

Section Two: Getting it right

ACCURACY, COMMENT, CONJECTURE AND FACT

Errors and judgments

If the Preamble embraces the spirit of the Code, then Clause 1 goes to the heart of good practice. The Code does not demand infallibility; it requires that care should be taken. It is about getting the story right in the first place, putting it right if mistakes are made and — where appropriate — saying Sorry.

This clause accounts for the majority of complaints to the PCC. That will surprise no-one familiar with the pace at which newspapers and magazines are produced, but it should not excuse reckless or sloppy journalism.

The PCC has reminded editors that accuracy is particularly

important in dealing with emotive topics such as asylum seekers or mental health, where there is danger of creating fear and hostility not borne out by facts, and where allegations are made, ahead of formal proceedings, suggesting an individual has committed — or is suspected of — a criminal offence.

The absence of a public interest exception to justify inaccuracy increases the burden on editors. (*See Section Six, Public Interest*).

As with all else in the Code, it is a question of balance. Care must be taken to minimise both errors and their impact. Mistakes may be inevitable, but it is important that they are put right swiftly and clearly.

The Code rules on accuracy break down into two main areas, covering pre-publication and post-publication.

THE CODE SAYS...

Clause One — 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, or an agreed statement is published.*

THE PRE-PUBLICATION REQUIREMENT

The Code is careful not to demand perfect accuracy, which would be impossible to achieve. Instead, sub-clause 1i obliges publications to take care not to publish inaccurate, misleading or distorted material, including pictures.

That is a simple, practical and deliverable requirement, applying to all they do ahead of publication. If sufficient care were taken, then that would be a defence to any subsequent complaint. The tests to apply would include such issues as:

- Are there reasonable grounds for believing the piece is accurate?
- Have proper checks been made?

- Have likely complainants been given an adequate opportunity to respond?

Proving sufficient care: A complaint by the European Commission (*Martin v Mail on Sunday: Report 53, 2000*) was rejected because the PCC decided the paper had taken sufficient care to check the accuracy of a story suggesting an EC summit was to discuss a £30-a-year levy on telephone lines.

First, the story was based on a report on an official EC website which gave no indication that it was out of date; second, the paper had twice asked the EC press office to comment, but received no response; and third, it had made clear this was a proposal for consideration which had not been adopted. These checks showed that the paper had taken sufficient care on all points.

The case demonstrates that editors are not always responsible for potentially misleading reports. There can be factors over which they can have no control, and there can be occasions when the error is caused by contributory negligence on the part of the complainant.

Conversely, a complaint against a Sunday tabloid was upheld because the paper failed to put details of an uncorroborated kiss-and-tell story to the subject of the piece prior to publication. The PCC ruled (*Harkishin v Sunday Sport: Report 58, 2002*) that this amounted to insufficient care to establish the truth.

THE POST-PUBLICATION REQUIREMENT

This requires publications to offer a suitable remedy if the story, including pictures, was *significantly inaccurate, misleading or distorted*. The burden of proof, as always in the PCC system, falls on the editors. If they wish to claim the story was true, then they will need to demonstrate that there were no *significant* inaccuracies or distortions and that it was not misleading. Even if the story was not entirely correct, the newspaper would be exonerated if it could demonstrate that it had taken sufficient care to avoid inaccuracy, or that it had offered a suitable remedy.

Was it significant? The spirit of the Code protects a substantially true story from failing due to a trifling error. The PCC's commonsense test of significance is simple: How much does it *really* matter? Getting a name wrong could be merely irritating — or wholly fundamental. The context would be crucial. The PCC might need to decide if the alleged error, taken alone, was of consequence, or even if a series of relatively minor errors, taken together, were likely to mislead or distort.

In 1998 (*Hunt v The Guardian: Report 45, 1999*) a man who had written critically about *The Guardian*, complained that a piece it had published in response was littered with inaccuracies, including a claim that he had a “shouting, screaming, vein-busting dislike” for *The Guardian*. The PCC decided the newspaper had a right to investigate a critic who had made serious allegations against it. In the context of the piece *all* the points were minor — except for an error over VAT repayment. That was significant, but had already been corrected by the newspaper. The complaint was rejected.

Was it true? If the point *is* significant, the next test is whether it is true. The PCC will expect from editors supporting evidence for a story, wherever possible, demonstrating that it wasn't inaccurate, misleading or distorted. However, the truth is not always easy to establish, especially if a newspaper or magazine is relying for its information on a single, confidential source, which it has a duty to protect under the Code (*See Clause 14, Confidential sources*).

