

PRESS COMPLAINTS COMMISSION

The Minutes of the 172nd Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 14th July 2010

Present: Baroness Buscombe Chairman
 John Home Robertson
 Anthony Longden
 Ian MacGregor
 Ian Nichol
 Lindsay Nicholson
 Eve Salomon
 Simon Sapper
 Julie Spence
 John Waine
 Ian Walden
 Peter Wright

In attendance: Stephen Abell Director

The following members of the secretariat attended the meeting as observers: Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Becky Hales, Lisi Ke, Scott Langham, Catherine Speller and Stephen Wheeler.

1. Apologies

Apologies were received from Simon Reynolds, Matti Alderson, Tina Weaver, John McLellan and Esther Robertson.

2. Minutes

The minutes of the meeting held on 2nd June were approved as a correct record of the meeting and for publication.

3. Matters arising:

One Commissioner asked whether further details about the proposed parliamentary reception were available. The Chairman confirmed that two MPs had agreed to sponsor the event.

4. Complaints

- (i) Complaint No. 10-0522/0551/0552/0553/0564/0571/1387 A man against Daily Mail, The Daily Telegraph, The Guardian, London Evening Standard, Daily Mirror, The Independent and The Sun

Peter Wright and Ian MacGregor left the room and took no part in the discussion of these complaints.

The Commission discussed the case, which related to reports about a criminal trial that had taken place outside the UK. A further submission had been received from the complainant in the days before the meeting, which indicated that further key documents were likely to become available in due course (in the autumn). The Commission agreed that it would be in a better position to come to a decision on the case once the documents were received; and it agreed with the complainant's request, therefore, to put the matter on hold temporarily.

- (ii) Complaint No. 10-0886 Smith against Hull Daily Mail

Peter Wright and Ian MacGregor rejoined the meeting. After discussion, the Commission concluded it should uphold the complaint in part and agreed the wording below for the adjudication:

Mr Paul Smith complained to the Press Complaints Commission that articles headlined "Town website publisher's porn business", "The sickening porn behind this man's veil of respectability" and "Town website: the sordid truth", published in the Hull Daily Mail on 4 March 2010, were inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was upheld in part.

The articles reported that the complainant – who was responsible for publishing a local community website which had been promoted by the local council – had “designed thousands of hardcore pornography websites” (at one point giving the specific figure of 3,991 for sites he had “designed”) and “owns the domain names to almost 4,000 sites”. The complainant said that this was incorrect: he had only ever designed a hundred or so websites, including some adult sites, across a number of fields; and he had bought just over 100 domain names, nearly half of which were dormant.

The newspaper said that, at the time of its investigation, a web registration search showed that the complainant owned 3,991 domains under the name Smiths Media Solutions, the majority of which could be categorised as adult. Following publication of the articles, the relevant server was disconnected and it was unable to prove this figure conclusively. The precise claim was put to the complainant before publication: the complainant was unable to confirm the number of sites in which he was involved and did not deny the allegation.

Adjudication

The Commission accepted that there was a legitimate public interest in the newspaper examining the business activities of the complainant, given his role in publishing a local community website. However, such high-profile scrutiny carried with it the responsibility to be accurate.

While it was not in dispute that the complainant had designed some pornographic websites in the past – and owned a substantial number of domain names – the newspaper had not been able to corroborate the significant claims that the complainant had “designed thousands” of such sites (as many as 3,991) or owned the domain names to “almost 4000 sites”. These were crucial allegations and the newspaper should have been able to substantiate them fully (and been in a position to provide concrete evidence to the PCC).

Based on the available material, the Commission considered that readers would have been misled as to the scale of the complainant’s involvement in adult websites. The result was a breach of Clause 1 of the Editors’ Code.

The complainant had raised a number of other points under Clause 1 (Accuracy) of the Editors’ Code. These aspects of the complaint were not upheld.

The complainant said that he built websites for a living and had, in the past, designed pages for the adult industry (in addition to the gaming, finance, retail and pharmaceutical industries). The front page headline wrongly suggested that that he owned a "porn business"; this was not the case. In addition, the coverage misleadingly suggested that he was personally involved in the creation of pornographic content, rather than legitimately designing the layout for those sites. Finally, the coverage stated that that he had "agreed" to design a website for a newspaper journalist posing as an escort girl when, in fact, he had merely discussed her requirements.

