that he needed to speak to the complainant to “put the icing, as it were, on the cake”.

The journal also argued that the complainant had appeared to welcome the article judging by his “rapid response” to it, which had been posted following publication; the complainant’s son had also commented positively on the article. It was willing to write to the complainant personally to apologise for any misunderstanding and any distress that may have been unintentionally caused. It saw no reason why the article should be removed from public view.

The complainant’s son made clear that their initial responses were influenced by the fact that they would have had to rely upon assistance from the journal, had any legal action resulted from the publication of the article.

Adjudication

Under the terms of Clause 14, journalists have a moral obligation to protect confidential sources of information. The purpose of this clause is to enable sensitive, often significant, information to be provided to publications by individuals without fear that their identities will be revealed against their wishes. The Commission has previously made clear that when considering complaints made under Clause 14, it will take account of whether a publication has agreed to treat the individual as a confidential source.

The question in this instance was whether such an agreement had been reached in relation to the nature of the complainant's involvement in the story. It was clear that, from the outset, the journal had accepted the need for sensitivity and care in its approach, and that the issue of potential risk to the complainant of having been seen to have cooperated with the journal had been discussed. However, in all the circumstances, the Commission did not consider that a breach of Clause 14 could be established by the complaint, for the following reasons.

The journal had been reporting on a case involving a whistle-blower who was party to a confidentiality clause which precluded him from speaking to the media. The complainant had not been identified as being at the heart of the story against his wishes; on the contrary, he had explicitly consented to being named in the article. His name, and details of the case, had, in any event, appeared in documents which had become publicly available.

The complaint rested on whether the complainant should have been regarded as a confidential source in the specific context of a conversation he had had with the journalist. The complainant argued that concerns had been raised, in advance of this conversation, over the potential legal difficulties that could occur if he had been known to have spoken directly to the journal. The journal acknowledged this, but said that no agreement had been reached about the way in which the direct quotations were to be used.

The Commission found that this question was the subject of some considerable dispute, not least in regard to the basis upon which the interview – undertaken in order to offer the complainant an opportunity to respond to claims concerning him – had taken place. The Commission was not in a position entirely to reconcile the opposing positions of the parties.

The Commission made clear that it would have been preferable for the parties to have reached a clear agreement before publication. In particular, the journalist concerned should have expressly addressed the issue about quotation during his conversation with the complainant. It was regrettable that this had not occurred.

However, the Commission was not persuaded that there was a “moral obligation” for the journal to have protected the complainant as a confidential source for the quotes. It did not consider, having read the transcript, that there was any implied agreement between the complainant and the journalist about the use to which the quotes would be put. Indeed, the tone of the exchange, in the Commission’s opinion, suggested that the quotes were being obtained for publication. There was also no unequivocal express agreement reached about confidentiality in the exchanges prior to publication between the complainant’s son and the journal. The discussions about the complainant’s interests fell short of being an agreement between the parties that no direct quotes would appear.

The Commission also noted that, immediately following publication, the complainant had not directly complained about the use of the quotes, or suggested that any agreement about his status as a confidential source had been breached. The complainant had in fact posted an on-the-record response to the published article under his own name, describing it as “sensitive and accurate”. He had also responded directly to the journal in a positive fashion about the content of the article.

In all the circumstances, the Commission did not conclude that there was a breach of the Code. It did wish to highlight that journalists should strive to be absolutely clear when dealing with members of the public about the purpose – and status – of their conversations.

The complaint was not upheld.

Relevant rulings

A man v Oxford Mail, 2010

Foster v Cambridge Evening News, 2006

(v) Complaint No. 11-0640 A man v Helensburgh Advertiser

The Commission discussed this case and concluded that the action taken by the newspaper to remedy a breach of Clause 1 (Accuracy) of the Code was sufficient. As such, it did not rule that further censure was necessary:

A man complained to the Press Complaints Commission that an article headlined "Woman indecently assaulted in pub", published in the Helensburgh Advertiser on 20 January 2011, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The newspaper had taken a sufficient form of remedial action.

The article reported that the complainant had "indecently assaulted a woman in a pub before assaulting a man two days later". In fact, the complainant had entered a not guilty plea in regard to the charge of indecent assault, which had been accepted by the court, pleading guilty to the other charge. While the newspaper had published a correction and apology on the matter, the complainant was concerned that: the newspaper had not taken sufficient care before publication; the apology – which was smaller than the original article – had appeared a week after publication; and the newspaper had not published the apology online. The complainant said that publication had caused him a number of problems.

The newspaper said that it had been informed of the error on the day of publication by the complainant and had confirmed the position with officials at Dumbarton Sheriff Court. Having accepted that the report was inaccurate, it had published the correction and apology in the next available edition on page 3 (the original had appeared on page 9). The original report (which was only 130 words long) had not been carried online and to have published an apology on its website would have been, in the newspaper's view, inappropriate. It offered to meet the complainant and apologise personally to him.

