



From the Director

Consultation on making sure that crime doesn't pay
Home Office
Criminal Law Policy Unit
2nd Floor, Fry Building
2 Marsham Street
London SW1 4DF

8th February 2007

A handwritten signature in black ink, appearing to read "Sir Christopher Meyer".

I am writing on behalf of the Press Complaints Commission to respond to the consultation paper on payment to criminals.

Self-regulation is, as your paper suggests, an effective means of ensuring that criminals do not receive unjustified payment for information about their crimes from newspapers and magazines. The hallmarks of self-regulation – its flexibility and capacity to apply both the spirit and the letter of the rules – are well suited to dealing with the complexities of an issue such as this where there will be a number of competing rights, the subtleties of which would be difficult to capture in more rigid, statutory rules.

Other media organisations have explained very clearly why there are several problems inherent in the proposals for the government to do anything in this area, not just practical ones but also in terms of desirability and the disproportionate nature of what is suggested. I am sure it is not necessary therefore to duplicate their arguments. Instead, the purpose of this submission is simply to underline very forcefully that, contrary to the assertion in the paper, moves to introduce a further layer of regulation which would apply to newspapers and magazines would compromise and seriously undermine the Commission's ability to police this area effectively.

CHAIRMAN
Sir Christopher Meyer

MEMBERS OF THE COMMISSION
Matti Alderson
Roger Alton
Paul Dacre
Spencer Feeney
Colleen Harris MVO, FRSA
Vivien Hepworth
Peter Hill
Simon Irwin
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Adam Phillips
Eve Salomon
Dianne Thompson CBE
Derek Tucker
The Right Rev.
John Waine KCVO
Rear Admiral
Nick Wilkinson CB

DIRECTOR
Tim Toulmin



This is one area where the PCC can be proactive in investigating its own enquiries without waiting for a complaint. The number of such 'own volition' investigations or complaints that the Commission has had to deal with is very low – less than 30 in the last ten years. The PCC believes that this shows that there is a culture of compliance throughout the industry with the rules set out in the Code of Practice, Clause 16 of which says:

- i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.
- ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

The consultation paper appears implicitly to accept that the manner in which the Commission has decided where the boundaries of acceptability lie in making criminal payments is about right. It is a difficult balancing act but one where a mature body of case law, which fleshes out the requirements of the Code, has now been developed. The Commission's formal rulings set down principles which guide the whole newspaper and magazine industry. Such principles relate as much to a £100 payment as to one of £100,000. These are well understood within the industry and, as I have said, there is no evidence at all that there is a culture of disregarding them. Breaches of the Code are rare.

But the Commission's approach is threatened by the proposals to introduce further restrictions and rules which would apply to payments by the press to criminals. There are two main reasons for this. First, if the payment was for more than £10,000 – the figure mentioned in the consultation paper as a possible threshold over which any regulations would apply (or any other arbitrary figure) – the editor concerned would naturally be reluctant to co-operate with the Commission if he or she thought that in doing so they might incriminate themselves in relation to a further inquiry. It would be more difficult for the Commission to oblige editors to co-operate if they were faced with parallel but non-identical investigations where one inquiry was rooted in legal regulations. This would inevitably undermine the Commission's ability to continue applying the Code consistently and fairly to all publications regardless of the size of the payment.



Second, the scope for confusion is clear. The PCC and the agency enforcing the government's rules might come to completely different conclusions about the acceptability of a payment. Compliance with either set of rules in these circumstances would become a minefield. Such uncertainty would inevitably also have an impact on smaller payments as parallel systems of case law relating to the legitimacy of payments were developed. Editors and their advisers would be placed in a difficult position knowing which set of rules and principles to apply, and the Commission's informal role in giving advice to publications before payments are made and stories published would be thrown into doubt.

These are both legitimate concerns. The danger is that, in trying to address a mischief which the paper itself accepts as being unusual and not clear cut, the measures become totally counter-productive in making the existing successful self-regulatory arrangements far more difficult to apply. There is no evidence of a problem so great that it requires a new set of statutory measures, and we would urge the government not to impose any.

Information on specific Commission rulings in this area – which I assume you have seen given the references to the Commission in the paper – can be found on our website, www.pcc.org.uk. If you would like any further information, then please do not hesitate to let me know.

With kind regards.

Yours sincerely
Tim Toulmin

Tim Toulmin



ANNEX B

RESPONSE PROFORMA

Thank you for taking time to read the consultation paper and to complete this questionnaire. The information you provide will be attributed to you and/or your organisation and made publicly available unless you specifically indicate that you want your response to be treated confidentially.

Would you like this response to be kept confidential?

Yes No

Section A - About You

Name: Tim Toulmin

Address: Press Complaints Commission, Halton House, 20-23 Holborn, London, EC1N 2JD

Email: tim.toulmin@pcc.org.uk

Are you replying on behalf of an organisation?

Yes

No (go to Section C)

If you would like us to acknowledge receipt of your response, please tick this box

Section B – Your Organisation (if applicable)

Name of your organisation:

Is your organisation a:

Registered Body Yes No

Umbrella Body Yes No

Other (Please Specify):

What is your position in this organisation?

Director

Section C Consultation questions
General Principles

Q1: In principle do you think that a new measure is necessary? Please say why or why not.

Yes No

Comments: Please see accompanying letter for reasons why we resist the introduction of new measures. As we believe it would be inappropriate and counter-productive to bring in new measures, it is not relevant for us to answer some of the questions below.

Q2: (a) Do you think that any new measure should cover all forms of publication?

