

PRESS COMPLAINTS COMMISSION

The Minutes of the 178th Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 13 April 2011

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

The Chairman welcomed Alison Hastings, consultant to the PCC.

2. Minutes

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

3. Matters arising

(i) Complaint No. 11-0001 Amess v The Echo

The Chairman reported to Commissioners that this complaint, which had been discussed at the last meeting, had been subsequently resolved following the publication of an apology.

(ii) Complaint No. 10-5964 A Man v Daily Mail

Commissioners were also informed that the ruling in respect of A man v Daily Mail, which had also been discussed at the previous meeting, remained under dispute. The secretariat continued to await developments.

4. Complaints

(i) Complaint No. 11-0207 Liberal Democrat Party v The Daily Telegraph

Ian MacGregor took no part in – and was not present for – the discussion of this case. Peter Wright declared an interest and also left the room.

After discussion of this case, Commissioners concluded that the complaint should be upheld. It agreed the terms of the following adjudication:

Mr Tim Farron MP, President of the Liberal Democrat Party, complained to the Press Complaints Commission that a series of articles in The Daily Telegraph on 21 December 2010, 22 December 2010 and 23 December 2010 contained information which had been obtained using subterfuge in breach of Clause 10 (Clandestine devices and subterfuge) of the Editors' Code of Practice.

The complaint was upheld.

The articles quoted a number of comments made by senior Liberal Democrat MPs in their constituency surgeries which had been secretly recorded by the newspaper's journalists posing as constituents. The MPs featured included the Business Secretary, Vince Cable, in addition to Ed Davey, Steve Webb, Michael Moore, Norman Baker, Andrew Stunnell, David Heath and Paul Burstow.

The complainant – who was formally acting on behalf of the MPs concerned, with their consent – said that the newspaper had embarked on a 'fishing expedition' "designed solely to entrap Members of Parliament" which had no plausible public interest justification. While robust media scrutiny of politicians was critical for a vibrant democracy, the manner in which the newspaper had sought information in this case had ramifications for the future: this would mean that MPs of all parties would be constrained from engaging in frank discussions with their constituents. He said that the practice threatened to undermine the privileged nature of the relationship between MPs and their constituents.

The newspaper denied that it had undertaken a 'fishing expedition'; rather, it had acted upon specific information it had received from parliamentarians and members of the public. In private meetings at the Conservative party conference in 2010, the editor had been informed by Conservative ministers including a Cabinet minister (themselves informed by local party activists) that the public and private views of some Liberal Democrat ministers were increasingly at odds, particularly on the issue of Coalition policies which had been backed publicly. Similar concerns had also been expressed separately to senior reporters and the issue was raised with several MPs in the course of various engagements. A consistent theme began to emerge of growing Liberal Democrat private dissatisfaction. The newspaper said that the Conservative ministers were understandably reluctant to go on the record, or provide information or contacts in Liberal Democrat constituencies to back up their concerns.

Additional enquiries with Liberal Democrat contacts had also led to claims of a growing divide within the party between those who wished to support Nick Clegg, and the Coalition in general, and those who wished for the party to assert its identity more clearly in public. Several people declined to go on the record. At the same time there were claims of Liberal Democrat tension over tuition fees with rumours of ministers wishing to resign (which were strongly denied in public). The newspaper had also been contacted by several readers with the same concerns.

After editorial discussion – where it was concluded that most of the information gathered could not be used as it might identify sources – the newspaper began to consider the decision to go undercover to test the allegations. Previous newspaper investigations using extensive subterfuge were discussed, which had not been subject to censure by the PCC. The subterfuge had been kept to a minimum and was proportionate to the circumstances – posing as members of the public at constituency surgeries. The newspaper had been informed that the apparent dissatisfaction was, or potentially was, systemic (an impression strengthened after the first approaches). As such, a decision was taken to approach as many ministers as possible, especially in view of the attempt to establish the weight of its case. While it had attempted to arrange interviews with the entire Liberal Democrat front bench, ten ministers had been visited in total.

