

PCC Investigation v News of the World

Clauses noted: 15, 16

The Press Complaints Commission has instituted an investigation as to whether a payment by the News of the World to a man who was a potential witness in a court case involving an alleged attempt to kidnap Victoria Beckham was made in breach of Clause 16 (i) (Payment to witnesses) of the 2002 Code of Practice. As the man also had a criminal conviction the Commission also considered whether the payment to him for the Beckham story gave rise to any issues under Clause 16 (ii) (Payment to criminals) of the 2002 Code.

It has concluded that there was no breach of either of these clauses of the Code.

On 2 June 2003 charges against a group of defendants accused of the kidnap plot were withdrawn after the evidence of the prosecution's key witness, Florin Gashi, had been declared unreliable. It appeared that the newspaper had paid him a sum of money and this was a material factor in the abandonment of the prosecution.

● The Judge said, "I am minded to refer the whole of this to the Attorney General who seems the proper person to consider the temptations which money being offered in return for stories, in particular about celebrities, give rise to and the way in which newspaper investigations may have a detrimental effect on the ultimate Court proceedings or may, indeed, lead to something being placed before persons by way of an inducement that seems to me to be something which ought to be considered by referring the papers to that officer."

On the same day, the Chairman of the Commission announced that it would hold its own inquiry into the alleged payment and whether it was made in breach of the PCC's Code. He also made clear that the Commission would take into account any decision of the Attorney General on the matter.

Possible Criminal Offences

● After the Commission had completed its draft adjudication it was about to contact the Attorney General in line with its normal procedures. Before it could do so, however, the Attorney General's Department itself contacted the Commission concerning the matter. (References to the Attorney General below are references to information coming from his Department with his approval.) The Attorney General told the Commission that he had conducted his own investigations into the circumstances surrounding the payment to Mr Gashi, pursuant to his responsibilities as guardian of the public interest in the conduct of criminal proceedings. In the light of that investigation the Attorney General had formed the view that it was not appropriate for him to bring proceedings for contempt against the newspaper. He further stated that the Director of Public Prosecutions had advised him that the CPS considered that no criminal offence had been committed as a result of the payment and that he had accepted such advice. The Attorney General confirmed, however, that the payment by the newspaper to Mr Gashi was a factor, but not the only factor, in the prosecution deciding not to go on with the kidnap charges.

The Commission is grateful to the Attorney General for bringing a number of matters to its attention and for answering a number of questions put to him. At all times the Attorney General emphasised that he wished to bring matters to the attention of the Commission in order to be helpful to it in the discharge of its functions. He emphasised that the decision as to whether the Code had been broken was one for the Commission itself.

The newspaper's explanation of the background

The newspaper told the Commission that its Investigations Editor, Mazher Mahmood, had been approached by one of the newspaper's informants called Florin Gashi, who offered to introduce him

to a gang who had already carried out a successful robbery and was in the process of planning other crimes. Mr Mahmood successfully infiltrated the gang and learned that it was planning to kidnap an Arab diplomat. When the gang realised that this would be too difficult they then selected Mrs Beckham as a target. The newspaper said that Mr Mahmood remained quiet through the planning operation and made no positive proposals. He was, however, recording the conversations which took place. As the newspaper's inquiries proceeded a decision was taken to refer the matter to the police. The newspaper wished to emphasise that its overriding purpose was to obtain a story for itself, not to set a prosecution in motion which was a matter for the CPS and the police alone. Following information given by the newspaper to the police a number of men were arrested on 2 November 2002 amidst some considerable publicity.

The Charges

The five defendants who appeared at Horseferry Road Magistrates' Court on the morning of 4 November 2002 were accused of various offences including conspiracy to rob and theft, but no charges were brought at that stage in relation to the alleged attempt to kidnap Victoria Beckham. The Attorney General told the Commission that four of the defendants had been detained for a period during 2/3 November 2002 under the Police and Criminal Evidence Act 1984 for questioning about the alleged kidnap plot. Thereafter, he said, although the defendants remained in custody on other charges, no further application was made to question them further or charge them until charges were notified to the defendants on 13 February 2003 and formally notified to the court on 24 February 2003.

