

Section Three: Intrusion

PRIVACY

Privacy, not invisibility

Privacy is always a hot issue. Complaints about intrusion account for a quarter of the PCC's cases, and cover the whole spectrum of national and regional newspapers and magazines in almost equal proportion.

This reflects the genuine and widespread conflict over where legitimate public exposure ends and public prurience begins. When dealing with public figures, there can be a further dimension: how much is this prurience encouraged by celebrities themselves? There is no definitive answer to these questions. It is a matter of balance and judgment according to all the circumstances. The Code attempts to embrace that and manage the conflicts in Clause 3, by two means.

First, in setting out the zones of privacy, it echoes the language of

the Human Rights Act — the entitlement *to respect for private and family life, home, health and correspondence*. In June 2004, the Code added to this digital communications, thus underlining Clause 10's strictures on the use of bugging devices.

Second, the Code's ban on intrusive photography makes clear that consent would be needed to take pictures of individuals on *public or private property where there is a reasonable expectation of privacy*.

This attempts to protect individuals by introducing a test of what was reasonable, with each case judged on its merits — the final arbiter of which would be the PCC with its lay majority. As this clause offers the possibility of a public interest defence, that too is often factored into the equation.

The wide discretion the clause gives to the PCC makes its decisions vital in influencing editorial judgments and setting public expectations of the press. Among the guiding principles it considers in reaching those decisions:

- **Privacy is not an absolute right** — it can be compromised by conduct or consent. For example, when considering complaints of alleged intrusions, the PCC has traditionally had regard for any relevant previous disclosures by the complainant. Since October 2009, that has been codified in Clause 3ii, which states: "*Account will be taken of the complainant's own public disclosures of information.*"
- **Privacy is not a commodity** which can be sold on one person's

THE CODE SAYS...

Clause Three — PRIVACY*

- Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
- Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.*
- It is unacceptable to photograph individuals in private places without their consent.*

Note — *Private places are public or private property where there is a reasonable expectation of privacy.*

* A public interest exemption may be available: [See Section Six](#)

The panel colour code

What the Code says

Key questions editors need to ask themselves when Code issues arise

Briefings on specific areas where the Code applies

Back to contents

Index

terms — the Code is not designed to protect commercial deals.

- **Privacy does not mean invisibility** — pictures taken in genuinely public places and information already in the public domain can be legitimate.
- **Privacy may be against the public interest** — such as when used to keep secret conduct that might reflect on a public figure or role model. The PCC has ruled in several cases where people have effectively invaded their own privacy by selling their story, or talking publicly about private matters — or not complaining when someone else does.

The Commission's view is that those people should expect consequential media comment, but that it should be proportionate.

COMPROMISING PRIVACY

The parents of a sole surviving conjoined twin sold picture rights to the story, but complained that it was intrusive and damaging to the child's welfare when another paper published *unauthorised* photographs of the baby. The Commission disagreed. First, a photograph of the infant's face did not concern her welfare, and, second, the parents had put the material into the public domain. Privacy, said the PCC, was "not a commodity which can be sold on one person's terms". (*Attard v Manchester Evening News: Report 55, 2001*).

The principle here is that people must, in part at least, have due regard for protecting their own privacy. Under the Code, information cannot be private if it is already genuinely in the public domain, and people cannot complain if they themselves have put it there.

Similarly, their scope for complaint is also limited if they have failed to complain about a previous allegation to prevent repetition.

Nailing rumours: In 2002, Mr David Maclean MP, the Conservative Chief Whip, did not challenge a Sunday newspaper's diary items suggesting he had had an affair with a senior civil servant in the 1990s. But when in 2004, Mr Maclean had occasion to warn fellow

Tory Boris Johnson on the danger of lying about an alleged affair with Petronella Wyatt, the same newspaper ran a bigger story headed *Top Tory Who Quizzed Boris Over Petsy Affair Cheated On His Own Wife With Chief Of Staff To Duncan Smith*. Mr Maclean complained to the PCC that two small diary items published two years before had not placed the matter into the public domain sufficiently to justify publication of the story.