The PCC has no powers of sub-poena, or of verifying unsupported evidence and in rare cases it has proved impossible to decide whether a story was accurate or not. In such situations, the Commission will often negotiate on whether it is reasonable for the complainant to be given an opportunity to reply.

In 2002 Cabinet Minister Charles Clarke accused a newspaper of inventing a story that he had ‘told friends’ he regarded the Speaker of the House of Commons as a liability. (*Clarke MP v The Times: Report 58, 2002*).

BRIEFING

Reporting of cases involving paedophiles

Editors are urged by the PCC to think carefully before embarking on high-profile campaigns in which details of convicted sex offenders are published. In a [Guidance Note](#) the Commission recommended:

- **Consultation:** It would be advisable to talk with representatives of the probation service and local police before publication. Both services had expressed fears that identifying sex-offenders could hamper their work and endanger public safety.
- **Accuracy:** Particular care needed to be taken to comply with the Code's rules (Clause 1), given the scale of problems created for innocent people that could follow an inaccuracy.
- **Corrections:** Where there is an acknowledged inaccuracy, it should be corrected as soon as possible (Clauses 1 and 2), with an apology if necessary.
- **Privacy:** People convicted of crime do have protection under Clause 3 — although reporting of convictions would not normally breach the Code.
- **Relatives and friends:** They have a right of privacy and should not be identified without consent (Clause 9) unless they are relevant to the case or there is a public interest in doing so.
- **Children and victims of sexual assault:** Particular care needs to be taken to prevent identification of victims in line with the Code rules in Clauses 7 and 11.

The paper stood by its story — insisting it was from a confidential source — and offered Mr Clarke an opportunity to reply, but balked at publishing his claim that its journalist invented the quotes. The PCC could not break the deadlock.

As it could not establish the facts, it could not oblige the newspaper to accept that the quotes were invented. It decided that the editor's offer to publish a letter carrying all Mr Clarke's other claims was a suitable remedy.

Was sufficient care taken? The problems sometimes encountered in establishing the truth tend to make the test of whether sufficient care was taken at least as important as the test of accuracy. It is often easier to establish. (*See pre-publication requirements above*).

The PCC has ruled that this duty of care places a burden on editors to be pro-active, rather than relying on complainants to prove their case. A weekly newspaper's report that a man had been accused of assault was accurate, but the paper failed to report his subsequent acquittal, because its court reporter was ill. The editor then refused to publish an apology unless the defendant himself produced evidence of his acquittal.

The Commission rejected the notion that the onus of proof was entirely on the complainant and criticised the editor for doing nothing to try to establish the facts. It said failure to publish the verdict created a misleading impression for several months and breached the Code. (*Millichamp v Brecon & Radnor Express: Report 72, 2005*).

Was it misleading? Stories that are technically accurate can still be misleading or distorted leaving the reader with a false impression. Sometimes the problem is more because of what they don't say than what they do, and that — whether intentional or not — can breach the Code.

A magazine (*Brain v Hello! Report 55, 2001*) published interior pictures of actress Kate Winslett's new home — but didn't mention

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that they were taken during the occupation of a former owner, who complained. The PCC ruled that the pictures showing the former owner's furniture suggested Ms Winslett had disposed of treasured wedding gifts.

The complaint was upheld. A caption making clear that the pictures showed the interiors pre-Ms Winslett might have kept the magazine out of trouble. But only if it was made very clear.

Hidden escape-clause justifications aren't acceptable to the PCC — as a local newspaper discovered when it ran the story of a police raid, in which six refugees were arrested, under a Page One headline *The Front Line In Folkestone*, apparently illustrated by a large picture of officers in riot gear.

The fact that the picture showed an entirely separate incident was only revealed on an inside page. The PCC upheld the complaint — while reminding editors that inaccurate or misleading reporting could generate an atmosphere of fear and hostility not borne out by the facts. (*Harman and Harman v Folkestone Herald: Report 47, 1999*). (See *Briefing*).

Was it distortion? The PCC insists that if a picture is not what it seems, or if it has been posed or digitally manipulated, the reader should generally be told. An exception might be in publishing spoofs — such as April Fool stories — where the manipulation is the story and will ultimately be revealed. The test would be whether the reader had been significantly misled. Most are not — and they get the joke if they are.

However, a picture illustrating a genuine story of local prostitution and showing what appeared to be a vice girl on a street corner was doubly damned. The newspaper admitted it had been digitally created by combining two images — and was posed using a model. The PCC ruled that in *any case where images were significantly altered*, the caption should say so. (*A man v Luton on Sunday: Report 64, 2003*).