In June 2003, the kidnap charges were abandoned, but some of the defendants still faced other charges. One man pleaded guilty to the theft of the turban and books from Sotheby's. A second pleaded guilty to receiving the same items. Both received terms of imprisonment. Another defendant awaited trial on charges of theft of all the items mentioned above with alternative counts of receiving.

The Relevant PCC Code

At all material times the applicable section of the PCC Code (2002 Code) was Clause 16 (payment for articles) the relevant parts of which read:

- "(i) Payment or offers of payment for stories or information must not be made to witnesses or potential witnesses in current criminal proceedings except when the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give. (An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence must be disclosed to the prosecution and the defence and the witness should be advised of this.)
- (ii) Payment or offers of payment for information, must not be made directly to convicted criminals except where the material concerned ought to be published in the public interest and payment is necessary for this to be done."

It is important to appreciate that the effect of Clause 16(i) was that a payment or offer of payment made before any current criminal proceedings had begun was not caught by the sub-clause and was consequently outside the terms of the 2002 Code.

Although the Commission had never previously considered what was precisely meant by "current criminal proceedings" the expression was said to be unclear and did not cover a number of

situations which ought to be covered by the Code. Accordingly, the Code was amended in 2003 (2003 Code) as follows:

"16. Witness payments in criminal trials:

(i) No payment or offer of payment to a witness or any person who may reasonably be expected to be called as a witness – should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.

(ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done, and all reasonable steps have been taken to ensure that no financial dealings influence the evidence those witnesses give.

(iii) Any payment or offer of payment made to persons later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement."

Proceedings become active under the Contempt of Court Act 1981 with an arrest.

It is important to note that the new clause was not a clarification of the 2002 Code but amounted to a completely new set of regulations.

The payments to Mr Gashi

Mr Mahmood told the Commission:

"Most informants have a motive when they provide us with information As I told the police with Florin Gashi, his main motive was not money. At the start of this investigation he did not demand money, and it would be wrong to say that financial gain was his motive for providing information about the Beckham kidnapGashi had previously provided us with the information relating to other matters and been happy just to have his expenses covered. He felt that by helping to expose wrongdoing he would strengthen his claim for political asylum in this country A few days prior to publication he told us he was very worried about the repercussions in his involvement in this story. He said he would be killed – he then told me that he would need money to move out of London; and he would have to find a new job and start a new life. With no income he said he would not be able to help his family back home as he had done in the past. It was at this stage that he asked that the newspaper pay a reasonable fee for his assistance. I also telephoned Sotheby's and asked if they would pay a reward for the recovery of the stolen works of art; and they agreed but said it would be after publication... It was in this context that £10,000 was agreed to cover all the work that he had done for NOW. I felt that had we not agreed to make payment there was a definite risk that Gashi, fearing for his life, would have backed out at the final stage. At the night before the arrest I had at least six long telephone conversations with Gashi to encourage him to go ahead."

The newspaper later informed the police that the £10,000 paid to Gashi had been allocated as to a figure of £5,000 for the Beckham kidnap story and £5,000 allocated to two other stories which had been published in September and October 2002. Only the Beckham kidnap payment related to charges later brought.

The newspaper raised a written requisition to its accounts department on 31 October 2002 for £10,000 payable to Florin Gashi. The cheque was posted on 1 November 2002 to Mr Mahmood for onward transmission to Mr Gashi. On 4 November 2002 Mr Gashi was handed the £10,000 cheque by Mr Mahmood. According to the prosecution, Mr Gashi paid the cheque into his bank account at

9.36 am on 4 November 2002 apparently shortly before the proceedings at Horseferry Road Magistrates Court took place.

Preliminary issue for the Commission

In October/November 2002 the applicable Code then in force was the 2002 Code.

