

Editors' Code of Practice Committee

Private and confidential

Minutes of the Code Committee meeting held at the offices of the Newspaper Society, Great Russell Street, Bloomsbury, on Thursday, 4 March, 2004 at 10.30am.

Present:

Leslie Hinton, <i>Chairman</i>	(NPA)	Perry Austin-Clarke	(NS)
Alan Rusbridger	(NPA)	Neil Benson	(NS)
Neil Wallis	(NPA)	Mike Gilson	(NS)
John Witherow	(NPA)	Douglas Melloy	(NS)
Peter Wright	(NPA)	Ian Murray	(NS)
James Bishop	(PPA)	Derek Tucker	(SDNS)

Attending:

Sir Christopher Meyer (PCC Chairman); Tim Toulmin; (PCC Director); Ian Beales (*Secretary*).

Apologies: Paul Potts (NPA)

Welcome:

The chairman welcomed Neil Benson, Alan Rusbridger and Peter Wright, as new members, and congratulated Tim Toulmin on his appointment as PCC Director.

Minutes:

The minutes of the meeting held on 24 September 2003 were approved and signed.

Media scrums

The secretary reported that a system had been agreed to harmonise arrangements with broadcasters for dealing with media scrums. The PCC would have a co-ordinating role. It was agreed a press release should be issued announcing the plan.

Anonymity of suspects: Guidance note

The chairman and secretary reported on a meeting and correspondence with Home Office Minister Paul Goggins on anonymity of suspects. The Code committee had undertaken jointly with the PCC to issue a guidance note, and incorporate advice in the forthcoming handbook to the Code. A draft guidance note was tabled. It was agreed the chairman would continue to liaise with Mr Goggins.

Data Protection: Guidance Note

It was agreed that the PCC would, without the need for further reference to the committee, produce a guidance note setting out how the law on Data Protection interacted with the PCC and the Code.

Metropolitan Police rewards protocol

The committee confirmed the secretary's earlier response to the Metropolitan police that it would be inappropriate to incorporate into the Code the suggested protocol on offering rewards in criminal investigations. The secretary would formally notify the police of this.

Editors' Code of Practice Committee

Representations on the Code (*summaries circulated*)

Accuracy and Discrimination: [redacted] (26.02.04):

The committee rejected [redacted] suggestions that the Code include corrections for *all* - rather than *significant* - errors and to protect groups under the discrimination clause.

Intrusion into grief: [redacted] (10.12.03):

It was agreed no change was needed as the Code already allowed the PCC to decide whether identifying a dead person constituted an intrusion into grief.

Discrimination:

❖ [redacted] (29.11.03): *Promoting community cohesion.*

The secretary reported that [redacted] and [redacted] were members of a Home Office working party considering ways of promoting community cohesion. [redacted] had written urging that the Code - subject to a public interest defence - put a responsibility on editors to encourage communities to live in harmony. [redacted] said action might be needed, in the Code or Handbook, to pre-empt calls from within the working party for legislation in this area.

❖ [redacted] (03.03.04 - *not circulated*)

[redacted] asked that the Discrimination clause be amended both to encourage editors to consider the effect language and tone of reports had on inciting racial tensions, and to avoid negative stereotyping of groups such as asylum seekers, gypsies and travellers. She said the Accuracy clause should be tighter to *ensure* reports reflected the status of those concerned.

❖ [redacted] (02.02.04) *Discrimination clause: Include groups*

[redacted] believed groups, such as gays suffering homophobic comment, were unprotected.

❖ These suggestions, along with [redacted] related points (see below), were considered together. The committee felt it would be unrealistic for the Code to require publications to promote ideals, which would be a matter for editors' discretion, or to be widened to include groups, which could limit freedom to comment. Incitement to hatred was already covered by the law and the committee would need to be vigilant if further legislation was proposed, because of the risks of encroaching on freedom of expression. While the handbook would inevitably look at some related wider issues, in the light of PCC guidance and case-law, it would be wrong to change the Code.

