

PRIVATE AND CONFIDENTIAL

PCC PAPER NO. 5183

PRESS COMPLAINTS COMMISSION

The Minutes of the 180th Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 6 July 2011

Present: Baroness Buscombe Chairman
Michael Grade
John Home Robertson
Anthony Longden
Ian MacGregor
John McLellan
Ian Nichol Deputy Chairman
Simon Reynolds
Esther Robertson
Jeremy Roberts QC
Simon Sapper
Michael Smyth
Julie Spence
Ian Walden
Tina Weaver
Peter Wright

In attendance: Stephen Abell Director

The following members of the secretariat attended the meeting as observers: Hannah Beveridge, Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Rebecca Hales, Scott Langham, Ben Milloy, Amber Mun, and Catherine Speller.

1. Apologies

Apologies were received from Lindsay Nicholson.

The Chairman welcomed Jeremy Roberts to his first meeting. The Chairman also welcomed Alison Hastings, consultant to the PCC.

2. Oral report from the Phone Hacking Review Committee

Ian Walden, on behalf of the Phone Hacking Review Committee, updated Commissioners on the Committee's recent work.

A statement was agreed by Commissioners to be published after the meeting.

3. Minutes

The minutes of the meeting held on 25th May were approved as a correct record of the meeting and for publication.

4. Matters arising

(i) Revised guidance note on reporting of sexual offences (PCC Paper No. 5149)

The Chairman welcomed final comments on the amended Guidance Note on the Reporting of Sexual Offences, which had also been shared with the Secretary of the Code Committee. Commissioners agreed the revised draft but suggested that the Code Committee be asked to consider in due course whether changes to the Code itself might be helpful.

(ii) Complaint No. 10-5964 A man v Daily Mail

The Chairman informed Commissioners that the office had now reverted to the newspaper to ask for its comments about one of the articles under complaint. The matter would be discussed again at the next meeting.

5. Complaints

(i) Complaint No. 11-1679 Rooney v The Sunday Times (PCC Paper No. 5143)

After discussion the Commission ruled that there had been no breach of the Code of Practice and as a result the complaint was not upheld.

It issued the following adjudication:

Mr Wayne Rooney complained to the Press Complaints Commission through Ian Monk Associates Ltd that an article headlined "Top footballers dodge millions in income tax: Rooney pays 2% on some earnings", published in The Sunday Times on 16 January 2011, was inaccurate and misleading in breach of Clause 1 (Accuracy) and that

he had been denied an opportunity in which to reply in breach of Clause 2 (Opportunity to reply) of the Editors' Code of Practice.

The complaint was not upheld.

The front-page article claimed that "dozens of top footballers" – including the complainant – were "avoiding millions of pounds in tax" using "complex tax avoidance schemes that legally allow them to pay as little as 2% tax on some earnings". It said that the complainant had saved nearly £600,000 by taking £1.6 million in loans over two years, rather than as income.

The complainant said that the headline was inaccurate and misleading: it was not true that he paid 2% tax on any part of his earnings, something which was not possible for any individual. A separate article in the same edition of the newspaper had indicated that the loans made to the complainant from his company's profits had already been subject to corporation tax at 28%. Moreover, the loans in question were all repaid the following year: the significance of this was that, upon their repayment, the profits of the company were paid out as dividends, and therefore subject to income tax at the higher rate of 42.5%. The article did not mention that the loans had been repaid.

The newspaper did not accept that the article was inaccurate, or that it gave a misleading or distorted picture of the complainant's complex tax affairs. The article focused on a Her Majesty's Revenue and Customs investigation of the manner in which footballers employed a range of (legal) tax mitigation devices to reduce significantly some of their income tax liabilities. One of these devices was the use of personal loans from a limited company. Under current legislation, these loans were classified as a benefit in kind and incurred a rate of only 2% income tax on the total sum of the loan. The complainant had used such a strategy by structuring some of his finances through a limited company. It was this company (which had three directors, including the complainant), rather than solely the complainant himself, which paid the corporation tax.