Sounding a warning to both editors and potential complainants, the Commission said that, even though the diary items were small, the information was undeniably in the public domain (*Maclean MP v Mail on Sunday: Report 72, 2005*): "It is important for editors to be aware that the Code applies as much to material contained in diary pieces as to the rest of a newspaper," said the Commission.

"It is also important for people who are the subject of such pieces to realise that not to complain about them may limit their ability to complain about future articles which repeat the same thing."

PUBLIC FIGURES

The PCC accepts that people such as show business celebrities or sports stars may need to create a professional image of themselves in the media. This does not undermine their right as individuals to privacy or mean the press could justify publishing articles on any subject about them. Their "private and family life, home, health and correspondence" all fall within the Code, unless there is a public interest in publication.

Address code: Publishing details about a celebrity's home without consent, for example, could constitute a breach, especially because of security problems and the threat from stalkers. The key test in such cases is not whether the precise location has been disclosed, but whether the information published would be sufficient to enable people to find the whereabouts of the home.

A complaint from singer Ms Dynamite was upheld after a local paper revealed that she had moved into a property near her mother,

picturing the home and naming the street. (*Ms Dynamite v Islington Gazette: Report 63, 2003*).

But the PCC judges each case individually, according to the threat posed. So when the author J. K. Rowling, who guards her privacy closely, complained about disclosure of details of her homes in London and Scotland, she had mixed success.

The PCC upheld her complaint that a *Daily Mirror* article, picturing the London house and naming the road in which it was located was sufficient to identify it. However, details the paper had given of two of the author's Scottish properties were not judged intrusive. In one, her Edinburgh house was pictured, but only the name of the suburb was given. In the other, an aerial photograph of Ms Rowling's country home, its name and the county — Perthshire — in which it was located were not regarded as a giveaway that might attract unwanted visitors. (*Rowling v Daily Mirror: Report 72, 2005*).

In 2008, Ms Rowling complained that three more newspaper stories had identified her country home by saying it was close to a farm she had bought, running more pictures and naming a nearby town. But the PCC ruled that the information given was not sufficiently different to that already in the public domain, especially on the internet — including a listing in *Wikipedia* — to contravene the Code. Significantly, the articles did not give the precise whereabouts of the house, or name the road, nor where the property was in relation to the nearby town, and the photographs showing the surrounding countryside did not pinpoint the location. (*Rowling v The Mail on Sunday Scottish Edition, Daily Mirror, Daily Record: Report 77, 2008*).

The Code's protection for people genuinely at risk from stalkers or obsessive fans does not automatically carry over to non-celebrities. Ms Helen Edmonds, former wife of Noel Edmonds, complained that a Sunday paper story headlined *A Far Cry From Crinkley Bottom* identified the location of her new home, making her and her children vulnerable to criminals. But the PCC ruled that the piece did not contain information — such as security arrangements or the times

when the house would be unoccupied — that would expose her home to greater risk than for other similar properties. (*Edmonds v The Mail on Sunday: Report 72, 2005*).

Pregnant pause: As with homes, so with health. There are limits on what can be said about celebrities, even though they are constantly in the public eye. Pregnancy, even for non-public figures, can rarely be kept secret for long, but the PCC has ruled that early speculation on whether someone is expecting a baby can be intrusive.

The actress Joanna Riding complained that a diary item disclosed that she had withdrawn from a theatre role because she was expecting a baby — before she had even told her family. She subsequently suffered a miscarriage.

In a landmark adjudication protecting all mothers-to-be, whether public figures or not, the PCC said that revealing the pregnancy at such an early stage was a serious intrusion (*Riding v The Independent: Report 73, 2006*). And, setting out guidelines for the future, the Commission ruled:

- *The press should not reveal news of an individual's pregnancy without consent before the 12-week scan unless the information is known to such an extent that it would be perverse not to refer to it.*
- *This is because of the risk of complications or miscarriages, and because it should be down to the mother to share the news with her family and friends at an early stage.*

The PCC has made clear that it will not accept attempts by journalists to get around its guidelines by running speculative stories. It upheld a complaint against a national tabloid which, having received firm information that the singer Charlotte Church was not more than 12 weeks pregnant, published a piece headlined *Baby Rumours For Sober Church*. The Commission said that trying to circumvent privacy provisions by presenting the story as speculation was against the spirit of the Code. (*Church v The Sun: Report 75, 2007*).