[redacted] *Coverage of mental health patients*

It was agreed that, while no change was needed to the Code, coverage would be reviewed in the handbook, which would automatically incorporate, re-emphasise and update previous guidance. The chairman would write informing [redacted] of this.

Conscience clause

[redacted] *Incorporate a conscience clause*

The committee reiterated the decision, taken at its previous meeting, that a conscience clause was not needed as the responsibility for ensuring adherence to the Code rested largely with editors. The Code Review would re-emphasise this.

Privacy for children

[redacted] *photographing children in public places*

[redacted] following publication of pictures of his toddler son, felt the Code's "fairly firm strictures" on protecting children were undermined by the apparent assumption that no one could expect privacy while on a suburban street. The committee decided this was a misreading of the Code, which specifically prohibited the use of pictures taken *on public or private property where there is a reasonable expectation of privacy*. It was agreed the chairman should write to [redacted] citing examples - such as Paul McCartney in a cathedral - where the PCC had accepted it was reasonable to expect privacy in public places.

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Anonymity for letter writers

[redacted] reiteration of previous suggestion

[redacted] repeatedly challenged the rejection of his suggestion that letter writers should be allowed anonymity only if there was a risk of intimidation or persecution. The committee reiterated that this was for editors' discretion. The chairman would write advising him of this.

General

[redacted] Code Review suggestions. (03.03.04 - not circulated)

[redacted] suggestions included: that corrections and apologies should be published with *equal* – rather than *due* – prominence; that the Code should require newspapers to take special care, when publishing stories about people arriving from abroad, to delineate between asylum-seekers, refugees and migrants; that stories concerning a person's sexual orientation be published only with consent, or when in the public interest; that the words *public interest* be changed to public *benefit*. Other recommendations covered newspaper reports of legal cases against themselves; clarifying a fair opportunity to reply, and a requirement for editors to ensure that long-lens pictures had been taken in a public place. The points were discussed as part of the Review, but no specific changes were made.

The Code Review

The Committee considered the Draft 2 Revised Code and notes circulated by the secretary, together with members' amendments.. The following substantive changes were agreed:

In the Preamble: to delete as unnecessary a phrase describing the Code as *legally valid, yet non-legalistic in approach and founded on conciliation and arbitration.*

Clause 1iv (Accuracy): to insert that publications should report the outcome of defamation actions against them *unless an agreed settlement states otherwise.*

Clause 4iii (Harassment): after several members raised concerns at the lengths to which editors need go to ensure compliance with the Code, it was agreed to add the words *take care not to use non-compliant material.*

Clause 5 (Intrusion into grief or shock): a suggested sub-clause covering suicide reporting was deleted, after some members expressed concerns that this was creating a special category which was unnecessary – in that these cases would be covered under the existing sub-clause – and anomalous. It was agreed that some reference to imitative suicide might be considered for inclusion in the handbook.

Clause 6 (Children): There was considerable discussion over the new draft *sub-clause 6i* which would have extended the protection currently available to children and young people at school to include school-leavers up to the age of 18. While some members found the current wording was inconsistent, it was felt that widening the protection to all young people at an age when they could work, marry and conduct adult lives would be unrealistic. It was agreed to revert to the existing sub-clause 6i, which, while not perfect, had performed reasonably well.

The Public Interest: Concern was raised that a draft sub-clause widening the public interest definitions to include *communicating information which the public has a right to know and which the press has a legal, social or moral duty to publish* was misleading in that it suggested the press had legal, social and moral obligations, which was not the case. The sub-clause was therefore amended to include only.....*which the public has a right to know and the press to publish.* It was also felt the sub-clause referring to *the public interest in freedom of expression itself*, should be split from the reference to the PCC *considering the extent to which material is in the public domain, or will become so, making non-publication perverse.*
(NOTE: THESE HAVE NOW BEEN RENUMBERED AND RE-SEQUENCED IN THE FINAL DRAFT BELOW – SECRETARY).

Thanks: The chairman thanked the secretary for his work in producing the Draft Review.

Code Handbook: The secretary hoped a draft of the handbook would be available by May.

Next meeting: It was left to the chairman and secretary to call the next meeting.

