

PRESS COMPLAINTS COMMISSION

The Minutes of the 176th Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 16th January 2011

Present: Baroness Buscombe Chairman
 Matti Alderson
 John Home Robertson
 Anthony Longden
 Ian MacGregor
 John McLellan
 Ian Nichol Deputy Chairman
 Lindsay Nicholson
 Esther Robertson
 Eve Salomon
 Simon Sapper
 Julie Spence
 Tina Weaver
 Peter Wright

In attendance: Stephen Abell Director

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

1. Apologies

Apologies were received from Simon Reynolds and Ian Walden.

The Chairman welcomed Alison Hastings, consultant to the PCC, and was pleased to report Hannah Beveridge's return to the Commission's secretariat following her maternity leave.

2. Minutes

The minutes of the meeting held on 8th December were approved as a correct record of the meeting and for publication.

3. Matters arising

There were none.

4. Complaints

(i) Complaint Nos. 10-5503/10-5655 Baskerville v Daily Mail/The Independent on Sunday

Peter Wright took no part in the discussion of these cases and absented himself from the room.

The Commission concluded that the complaints raised no breach of the Editors' Code and that they should not, therefore, be upheld. The following adjudications were agreed:

Ms Sarah Baskerville complained to the Press Complaints Commission that an article headlined "Oh please, stop this twit from Tweeting, someone", published in the Daily Mail on 13 November 2010, intruded into her privacy in breach of Clause 3 (Privacy) and was misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was not upheld.

The article reported that the complainant – a civil servant who worked for the Department for Transport – had been using the micro-blogging website, Twitter, to describe aspects of her job and her feelings towards her work. The newspaper considered some of her comments to be inappropriate.

The article referred to the fact that the complainant had in her tweets: described the leader of a course she was doing (as part of her job) as "mental"; said that she was "struggling with a wine-induced hangover" at work; and, again at work, told how she was "feeling rather tired – would much prefer going home". In addition, the article pointed to a number of tweets that were political in nature: a complaining reference to a Conservative MP who was a prominent critic of Whitehall waste; a re-tweet of a Labour MP's attack on government "spin"; and a reference to the complainant's acquaintance with Sally Bercow.

The complainant said her activities on Twitter and other social networking sites (she also had a blog and had uploaded pictures of herself on Flickr) were private. While it was true in theory that anybody could view the information she had posted online, she argued that she had a "reasonable expectation that my messages...would be published only to my followers". Only her 700 or so followers could see the full context of her messages. Others would only find her account by actively searching for her, which seemed an unlikely thing for most people to do, and would only see messages she had posted, not those she was responding to. Her Twitter account and her blog (neither of which were anonymous) both included clear disclaimers that the views expressed were personal opinions and were not representative of her employer.

In addition, the complainant said that the newspaper had presented her messages out of context. For example, in another tweet about the course she had attended she made clear it was "good and worthwhile". This meant that readers were given a misleading impression of her character. She argued that there were thousands of public sector workers who regularly use Twitter in and out of office hours. She could not understand why she had been targeted.

The newspaper disputed that it had invaded the complainant's privacy. She was openly posting messages about many aspects of her life, including her job. The material could be read by anybody; she had not limited her Twitter account to those officially "following" her.

In any case, there was an ongoing debate about the use of social media, which the newspaper was entitled to take part in. Since the civil service code requires that public servants should not, by their personal statements, call into doubt the impartiality of the civil service, it was quite legitimate for the newspaper to highlight this particular case. As to taking the messages out of context, the newspaper said it could only include a limited number of posts and argued that those it had referenced were the ones that were relevant to the point being made by the columnist – that a civil servant ought not to publicise political views online and talk of being hungover at work.

The complainant said she was fully compliant with the civil service code. As a result of the newspaper's article, she had taken the decision – reluctantly – to lock her Twitter stream so it could not be viewed by anybody apart from her followers.

Adjudication

The Commission has made a number of key rulings about the use by newspapers and magazines of material obtained from social networking sites. This was the first time it had considered a complaint about the republication of information originating from Twitter.

There was no dispute that the material posted by the complainant was open to public view, and could be accessed by anyone who wished to read it. Although there were 700 actual subscribers to the complainant's account, the potential audience was much greater. This was particularly the case as any message could be "re-tweeted" without the complainant's consent, or control, to a larger subscription list. This was a notable feature of Twitter. The publicly accessible nature of the information (for which the complainant was responsible) was a key consideration in the Commission's assessment as to whether it was private.