The newspaper defended its coverage: its readers had a right to know about the activities of the complainant who was responsible for running a prominent local website which covered a range of community issues and had been supported by the local authorities. It had sought to obtain the complainant's comments on the allegations and his position had been published at length (together with positive comments from members of the community). The coverage made the nature of the complainant's involvement with pornographic websites clear, outlining that there was no suggestion that any of the websites contained illegal material. It was willing to publish a clarification on this point, which was rejected by the complainant.

The newspaper maintained that the complainant had agreed to build a website for the journalist posing as an escort girl and had quoted between £150 and £250 for doing so. It provided emails to support this position.

Adjudication

The Commission has consistently stated that headlines can only be fully understood in the context of an article when read as a whole. On this occasion, the article made plain to readers the level of the complainant's involvement with pornographic websites: he had designed websites that hosted legal adult content. It was clear that the complainant's role was as a designer, rather than a producer, of web content. He had also been quoted at length on the matter setting out his position. The nature of the complainant's discussions with the journalist posing as "Sarah" was also sufficiently clear, in the Commission's view. No breach of Clause 1 (Accuracy) could be established on these points.

The complainant also complained that the coverage was intrusive, and that the newspaper had used subterfuge, in breach of Clause 3 (Privacy) and 10 (Clandestine devices and subterfuge) of the Editors' Code of Practice.

The complaint was not upheld.

The complainant was concerned that the journalist had misrepresented her identity, claiming that she was an escort girl (requesting his assistance in setting up a website) and using a fake Facebook account, when he was first contacted by the newspaper. This led to the reporter emailing him with further details of her enquiry. The complainant said this was unnecessary: he would have willingly spoken to the newspaper and his actions did not need to be exposed in such a manner. He also objected to the inclusion of his partner's name and employer in addition to his partial home address in the article. This was intrusive and had left his family feeling vulnerable.

The newspaper said that it was in the public interest for the complainant's professional involvement in the design and hosting of pornographic websites to be exposed, particularly as the local council had actively promoted him. Having established that he owned a substantial number of domain names for websites containing pornography, it wished to determine whether he remained actively engaged in the creation of adult websites at the same time as running the local community website. It did not consider that the complainant would have answered its enquiries directly. As soon as the reporter had established that the complainant was willing to design a website for an escort girl, she approached him in person and made clear her identity.

The newspaper said that publicly accessible Companies House records showed that the company secretary of Smiths Media Solutions was the complainant's partner. Naming her, and referring to her employment, was relevant to the story. The newspaper had published the complainant's street name for clarity given that his name was not uncommon. His home address was also his business address.

Adjudication

It was not in dispute that, as part of her enquiries, the reporter had created a bogus Facebook page and had misrepresented her identity to the complainant. The reporter had then revealed her true identity when she met the complainant in person.

While it was clear that the journalist had used subterfuge, the Commission had regard to the level of intrusion involved, which was not – in its view – of a particularly serious order. The actions of the journalist consisted of the use of a false name and social networking page, for the purpose of obtaining non-personal information about the complainant's business activities. There was no undercover filming or inappropriate access to private information about the complainant.

The Commission was satisfied that the public interest argument advanced by the newspaper – to the effect that the ongoing design of websites connected to the sex industry was incompatible with the complainant’s role in a prominent local community website – justified the employment of such mild subterfuge in this case. It considered that the newspaper could legitimately claim that this method was necessary to obtain the information, believing that the complainant may not have been forthcoming to a direct journalistic approach about his willingness to consider designing a website for an escort. There was no breach of Clause 10.

The inclusion of the complainant’s partial address – which also served as his business premises – did not represent an intrusion into his private life. In addition, the brief reference to the complainant’s partner, her role in Smiths Media Solutions and her employment did not reveal anything especially private about her. There was no breach of the Code.

Relevant Ruling

Bretherick v County Times, report 75

(iii) Complaint No. 09-4143 A man against Sunday World

After discussion, the Commission agreed that it should uphold the complaint in the following terms:

A man from Northern Ireland complained to the Press Complaints Commission that two articles published in the Sunday World on 13 September and 20 September 2009, headlined “Private members club” and “Bukkake gigolo” respectively, were inaccurate, intrusive and that the newspaper had used hidden cameras and subterfuge in breach of Clause 1 (Accuracy), Clause 3 (Privacy) and Clause 10 (Clandestine devices and subterfuge) of the Editors’ Code of Practice.