The 2% figure in the headline could not explain the complexity of the complainant's tax affairs: any reasonable person reading the headline would understand that the arrangement was explained in the full story. Whether or not the loans were repaid was immaterial, in the newspaper's view: the complainant had had access to large sums of money which had only attracted a tax rate of 2% for the period of the loans. Nonetheless, the newspaper was willing to publish a clarification outlining that the complainant paid all his taxes at the legally required rate.

The complainant wished for any clarification to accept that the article was inaccurate when it claimed that he paid only 2% tax on some earnings. The newspaper was not prepared to agree to this.

Adjudication

Headlines are often the subject of complaints to the Commission under the terms of Clause 1 (Accuracy) of the Code, which states that newspapers must take care not to publish inaccurate, misleading or distorted information. The Commission recognises that headlines are, by their nature, reductive, attempting to summarise complex issues succinctly, and must be read along with the accompanying articles. However, it has in the past ruled that too great a disparity between the headline and the text of the article can raise a breach of the Code.

The Commission did not consider that there was such a disparity on this occasion. It was accepted that the complainant employed, legally, a complicated system by which he paid 2% tax on loans from his own company. In that context, the reference to him paying "2% on some earnings" was not, in the Commission's view, inaccurate, even if it was not the full position. The headline clearly required further explanation which the Commission considered was contained in the articles themselves. These made clear that, by this arrangement, the money, which had already been subject to corporation tax at 28%, was a "director's loan", in respect of which tax was paid, and it was likely that the loan would have to be repaid. They also made clear that the arrangement was legal.

Taking this into account, the Commission believed that readers of the coverage as a whole would not be misled as to the specific structure of the tax arrangements of the complainant. In the circumstances, the Commission ruled that Clause 1 (Accuracy) of the Code had not been breached.

However, the Commission did note that the complainant had made clear that the loans in question had been repaid, and that the requisite tax had been paid on them. It felt that readers should be made aware of this and noted that the newspaper was willing to publish a clarification, stating that it accepted the complainant's assurance that he "pays all his taxes at the full legally required rates". This was a sensible, and proportionate, response to the complaint, and there were no further issues to pursue under Clause 2 of the Code.

The complaint was not upheld.

(ii) Complaint No. 11-1683 Stamp v Essex Chronicle (PCC Paper No. 5147)

After discussion the Commission decided that the actions of the newspaper's reporter constituted a breach of the Editors' Code. It upheld the complaint in the following terms:

Malcolm Stamp CBE, Chief Executive of Mid Essex Hospital Services NHS Trust, complained to the Press Complaints Commission that an article headlined "Victim of attacker 'lucky to be alive' after coma ordeal", published in the Essex Chronicle on 3 February 2011, contained material that had been obtained in breach of Clause 8 (Hospitals) of the Editors' Code of Practice.

The complaint was upheld.

The article reported on the condition and treatment of a patient in hospital who was recovering from an assault which had left him with serious head injuries. It was based on an interview with him and his parents, conducted in the hospital's stroke unit. The reporter had visited the hospital in the company of the parents. The Commission has not received any complaint from the patient or his family in relation to the article.

The complainant said that the reporter had not notified the Trust, nor any of its staff, of his identity as a journalist or the purpose of his visit before publication, in breach of Clause 8 of the Code. The Trust's policy was that stories should be requested through the communications team and should be pre-arranged, particularly in relation to vulnerable patients. The Health Care Support Worker who had supervised the visit said that she had asked the reporter who he was and the patient's father had replied that he was "from the Court". At no point, she said, did she feel that any interview was in progress (she had not seen any notepad or recording equipment, for example); the reporter had simply asked how the patient was. The Senior Ward Sister stated that the patient had been unaware that he had spoken to a journalist and had been "upset and angry" when alerted to the article by staff at the hospital.

The newspaper denied that its reporter had breached the terms of Clause 8: he had been invited to see the patient in hospital by his parents who were keen for an article to be published about the effects of drunken violence. It believed that the patient had provided his consent. The newspaper denied that the journalist had introduced himself as "from the Court": he had made clear to nursing staff his

status as a journalist and identified the publication he worked for. The newspaper disputed the veracity of the statements provided by the staff, making clear that the reporter had conducted a relaxed interview with the patient and had indeed carried a camera (which he had not used) in addition to using a notepad. A nurse had been present throughout the time he had spent with the patient, and another member of staff had given advice to the reporter on how the case should be reported. In the view of the newspaper, ward nurses were "responsible executives" of the hospital: they were in charge of managing day-to-day matters on the ward. The newspaper offered an assurance that it would coordinate future visits through the hospital's communications department.