The Commission has first to decide whether the payment in respect of the alleged Beckham kidnap made to Gashi was made before "current criminal proceedings" began. If it was, then, subject to the terms of Clause 16(ii), the payment was not subject to the terms of the 2002 Code and therefore not made in breach of it.

The Commission had to decide at which point legal proceedings in the Victoria Beckham kidnap case can be said to have been current. The main options are as follows:

First, it could be said that proceedings began with the arrests and before payment was made to Mr Gashi.

Second, it could be said that proceedings began when the defendants appeared at Horseferry Road Magistrates Court on the morning of 4 November 2002.

Third, it could be said that proceedings began when charges were brought with respect to the Beckham kidnap on 24 February 2003.

The Attorney General suggested that the Commission adopt the definition of active proceedings set out in the 2003 Code, namely that they began with the arrest of the defendants. He also pointed out that the charges relating to conspiracy to rob were intimately connected with the alleged Beckham kidnap case as that was the means by which money was to be raised to fund the kidnap. Mr Gashi had signed a statement agreeing to give evidence in relation to the alleged Beckham kidnap in those proceedings. Thus the terms of the Code should apply from the date of the arrest in related proceedings notwithstanding that charges were not brought in relation to the kidnap plot until much later.

The Commission's Approach

The Commission does not adopt a legalistic attitude in its interpretation of the Code which is intended for everyday use by editors and journalists. In this connection it draws attention to the words of Lord Woolf in an earlier case against the Commission in which he said:

"It seems to me ... that their task is, above all, not a technical one; it is to deal with the substance of what has occurred."

The Commission's preferred approach is to determine which reading of the Code is most likely sensibly to be understood by editors and journalists, wanting to check their obligations under the Code, as being the meaning of the phrase concerned.

Applying this test the Commission takes the view that the legal proceedings in relation to the alleged Victoria Beckham kidnap plot began when charges were brought in relation to it on 24 February 2002.

If the point of arrest is taken as the commencement of proceedings, then it is difficult to contend that there were any current proceedings in relation to the alleged Victoria Beckham kidnap plot when the payment was made to Mr Gashi on 4 November 2002, the defendants having ceased to be detained in relation to that matter on the previous day.

The Commission does not accept that the technical legal definition of 'active proceedings' in the Contempt of Court 1981 has any relationship to the expression under consideration in the 2002 Code and which it replaced, precisely because the 2002 Code was considered to be unclear.

The Commission did not feel able to accept the suggestion that legal proceedings in relation to the Victoria Beckham kidnap plot could be deemed to have begun solely by reference to a wholly different charge, however closely connected. Such an interpretation would have made considerable difficulties for editors and journalists seeking to understand their responsibilities.

Similarly, if the proceedings are regarded as having begun with the Magistrates' Court hearing on 4 November 2002 then the payment to Mr Gashi appears to have preceded that hearing.

Accordingly, the Commission finds that the payment to Mr Gashi was made prior to the commencement of "current criminal proceedings" for the purpose of the 2002 Code.

This leaves Clause 16(ii) – which related to payments to criminals – to be considered. Mr Gashi has previously been convicted of possessing a false passport for which he had received a suspended sentence.

The Commission has always accepted that this sub-Clause does not apply to every conviction which someone may have. There must be a relationship between the payment and the conviction in some form, either because it relates to the particular conviction itself or is connected with it in some relevant way (see the recent investigation re: The Guardian and a payment to a criminal for information about a fellow prisoner). In this case, there was no connection between Mr Gashi's conviction and the payment made to him for the story about the alleged Beckham kidnap plot which the Commission is investigating.

Adjudication

Conclusion

The payment by the newspaper to Mr Gashi in respect of the alleged Victoria Beckham kidnap plot was not in breach of the 2002 Code since the payment was made before the relevant proceedings took place.

