

Personal and prejudiced

THE CODE SAYS...

Clause Twelve — 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.*

The aim of Clause 12 is to protect individuals from discriminatory coverage and no public interest defence is available. However, the Code does not cover generalised remarks about groups or categories of people, which would involve subjective views, often based on political correctness or taste, and be difficult to adjudicate upon without infringing the freedom of expression of others.

As always, the Code is striking a balance between the rights of the public to freedom of speech and the rights of the individual — in this case not to face personal discriminatory abuse. Freedom of expression must embrace the right to hold views that others might find distasteful and sometimes offensive.

The Code Committee's approach has always been that, in a free

society with a diverse press, subjective issues of taste and decency should be a matter for editors' discretion. And with newspapers and magazines constantly answerable in the court of public opinion, there is ample evidence that editors exercise that discretion on a daily basis.

For example, although British newspapers and magazines were free under the Code to publish the controversial Danish cartoons of the Prophet Mohammed, none chose to do so. It was the exercise of discretionary editorial judgment.

By the same standard, a national newspaper columnist was free to suggest, wryly, that piano wire should be strung across country lanes to decapitate cyclists. His comments caused widespread outrage, but did not breach the Code because they were not aimed at any named individuals. However, faced with the wrath of hundreds of readers, the writer voluntarily apologised for any unintended offence caused.

The PCC has always upheld the press's right to make robust, generalised remarks, when clearly presented as comment, in the name of free speech.

However, the same does not apply to pejorative or prejudicial attacks directed at named individuals. So when a lad's mag published a sticker poking fun at the disabled son of Katie Price — the glamour model Jordan — the PCC received 143 complaints, including from Ms Price and her husband, Peter Andre. The issue

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BRIEFING

Unsporting reporting

The PCC has issued cautionary [advice](#) to the press stressing the importance of not allowing patriotic fervour to get out of hand when covering high profile international sporting events.

After widespread criticism of press coverage of the Euro 96 soccer tournament — where the England v Germany match had been represented as a re-run of World War Two — Lord Wakeham, then PCC chairman, sounded a warning ahead of the 1998 Soccer World Cup.

The press had a responsibility not to encourage British sports fans to behave in a disorderly manner, he said. This covered not just comment about other nations' competitors, but also practical advice about how fans should participate in, or seek to attend, events.

It was part of the press's role to reflect robustly and in partisan fashion the nation's support for British sportsmen and women representing their country, but they should do nothing to –

- Incite violence, disorder or other unlawful behaviour, or to –
- Foster xenophobia that could contribute directly to such incitement.

Lord Wakeham's warning has been widely credited with the toning down of coverage since then and avoiding repetitions of the sort of jingoistic journalism which had been a feature of international events before 1998.

was swiftly resolved when the magazine published an apology online and in the magazine and made a donation to charity. (*Price and Andre v Heat magazine: Report 76, 2007*).

Individuals only: One of the strengths of the Code is the protection that it gives specifically to personally affected individuals. But inevitably that means that some third party complaints cannot succeed. The PCC will not proceed with a third-party complaint without the subject's consent.

Although the Code does not cover complaints about groups of people, where the main objection is often against the tenor of reporting, the PCC sometimes addresses these wider issues via rulings on individual cases and guidance notes.

It has made clear that even if there may be no claim under the discrimination clauses, there may be a case under other sections of the Code, such as Accuracy — if statements are incorrect or comment is passed off as fact.

Its guidance note on asylum seekers, for example, (*See Briefing panel: Asylum Seekers*) suggested it was inaccurate to describe people as *illegal asylum seekers*. They could not be illegal unless they had been refused asylum — which, by definition, asylum seekers had not. It has suggested some stories risked breaching the Code's privacy rules, and publication in other cases could involve a threat to children's welfare.

The Commission has also warned against the gratuitous use of insensitive language — such as referring to mental health patients (*See Briefing panel: Mental Health*) as *basket-cases*, *nutters* or *psychos* — which could be discriminatory or inaccurate.

Prejudicial or pejorative: Not all references to an individual's race, colour, religion, gender, sexual orientation, or to any physical or mental illness or disability, need to be avoided under the Code. To be in breach of sub-clause 12i, they must not only be prejudicial or pejorative — but also in a discriminatory manner.

KEY QUESTIONS

- **Is the reference to an individual?** This would normally mean a named or readily identifiable person.
- **Is the reference prejudicial or pejorative in a discriminatory way?** Sub-clause 12i.
- **Is the reference genuinely relevant?** Sub-Clause 12ii.

For example, a satirical cartoon depicting Israeli premier Ariel Sharon eating a baby — while undeniably pejorative — was cleared by the PCC of being racist as it referred to him in his capacity as a head of government, rather than as a Jew. (*Sharon v The Independent: Report 62, 2003*).

Genuine relevance: In sub-clause 12ii, the restriction relates only to details of race, colour, religion, sexual orientation, or physical or mental illness or disability, which are not genuinely relevant to the story. It does *not* cover the individual's sex, mention of which is not itself discriminatory.

The PCC has held that it was relevant to mention, factually and non-pejoratively, the sexuality of a pregnant lesbian in the context of a story that included comparisons with parenting by other same-sex couples. (*BBC Scotland v Scottish News of the World: Report 59/60, 2002*).

It was, however, not relevant to give details of religion in an interview with a tie-manufacturer, especially in terms which might have appeared pejorative. (*Bishko v Evening Standard: Report 40, 1997*).

Gender recognition: A Code change to cover discriminatory reporting of transgender people was introduced in 2005, after the passing of the Gender Recognition Act. In Clause 12i the word 'gender' was substituted for 'sex'. This meant that individuals undergoing — or who had undergone — treatment for gender

reassignment were included in the categories offered protection from prejudicial or pejorative references.

The Code Committee decided against a change to the accompanying subclause 12ii — which covers publication of discriminatory details that aren't relevant to a story — because trans individuals, having suffered from gender dysphoria, would be protected under existing rules covering physical illness.

KEY RULINGS

- *Price and Andre v Heat magazine* (Report 76, 2007).
- *Sharon v The Independent* (Report 62, 2003).
- *BBC Scotland v Scottish News of the World* (Report 59/60, 2002).
- *Bishko v Evening Standard* (Report 40, 1997).