

THE PRESS STANDARDS BOARD OF FINANCE LIMITED

Editors' Code of Practice Committee

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Baroness Buscombe
Chairman
Press Complaints Commission
Halton House
20/23 Holborn,
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7 December 2010

Dear Peta

The Code Committee has asked me to reply to your letter of 22 September, with regard to the questions you have raised about payments to defendants in criminal trials, in the context of the Tapui case.

The first point to clarify is that Clause 15 of the Editors' Code of Practice does not, and was never designed to, govern the position of defendants. That Clause was drafted in its current form to address distinct concerns which had been raised in relation to payments to witnesses, not defendants, and the amendments to Clause 15 were approved by the then Lord Chancellor.

The following explanation, which has been drawn from the advice of independent leading counsel (Jonathan Caplan QC) for the Code Committee will, I hope, shed light on the reasons for this distinction:

- Witnesses as a class are persons called by either side to give evidence of fact or opinion to assist the fact finder(s) to resolve the triable issues. Their evidence should be truthful and accurate and not purely given out of alliance to the party calling them or influenced by any financial arrangement. It is this latter aspect which gave rise to concern and was highlighted in Lord Chancellor Irving's Consultation Paper on payments to witnesses in 2002, which listed perceived threats. The consultation paper made no mention of defendants.
- A defendant or party would not be described as a "witness" in advance of the trial and, in contrast to the position of a witness, a defendant who goes into the witness box can be expected to give evidence in their own cause.
- As defendants are innocent until proved guilty, they are free to comment on their own case, paid or unpaid, and newspapers are free to publish subject to any reporting restrictions and the laws of contempt and defamation.

The Code Committee considers that there might be occasions when a newspaper might wish to contribute to the defence costs of someone whom it regarded as being falsely or unfairly accused, as in cases involving whistleblowers, such as Sarah Tisdall or Clive Ponting.

The Tapui case: The Code Committee, which notes that this complaint was brought at the instigation of the PCC, is not placed to discuss the particular merits of the Tapui case, nor is that its role. However, it is not a breach of Clause 15 and we understand that the Judge in the Tapui trial made no criticism of the payment, although he was aware of the payment.

Turning to your specific questions, the Code Committee therefore does not believe that it is necessary or appropriate to amend Clause 15 to cover defendants, whatever the stage reached in the criminal proceedings.

However, the issues raised by the Commission suggest some clarification might be desirable. This could be addressed by a new passage in the Clause 15 section of the online version of *The Editors' Codebook*. I do hope the Commission finds this useful. We will, of course await your response before making any amendment to the Codebook.

Yours sincerely

Ian Beales
Secretary, Editors' Code Committee