Again, the key word is *significantly*. The PCC does not expect

editors to chronicle each digital enhancement of every picture. The image would need to have been distorted enough to have been capable of misleading the reader.

REMEDIES: CORRECTIONS AND APOLOGIES

The need for speedy and clear corrections is set out in sub-clause 1ii which requires that a significant inaccuracy, misleading statement or distortion, *once recognised* must be corrected *promptly* and with *due prominence*. There is no hard and fast definition in either case. Promptness and prominence must be decided by what is reasonable in all the circumstances, particularly subject to any over-riding legal considerations.

Promptness: While delays in some cases may be genuinely unavoidable, the Commission takes a stern view of unnecessary delays in righting undisputed — or incontestable — errors, especially where the repercussions can be serious.

A newspaper wrongly reported that an estranged husband was involved in a knife-wielding incident with his wife's new boyfriend. It was not her boyfriend — she did not have one — but a neighbour. However, due to what the editor described as a “breakdown in communications”, the paper failed to correct the error for six weeks — during which time the husband was found dead.

The PCC ruled (*A woman v South Wales Evening Post: Report 59, 2002*) that the delay, while inadvertent, was not acceptable in circumstances where the potential consequences of the mistake were serious. It also found that the correction, when eventually published, should have included an apology.

Due prominence: As with the publication of adverse PCC adjudications (See *Page 11*), the Commission will take into account all the circumstances to decide whether the prominence given to a correction, clarification, or apology amounts to an adequate remedy.

BRIEFING

Refugees and asylum seekers

After a number of breaches of the Code, the PCC issued [Guidance](#) aimed at ending confusion over the terminology used to describe asylum seekers and refugees.

The Commission expressed concern that misunderstandings could lead to inaccurate, misleading or distorted reporting, in breach of the Code's accuracy rules ([Clause 1](#)), and might also generate a fear and hostility that was not borne out by the facts.

Although the Code's Discrimination rules ([Clause 12](#)) — relating to pejorative, prejudicial or irrelevant references — apply only to individuals, the wider question of whether a description is accurate, misleading or distorted applies equally to groups. This means a term such as “*illegal asylum seeker*” would be a breach, since it is inaccurate.

The guidance suggested:

- *An asylum seeker* is a person *currently seeking* refugee status or humanitarian protection.
- *A refugee* is someone who has fled their country in fear of their life — and may have been granted asylum under the 1951 Refugee Convention, or who otherwise qualifies for humanitarian protection, discretionary leave or has been granted exceptional leave to remain in the UK.
- *An illegal immigrant* would describe a person who had been refused such status, and had failed to respond to a removal notice to quit Britain.

The PCC has also held that stories which generated fear and hostility not borne out by the facts might in certain circumstances affect the welfare of children, in breach of [Clause 6](#).

It has always taken the view that *due prominence* does not mean *equal* prominence: an error in a Page One lead would not automatically require a Page One lead correction. However, the PCC would expect that the positioning of apologies or corrections should generally reflect the seriousness of the error — and that would include front page apologies where appropriate.

When the *Evening Standard* ran a Page One story incorrectly stating that Prince Philip had prostate cancer, the newspaper quickly acknowledged the error and within 36 hours the PCC negotiated a [settlement](#).

This included a Page One reference to a Page 5 item apologising unreservedly to the Prince and his family for making the distressing allegation and breaching his privacy. It was a classic example of a prompt, prominent and proportionate apology working rapidly to minimise the damage of a bad error. However, when apologies are not treated in such a way it can seriously compound the problem and aggravate the damage done.

The Mayor of Totnes complained that a *Daily Express* story claiming that she had personally ordered the scrapping of civic prayers to avoid offending other faiths, was not true. The council as a whole had agreed the move and it was not in deference to other faiths.

The Express agreed to apologise but, although the original story had appeared on Page 5, the apology was relegated to Page 33. The PCC censured the newspaper for “an unfortunate example of bad practice” especially as the complainant had to wait four months for it. ([Boswell-Harper v Daily Express: Report 75, 2007](#)).

Apologies: In fact, the Code makes a distinction between corrections — which usually need to be published promptly and prominently — and apologies, where the same is not always true.

First, the wording of apologies often needs to be agreed with the complainant, especially if there are legal implications — as in defamation cases, for example — which may cause unavoidable

delay, affecting promptness. Secondly, a public apology, which could highlight the error and cause renewed embarrassment, may be the last thing a complainant wants.

Editors regularly find that complainants regard a personal letter, or phone call, as more suitable. An apologetic note from a genuinely regretful editor, accompanied by a bouquet of flowers, is by no means uncommon. It is an example of the spirit of the Code in action.