The Commission also had regard to the quality of the information (how personal it is), how it is used by the publication and whether there is a public interest. In this case, the Commission noted that the published material related directly to the complainant's professional life as a public servant. The newspaper was seeking to comment on the wisdom of civil servants using social media platforms, which may give rise to claims that it can conflict with their professional duties.

The Commission recognised that the complainant had been caused distress by the coverage of the newspaper, which was regrettable. However, taking into account all of the above factors, it did not consider that the material published by the newspaper constituted an unjustifiable intrusion into her privacy in breach of Clause 3 (Privacy) of the Code.

The Commission did not consider either that the article was misleading or distorted. It was accepted that the complainant had made the comments attributed to her. While the newspaper could have included more innocuous tweets, its failure to do so did not render the article misleading. The article constituted an argument by the journalist – with which some people clearly would disagree – that the actions of the complainant were inappropriate. Readers would recognise that he was using selected tweets to reinforce that argument. There was no breach of Clause 1 (Accuracy) raised by this complaint.

Relevant rulings:

Goble v The People (2009)

Mullan et al v Scottish Sunday Express (2009)

Rundle v The Sunday Times (2010)

A Woman v Loaded (2010)

Ms Sarah Baskerville complained to the Press Complaints Commission that an article headlined "The hounding of Baskerville", published in the Independent on Sunday on 14 November 2010, intruded into her privacy in breach of Clause 3 (Privacy) and was misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was not upheld.

The article reported that the complainant – a civil servant who worked for the Department for Transport – had been using the micro-blogging website, Twitter, to describe aspects of her job, her feelings towards work and wider political issues. Following up a critical article in the previous day's Daily Mail, the article highlighted a number of tweets the complainant had made and reported that she felt "targeted" by the criticism she had received. The article was accompanied by a photograph of the complainant taken from her Flickr page and also included comments from her blog.

The complainant said that her activities on Twitter and other social networking sites were private. While it was true in theory that anybody could view the information she had posted online, she argued that she had a "reasonable expectation that my [Twitter] messages...would be published only to my followers". Only her 700 or so followers could see the full context of her messages. Others would only find her account by actively searching for her, which seemed an unlikely thing for most people to do, and would only see messages she had posted, not those she was responding to. Her Twitter account and her blog both included clear disclaimers that the views expressed were personal opinions and were not representative of her employer.

The complainant also said that the newspaper had presented her comments out of context. This meant that readers were given a misleading impression of her character. She argued that there were thousands of public sector workers who regularly use Twitter in and out of office hours. She could not understand why she had been targeted.

The newspaper disputed that it had invaded the complainant's privacy. She was openly posting messages about many aspects of her life, including her job. The material could be read by anybody; she had not limited her Twitter account to those officially "following" her. While her Twitter stream had been closed to public view after the Daily Mail article appeared, the material on her blog and her Flickr photo stream were still openly accessible.

The complainant was not, said the newspaper, “someone who for some reason was able to use the technology but unable to realise the consequences of making her life so public”. It was legitimate for newspapers to consider how people in positions such as the complainant’s should be careful about what they publish about themselves – and to consider what a lack of care said about their judgement.

Adjudication

The Commission had already considered a similar complaint against the Daily Mail’s original article and had concluded that there was no breach of the Code. It reached the same conclusion in relation to this complaint and for the same reasons as set out in the related adjudication.

The Independent on Sunday had included some additional information, including from the complainant’s blog and her Flickr photo-stream (neither of which were privacy-protected). However, the Commission did not consider that the publication of this publicly-accessible information – which was not of an intimate nature, and included an innocuous picture of the complainant – constituted an intrusion into her privacy. It did not find a breach of Clause 3 (Privacy) of the Code.

As with the case against the Daily Mail, the Commission did not consider the publication of selected information made available by the complainant to be misleading. There was no breach of Clause 1 (Accuracy) of the Code.

Relevant rulings:

Goble v The People (2009)

Mullan et al v Scottish Sunday Express (2009)

Rundle v The Sunday Times (2010)

A Woman v Loaded (2010)

Baskerville v Daily Mail (2010)

(ii) Complaint No. 10-5851 McCann v East Kilbride News

Peter Wright returned to the meeting. Tina Weaver left the room and took no part in the discussion of this case (the East Kilbride News being owned by Trinity Mirror).

After discussion, the Commission agreed that the complaint should be upheld in part. The terms of the adjudication were as follows:

Mr Michael McCann MP complained to the Press Complaints Commission that an article headlined "MP claims £12,000 expenses in 4 months", published in the East Kilbride News on 8 December 2010, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was upheld.