The newspaper said that its enquiry was undertaken in the public interest: it was predicated on the fact that there was “a reasonable expectation that some legitimate public interest would be served” (a factor to which the Editors’ Codebook made reference), based on information received from multiple sources. Visiting constituency surgeries was the only way to do so without disproportionate effort. All the issues related to public policy under the responsibility of the minister and nothing personal had been raised. The manner in which the reporters sought to test the allegations was shown in the transcripts of the interviews which the newspaper provided as part of its evidence.

In the event, most of the ministers expressed opinions which were at odds with their public positions and statements: Ed Davey had publicly defended Coalition cuts in October 2010 yet, in the surgery, he had said that he was “gobsmacked” by the announcement on child benefits which was “dreamed up out of the blue” and said that housing benefit cuts were “deeply unacceptable” as they were going to “hit people while they are down”; Vince Cable had spoken carefully in public about the News Corporation bid for BSkyB owing to the legal process, yet had said to the reporters that he had “declared war on Mr Murdoch” (“I have blocked it, using the powers that I have got...his whole empire is now under attack”); Michael Moore had, on the day of the visit, told the BBC that the rise in tuition fees would prevent universities being “starved of the money they need to provide quality education” and – while the issue was “difficult” – there was no “workable alternative” but, to reporters, his view was very different (the decision was “ugly”, “horrific” and “a train wreck” and the party’s reneging on their election pledge was “the worst crime a politician can commit”); and Paul Burstow had subsequently publicly acknowledged his embarrassment that he had said “I don’t want you to trust David Cameron”.

The newspaper said that its investigation had proved that the Liberal Democrat members of the Government were not consistent in their private and public statements, which it rightly brought to the attention of its readers and the wider public. The newspaper argued that a constituency surgery was not a private forum: while MPs had a duty of confidentiality to their constituents, constituents did not have such a duty for their MPs.

The complainant said that it was the public statements and comments of ministers which were the basis of collective ministerial responsibility, regardless of what other views they might hold, and which formed the basis on which politicians were judged by the electorate.

Adjudication

Clause 10 of the Code states that newspapers “must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices”. It also makes clear that “engaging in misrepresentation or subterfuge...can generally be justified only in the public interest and then only when the material cannot be obtained by other means”. The Commission has consistently ruled that so-called ‘fishing expeditions’ – where newspapers employ subterfuge and use clandestine devices without sufficient justification – are unacceptable.

In determining whether a newspaper has embarked on a ‘fishing expedition’, the Commission must have regard for the circumstances which led to the decision to employ subterfuge. The questions for the Commission in this case were, ultimately, as follows: had the newspaper demonstrated that it had sufficient prima facie grounds for investigation before its reporters were asked to go undercover, such that would justify the recording of numerous MPs at their surgeries without their knowledge; and was such an investigation (using hidden listening devices) justified in the public interest?

There was a fine balance to be struck here. The Commission accepted from the outset that there was a broad public interest in the area the newspaper had chosen to investigate: the unity of a Coalition government, which was something of a new political departure in Westminster. The Code’s definition of what is in the public interest includes “preventing the public from being misled by an action or statement of an individual or organisation” and the newspaper was seeking to highlight an apparent disparity between comments made by MPs on Coalition policies in public and comments made privately. The newspaper had said that it had acted on information from various sources, who had been unwilling to go on the record.

There were some grounds, therefore, for the newspaper's interest in this matter, and for it to devote resources to exploring how the Coalition was working in practice. In the Commission's view, the newspaper had not sought to discount the terms of the Code or the need for adherence to it. However, it felt that, nonetheless, the newspaper had reached the wrong decision in deciding to pursue subterfuge on this occasion for the following reasons.

First, the evidence on which the newspaper was acting (such as the Commission could see) was of a general nature. The newspaper did not appear to have any specific information (the significance of which could be established in advance) that the ministers in question had expressed private views at odds with Coalition policy. Rather, it was responding to broad assertions of party-wide disquiet, which perhaps could have been reported on an unattributed basis. It did so by focussing what amounted to disproportionately intrusive attention on a number of MPs (who had been selected purely on the basis of their ministerial position). This was demonstrated by the fact that – as the transcripts made clear – each minister had been asked to respond, in effect, to the same lines of questioning.