Other matters

In this instance it was, of course, right for the Commission to come to a conclusion on a preliminary point based on the 2002 Code. It recognised, however, that it would be somewhat unsatisfactory to leave matters there. First, it might be important to see what the effect of the 2003 Code would be upon the circumstances of this particular case. Second, on the basis that there was no preliminary issue to be decided it might be helpful to see whether the newspaper had complied with the other substantive terms of Clause 16 of the 2002 Code. Third, in light of widespread reports that the newspaper had been responsible, to a large degree, for the abandonment of the criminal prosecution the Commission felt it ought to consider that matter as it might have a bearing on issues arising under the Code.

2003 Code

It is clear that there would have been no preliminary issue to be decided if the 2003 Code had been in force in October/November 2002. The current Code bars all payments to witnesses or potential witnesses once proceedings are active. In other cases (as with the payment to Mr Gashi) where proceedings have not yet begun any payment to a potential witness is subject to the strict requirements of the Code.

Previous discussion on this subject has centred around the question of payments to witnesses who have been approached after criminal proceedings had begun. There is clearly another situation where the potential witness is an informant who receives an offer of payment from a newspaper prior to charges being brought. This position is now covered by the 2003 Code.

Findings under Clause 16 of the 2002 Code

The Commission accepted that the payment here was made in the public interest (which is defined in the Code as, inter alia, detecting or exposing crime). Based on the information available to the editor and Mr Mahmood at the time when the decision to make the payment was made, they had reasonable grounds for believing a crime or crimes were about to be committed in relation to Victoria Beckham and that only by agreeing to pay a sum of money to Mr Gashi was he prepared to go on with the deception in which he was involved. It should also be noted that ultimately some of the defendants were convicted of other offences involving robbery and receiving.

The 2002 Code required that payment had to be "necessary" for the material to be published. The Attorney General suggested to the Commission that as Mr Gashi had given information to the newspaper on a number of matters without requiring any payment there could have been no necessity to pay him in this instance.

The newspaper made the forceful point to the Commission that it "does not sign cheques for large amounts (eg £10,000) for stories that it is not obliged by contract to do so." Mr Mahmood has explained why it became necessary to make payment and the Commission has accepted his explanation.

The 2002 Code required any payment to be disclosed to the prosecution and defence and the witness should be advised of this. As to this there is a dispute on the facts between the prosecution and the Attorney General on the one hand and the newspaper on the other.

At the Court hearing in June 2003 prosecuting counsel said that Mr Mahmood made his first statement to the police on 3 November 2002 but said nothing about the prospect of a reward for Gashi. Indeed, what he did say was that Gashi was doing this, "without mention of financial or other rewards." Mr Mahmood next saw police officers some three months later on 4 February 2003 in order to make a further witness statement covering certain topics.

During the taking of the statement counsel said that Mr Mahmood was asked by police officers taking the statement the direct question as to whether any money was paid to any person "at this point or any point later" (the reference "at this point" being to 2 November 2002). He answered, "later yes but not at that point." Mahmood told the officers, "I think we gave him a few grand ... about five grand for this story and I sent him a credit for the previous stuff he had done ... maybe a couple of grand."

According to counsel, on 4 February 2003 and even when giving his earlier statement in November 2002 Mr Mahmood knew Mr Gashi had actually been given a cheque for £10,000. As to Mr Gashi, in a witness statement taken in January he had not revealed that he had received payment for any information. Indeed, he said the opposite.

The newspaper disputed these assertions. It said that Mr Mahmood asserted that he told the police in November 2002 about the payment to Mr Gashi, who was aware of this. The quotation from Mr Mahmood's first statement appeared to have been taken out of context. Mr Mahmood's statement of 4 February 2003 was correct with reference to the Beckham story.

The newspaper pointed out that a questionnaire given by the police to the newspaper on 27

February 2003 asked for details of the breakdown of the £10,000 payment which indicated that the police must have known prior to that time that a specific payment had been made.

The Attorney General accepted that the police were aware of the payment of £10,000 to Mr Gashi by 21 February 2003 and probably a few days before. The newspaper pointed out that one of the defence lawyers was on record (in The Times on June 17 2003) as saying that she had mentioned the payment to the authorities in January 2003. Charges were in fact brought on 24 February 2002.