Yes No

Comments:

Q3: Do you think that a new measure should apply to all criminals, regardless of the seriousness of their offences? Please say why or why not.

Yes No

Comments: see letter

Q4: (a) If you think that there should be a seriousness threshold, do you think that this should be based on the maximum penalties for offences?

Yes No

(b) If so, what do you think the maximum penalty threshold should be?

Years

(c) Do you think that there should also be a requirement for the actual sentence imposed to be custodial?

Yes No

Comments:

Q5: Is there a better way of applying a seriousness threshold?

Yes No

Comments:

Q6: (a) Do you think that any new measure should be limited to criminals writing, or contributing to, accounts of their own crimes?

Yes No

(b) If not, what other types of publication do you think should be covered?

Comments:

Q7: (a) In principle, do you think that any new measure should extend to publications about lesser offences that are associated in some way with a much more serious crime and to other offences taken into account on sentencing?

Yes No

(b) If so, should any maximum penalty threshold as described above apply equally to the lesser offence(s) and others taken into account on sentencing?

Yes No

Comments:

Q8: (a) Do you think that there should be a public interest test?

Yes No

(b) If so, how do you think it should be defined?

Comments:

Q9: Do you think that publications about alleged miscarriages of justice should not explicitly be exempt?

Yes No

Comments:

Options

Q10: (a) Do you think that receiving a payment should be a criminal offence?

Yes No

(b) If so, do you think that those who assist the receipt of the payment should be liable for secondary participation offences and to receive the same penalty as the person receiving the payment?

Yes No

Comments:

Q11: (a) Do you think that making a payment should be a criminal offence?

Yes No

(b) If so, should this be instead of or in addition to an offence of receiving a payment?

Yes No

(c) If both, do you think that those who make such payments (e.g. publishers) should be criminally liable both as secondary participants in an offence of receiving payment and as principal offenders who commit an offence of making a payment?

Yes No

Comments:

Q12: Do you think that secondary participants, and principal offenders other than the criminal, should still be allowed to profit from any publication?

Yes No

Comments:

Q13: In principle, do you think that a civil scheme would be preferable to introducing new criminal offences? Please give reasons.

Yes No

Comments:

Q14: Do you think that civil proceedings under a new scheme should only be taken against the criminal and not anyone else?

Yes No

Comments:

Q15: Do you think that a recovery order should extend to payments from which criminals have received indirect benefits?

Yes No

Comments:

Q16: Do you think that, if there is no direct or indirect benefit to the criminal, payment should not be recoverable?

Yes No

Comments:

Q17: (a) Do you think that the Assets Recovery Agency or Civil Recovery Unit should bring any civil proceedings to recover profits from publications about crime?

Yes No

(b) If not, what person or agency do you think should be able to bring such proceedings?

Comments: No agency should be so empowered.

Q18: (a) Do you think there should be a limit below which a criminal's profit should not be pursued?

Yes No

(b) If so, what do you think the limit should be?

£

Comments:

Q19: (a) Do you think there should be a requirement for the Assets Recovery Agency or Civil Recovery unit to be informed of any contract with a convicted criminal which allows him to profit from the publication of a book or other work describing his crime?

Yes No

(b) If so, who do you think should be required to inform the Agency or Unit of such a contract, the publisher or the criminal?

Publisher Criminal

(c) What, if any, sanction do you think should apply for failure to inform?

Comments:

Q20: a) Do you think that the Assets Recovery Agency or Civil Recovery Unit should have discretion as to when to bring recovery proceedings

Yes No

(b) If so, do you agree with the suggested criteria?

Yes No

Comments:

Q21: How do you think net profits should be defined?

Comments:

Q22: Do you think that the court should be able to determine what proportion of the benefit the criminal obtains is derived from an account of his crime?

Yes No

Comments:

Q23: (a) Do you think that the limitation period should be 12 years from the date on which the Assets Recovery Agency or Civil Recovery Unit becomes aware of the cause of action?

Yes No

(b) If not, what do you think it should be?

Comments:

Q24: (a) Do you think that any new provision should cover all future publications about crimes regardless of whether the crimes were committed before the provision came into force or afterwards?

Yes No

(b) If not, how would you limit the coverage?

Comments:

Q25: (a) Do you think that self-regulation is an effective means of preventing profit?

Yes No

(b) If so, do you think that extending self-regulation to other media is preferable to options 1 and 2?

Yes No

Comments: We think the status quo is perfectly suitable.

Q26: In practical terms, do you think doing nothing is justified?

Yes No

Comments: There is no evidence that any measures are necessary. Introducing further rules risks severely undermining the current self-regulatory arrangements in relation to the press which are working well (see letter). This element of counter-productivity has not been considered by the consultation paper but it is a very real risk.

Partial Regulatory Impact Assessment

Q27: (a) Has your organisation ever contracted to pay a convicted criminal in connection with a book, article or other work describing their crime?

Yes No

(b) If yes, in how many cases was such payment made, what type of crime had been committed and what were the sums involved?

Number of cases

Type(s) of crimes

Amounts(s) £

(c) Was payment necessary to secure the criminal's cooperation?

Yes No

Q28: What do you think would be the likely cost of establishing and administering a completely new self-regulatory body in the film or publishing sector?

Comments:

Q29: What do you think would be the likely cost to your organisation of establishing and administering a self-regulatory regime in the film or publishing sector?

Comments:

Q30: Do you think that any of these proposals would affect your organisation substantially more than others? If yes, please explain how.

Yes No

Comments: As outlined above and in our letter, we have substantial and legitimate concerns that options 1 and 2 would interfere with our ability to police the press Code successfully in this area.