

PCC Investigation v The Guardian

Clauses noted: 16

The Press Complaints Commission has investigated whether material contained in an article published in The Guardian on 7 April 2003 headlined "As a con, he's just a beginner" was obtained in breach of Clause 17 (Payment to criminals) of the Code of Practice.

The Commission found a breach of the Code.

The article, published in the newspaper's G2 section, was the diary of a prisoner named John Williams who was in HMP Hollesley Bay at the same time as Jeffrey Archer. The piece detailed Mr Williams's encounters with Archer, and included information about Archer's routine and how other prisoners viewed him. The Commission wrote to the newspaper to ask whether the author had been paid and, if so, for an explanation of the public interest value of the material and why it was necessary to pay for it.

The newspaper replied that it had paid Mr Williams the standard journalistic fee, explaining that he is a published author and earns his living as a writer. Regarding the public interest, the newspaper said that the circumstances in which Lord Archer had been held in prison had attracted considerable publicity with allegations of preferential treatment. Publishing Mr Williams's diary was a unique opportunity to reveal the true story of how he had really been treated and how he had behaved in prison. New information had therefore been made available to the public, including material that was at odds with Archer's own description of the harshness of prison life which was published in a book. The newspaper pointed to previous PCC rulings that made clear that the Code is not designed to prevent "all those who have ever been convicted of a crime from being paid for their story in every set of circumstances" and argued that to find a breach of the Code would be to interfere with the newspaper's and Mr Williams's right to freedom of expression under the Human Rights Act 1998.

Adjudication

The Commission agreed with the newspaper that the Code is not intended to prevent all people who have been convicted of a crime from being paid by newspapers in all circumstances – not least because the law recognises that people can be rehabilitated and convictions, in some cases, spent. Neither is the Code designed to prevent all convicted or confessed criminals from writing about subjects that are entirely unrelated to their crime. Furthermore, it would be unreasonable for the Code to be interpreted so as to outlaw payments to prisoners or former prisoners who write about their perspective of prison policy and conditions.

The Commission took fully into account the right of The Guardian and Mr Williams to freedom of expression, namely that there should be an interference with their right to free speech only if necessary to advance some other legitimate public interest.

The Commission wished to make it clear that its concern here was not that Mr Williams had been paid for an article commenting generally on prison conditions from the perspective of the prisoner (which may well be legitimate in the public interest). Rather its concern was that he appeared to have been paid for an opportunistic article based on the notoriety of Jeffrey Archer, with whom Mr Williams had come into contact only because of Mr Williams's own crime and subsequent punishment. The Commission took the view that such an article fell within the meaning and purpose of Clause 17.

In relation to the question of the public interest, the information that the newspaper had claimed was new – including reports of prisoner resentment at Archer's treatment, the allegation that a prisoner was moved to another room to make way for him and the fact that he had to eat the same food as the other prisoners – was not in the Commission's view of sufficient significance and added nothing

of public interest to justify breaching the strict terms of the Code. This point was seemingly reinforced by the newspaper's action of presenting the information in a feature item rather than as a news story. The Commission dismissed the newspaper's argument that the material dispelled any impression that Archer was still enduring the harsh conditions that he had outlined in his prison diary, which was published as a book. That book related to an entirely different, and higher security, prison. It would have been obvious that conditions would have varied.

The Commission noted that the newspaper had pointed to a string of articles in other newspapers about the supposedly preferential treatment that Jeffrey Archer had received in prison, and it agreed that that subject was a matter of legitimate comment. However, that was not the case here. Furthermore, the newspaper had not suggested that any of the information in these numerous other articles had been obtained by paying criminals. This simply illustrated to the Commission that it was quite possible to get information about the subject without resorting to paying criminals for it. The Commission did not therefore believe that the newspaper had made out a case that payment was necessary to obtain the sort of observations contained in the article. At all times the newspaper and Mr Williams remained free to publish the article concerned in accordance with the terms of the Code.

The Commission considers that payments to criminals by newspapers on issues directly relating to their own crimes or stemming from them are only justifiable in circumstances where the right to freedom of expression guaranteed by Article 10 of the Convention on Human Rights is to be preferred on public interest grounds. In this case the justification was unconvincing for the reasons given and the Commission found a breach of the Code.

Relevant rulings

Barlow v The Daily Telegraph, 1999

Collie v Sunday Sport, 2000

Adjudication issued 2003