The Commission was unable to resolve the question of when notice was given – and its relevance to this particular case – as the Attorney General was unable for legal reasons to release the particular statements to it. The relevant requirement in the 2002 Code provided that notice had to be given of the payments in respect of a witness actually cited to give evidence in criminal proceedings. What can be said is that by the date that charges were brought in respect of the Beckham kidnap plot and Mr Gashi had consequently become a witness in those proceedings, the police were aware of the payment to Mr Gashi.

As a matter of general policy, the Commission recommends that any newspaper involved in a payment to a potential witness where proceedings are likely or foreseeable should seek to document the payment and surrounding details if it is possible to do so and to ensure that full details of the payment are notified in writing at the earliest possible time. At the time of the payment or offer of payment in appropriate cases the potential witness should be informed in writing, if possible, that full details of the payment would be given to the prosecution and the defence at an appropriate time.

So far as notification to the defence is concerned this may be satisfied in appropriate cases, such as in respect of potential witnesses, by written notice to the police or the prosecution for onward transmission to the defence. In this particular instance the Commission also noted that the police had asked the newspaper specifically not to contact Mr Gashi.

Was the newspaper responsible for the kidnap charges being dropped?

The Attorney General made it clear that the payment to Mr Gashi was a factor, but not the only factor, in the decision to withdraw the charges against the men concerned. Explaining the position to the court in June 2003 prosecuting counsel referred to the payment and the unreliability of Mr Gashi as a witness as being the main reasons for the decision not to continue with the charges. Counsel also said:

“In a statement made by another employee of the News of the World dated 13 May, in other words a couple of weeks ago, we discovered that the cheque had been issued by the News of the World on 1 November in other words the day before the arrests were made on Saturday 2 November and also suggested, of course, that authorisation that payment must have taken place days earlier.”

The newspaper vigorously contested what it saw as an implication arising from this statement and, in particular, the use of the word “discovered”. The newspaper told us that the statement of 13 May 2003 from one of its employees was merely the formal production of a letter dated 13 March 2003 replying to the questionnaire supplied by the police on 27 February 2003. The implication that the newspaper had disclosed information well after charges had been brought and which led to the trial on those charges being aborted was quite wrong. The Attorney General said that prosecuting counsel was correct in referring to the 13 May statement but that any implication that the police had not been aware of the contents of that statement before that date would be incorrect.

The Commission has already noted that the Attorney General has stated that the payment to Mr Gashi was only one factor in the decision to withdraw the charges. The police had known about the payment to Gashi since at least early February and, the newspaper contended, well before. Subsequent developments need to be viewed in that context.

Conclusions

1. The payment made by the newspaper to Mr Gashi took place before current court proceedings commenced and was, therefore, not in breach of the Code.
2. There was no breach of Clause 16 (ii) of the 2002 Code which relates to payments to criminals as the payment to Mr Gashi for the Beckham kidnap story had no connection with his conviction.
3. Subject to the qualifications set out above regarding the notice provisions, the newspaper had satisfied the main provisions of Clause 16 (i) of the 2002 Code.
4. The Commission is grateful to the Attorney General for patiently answering a large number of questions put to him. The Commission recommends that in future the Attorney General and the Commission liaise more closely at the earliest possible time to deal with any investigations which need to take place. Arrangements are being made for a meeting to discuss co-operation in the near future.
5. As a matter of general guidance, the Commission believes it is important that newspapers or magazines give prompt notification to the relevant authorities of any payments made to potential witnesses. Full details of any payment made or contract entered into should be set down, if possible, in writing and the publication should give the necessary notification in writing. The potential witness should be informed in writing, if possible, that details of the payment would be made to the prosecution and the defence at an appropriate time.
6. The requirement to inform the defence may be satisfied in appropriate cases by notification to the prosecution for onward transmission to the defence.

Decision issued 19/09/2003