The newspaper also sought to explain the circumstances which led to the publication of the error. The Sheriff Clerk's office generally made charge sheets – which contained details of the accused, their age, address and the nature of the charge/s – available to its reporters; any additional information or changes to the charges (such as whether a charge had been dropped, amended or pleas had been tendered) were usually handwritten on the sheet. Its reporter had said that no changes had been indicated on the document, and the reporter had believed that this information was accurate and up-to-date. As a result of the complaint, the newspaper had changed its practice in regard to reporting court proceedings: the details on charge sheets would be

double checked with the Sheriff Clerk or the defence solicitor to ensure accuracy and any uncertainty in regard to cases would be brought to the attention of the editor.

Adjudication

It is fundamental in a democratic society that justice is not only done but seen to be done, and newspaper reports of court proceedings are a vital part of this system of open justice. However, there is a requirement under Clause 1 of the Editors' Code that care should be taken to ensure that inaccurate, misleading or distorted information is not published.

In this case, the Commission considered – and the newspaper had accepted – that sufficient checks had not been made before publication to confirm the nature of the charges which the complainant faced, which led to a significant inaccuracy being published. This was a clear breach of the Code. As such, it was incumbent on the newspaper – as outlined under Clause 1 (ii) of the Code – to correct the position and apologise (given the nature of the error) at the earliest opportunity, with due prominence.

While the Commission noted the complainant's unhappiness with the correction and apology, the manner in which the newspaper had addressed the error was, in its view, in accordance with the Code: the text had appeared in the next available edition of the newspaper (which had not published the original report online); it had corrected the error and apologised to the complainant "for this inaccuracy and for any embarrassment caused"; and had appeared prominently on page 3 of the newspaper, significantly further forward in the newspaper than the original report.

The Commission considered that this constituted an appropriate response to the breach of the Code, and represented an example of a prompt and proportionate remedy to the initial error. The complaint was therefore not upheld.

The Commission also welcomed the fact that, following this complaint, the newspaper had tightened its procedures in terms of court coverage. This was an example of how the complaints process can directly lead to improved standards for the future.

- (vi) The Commission formally approved (subject to individual queries on specific complaints raised with the office) the following PCC Papers, which had contained draft adjudications for Commissioners' ratification or otherwise: 5082, 5083, 5084, 5085, 5086, 5087, 5088, 5089, 5090, 5091, 5092, 5093, 5094, 5095, 5096, 5097, 5098, 5099, 5100, 5101, 5102, 5103, 5104, 5105. All papers had been circulated since the previous Commission meeting.

6. Note to Commissioners on delay issues, including two complaints: Forgeham v The People and Reid v News Shopper/Scotland on Sunday

Tina Weaver and John McLellan left the room and took no part in discussion of the two cases at issue.

On the general question of how the PCC deals with delayed or 'out of time' complaints, Commissioners agreed that the current position – as set out in the Commission's literature and on its website – was appropriate.

With regard to the two specific cases to which the paper made reference, Commissioners agreed that it was inappropriate to continue with an investigation of the first but right that further enquiries should be made into the second.

7. Draft guidance note on the reporting of court cases involving sexual offences

Commissioners considered draft guidance on the reporting of court cases involving sexual offences. It was agreed that the wording would be finalised at the next meeting.

8. Independent Reviewer Annual Report

Sir Michael Willcocks said he was glad to attend the meeting, not least to see the work of the Commission as it happened. He was also pleased to have the opportunity to talk Commissioners through his latest Annual Report (which can be seen on the PCC's website). Commissioners discussed a number of matters with Sir Michael, particularly a concern expressed by some complainants about delays on the part of newspapers when dealing with the PCC.

9. Oral update on phone hacking

The Chairman informed Commissioners that work was progressing via the Phone Hacking Committee. She advised Commissioners that she had asked to see senior executives at every national newspaper and magazine company to ensure that the PCC has full corporate commitment to what it, and the Review Committee, is doing. It is intended that the Committee will be in contact with editors across the industry, with a view to developing a protocol to ensure that proper controls exist in the area of assessing personal information.

10. A man v Daily Mail: legal development

Commissioners considered a paper regarding legal developments in connection with a case against the Daily Mail.

11. Chairman and Director's meetings

Commissioners received an update on appointments undertaken by the Chairman and Director.

12. Any other business

(i) Privacy

The Chairman led a discussion about the forthcoming Parliamentary joint-committee, which is to look into the use of injunctions, and other privacy matters. It was agreed that the PCC has a strong case to make about its work in the area of privacy.

(ii) Annual Review

Commissioners welcomed publication of the 2010 Annual Review. There was particular approval for the 'Perspectives' document.

(iii) Matti Alderson

The Chairman announced that this had been Matti Alderson's final meeting as a member of the Commission. She thanked Matti for the huge amount of work she had done for the PCC.

13. Date of next meeting

2.00pm on **Wednesday, 6 July 2011** at Halton House, 20/23 Holborn, London EC1.