The article reported that the complainant, the Member of Parliament for East Kilbride, Strathaven and Lesmahagow, had claimed £12,133 in expenses between May and August 2010, following the release of the figures by the Independent Parliamentary Standards Authority (IPSA). In the article it stated that the complainant's expenses "include £1150 in hotel bills to fund his trips to Westminster, while he also claims for a rented property in central London". The complainant said that this was misleading as it suggested that he had claimed for hotel rooms at the same time as paying rent on a property. This was incorrect: the hotel bills were incurred before he had the property.

The newspaper said that it had accurately reported the details of the expenses as published by IPSA, which had not explained why the expenses had been claimed. The complainant had claimed both hotel expenses and rent between May and August. It had sought to contact the complainant to discuss the claims on three occasions before publication, and the issue could easily have been clarified at that time.

Adjudication

It was not in dispute that the complainant had claimed for both hotel bills and rent in the period between May and August. However, it was also not in dispute that he had claimed for them consecutively, rather than concurrently. This was an important distinction.

The key issue here for the Commission was whether readers would have been misled by the phrase "while he also claims for a rented property in central London". This phrase was ambiguous, and could certainly be interpreted to mean that the claims overlapped. The Commission considered that readers could have been misled as a result. The newspaper should have offered to clarify its meaning so as to avoid any misunderstanding. It had not done so, and the result was a breach of the Code.

Mr McCann also complained that a letter headlined "A claim too far from our MP", published in the East Kilbride News on 8 December, was inaccurate and misleading in breach of Clause 1 (Accuracy) and represented harassment in breach of Clause 4 (Harassment) of the Editors' Code.

The complaint was not upheld.

The anonymous letter – attributed to an "East Kilbride taxpayer" – criticised the complainant on the topic of his latest expenses, stating that his "first few months in office have cost the taxpayer more than almost every other MP in Scotland". The complainant said that this claim was incorrect and had been presented as fact. He also said that the criticism had appeared in the same edition of the newspaper as its own report on the issue, making much the same points. He said that the letter appeared to have been written in response to the article, and did not believe that the letter had been sent independently by a member of the public.

The newspaper said that the letter had been received by email on 3 December, and provided a redacted copy of it. The writer of the letter had asked for their name to be withheld. A number of the points raised by the author had been previously highlighted in the public domain, and it had not been in touch with the individual before publication. It had chosen not to censor the opinion of the letter writer, which had been clearly presented.

Adjudication

The Commission was not in a position to determine the provenance of the letter, which had been submitted by email. It accepted that the letter had echoed many of the points in the report, but noted that the IPSA figures had been made publicly available on 2 December, and the overall amount of the complainant's claims (and individual claims such as a £2 parking charge) had been discussed in other newspapers. Overall, the Commission was satisfied that readers would have recognised that the letter represented a reader's appraisal of the figures which had been released. No inaccuracy could be established on this point and there was no breach of Clause 1.

In addition, the Commission has previously ruled that Clause 4 "relates to physical harassment of individuals by journalists and/or photographers in the newsgathering process". A letter of criticism about a local MP published by the newspaper would not raise an issue under this Clause of the Code.

(iii) Complaint No. 10-4442 Levy v Jewish Telegraph

Tina Weaver returned to the meeting.

Following discussion of this case Commissioners came to the conclusion that the matter raised by the complainant was not one that engaged the Editors' Code. It was agreed that both parties would, therefore, be informed that the Commission would be unable to come to a ruling on the case.

(iv) Complaint No. 10-5741 A woman v Take a Break

Commissioners expressed considerable concern about this case and agreed that there had been a serious breach of the Editors' Code. The complaint was upheld in the following adjudication and the Commission requested that further steps be taken to establish how the magazine intended to avoid a repeat of the situation:

A woman complained to the Press Complaints Commission through Liberty that an article in an October 2010 edition of Take a Break magazine intruded into her privacy and identified her as a victim of sexual assault in breach of Clause 3 (Privacy) and Clause 11 (Victims of sexual assault) of the Editors' Code of Practice.

The complaint was upheld.

The real-life article – told from the point of view of the complainant's sister – detailed how the complainant and her sister had been abused by their stepfather as children. He had subsequently been convicted for rape and other sexual offences, receiving a lengthy custodial sentence. The article named both victims, and included photographs of them. It said that the women had waived their right to anonymity.

The complainant said that her sister had waived her own right to anonymity and approached the magazine to tell her story (in exchange for a charity donation). She had provided the journalist with the complainant's contact details and understood that she would be contacted directly by the magazine. In the event, the complainant was not contacted. She had not, and would not have, given permission to be identified in the article and had been seriously affected by its publication, both socially and emotionally.