Editors' Code of Practice Committee

Editors' Code of Practice: Final Draft (revisions italicised)

The Press Complaints Commission is charged with enforcing the following Code of Practice which was framed by the newspaper and periodical industry and is ratified by the Press Complaints Commission.

Existing Code

The Preamble

All members of the press have a duty to maintain the highest professional and ethical standards. This code sets the benchmark for those standards. It both protects the rights of the individual and upholds the public's right to know.

The Code is the cornerstone of the system of self-regulation to which the industry has made a binding commitment. Editors and publishers must ensure that the Code is observed rigorously not only by their staff but also by anyone who contributes to their publications.

It is ~~essential to the workings of~~ an agreed code that it be honoured not only to the letter but in the full spirit. The Code should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it prevents publication in the public interest.

It is the responsibility of editors to co-operate with the PCC as swiftly as possible in the resolution of complaints.

Any publication which is criticised by the PCC under one of the following clauses must print the adjudication which follows in full and with due prominence.

1. Accuracy

- i) ~~Newspapers and periodicals~~ must take care not to publish inaccurate, misleading or distorted material including pictures.
- ii) ~~Whenever it is recognised that~~ a significant inaccuracy, misleading statement or distorted report ~~has been published~~, it must be corrected promptly and with due prominence.
- iii) ~~An apology must be published whenever appropriate.~~
- iv) Newspapers, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- v) ~~A newspaper or periodical~~ must report fairly and accurately the outcome of an action for defamation to which it has been a party.

(276 words)

Final Draft Revised Code, 2004

The Code

All members of the press have a duty to maintain the highest professional standards. This Code sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.

It is essential *that an* agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it *constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.*

It is the responsibility of editors and publishers to ensure the Code is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications.

Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.

1. Accuracy

- i) *The Press* must take care not to publish inaccurate, misleading or distorted information, including pictures.
- ii) A significant inaccuracy, misleading statement or *distortion* once recognised must be corrected, promptly and with due prominence, *and - where appropriate - an apology published.*
- iii) *The Press*, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, *unless an agreed settlement states otherwise.*

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Editors' Code of Practice Committee

2. Opportunity to reply

A fair opportunity for reply to inaccuracies must be given to individuals or organisations when reasonably called for.

3. *Privacy

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent

ii) ~~The use of long lens photography to take pictures of people in private places without their consent is unacceptable.~~

Note - Private places are public or private property where there is a reasonable expectation of privacy.

4. *Harassment

i) Journalists and photographers must ~~neither obtain nor seek to obtain information or pictures through intimidation, harassment or persistent pursuit~~

ii) ~~They must not photograph individuals in private places (as defined by the note to clause 3) without their consent; must not persist in telephoning, questioning, pursuing or photographing individuals after having been asked to desist; must not remain on their property after having been asked to leave and must not follow them.~~

iii) ~~Editors must ensure that those working for them comply with these requirements and must not publish material from other sources which does not meet these requirements.~~

5. Intrusion into grief or shock

In cases involving personal grief or shock, enquiries must be carried out and approaches made with sympathy and discretion. Publication must be handled sensitively at such times but this should not be interpreted as restricting the right to report judicial proceedings.

6.* Children

i) Young people should be free to complete their time at school without unnecessary intrusion.

ii) Journalists must not interview or photograph a child under the age of 16 on ~~subjects involving the welfare of the child or any other child in the absence of or without the consent of a parent or other adult who is responsible for the children.~~

iii) Pupils must not be approached or photographed while at school without the permission of the school authorities.
(324)

2. Opportunity to reply

A fair opportunity for reply to inaccuracies must be given when reasonably called for.

3. *Privacy

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, *including digital communications*. Editors will be expected to justify intrusions into any individual's private life without consent.

ii) *It is unacceptable to photograph individuals in private places without their consent.*

Note - Private places are public or private property where there is a reasonable expectation of privacy.