The Commission considered that there was an important dislocation here between the prima facie evidence and the method used to test it. It was notable, for example, that the newspaper was relying upon off-the-record comments from Conservative ministers on the subject of the Coalition to justify covert recordings of Liberal Democrats on the same subject. Those Ministers were being asked, in the Commission's view, to comment on a series of policy issues with the evident intent of establishing on which subject they might say something newsworthy.

Certainly, the level of subterfuge was – contrary to the newspaper's assertion – high. The Commission wished to make it clear that recording individuals using clandestine listening devices without their knowledge was particularly serious and intrusive, requiring a strong public interest defence. Secretly recording a public servant pursuing legitimate public business was without question a serious matter.

On this occasion, the Commission was not convinced that the public interest was such as to justify proportionately this level of subterfuge. The newspaper had provided some supporting material to establish the claim in advance that there were differences of opinion and philosophy within the Coalition government. This was, in the context of debate about politics in the UK, significant. But the Commission did not consider that it was enough to warrant the use of undercover reporters taping MPs as they went about their constituency work. The Commission had to have regard for the importance of the democratic process (which it was in the public interest to preserve), which could be threatened if journalists were to be allowed to use hidden devices to

record MPs' views, expressed within the confines of their constituency surgeries, in order to test broad claims about policy matters. This was particularly the case in regard to Ministers who were required to act in accordance with the principle of collective responsibility when commenting in public.

For the Commission to have sanctioned this method, it would have had to be convinced that a high level of public interest could reasonably have been postulated in advance. It did not believe that the Telegraph – although acting no doubt with legitimate intent – had sufficient grounds, on a prima facie basis, to justify their decision to send the reporters in. The complaint was therefore upheld.

The Commission did feel that the newspaper had uncovered material in the public interest regarding the remarks made by Vince Cable about the News Corporation bid for BSkyB, which had led to him being divested of his role in that decision. However, there had been no suggestion that the intention of the newspaper had been to explore how he had been handling the bid (it made clear in its coverage that Mr Cable had spoken “despite not being asked about the issue”), and the newspaper itself had chosen not to make it a focus of its first day’s coverage. The test for the Commission was whether there were grounds in the first place to justify the subterfuge: the Cable disclosures about Sky were not relevant to that.

Other published material did reveal discrepancies between what Ministers had said representing the Government and what they said to the reporters, and was related to the policy areas highlighted by the reporters (views on particular policies such as, for example, child benefits and tuition fees). The Commission had due regard to the public interest in revealing this information. But, in the end, it did not feel that the public interest was sufficient to provide justification for the subterfuge.

The Commission recognised that the issue of how journalists make use of subterfuge deserved scrutiny, and went much wider than the Telegraph’s actions on this occasion. It has undertaken to issue further guidance on the subject with a view to ensuring high standards across the industry.

Relevant rulings

Ryle v News of the World, Report 53
Munro & Bancroft v Evening Standard, Report 54
Monckton v Evening Standard, Report 64

(ii) Complaint No. 10-3867 Fleming v Pick Me Up

Ian MacGregor and Peter Wright returned to the meeting.

Commissioners considered each aspect of this complaint and ruled that it should be upheld in part. They concluded that there had been a breach of Clause 16 (Payment to criminals) but no breach of Clause 1 (Accuracy) or Clause 5 (Intrusion into grief or shock) of the Code.

These conclusions were set out in the following adjudication:

Mrs Donna Fleming complained to the Press Complaints Commission that Pick Me Up had paid an associate of a convicted criminal for an article of 8 July 2010 headlined "Forensics tore my flat apart" in breach of Clause 16 (Payment to criminals) of the Editors' Code of Practice.

The complaint was upheld.