Yet sometimes such gestures are neither appropriate nor enough and the demand for a published apology becomes an issue. Each case is judged on its merits, but one factor when deciding if an apology is appropriate, might be whether the story had caused significant hurt or embarrassment.

A newspaper whose headline *Blair All Spin And No Delivery* — *Field*, attributed to Frank Field MP words about the Prime Minister he had not used, offered the opportunity to reply in a letter, but refused to run an apology. The PCC upheld the complaint, ruling that, as the error had been recognised at an early stage, an apology would have been appropriate (*Field MP v The Independent: Report 51, 2000*).

COMMENT, CONJECTURE AND FACT

The Code upholds in sub-clause 1iii the Press's right to be partisan, but insists on a clear distinction between comment, conjecture and fact. The rival claims of freedom of expression and freedom from prejudice can find a battleground here, especially when distinctions become blurred in personal opinion columns.

The PCC holds the ring by defending the freedom to comment — but only as long as columnists do not try to argue a false factual basis for their views. It has particularly used this to decide cases involving complaints from minority groups about being portrayed inaccurately. The tests include:

- Is the disputed material demonstrably factual? If not —
- Does the presentation make clear that it is comment or conjecture?

In 1997, a tabloid columnist stated as fact that gay men had an average life expectancy of 43 and were 17 times more likely to be paedophiles than straight men. During the PCC inquiry, the newspaper accepted the statistics had been challenged and that, although “broadly accurate”, the columnist’s interpretations should not be taken as absolute.

In a key ruling, the Commission concluded that such claims should not then have been presented as fact, and upheld the complaint. (*A. J. Crompton v The Sun: Report 41, 1997*).

Importance of presentation: In news reports, too, there is a danger of passing off allegations, however strong, as fact. Presentation of the story can be crucial if by tone, display or other means it misleads the reader into interpreting as fact that which is conjecture or comment, or a mixture of both.

Soon after the death of Father John Tolkien — son of JRR Tolkien — a Sunday paper published a former altar boy’s claims that the priest was a paedophile, who had abused hundreds of children. The Tolkien family, in a series of complaints under five clauses of the Code, said they had been given no chance to comment on these allegations, which were presented explicitly as fact.

The editor’s suggestion that publication was justified by freedom of expression and a duty to expose crime was rejected by the PCC, which ruled that while the newspaper may have strongly believed the priest to be a paedophile, he had not been convicted of, or charged with, any offence.

The presentation of the story should have made absolutely clear that these were allegations. By publishing such extremely serious claims without sufficient qualification, the newspaper had breached Clause 1 of the Code. (*Tolkien family v Sunday Mercury: Report 62, 2003*).

The issue of presentation was doubly crucial when Sinn Fein leader Martin McGuinness complained to the PCC after a Sunday newspaper splashed with the headline *McGuinness Was A Brit Spy*.

Without any legal powers to investigate the suggestion — by a named former British agent — that Mr McGuinness had co-operated with MI6, the Commission was in no position to decide on its veracity.

In fact, it did not need to. For the issue was not whether the allegation was true, but whether the newspaper had clearly separated fact from comment. The PCC decided it had, as the main headline had been accompanied by another saying, *Spook's Shock Claims*.

Mr McGuinness said the other headline appeared to be separate in another box, but the PCC ruled (*McGuinness v Sunday World: Report 74, 2006*) that readers would have understood that the suggestion that he was a spy was not stated as fact, but as a claim from an intelligence source. The complaint of inaccuracy was therefore rejected.

Alternative view: The importance of presentation was stressed again in a case brought by Rina and Michelangelo Attard, the parents of conjoined twins, who had sold pictures and information to the media. (*Attard v Sunday Mirror: Report 55, 2001*).

The article was based on an interview with Mr and Mrs Hubble, who had become friends of the Attards. When the couples fell out, the Hubbles sold their story to the *Sunday Mirror*, giving their view of events.

But the PCC ruled that because the interview was presented as just one side of a complicated story, leaving readers in no doubt there would have been another point of view, it was valid. There was no breach of the Code.

Crime reporting and court stories, where accurate accounts would normally be covered by legal privilege, hold hidden dangers for newspapers when they get it wrong and confuse comment or conjecture with fact. As always, misleading headlines can be a particular problem.

The alleged rape of a 14-year-old black girl by 19 men in an Asian

shop was reported on the front page of a weekly newspaper under the headline *Gang Of 19 Rape Teen*. Although headlines and reports on inside pages had used the words “alleged gang rape” and “alleged attack”, the word “alleged” was used only once in the short Page One story.