The complaint was upheld.

The articles exposed a “shocking new group sex craze” (‘bukake’) which was taking place in Ulster, based on the newspaper’s own undercover investigation centring on the complainant. The coverage included claims that: the complainant charged an entrance fee to attend such events and made “big money” doing so; the complainant and his wife were a “sex-for-sale” couple; and the complainant was a “secret male escort”/“gigolo”.

The complainant said that all these claims were untrue. He organised the events, which were not illegal, as a hobby and did not profit from them. They were staged for the sole purpose of producing footage to be sold on the professional female models' websites. While he and his wife had featured in pornographic material available on the internet, they did not make themselves sexually available to members of the public for money. The complainant was also concerned that the newspaper had used subterfuge as part of its investigation, which intruded into his privacy. The coverage featured stills from footage shot using a hidden camera by the newspaper's undercover reporter who had attended part of one event.

The newspaper said that there were strong grounds to believe that the complainant organised such events as part of a business. Its reporter had been obliged to pay in order to attend the event in question and screengrabs of the purchases had been provided. The public availability of footage taken from such events meant that they could not be considered to be private. It had been justified in exposing the event on grounds of protecting public health: a senior medical officer had said that the participants were at risk from sexually transmitted diseases.

The complainant said that there was no public health issue: the female professional performers involved were certified to industry standards, while the male performers were either certified or practised safe sex.

Adjudication

While the newspaper was entitled to report on the sex industry in its local area, and offer its own robust comment and criticism about some of the associated practices, it was not free to pursue any journalistic approach to do so. There had to be sufficient public interest to justify the conduct of the journalists and the content of the articles.

On this occasion, the reporter had used a hidden camera to film the complainant, without his consent, in a private place in which a number of participants were about to be involved in consensual, legal sexual activity. The newspaper had used stills from this footage in its articles. Both the filming and the published images constituted a serious intrusion, which required a high level of public interest to justify. The newspaper could not reach that level in its defence, arguing only that practice of bukkake raised a possible health risk. The Commission took that into account, but did not believe this defence was able to justify specifically the use of the hidden camera on this occasion. The newspaper was in a position to expose the existence of bukkake parties (and the attendant health risks) without using such undercover footage.

The newspaper had also not provided sufficient evidence to support its assertion that the complainant was making "big money" from bukkake events. It had not provided any evidence at all that the complainant hired himself out as a "gigolo", or that his wife had "paid-for sex with strangers". On this basis, the Commission considered that the articles had been in breach of Clause 1.

This case revealed a bad editorial lapse on the part of the newspaper, compounded by an unacceptably slow response to the PCC investigation.

(iv) Complaint No. 10-1170 Turner against Birmingham Mail and Birmingham Mail Extra

The Commission discussed the complaint from Ms Turner and concluded that it should not be upheld. Commissioners agreed the wording below for the adjudication:

Ms Sue Turner, Chief Executive of the Birmingham and Solihull Mental Health NHS Trust, complained to the Press Complaints Commission that articles in the Birmingham Mail and Birmingham Mail Extra of 20 February and 25 February 2010, headlined "Suicide pact" and "Our suicide pact" respectively, were intrusive in breach of Clause 3 (Privacy), Clause 5 (Intrusion into grief or shock) and Clause 8 (Hospitals) of the Editors' Code of Practice.

The complaint was not upheld.

The front-page articles reported that three patients at a Birmingham psychiatric unit, Main House, had – several days before publication – attempted suicide over concerns about the future of the unit. They had subsequently been informed that Main House was indeed to be closed down, which prompted the newspapers' articles. The articles were accompanied by pixellated photographs of the patients being informed of the decision – said in the coverage to have been "supplied by the patients themselves via their psychiatrist" – in which they were shown to be distraught at the news.