The article was a first person account of a woman (Emma Cooke) who had discovered she had slept with a man (Scott Riley) on the night he had killed the complainant's mother. The complainant said that Emma Cooke's association with Scott Riley was not merely a fleeting one, but that they were longer standing acquaintances who shared the same friends. She saw no purpose to the article other than financial gain for both the magazine and Ms Cooke at the expense of her mother's death.

The magazine did not consider that Emma Cooke amounted to an "associate" of Scott Riley in the context of Clause 16 of the Code. It did not believe that the term encompassed passing acquaintances. By having a one night stand with an individual she later found out to be a killer, the magazine maintained that Emma Cooke was also a victim of Scott Riley and entitled to tell her story.

Adjudication

Freedom of expression dictates that individuals are generally entitled to tell their stories – regardless of their involvement or association with crimes – and magazines and newspapers are permitted to publish such stories. However, the Editors' Code places certain restrictions on whether newspapers and magazines are entitled to offer payment for them. Clause 16 (Payment to criminals) prohibits payment to "convicted or confessed criminals or to their associates – who may include family, friends and colleagues" for stories which "seek to exploit a particular crime".

It was the Commission's view that the sexual relationship between Ms Cooke and Mr Riley placed Ms Cooke within the reasonable definition of the term "associate". There was also some suggestion of a pre-existing acquaintance between the two.

The article was focused entirely on Ms Cooke's association with a murderer immediately after he had committed the crime. In the Commission's opinion, there could be no doubt that the story, therefore, exploited the existence of that crime. While Ms Cooke had a right to discuss her experiences, the Commission did not consider that payment for the story was justified in this instance.

The complaint was upheld.

Mrs Fleming also complained that the article included a number of inaccuracies in breach of Clause 1 (Accuracy) and represented an intrusion into her family's grief in breach of Clause 5 (Intrusion into grief or shock) of the Editors' Code.

The complaint was not upheld.

The complainant considered that the publication of the article showed a lack of compassion for the family at an extremely distressing time. She found the images used to illustrate the article highly distasteful, especially given that she and her family had been unaware of the type of knife used by Scott Riley. She also pointed out a number of inaccuracies: that the image of the car in the article was the wrong colour; that Emma Cooke had not met up with Scott Riley at 3am, but rather some time later; and that Scott Riley had been arrested by police five days after the crime (not three) and was not charged until several months later (not at the time of arrest).

The magazine stated that it had taken care not to include gratuitous details or details which did not already exist in the public domain about the death of the complainant's mother. Attempts had been made to contact the family through the police without success. The images of the car and knife used were generic and intended to support the story visually. The magazine pointed out the article had stated that Emma Cooke had left the nightclub at 3am and subsequently seen Scott Riley rather than seeing him at 3am.

Adjudication

The publication of a story relating to the death of her mother would naturally be distressing for the complainant and her family. However, Ms Cooke was entitled to tell her story regarding her involvement with Scott Riley. In the Commission's view, the article did not include information that was gratuitously graphic or out of proportion to what was already in the public domain. While the accompanying image of a knife may have been distasteful, the Commission did not consider that the article was in breach of Clause 5 (Intrusion into grief or shock) of the Code.

The complainant had highlighted a number of minor inaccuracies in the article. It is important that newspapers and magazines take care at all times that information they publish is correct. That said, the Commission had regard for the nature of the article, which was Emma Cooke's own account of her personal experience of the incident and the aftermath. Readers would be aware that the article reflected her own memory and interpretation of the events, rather than necessarily being simply a factual report. The discrepancies highlighted by the complainant would not significantly impact upon readers' understanding of the crime and the outcome. The Commission acknowledged the areas of dispute, but found that there was no breach of Clause 1 (Accuracy) of the Code.

- (iii) Complaint No. 11-0328 A woman v Courier & Advertiser
- (iv) Complaint No. 11-0329 A woman v Courier & Advertiser

The Commission considered these two complaints together as they related to the same article and raised almost identical concerns. Following discussion both complaints were upheld. The Commission also agreed that it was necessary to issue guidance to the industry on the subject of reporting issues involving victims of sexual abuse. This would be discussed substantively at the next meeting.

