



*From the Director*

Michael J Todd  
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7<sup>th</sup> June 2006

*Dear Mr Todd,*

Thank you very much for agreeing to see me next Thursday.

I thought it might be helpful if I wrote in advance about the issue on which I would be grateful for your thoughts. It was suggested that with your experience of the media and position in ACPO, you would be able to give the best advice about how we might proceed.

My concern is about the issue of payments by the press to witnesses in criminal trials. The PCC rules on this are clear and state that:

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.

This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

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 no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

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

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While the rules contained in the second and third paragraphs may be breached if there is a legitimate public interest reason, the first paragraph contains no such defence. You will see that in cases where a not guilty plea has been entered there is an absolute ban on offering or making a payment to witnesses until the court has announced its verdict. This firm position was reached in 2003 following a lengthy consultation with the department of the then Lord Chancellor, Lord Irvine of Lairg.

I have recently been approached on a confidential basis by a national newspaper following the trial of those accused of murdering Mary-Ann Leneghan in Reading. It was concerned that, before the court had announced its verdict, the police were soliciting bids from newspapers for the story of Mary-Ann's friend, who was a survivor of the attack. While there is no doubt that the motives for this were honourable – the police were apparently simply trying to ensure that the girl was not besieged by the media at the end of the trial – one inadvertent result was that several national newspapers were encouraged to break their rules on paying witnesses, for which there is no defence.

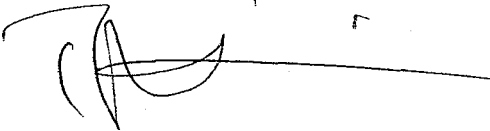
I understand that a similar thing happened with your own force a couple of years ago during the trial of Toby Studabaker, doubtless for similar reasons. I am certainly not criticising the police in either case. The problem for us is that under this system any newspaper that makes an offer before the conclusion of a trial to pay someone for a story – regardless of whether the witness has finished giving evidence, and regardless of whether the police have invited offers from newspapers – is guilty of breaching the Code. As the PCC's job is to prevent breaches of the Code from occurring – and put them right if things do go wrong – you will appreciate the nature of my concern.

I am therefore looking forward to discussing how we might address this problem going forward, so that the interests of victims, the press and the police are well balanced and that PCC rules are not broken.

I am sending a copy of this letter to Paul Horrocks, who has kindly agreed to join us at the meeting wearing (I think) all three of his relevant hats – that of editor, member of the Press Complaints Commission, and Vice-President of the Society of Editors.

I look forward to seeing you next week.

With kind regards.

*Yours sincerely*  


Tim Toulmin

cc. Paul Horrocks