The magazine immediately accepted that the complainant had not waived her right to anonymity, apologising sincerely to her. Its reporter had confirmed on numerous occasions to the editorial team, mainly orally, that both sisters had agreed to be identified. In fact, contact had only been made with the complainant's sister (who, the

magazine claimed, had said that she was speaking on her sister's behalf). The complainant had not been contacted. The editor took full responsibility for a mistake which should never have happened, accepting that there had been a breach of the Code. Following the complaint, the magazine said it had taken steps to ensure that its system of checks did not fail again: it would now require written documentary evidence that those featured in such a story had agreed to be identified.

Adjudication

The identification of victims of sexual assault without their consent is an extremely serious matter. Clause 11 of the Code is particularly clear: "The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so".

In this case, there had been an unacceptable failure on the part of the magazine to protect the complainant from being identified. It plainly should have sought unequivocal confirmation from the complainant directly that she was willing to feature in the article and waive her right to anonymity. The Commission was concerned at the apparent ease with which the story had appeared without sufficient checks having been made with the complainant. It noted that the magazine had indicated how its practice would change in the future. This was a necessary step to remedy a problem that never should have arisen in the first place. The Commission asked that this was followed up further.

The complaint was upheld under Clauses 3 (Privacy) and 11 (Victims of sexual assault).

(v) Complaint No. 10-4086 Levy & McRae Solicitors v The Digger

Tina Weaver declared an interest, noting that some Mirror Group titles in Scotland have used the services of Levy & McRae Solicitors.

There was concern among Commissioners at the manner in which the magazine in this case had communicated with PCC staff. However, the Commission came to the view that the substance of the complaint should not be upheld. It agreed the following adjudication:

Levy & McRae Solicitors of Glasgow complained to the Press Complaints Commission that an article headlined "Law firm Levy & McRae 'incompetent'", published in The Digger on 24 June 2010, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was not upheld.

The article was an editorial opinion piece on a court case, concerning the suspension of two individuals' security licences. The complainants were the solicitors for the individuals. The outcome was that Sheriff Principal Bruce Kerr QC ruled that Sheriff Simon Fraser had gone beyond his powers in making a decision (to overturn the original suspension), and therefore the decision was "incompetent".

The complainants said that the article, and in particular the headline, was inaccurate and misleading: the judgment had not referred to them as "incompetent" in any way. Rather, the judgment had stated that the original decision was "incompetent", in the legal sense (in that it was outside of Sheriff Fraser's powers). Sheriff Kerr's decision was summarised in the judgment as follows: "For these various reasons I consider that the Sheriff's interlocutor [judgment] of 26 January 2010 went beyond his powers and was incompetent".

The complainants also objected to other claims in the article that wrongly suggested their incompetence: that "most solicitors know how to present a summary cause while blindfolded"; and "the Private Security Industry Act 2001 taught Watson and his crew that being a solicitor means more than wearing a suit". Any such suggestions were inaccurate and misleading. The complainants were the instructing solicitors on the case: the presentation of the case to the court was a matter for Counsel. It was, therefore, misleading to use the outcome of the case to criticise the complainants.

The magazine said that the article was an opinion piece on a matter of public interest and represented fair comment on the basis of the circumstances of the case, which had been reported in the same edition in a news item. It was entitled to hold the opinion that the complainants should not have asked the Sheriff to make a decision he was not competent to make. The term "incompetent" had been clearly presented in the headline in inverted commas, satirically combining both the legal and layman senses of the word. In its view, readers would not have been misled by the article.

Adjudication

Newspapers and magazines are generally entitled to publish reports of court verdicts and to offer their views and opinions on them provided that, in doing so, the terms of the Editors' Code are not breached.

In reaching its decision on the case, the Commission had regard for the fact that the piece: was an editorial; was clearly presented under the banner 'Opinion'; and was explicitly linked to a news report in respect

of which no complaint had been made. The Commission had to decide whether the magazine's coverage was inaccurate or misleading in breach of Clause 1 (Accuracy) of the Code. On balance, the Commission did not find that it was.

The term "incompetent" had been used, in the headline, with single inverted commas, in a manner which suggested that the remark was not a statement of fact. The editorial itself did not claim that the complainants had been found by the court to be incompetent and the news report (in which the judgment was quoted) made it clear that the term "incompetent" had been used by Sheriff Principal Kerr, in a legal sense, to describe the decision of Sheriff Fraser. The Commission reached the view that the use of the term in the headline would have been understood to be the opinion of the magazine given that the editorial argued that the complainants should not have asked "a Sheriff to do things they are not competent to do". The editorial contained the opinion – clearly marked as such – that the appeal ruling constituted, in effect, a legal defeat for the complainants and their clients. The complainants were, of course, entitled to challenge that interpretation, but on balance the Commission found that the magazine had adequately distinguished between comment and fact and that the coverage as a whole was not misleading.