Adjudication

The Commission had not received a complaint from the patient in relation to the publication of the article. It noted that the reporter had been present not only with the consent, but actually at the request of, the patient's parents. There was clearly a public interest, albeit a general one, in publishing information about the consequences of violence.

However, Clause 8 states that "journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries". In this case, the Commission considered that the stroke unit was a "non-public area" because it was an area where patients would have a reasonable expectation of being treated without interference. There was clearly a significant dispute over what had occurred during the visit to the hospital, and the Commission was not in a position entirely to resolve this conflict of accounts. However, it was nonetheless able to establish a breach of the Editors' Code on this occasion.

It is the responsibility of newspapers to demonstrate that they have abided by the terms of the Editors' Code. In the view of the Commission, the reporter could have acted to ensure that there was no uncertainty about his identification, and that the necessary permission had been obtained from a "responsible executive", before entering the unit where the patient was being treated. This could have been achieved, for example, by asking at reception at the beginning of the visit to speak to a relevant executive, or approaching the hospital in advance. Bearing in mind that the patient was in an especially vulnerable condition, the onus was on the reporter to ensure that he was open about his status with the hospital.

As it was, the conversation in which the journalist had allegedly identified himself had been with staff in the unit; he appeared, therefore, to have already entered a non-public area. Under the terms of Clause 8, appropriate permission should have been sought well

before entering this area. The Commission did not believe a reporter speaking to medical staff (whom he was not able to identify by name or position), while already in the unit, was adequate in light of the requirements of Clause 8.

The Commission did not consider that the general public interest in this case was sufficient to justify the manner in which the material had been obtained. The complaint was therefore upheld.

Relevant rulings:

Croft v Daily Mail, Report 74

O'Sullivan v Daily Mirror, Report 54

(iii) Complaint No. 11-1788 Pitt v Cambrian News (PCC Paper No. 5148)

Following discussion of this case the Commission ruled that there had been a breach of the Code. It made the following adjudication:

Mark and Jo-anne Pitt complained to the Press Complaints Commission that an article headlined "Anger at council's changes to pupils' disabled taxi service", published in the Cambrian News on 31 March 2011, had intruded into their son's privacy in breach of Clause 3 (Privacy) and Clause 6 (Children) of the Editors' Code of Practice.

The complaint was upheld.

The article reported criticism of a council decision to put out to tender the contracts for a school taxi service for disabled children. It stated that the complainants were "furious" at the decision, which affected their son. The article included a photograph of the child, in addition to his name, age, and details of his medical condition. The complainants said that they had consented to the publication of the photograph of their son on the condition that his name (and their own details) would not be published. They had not provided any information about their son's medical condition, nor consented to the publication of any details about it.

The newspaper said that the information had been provided by the current driver of the taxi service, and it had understood that she was acting on the complainants' behalf, with their consent. This understanding had been supported by the presence of one of the complainants when the photograph was taken; the photographer said that he had not been informed that personal details should not be used in the article. Nonetheless, the newspaper accepted that it should have obtained the complainants' consent for the publication of information about the child, and it apologised for not having done so. It marked its records to ensure that the details would not be used in the future, and

was willing to write to the complainants to apologise for what appeared to have been a misunderstanding.

The complainants asked that the newspaper apologise publicly, offer an assurance that it would obtain appropriate parental consent in future, and accept that the issue had not been caused by a 'misunderstanding'.

Adjudication

The publication of private medical details about an individual (of any age) without consent plainly raises significant issues under Clause 3 of the Editors' Code, which states that everyone is entitled to respect for their health, and that editors will be expected to justify intrusions without consent. In cases involving children, the requirements of Clause 6 also apply. Clause 6 states that "young people should be free to complete their time at school without unnecessary intrusion".

In this case, the information about the complainants' child's medical condition had been provided by a third party. It was the newspaper's responsibility to obtain the complainants' consent for the publication of this information and other personal details. It appeared that the newspaper had not taken any steps to verify independently that consent had been given. This was inadequate in light of the requirements of both Clause 3 and Clause 6 of the Code.