The terms of the adjudication below were agreed:

Two women complained separately to the Press Complaints Commission that an article published in the Courier and Advertiser (Dundee) in January 2011 contained material that had identified their daughters as victims of sexual assault in breach of Clause 3 (Privacy), Clause 7 (Children in sex cases) and Clause 11 (Victims of sexual assault) of the Editors' Code.

The complaint was upheld.

The article reported a court hearing in which a man had admitted sexual offences against two girls, both of whom were under the age of sixteen at the time the crimes occurred. The report made reference to the locations where the offences had taken place, including the names of the streets – two of which were the streets on which the victims lived. The article also stated the ages of the girls at the time of the offences.

The complainants both said their daughters' right to anonymity had been compromised by the inclusion of this information. Complainant A said that she and her daughter lived in a rural area with only twelve houses on their street. It was easy for neighbours and others in the local community to identify her daughter as a result of the article. Complainant A added that the level of detail included about the offences was unnecessary.

Complainant B said her daughter was the only female child of the reported age who lived on the other named street. Neighbours, classmates and other acquaintances had, as a consequence, been made aware of her identity and the graphic nature of the offences to which she was subjected. This in turn had led to the girl being extremely distressed.

Although it did not initially accept that it had published sufficient information to identify the victims, the newspaper admitted that its practice of only publishing outline details of cases of this nature had not been properly followed. It removed the partial addresses from its electronic archive and excluded similar references in a subsequent report about sentencing. In addition, the editor circulated a message to all staff reminding them of their obligations to protect children under the Editors' Code, and sent a letter of apology and explanation to the complainants.

Adjudication

The terms of Clause 7 (Children in sex cases) of the Editors' Code are very clear: "the press must not...identify children under 16 who are victims in cases involving sex offences". Clause 11 (Victims of sexual assault) adds that the press "must not publish material likely to contribute to [the] identification" of victims of sexual assault. If in doubt, newspapers should always err on the side of caution when considering what details to publish in relation to such cases.

In this instance, the inclusion of the girls' ages and of their partial addresses clearly had the potential to contribute to their identification. Indeed, given the relatively small number of houses on the streets in question, identification was always going to be a strong possibility.

This was a bad mistake by the newspaper, which had acknowledged that its practice of publishing only outline details of cases such as these had not been followed. The Code affords particular protection to those who are vulnerable – and it is hard to imagine anyone more vulnerable than a child victim of sexual crimes. The failure of the newspaper properly to consider the likely consequences of publishing the information in the report, especially the references to the girls' partial addresses, was a serious one.

While the Commission welcomed the steps taken by the editor to ensure that the Editors' Code was adhered to in the future (and while it noted that he had apologised to the victims via their parents), it did not hesitate to uphold these complaints.

(v) Complaint No. 11-0785 A man v Staffordshire Newsletter

Commissioners next examined this case, which also related to the identification of a victim of sexual offences, and concluded again that there had been a breach of the Code. The following adjudication was agreed:

A man complained to the Press Complaints Commission that an article published in the Staffordshire Newsletter identified a child victim of sex abuse 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 of the article had the potential to imply the connection between the accused and his victim. This adjudication is written in broad terms to avoid repeating any of the identifying information.

The article reported that a man had been jailed after admitting charges of sexual activity with a child. The article named the man and included a photograph of him. The article also referred to the gender of the child, the child's age when the abuse began and the period of time in which the abuse was carried out. The grandfather of the victim, complaining on behalf and with the consent of the victim's mother, contended that the article had effectively identified his grandchild.

The complainant was primarily concerned about the newspaper's use of a photograph of the convicted man. Nonetheless, he also confirmed that the other details in the report were very likely to point to his grandchild as the victim of the offences. Consequently, within the child's school and in the local community, the victim's identity was now common knowledge.

The newspaper said it was at liberty to publish the name and photograph of the convicted man. The victim had not been identified, in accordance with the reporting restrictions that were in place. The newspaper added that it had not been privy to information about the connection between the victim and the abuser (as the copy had been supplied by a reliable outside agency).