The Commission had some sympathy with the view that the headline was ambiguous. It was clear that the complainants had not been criticised by Sheriff Principal Kerr or labelled by him as incompetent. Following the complaint, it would have been preferable if this issue had been clarified by the magazine. However, even without such clarification, the Commission considered that the editorial was not significantly misleading such as to breach the Code. The remarks made by the magazine about the complainants were clearly made under the banner of 'Opinion' and were not, in the Commission's view, statements of fact. It did not consider that a breach of the Code had been established in this case.

(vi) Complaint No. 10-1622 Caborn v The Sunday Times

The complainant had once again asked the Commission to postpone consideration of his complaint while he dealt with a concurrent Parliamentary investigation. Commissioners asked the office to make clear to the complainant that there could be no further delay: either the matter should be considered at its next meeting, or he should withdraw the complaint.

(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: 4966, 4974, 4975, 4976, 4977, 4979, 4980, 4981, 4982, 4983, 4984, 4985, 4986, 4987, 4988, 4989, 4990, 4991, 4992, 4993, 4994, 4995, 4996, 5001, 5002, 5003, 5004. All papers had been circulated since the previous Commission meeting.

5. Complaint Nos. 10-3772/10-4027 HRH Prince William of Wales v The Mail on Sunday/Lord Triesman v The Mail on Sunday

Peter Wright left the room and took no part in the discussion of this item on the agenda.

The Commission considered the two cases, which had both initially been lodged some months previously through the same solicitors. As the complainant's solicitors had not actively pursued the HRH Prince William of Wales case (following the newspaper's initial defence in August 2010), the PCC declined to deal with the matter further.

The Lord Triesman case had been lodged in August 2010 and the Commission had been seeking confirmation as to the position with regard to any legal proceedings in addition to making preliminary enquiries. The terms of the complaint under Clause 1 (Accuracy) of the Code had also remained unclear, despite numerous attempts at clarification. Commissioners agreed that the office should write to the complainant's solicitors and request the submission of a specific list of inaccuracies, without which it would not be possible to proceed with the complaint under this Clause. It also sought assurances with regard to the confidentiality of the process.

6. Withdrawal of Northern & Shell from the system of self-regulation – oral update & discussion

Peter Wright returned to the meeting.

Commissioners were informed by the Chairman that the office had started to direct members of the public who wished to complain about N&S titles to the company's legal department.

There was concern and regret at the ongoing absence of Northern & Shell titles from the self-regulatory system, although Commissioners recognised that it was fundamentally the result of an internal industry dispute and that it was primarily for the newspaper and magazine industry to seek a resolution. Nonetheless, the Commission was extremely keen that N&S titles should return to the fold as soon as possible and Commissioners requested that the Chairman write to PressBof, making it aware of the concerns and requesting regular updates.

7. Guidance Note on Online Prominence

Commissioners discussed draft guidance on the question of the online prominence of corrections, apologies and adjudications, which had been prepared by the online working group. The draft was welcomed by Commissioners and agreed in its entirety.

8. Editors' Code of Practice Audit

Commissioners discussed the forthcoming audit of the Editors' Code of Practice by the Code of Practice Committee. A number of issues were raised in relation to which the Commission was keen to arrange an opportunity for further discussion. However, no specific proposals were put forward for consideration by the Code Committee.

9. Developments in phone-hacking – oral update

The Chairman indicated to Commissioners her desire to ensure that the PCC was ready to examine developments as quickly as possible, and to consider matters fully once relevant police and legal proceedings had shed more light on the subject of phone-hacking. She proposed the establishment of a sub-committee of the Commission to lead the examination of these matters and suggested that it be comprised of two lay members and one editorial member. Commissioners welcomed the proposal and the Chairman indicated that details would be confirmed by email shortly.

10. Chairman and Director's meetings

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

11. Any other business

The Chairman informed Commissioners that the advertisement for new lay Commissioners had been widely run and that hundreds of applications had been received. Commissioners were asked to encourage further applicants, as the deadline was at the end of the month.

The Chairman also informed Commissioners that she would be in touch to organise one-to-one meetings with them to discuss their performance, as per the

recommendation contained in paragraphs 98 and 99 of the independent Governance Review, published in July 2010.

12. Date of next meeting

2.00pm on **Wednesday, 2 March 2011** at Halton House, 20/23 Holborn, London EC1.