The complainant said that the residents were extremely vulnerable adults to whom the Trust owed a duty of care: they were not in a position to give any clear consent for the taking and publication of these photographs, which had been taken inside Main House. The complainant argued that the newspaper should have obtained consent from not only the patients but also their respective carers, consultants and/or relatives before publication. Indeed, while there is some assumption under the Mental Capacity Act 2005 that patients have

capacity to make their own choices, it is not automatically the case that they do and the newspaper should have sought further guidance from appropriate individuals. The Trust was now unable to assess retrospectively whether the patients had the capacity to make decisions about the photographs, but considered that they would not have had the capacity to make such a decision due to their vulnerability.

The complainant said that the photographs had also been taken in breach of patient confidentiality by a GP who worked with the patients once a week, and was not their consultant or primary carer. He had been dismissed following a disciplinary hearing and the case had been referred to the General Medical Council.

The complainant stated that the Trust had received a number of complaints about the articles from the family of one of the patients and another former service user. The former service user said that she had been identified as her car had been recognised following the publication of a photograph of the exterior of Main House. The Trust was prepared to contact the concerned parent to support its complaint, but was worried about causing additional stress by doing so.

The newspapers said that the closure of Main House was a major local issue. When they received the photographs of the distressed patients they gave careful consideration to their publication. They felt justified in publishing for the following reasons: the photographs had been taken with the knowledge of the patients; they had been taken by a medical professional working with the patients; the patients, who were all adults, had given their consent for publication and were actively keen for them to be shown; and a parent of one of the patients had supported the use of the images. The newspapers added that they had taken steps to protect the identities of the patients by pixellating their faces.

The newspapers said that they had given a voice to mental health patients who said that they were being ignored and distressed by the sudden closure of the unit midway through a public consultation. They had received no complaints from the patients or their families directly. They also said that – given the small size of the photograph of Main House – it would not have been possible to identify registration numbers of the cars.

Adjudication

In making this decision the Commission wished to make clear that it took into consideration the many special circumstances of the case. While the Commission had not received a complaint from the individuals at the centre of the coverage, it decided that it was able to investigate a complaint from the NHS Trust, which was certainly a

relevant party in the matter. In making this ruling, the Commission had to be particularly aware of the potentially competing positions of the Trust and the patients themselves, who were apparently content for publication to go ahead.

The protection of vulnerable individuals is at the heart of the Editors' Code and the question of intrusion in regard to patients at a mental health facility was clearly a serious matter. An attempt by the newspapers to ignore – or bypass – the terms of the Code, and compromise the welfare of patients, would be the subject of vigorous censure by the Commission. However, the Commission did not believe that the newspapers had made any such attempt on this occasion.

The key consideration for the Commission related to the question of appropriate consent. In normal circumstances, editors are rightly able to rely on the consent of affected parties to publish private information about them. In this case, the three patients at Main House had provided explicit consent (and apparent encouragement) for the publication of the images. However, the complainant had argued that this consent was insufficient, due to the vulnerable nature of the patients and concerns over their ability to make an informed decision.

This was an important point and one which the Commission weighed heavily. There were also two other significant factors, relating to the photographs, for it to bear in mind: they had been provided by a doctor, who was employed by the facility; and they had been pixellated by the newspapers, to prevent identification of the patients (who had also not been named in the articles). There was a final issue relating to the public interest inherent in the story, which reported the closure of a mental health unit and its impact on the patients who lived there (which had even led the patients apparently to seek to take their own lives).

At this stage, it was not possible for the Commission (or indeed the Trust) to establish the specific capacity of the patients to offer informed consent about publication. The Commission did recognise, though, that legitimate concerns would exist about the patients' capacity in this area. This was something which the newspapers had a responsibility to take into account. The Commission considered that patients' consent on its own may not be sufficient always to justify publication.

In the Commission's view, it was the existence of the other factors that tipped the balance in favour of the newspapers' decision to publish: the involvement of the doctor; the decision to pixellate; and the public interest in the story as a whole. The Trust's position was that the doctor, who had provided the images, had acted inappropriately and in breach of his own professional standards. However, it did not

necessarily follow that the newspapers, in making use of the images, had acted in breach of their own professional standards. At the time of publication, the newspapers had to be able to give weight to the fact that the image had been provided by a medical professional, who was involved in the care of the patients. In any case, the newspapers had not published the photographs unaltered, but had ensured that the patients' identities were not revealed to a wide audience.