The PCC ruled that this was insufficient to enable readers to realise that the story was about allegations and the inside coverage did not mitigate that. It therefore breached the Code by failing to distinguish comment, conjecture and fact. (*A man v The Voice: Report 72, 2005-6*).

Unproven evidence: Similar problems can arise in court reporting of statements that are not proven facts. A plea of mitigation for an offence, untested and unproven, is not necessarily a fact, but an allegation. And that must be made clear — as the editor of a local newspaper found when he ran a story headlined *Man Attacked Girlfriend's Lesbian Lover*.

The defendant admitted in court attacking a woman, but said he was upset because he had discovered she was having an affair with his girlfriend. His victim complained to the PCC that the newspaper stated as fact in its headline and the intro to its story that the two women had been lovers, rather than making clear that this was an allegation made in mitigation. In fact, both women later said the claims were unfounded. However, the editor said he had accurately reported what was said in court and would not publish a letter of denial from the complainant because it could expose his newspaper to the risk of defamation proceedings.

The PCC said while the editor was not responsible for the accuracy of *what was said* in court, there was an important principle under the Code of *how proceedings were reported*. Readers would have been misled into believing that the court claim was an established fact. The Commission criticised the editor for not trying to find an amicable resolution and upheld the complaint. (*Mahmoud v Isle of Wight County Press: Report 75, 2007*).

REPORTING THE OUTCOME OF DEFAMATION CASES

Publications are required by the Code in sub-clause 1iv to report fairly and accurately the outcome of a case for defamation to which they had been party — *unless an agreed settlement states otherwise, or an agreed statement is published.*

This is intended to ensure that newspapers set the record straight in their own pages. It covers only the outcome of the case and puts no onus on editors to run ongoing reports of the action — although they may choose to do so.

A case where a man who successfully sued *The Guardian* went on to complain that the paper had not run balanced reports of the trial (*Kirby and Co. v The Guardian: Report 46, 1998*) was rejected by the PCC. The Code refers only to the outcome of the case.

Agreed statements: The provision for cases where the settlement of the defamation action clearly states that there is no requirement to publish the outcome, or where an agreed statement is published, was added in June 2004 to protect publications which reached such an agreement from being guilty of a technical breach.

That happened in 1999, when a magazine did not report the

outcome of a case, believing in good faith that the settlement did not require a report of the outcome. In its adjudication (*McQueen and Givenchy SA v Time Out: Report 46, 1999*) the PCC accepted that the Code should not be used to give litigants in resolved cases further redress.

Significantly, the Commission did not censure the magazine, but urged editors and lawyers to make clear in settlements that reporting of the outcome was not an issue.

The clear lesson for both sides is that agreed legal settlements of defamation actions should include the timing and manner of any publication of the outcome and those arrangements should be enforced as part of that settlement. It should not be a matter for the PCC to referee after the event.

KEY RULINGS

- *Martin v Mail on Sunday*, (Report 53, 2000).
- *Harkishin v Sunday Sport*, (Report 58, 2002).
- *Hunt v The Guardian*, (Report 45,1999).
- *Clarke MP v The Times*, (Report 58,2002).
- *Millichamp v Brecon & Radnor Express* (Report 72, 2005).
- *Brain v Hello!* (Report 55, 2001).
- *Harman and Harman v Folkestone Herald* (Report 49, 2000).
- *A man v Luton on Sunday*, (Report 64, 2003).
- *A woman v South Wales Evening Post* (Report 59, 2002).
- *Boswell-Harper v Daily Express* (Report 75, 2007).
- *Field MP v The Independent* (Report 51,2000).
- *A. J. Crompton v The Sun*, (Report 41, 1998).
- *Tolkien family v Sunday Mercury* (Report 62, 2003).
- *McGuinness v Sunday World* (Report 74, 2006).
- *Attard v Sunday Mirror* (Report 55, 2001).
- *A man v The Voice* (Report 72, 2005-6).
- *Mahmoud v Isle of Wight County Press* (Report 75, 2007).
- *Kirby and Co. v The Guardian*, (Report 46, 1999).
- *McQueen and Givenchy SA v Time Out* (Report 46, 1999).

KEY QUESTIONS

- **Was the alleged error significant?** Trivial errors are not covered.
- **Was the story inaccurate, misleading or distorted?** A technically accurate story could still be misleading. Has a picture been manipulated?
- **Was sufficient care taken to establish accuracy ahead of publication?** Were proper checks made? Was the complainant offered a chance to comment?
- **Did the story confuse comment or conjecture and fact?** Presentation is important.
- **Was a suitable remedy offered?**
- **Was the outcome of a defamation case reported?**

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What the Code says

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