

Mr Keith Lee v The Daily Telegraph & The Sunday Telegraph

Clauses noted: 1, 13

Mr Keith Lee complained to the Press Complaints Commission about a series of investment recommendations in the Questor column, which appears in The Daily Telegraph and Sunday Telegraph. He was concerned about the frequency with which certain shares - in which the column's editor had a stated financial interest - were recommended. The Commission determined to examine the matter under the terms of Clause 13 (Financial journalism) of the Editors' Code of Practice.

The complaint was not upheld.

The Questor column is a regular feature in the newspapers and has been running for almost 50 years. The column gives recommendations on whether to buy, hold or sell particular shares.

The complainant said he was concerned that the Questor editor was publishing excessively frequent "buy" recommendations for certain shares. In particular, the complainant pointed out that shares in JP Morgan Indian investment trust (in which the Questor editor had a stated financial interest) had been "tipped" on nine occasions between 14 January 2009 and 15 April 2010, while Hill & Smith shares had been recommended six times between 28 June 2009 and 10 August 2010. He noted that there was a correlation between the appearance of recommendations for JP Morgan Investment Trust and the traded volume of shares in that stock. The price of the share also tended to rise more steeply than the FTSE 100 index.

In response to the complaint, the newspaper group said that its policy since late 2008 (when the current Questor editor took charge of the column) was to focus Questor on a relatively small pool of securities. This, it said, provided greater interest to the typical reader. In the subsequent period, several shares had been frequently recommended by Questor: in addition to those referred to by the complainant, Petrofac had been mentioned 16 times, Templeton Emerging Markets 14 times and Vedanta 11 times. Decisions about which shares to recommend were made by the Questor editor and the newspaper group's head of business. The fact that the price of shares rose after being tipped by Questor was in no way sinister. It was simply a demonstration that the recommendations made in the column were well-founded. (The newspaper group noted, in response to the example put forward by the complainant, that the value of the JP Morgan fund is not based on the volume of shares traded. It argued that an increase in the volume of shares being traded was likely to cause only small changes in the share price.)

While it was true that the Questor editor retained a personal financial interest in the stock market, the newspaper group said it had always followed strict policies to ensure adherence to the Editors' Code of Practice. It was standard practice for personal financial interests to be declared to the editor (which had been followed in this case). In the interests of transparency, the Questor editor made his financial interests public by making clear in the newspapers themselves when he had a stake in shares he was recommending.

The newspaper group said that, since the current Questor editor started writing for the Telegraph, any share purchases had been made through his share club, in which he owns a 10.3% stake. (This information, apart from the specific size of the journalist's stake in the club, was also included in the disclosures published at the end of the Questor column.) Since he started his role, no shares about which he had written had been sold. Shares in four companies had been bought:

1. Northern Foods shares were purchased on 22 March 2010 (an earlier tranche having been purchased on 20 November 2006 before he took on the Questor editorship). The shares were recommended by Questor on ten occasions between March 2009 and October 2010.
2. National Grid shares were also purchased on 22 March 2010. The shares were tipped ten times between March 2009 and June 2010.

3. HSBC shares were also purchased on 22 March 2010. They were tipped by Questor on six occasions between June 2009 and September 2010.
4. Shares in Avanti Communications were also purchased on 22 March 2010. They were recommended by Questor in January 2010 and again in February 2010.

The current value of Questor's holdings in these shares was:

1. Northern Foods - £388.86
2. National Grid - £500
3. HSBC Infrastructure - £120.05
4. Avanti - £207.70

He also had a holding valued at £451 in JP Morgan Indian, which had been tipped several times, as noted by the complainant. Shares in this investment trust had not been purchased since the beginning of Questor's editorship.

No shares had been bought or sold either shortly before or shortly after they were written about in the column. The shortest gap between shares being purchased and subsequently written about was 29 days (Northern Foods shares having been bought on 22 March then tipped on 20 April).

Consequently, the newspaper group argued that there had been no breach of Clause 13 of the Code of Practice. It said that the Questor editor had acted honestly and reputably in his role.

However, it accepted that it was vital to ensure there could be no doubt about the legitimacy of Questor's activities. As a result, it had decided that Questor would dispose of his stake in his share club and would not buy or sell shares in the future.

Adjudication

It is extremely rare for the Press Complaints Commission to receive a complaint under Clause 13 (Financial journalism) of the Editors' Code of Practice, or for matters to arise that require investigation even in the absence of a complaint.

The only occasion on which a breach of Clause 13 (Financial journalism) was found to have occurred was in relation to the "City Slickers" case of 2000. Afterwards, the PCC introduced specific guidance in the area of financial journalism, which was updated five years ago to take account of the Investment Recommendation (Media) Regulations 2005, which gave effect in UK law to the European Union's Market Abuse Directive.

The Commission wishes to make clear that it remains vigilant in this area. In October 2010, the PCC wrote to relevant executives across the national newspaper industry reminding them of the obligations imposed by the Code of Practice (and the Investment Recommendation (Media) Regulations, as set out in the PCC's guidance). The Commission will, in the New Year, run a seminar on the subject of financial journalism for relevant figures in the industry.

This case provided an opportunity for the Commission to examine the practical effect of the terms of Clause 13 of the Code. It found that the newspaper group had taken steps to adhere to them on this occasion.