In all of these circumstances taken together, the Commission did not consider that the newspapers' actions represented a failure to respect the private lives of the patients in breach of either Clause 3 (Privacy) or Clause 8 (Hospitals) of the Code. This was not an easy decision, but the Commission in the end found that the newspapers had managed to balance their duty to behave responsibly towards vulnerable individuals with the need to cover a story of important public interest.

Clause 5 refers to publication being "handled sensitively" at times of grief or shock. This clause normally applies to the aftermath of a death or serious accident, which was not the case here. The Commission did not consider that the newspapers had handled their coverage of what was a distressing time for the patients in an insensitive way.

Finally, the Commission did not consider that the publication of a photograph of the outside of Main House, which showed a number of cars in the car park without clearly showing their registration numbers, represented an intrusion into the private life of a former service user in breach of Clause 3.

(v) Complaint No. 10-1827 A man against The Argus

The Commission considered the complaint, which was about various tweets published on a Twitter page administered by the newspaper. This was the first such complaint it had received and was one that raised a new jurisdictional issue. As a result, the Commission agreed to refer the wider question of the PCC's remit over such matters to its Online Working Group. It was to conduct consultation within the industry, before making recommendations about whether remit extension should be considered.

Although the Commission was not currently in a position to come to a formal view on the complaint under the terms of the Editors' Code, it concluded that the offer by the newspaper to remove the tweets under complaint and to give the complainant an opportunity to reply publicly was a sensible and proportionate response to the complaint.

(vi) Complaint No. 10-1700 et al Various against Daily Star

The Commission considered a number of complaints it had received about an article headlined 'Terror as plane hits ash cloud', which had been published on 21 April. In response to the PCC's enquiries into the complaints, the newspaper had agreed to publish a correction and apology. The Commission considered that this was a suitable offer to remedy what was a clear breach of the Editors' Code of Practice. As such, it decided not to issue a critical adjudication.

- (vii) 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: 4808, 4809, 4810, 4811, 4812, 4814, 4815, 4816, 4817, 4818, 4819, 4820, 4821, 4822, 4823, 4824, 4825, 4826, 4827, 4828, 4829, 4830, 4833, 4834, 4835. All papers had been circulated since the previous Commission meeting.

5. NUJ and Johnston Press

Commissioners discussed recent correspondence between the Chairman and Johnston Press, and between the Chairman and Director and the NUJ, about the new Atex (content management) system in use at Johnston Press titles. Commissioners agreed that no further steps were appropriate at this stage, Johnston Press having affirmed its commitment to the PCC – a commitment it said was unchanged by the latest technological developments.

6. The Governance Review

Commissioners discussed the recently published Governance Review, welcoming its thoroughness and agreeing that a separate meeting should be held to consider its proposals in full.

7. Chairman and Director's meetings

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

8. Any other business

Cumbria shootings: Commissioners received a paper on work carried out by the PCC in relation to media coverage of the recent shootings in Cumbria. This included: contacting local police and hospitals after news broke of the first two shootings; liaison with police communicators in the days after the incident; assisting an individual who did not wish to speak to the media; dealing with several complaints about published material; and visiting the area to hold meetings with local police, media and clergy.

Commissioners welcomed the work that had been done and agreed that it would be helpful for the office to consider revising guidance on how to deal with such major incidents.

Libel reform bill: the Chairman reported on a speech she had made in the House of Lords on the subject and expressed hope that libel reform could be helpful in reinforcing the role of the PCC.

Mental Health seminar: a Commissioner who had attended the recent PCC seminar on mental health reporting (held in conjunction with the Royal College of Psychiatrists and SHIFT), said it had been an excellent and worthwhile event.

Oxford Union debate: the Chairman reported that she had spoken against the motion that 'This house believes that a public person has no right to a private life'. Others speaking against the motion, which was defeated, were Max Mosley and Andrew Caldecott.

9. Annual General Meeting

The Chairman declared the ordinary meeting closed.

The Chairman declared the AGM open.

- (i) Commissioners received the accounts for the year ending 2009 – a copy of which had been circulated to members; and
- (ii) Agreed to reappoint Saffery Champness as the Commission's auditors for a further year; and
- (ii) Approved Professor Ian Walden as a cheque signatory.

The Chairman declared the AGM closed.

10. Date of next meeting

2.00pm on Wednesday, 8th September 2010 at Halton House, 20/23 Holborn,
London EC1.