Private health details of public figures, or their families, are generally protected under the Code unless there is some public interest in revealing them — such as when they might significantly affect the performance of a senior politician. But when a Sunday newspaper revealed specific health details of Government Minister David Miliband’s wife, in a story discussing their adoption of a child, the PCC judged it to be highly intrusive. Such details should not have been published, it said, without explicit consent or some convincing public interest reason. It was a serious breach of the Code. (*Miliband v The Mail on Sunday: Report 69, 2005*).

Famous or infamous? The rules that protect the famous from unjustified intrusions into privacy reply equally to the infamous. Even notorious criminals do not automatically forfeit their rights under the Code. The judgment, as ever, is whether publication would be in the public interest.

So when Peter Coonan — formerly Peter Sutcliffe, the Yorkshire Ripper — complained about publication of a private telephone conversation secretly taped from Broadmoor Special Hospital, where he was a patient, the PCC had to judge whether his rights had been breached.

The Commission decided that, as a result of Coonan’s crimes, his criminal career, medical condition and the circumstances of his treatment and detention were properly matters for public scrutiny and discussion. And, although the conversation — run by the *News of the World* as the Ripper Tapes — referred to his mental state, medical condition and treatment, the information was not particularly revealing, much of it was already in the public domain and it was not sufficiently private to be protected under the Code. The PCC rejected both the privacy complaint and another that the taping of the conversation had breached the Code’s provisions on the use of clandestine listening devices. (*Coonan v News of the World: Report 74, 2007*).

Public servants, including politicians, are also entitled to privacy — although they are inevitably subject to extra scrutiny in the public interest. The PCC upheld a complaint about the story of a wife who left her husband for a relationship with a policewoman. The fact that the WPC was a public servant was not sufficient grounds for intrusion. (*Charters v The Scottish Sun: Report 48, 1999*).

Royal Family: There is a delicate balancing act between the fulfilment of the Royal Family’s public role and their private lives. But while they are not entitled to any special provision, they are entitled to the protection of the Code. The PCC issued a [guidance note](#) on the Royal Princes, particularly protecting them from unnecessary intrusion during their time at school. Pictures of Prince William hiking and crossing a river during a gap-year visit to Chile were held to breach both privacy and harassment rules.

The PCC condemned publication and the ‘persistent pursuit’ involved. “The ability of all young people to go about their lives without physical intimidation is hugely important.” (*Prince William v OK! Magazine: Report 52, 2000*).

REASONABLE EXPECTATION OF PRIVACY

The Prince William pictures, in the PCC’s view, clearly breached the rule that photographs should not be taken without consent in a private place where the individual has a reasonable expectation of privacy. Mid-river in a South American wilderness was an example of just such a private place. In fact, the elements that contribute to a reasonable expectation of privacy have been delineated in a series of Commission rulings. Before publication, editors must decide:

- Was the person photographed out of the public view — not visible or identifiable with the naked eye to someone in a public place?
- Was he or she engaged in a private activity at the time?

If the answer to either question is Yes, there are serious risks that the pictures could breach the Code.

Back to
contents

Index

In response to a complaint from Sir Paul McCartney, the PCC decided that Notre Dame cathedral, although a great public monument thronged with tourists, was also a private place for a person at prayer. It deprecated the publication of pictures in *Hello!* magazine showing Sir Paul praying inside the cathedral soon after his wife's death. While not privately owned, the cathedral was clearly a place where a person would have a reasonable expectation of privacy. (*McCartney v Hello: Report 43, 1998*).