Adjudication

In addition to the general requirement not to identify victims of sexual assault set out in Clause 11, Clause 7 of the Code states that the press "must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences". The Code then makes clear how this obligation can be met, including the following: "care must be taken that nothing in the report implies the relationship between the accused and the child". This places a considerable onus on editors to consider how the information they publish might enable those who know the accused to work out the identity of the victim.

In this case, it was important first to recognise that the newspaper was fully entitled to identify the convicted man. In accordance with the principle of open justice, those convicted of serious criminal acts such as this should be identified to the wider public. The Code makes this specifically clear. Such identification can include the publication of a photograph of the convicted individual. There was no breach of the Code raised by the photograph on this occasion.

The Commission also had to have regard, however, for the additional information contained in the report, which included references to the child and the abuse as well as comments made by prosecution counsel and the judge. While each of the details (which it would not be appropriate to repeat here) might have seemed relatively insignificant, it was clear to the Commission that they had the potential to imply the connection between the accused and his victim.

Overall, the Commission did not agree that the newspaper had taken sufficient care to avoid this implication. While it may not have known the full facts about the case, it was the newspaper's responsibility – not the court's or the police's or an outside agency's – to take every possible step to avoid identification. This it had failed to do and the result was a serious, albeit inadvertent, error.

The Commission upheld the complaint.

- (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: 5042, 5043, 5044, 5045, 5046, 5047, 5048, 5049, 5050, 5051, 5052, 5053, 5054, 5055, 5056, 5057, 5058, 5059, 5060, 5061, 5063, 5064, 5065, 5066, 5068, 5069, 5070, 5071. All papers had been circulated since the previous Commission meeting.

5. Nominations Committee Report

The Chairman presented a report to Commissioners about the nomination of new public Commission members. She noted that there had been almost 3,000 applicants and that, with the assistance of Lucinda Bolton, the independent assessor, the Nominations Committee (Baroness Buscombe, Ian Nichol and Prof Ian Walden) was now in a position to put forward its preferred candidates for the Commission's ratification.

After discussion, the following candidates were approved for membership of the Press Complaints Commission:

Lord Grade of Yarmouth CBE
Michael Smyth CBE
His Hon Judge Jeremy Roberts QC

It was agreed that two further candidates would be approved to fill vacancies in the next twelve months. It was suggested that a further candidate should be approached to sit on the newly-formed Review Committee, charged with conducting an annual audit for the PCC's work.

6. Editors' Code Committee Meeting Report

The Director reported on the latest meeting of the Editors' Code of Practice Committee, which he had attended.

7. Chairman and Director's meetings

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

8. Any other business

- (i) Phone hacking – Commissioners received a brief report from Professor Ian Walden about the work of the Phone Hacking Review Committee looking into this issue.
- (ii) Northern & Shell – The Chairman reported that she understood there were further industry efforts underway to bring N&S titles back into the system of self-regulation.
- (iii) Chris Jefferies – Following previous consideration of the issue, Commissioners discussed the manner in which newspapers and other media had reported on Mr Jefferies during the investigation of the murder of Joanna Yeates. The Commission has been in contact with the Attorney General on the matter, and will continue to consider the right manner in which to work to raise standards in this area. It was agreed that the Director would arrange a meeting with a representative of OFCOM, to discuss how broadcast regulation is dealing with issues relating to the reporting of crime.
- (iv) PCC & Race for Life – Commissioners were pleased to learn that female members of the secretariat were to take part once again in the annual Race for Life to raise money for Cancer Research UK.
- (v) Eve Salomon's last meeting – The Chairman was sad to announce that this was Eve Salomon's final meeting as a Commissioner, having served on the PCC's board since 2003. She expressed her thanks on behalf of the PCC for the enormous contribution Eve had made during her membership.

9. Date of next meeting

2.00pm on **Wednesday, 25 May 2011** at Halton House, 20/23 Holborn, London EC1.