The complainant's concern related to the frequent tipping of shares in which the editor of the column where the recommendations appeared (Questor) had a personal financial interest, via membership of a share club. The frequency of recommendations is not something to which the Code of Practice or the PCC's additional guidance makes direct reference. Nonetheless, in relation to writing about shares and securities, there are two key tests and the Commission examined both.

First, the Code says that journalists "must not write about shares...in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or the financial editor".

There was no evidence that the Questor editor had breached this requirement. It was standard practice at the Telegraph newspapers for journalists' financial interests to be declared to the editor and, in Questor's case, personal financial interests were made public at the end of relevant recommendations. This ensured a suitably high level of transparency, and indeed meant that readers could see for themselves the frequency of the recommendations.

Having examined the trades in question, the Commission was not convinced that the financial interest of the Questor editor in the relevant shares could be considered "significant" in the meaning of the Code. It noted that the highest value of shares in any one company was £500.

The second key requirement of the Code is that "journalists 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".

The newspaper group acknowledged that the Questor editor had, in several instances, purchased shares in companies he had written about. Purchases had been made through an investment club in which the journalist had a stake of around 10%. No shares had been sold.

Buying shares is not prohibited by the Code unless they have been written about "recently" or will be written about in the "near future". The Commission's guidance notes that it is impossible to define these terms more precisely without producing loopholes. However, it goes on to make clear that, as best practice, "journalists should not speculate by buying or selling shares on a short-term basis".

In this instance, it did not appear to the Commission that the Questor editor was dealing in shares in a way that amounted to such short-term speculation. The shortest gap between a recommendation and his purchase of the recommended stock was 29 days; and there had been no subsequent sales of any shares.

In all the circumstances, the Commission was satisfied that there had been no breach of Clause 13 (Financial journalism) of the Code.

In this area of journalism (as in others), it is necessary that readers should have confidence in the propriety of the actions of journalists. It was clear to the Commission that the newspaper group had taken seriously the concerns about the Questor column. It noted the Telegraph's decision that the Questor editor would not trade in shares in the future, in order that there could be no question of a conflict of interest. This action (which was volunteered rather than required) underlines the strength of the self-regulatory mechanism in this area, which seeks to promote high standards of accountability.

The complainant had also raised a complaint under Clause 1 (Accuracy) of the Editors' Code. He said that the column regularly made reference to the date on which shares were "first recommended". Yet in fact, the shares had often been recommended before the given date. For instance, he said, on 10 March and 9 May 2010 Questor had made recommendations to buy shares in Hill & Smith and had noted that the shares were "first recommended at 202p on February 7 last". The complainant said that, in fact, the shares had been first recommended by the column in July 2008. He also noted that an item recommending Hill & Smith on 10 August referred to them having been "first recommended at 202p on June 28 last year". Even if the July 2008 recommendation was ignored, there was clearly an error in at least one of these columns.

The newspaper group said that the phrase "first recommended" related to the first recommendation by the current Questor editor. It said this policy made more sense than referring back to a recommendation made by a previous editor, perhaps many years ago. It argued that regular readers of the column would be very well aware of a change in the editorship (the most recent editor having been welcomed in a special feature in November 2008). It did acknowledge that an error had been made in the 10 March and 9 May items when Hill & Smith were said to have been first tipped "on February 7 last". In fact, the August 10 item was correct when it said that the first tip by the current editor of Hill & Smith shares was "on June 28 last year". It apologised for the mistake and corrected the two earlier items online.

It subsequently corrected two further items relating to the recommendation of BP shares, both of which erroneously referred to the shares having been "first recommended" on 4 April 2009. In fact, as was correctly stated in a third recommendation - and as the complainant had pointed out - they had first been recommended on 4 February 2009.

The complainant also said that the Questor column was misleading because it used the FTSE 100 index as a point of comparison for all the shares it recommended, even when it was recommending shares that were not in the FTSE 100.

The newspaper group said that the FTSE 100 index was a sensible benchmark for all recommendations. If different comparisons were employed for different shares, there might equally be claims of distortion. Ultimately, no system was perfect.

Adjudication

The Commission was satisfied that readers would not generally be misled by the fact that references to when shares had "first been recommended" related to their first recommendation by the current Questor editor. Even if readers were not aware of changes in editorship, the "first recommendation" references were simply a point of comparison for readers to consider. The rise and fall of share prices were, of course, publicly accessible and the Commission did not conclude that it was misleading for the newspaper group to regard Questor editorships as discrete periods.

There clearly had been an error in the 10 March and 9 May articles (in which Hill & Smith had been referred to as being first tipped "on 7 February last", which was in fact not the case) but the Commission did not consider that it was a sufficiently significant error to warrant stand-alone correction or formal censure. It took the same view in relation to the errors about when shares in BP had first been recommended. The amendment of the articles online was a suitable way of remedying the inaccuracies. That said, these were clear mistakes and the Commission wished to make clear that editors and financial editors must remain vigilant in ensuring that information they publish is accurate.

The use of the FTSE 100 index as a benchmark for comparing share performance (even in relation to non-FTSE 100 shares) was not misleading either. Readers would generally be aware that some of the shares being written about were not listed in the FTSE 100 and they would, therefore, be able to draw their own conclusions as to the practical use of the index for comparative purposes. Even if they were not aware of this, the Commission did not believe they would be misled by the comparison.

Adjudication issued 16/12/2010