4. *Harassment

i) Journalists must *not engage in* intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.

iii) Editors must *ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.*

5. Intrusion into grief or shock

i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not *restrict* the right to report *legal proceedings, such as inquests.*

6.* Children

i)) Young people should be free to complete their time at school without unnecessary intrusion.

ii) *A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.*

iii) *Editors should generally avoid publishing, without consent, material about an identifiable child which adversely affects his or her welfare.*

iv) Pupils must not be approached or photographed at school without the permission of the school authorities.
(277)

Editors' Code of Practice Committee

iv) ~~There must be no payment to minors for material involving the welfare of children, nor to parents or guardians for material about their children or wards, unless it is demonstrably in the child's interest.~~

v) ~~Where material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his or her parents or guardian.~~

7. *Children in sex cases

1. ~~The press must not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims or as witnesses.~~

2. ~~in any press report of a case involving a sexual offence against a child -~~

i) ~~The child must not be identified.~~

ii) ~~The adult may be identified.~~

iii) ~~The word "incest" must not be used where a child victim might be identified.~~

iv) ~~Care must be taken that nothing in the report implies the relationship between the accused and the child.~~

8. *Listening Devices

~~Journalists must not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.~~

9. *Hospitals

i) ~~Journalists or photographers making enquiries at hospitals or similar institutions must identify themselves to a responsible executive and obtain permission before entering non-public areas.~~

ii) ~~The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.~~

10. *Reporting of crime.

(i) ~~The press must avoid identifying relatives or friends of persons convicted or accused of crime without their consent.~~

(ii) ~~Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of, crime. This should not be interpreted as restricting the right to report judicial proceedings.~~

(294)

v) *Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.*

vi) *Editors must not use the fame, notoriety or position of a parent or guardian as justification for publishing details of a child's private life.*

7. *Children in sex cases

1. *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.*

2. *In any press report of a case involving a sexual offence against a child -*

i) *The child must not be identified.*

ii) *The adult may be identified.*

iii) *The word "incest" must not be used where a child victim might be identified.*

iv) *Care must be taken that nothing in the report implies the relationship between the accused and the child.*

8. *Hospitals

i) *Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.*

ii) *The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.*

9. *Reporting of crime

(i) *Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.*

(ii) *Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.*

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11. *Misrepresentation

~~i) Journalists must not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge.~~

~~ii) Documents or photographs should be removed only with the consent of the owner.~~

~~iii) Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means.~~

12. Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and, ~~by law~~, they are free to do so.

13. Discrimination

~~i) The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or disability.~~

~~ii) It must avoid publishing details of a person's race, colour, religion, sexual orientation, physical or mental illness or disability unless these are directly relevant to the story.~~

14. Financial Journalism

~~i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.~~

~~ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.~~

~~iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.~~

(256)

10. *Clandestine devices and subterfuge

i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs.

ii) 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.

11. Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

12. Discrimination

i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.

ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13. Financial journalism

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iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

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Editors' Code of Practice Committee

15. Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

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.

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.

17.* Payment to criminals

Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.

(301)

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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.

16.* Payment to criminals

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.*

(335)

Editors' Code of Practice Committee

The public interest

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

1. The public interest includes:

- i) Detecting or exposing crime or a serious misdemeanour.
- ii) Protecting public health and safety.
- iii) Preventing the public from being misled by some statement or action of an individual or organisation.

2. ~~In any case where~~ the public interest is invoked, the Press Complaints Commission will require a full explanation by the editor demonstrating how the public interest was served.

3. There is a public interest in freedom of expression itself. The Commission will therefore ~~have regard to~~ the extent to which material ~~has, or is about to, become~~ available to the public.

4. In cases involving children editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child

(140)
1593

The public interest

*There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.*

1. The public interest includes, *but is not confined to:*

- i) Detecting or exposing crime or serious impropriety.
- ii) Protecting public health and safety.
- iii) Preventing the public from being misled by an action or statement of an individual or organisation.
- iv) *Communicating information which the public has a right to know and the press to publish.*

2. There is a public interest in freedom of expression itself.

3. *Whenever* the public interest is invoked, the PCC will require editors to demonstrate fully how *the public interest was served.*

4. The PCC will consider the extent to which material is already in the public domain, or will become so, *making non-publication perverse.*

5. In cases involving children *under 16* editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

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1560