The complaint was upheld.

Relevant rulings:

A man v Dorset Echo, Report 77

A woman v Kent Messenger, Report 70

(iv) Complaint No. 11-1777 A woman v Clevedon People (PCC Paper No. 5146)

After discussion, the Commission agreed an adjudication on this case, which was sent to the parties. However, following subsequent submissions by the complainant, the Commission has been asked to reconsider the matter.

- (v) The Commission formally approved (subject to individual queries on specific complaints raised with the office) the following PCC Papers, which had contained draft adjudications for Commissioners' ratification or otherwise 5115, 5116, 5117, 5119, 5120, 5121, 5122, 5123, 5124, 5125, 5126, 5127, 5128, 5129, 5130, 5131, 5132, 5134, 5135, 5136, 5137, 5139, 5140, 5141, 5142. All papers had been circulated since the previous Commission meeting.

6. Libel and Privacy: How the PCC is affected (PCC Paper No. 5138)

The Commission received and discussed a paper by the Director about current debates concerning libel reform and privacy laws.

7. Oral report from Chairman of Audit Committee

The first meeting of the Audit Committee had been held prior to the Ordinary Meeting of the PCC. Its Chairman, Ian Nichol, provided the Commission with an update about its work, noting that he and the other Committee members (Jeremy Roberts and Esther Robertson) had examined the six-monthly finances of the PCC and had also discussed the proposed terms of reference for the new Review Panel (to be chaired by Sir Michael Wilcocks).

8. Chairman and Director's meetings

Commissioners received an update on appointments undertaken by the Chairman and Director.

9. Any other business

Johann Hari

The Chairman was asked whether any complaints had been received about articles by Johan Hari in the wake of revelations about his working methods. She confirmed that no complaints had been received but Commissioners agreed that it would be helpful to find out what action was being taken by the Independent. It was agreed the Chairman would write to the newspaper's editor, and the matter would then revert to the Commission.

10. Annual General Meeting

The Chairman declared the ordinary meeting closed.

The Chairman declared the AGM open.

- (i) Commissioners received the accounts for the year ending 2010 – a copy of which had been circulated to members; and
- (ii) agreed to reappoint Saffery Champness as the Commission's auditors for a further year.

The Chairman declared the AGM closed.

11. Date of next meeting

2.00pm on Wednesday, 7 September 2011 at Halton House, 20/23 Holborn, London EC1.

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Present: Baroness Buscombe Chairman
 Michael Grade
 John Home Robertson
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 Ian Nichol Deputy Chairman
 Esther Robertson
 Jeremy Roberts QC
 Simon Sapper
 Michael Smyth
 Julie Spence
 Ian Walden
 Tina Weaver
 Peter Wright

In attendance: Stephen Abell Director

The following members of the secretariat attended the meeting as observers: Hannah Beveridge, Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Rebecca Hales, Scott Langham, Ben Milloy, Amber Mun, and Catherine Speller.

1. Apologies

Apologies were received from Lindsay Nicholson.

The Chairman welcomed Jeremy Roberts to his first meeting. The Chairman also welcomed Alison Hastings, consultant to the PCC.

3. The Leveson Inquiry

Commissioners discussed how best to seek to engage with the Leveson inquiry. It agreed to establish a standing committee of Commissioners to frame the response. This was to be chaired by Michael Smyth.

4. Strategy for regulatory reform

The Commission agreed that reform fell into the following five areas: Independence; Powers; Remit; Funding; Membership.

It agreed that reform would be led by the Standing Committee, but all decisions would be taken by the PCC as a whole.

5. Future remit and work of the Phone Hacking Review Committee

It was agreed that one major area of work (as previously discussed) was to establish current practices across the industry with regard to the access of personal information. This would lead to the establishment of a protocol of best practice. It had already been discussed by the Chairman and Director of the PCC with proprietors.

The Director undertook to write to editors and publishers with a series of questions on behalf of the Committee.

6. Any other business

Baroness Buscombe announced her intention to stand down as Chairman. After discussion, it was agreed that this should be announced shortly to enable a successor to be found in time for the Leveson inquiry.