Holiday pictures: When supermodel Elle Macpherson was taking her family on holiday, she chose a private villa on the private island of Mustique, which has no public beaches, and therefore provided a reasonable expectation of privacy for her children. So when a celebrity magazine published shots of the family relaxing, her complaint to the PCC was upheld. (*Macpherson v Hello!: Report 74, 2007*).

However, the PCC decided that, in the middle of summer, a publicly accessible Majorcan beach overlooked by holiday apartments was not a place where newsreader Anna Ford and her partner might reasonably expect privacy as they relaxed in their swimwear. It also said publication of the pictures did not show disrespect for her private life. The adjudication was challenged on judicial review, but upheld by the Divisional Court. (*Ford/Scott v Daily Mail / OK! Magazine: Report 52, 2000*).

A crowded beach is one thing, a quiet tearoom in Dorking, another. A diner complained that a picture of him tucking into a butterscotch tart was taken without consent and used in a newspaper. The PCC said customers should reasonably expect to sit inside a quiet café without having to worry about surreptitious photographs being taken and published in newspapers. (*Tunbridge v Dorking Advertiser: Report 58, 2002*).

Similarly, bank cashier Mark Kisby did not expect his photograph to appear, without consent, in a men's magazine simply because he was snapped while serving a 'lottery lout' millionaire who was

making a large withdrawal. So, when it did, Mr Kisby complained that it was an intrusion on his privacy that could have led to security problems for him and his family.

The magazine argued that the cashier was the public face of the bank and could not expect his identity to be concealed. However, the PCC ruled that publishing a photograph of a person, without consent, at his workplace was in this instance a clear breach of the Code. (*Kisby v Loaded: Report 73, 2006*).

Public or private space? While the interiors of publicly accessible buildings such as cathedrals, cafés, banks or offices can constitute a private place within the Code, the exterior of a person's own home may not always do so.

Mrs Gail Sheridan, the high-profile wife of a prominent Scottish politician, objected to a tabloid newspaper's photograph, taken with a long lens, of her in her back garden. She claimed she had a reasonable expectation of privacy. The newspaper disagreed. It said Mrs Sheridan was a public figure, standing on her driveway, visible from the street — even without a long lens camera — and was not engaged in any private activity, other than holding her keys.

The PCC, in an adjudication pulling together many of the factors upon which such issues hinge, said that had Mrs Sheridan been hidden from view in an enclosed back garden, she might have been protected. But here she was clearly visible from the street and engaged in an innocuous activity.

The fact that the photograph was taken with a long lens was immaterial: what was important was not the means by which the picture was taken but that she was identifiable to ordinary passers-by. The complaint was not upheld. (*Sheridan v Scottish Sun: Report 75, 2007*).

THE PUBLIC INTEREST

No judgment is more difficult than when weighing the privacy of the individual against freedom of expression and intrusion in the wider public interest (*See Section Six, Public Interest*). The two principal issues in making such a judgment are:

- *Is publication of the private information genuinely in the public interest? And —*
- *Is the degree of intrusion proportionate to the public interest served?*

Sometimes editors surmount the first hurdle, only to fall at the second.

There were no such problems in identifying the public interest when the then Tory MP Rupert Allason's affair with a married woman was splashed in a newspaper. He complained that it was his private business. But the PCC ruled that as his election literature had led constituents to believe he was a family man — an impression that had not been corrected — publication was justified. (*Allason v Daily Mirror: Report 37, 1996*).

The Commission also found a public interest in the *Evening Standard* naming a council worker who had warned a friend that a care-worker was a paedophile — but had done nothing to alert the wider public (*Robson v Evening Standard: Report 42, 1998*).

And a convicted drug smuggler's complaint about a newspaper which published interior pictures of her home was rejected because it was in the public interest to show how she had spent the proceeds of crime. (*Tomlinson v Peterborough Evening Telegraph: Report 60, 2002*).

Attending police raids: By contrast, a newspaper came unstuck when it joined a police drugs raid on local homes. It posted a video clip of one raid, where a small amount of cannabis was found, on its website and used still pictures in the paper, headlined *Drugs And Cash Seized In Raid*. But the homeowner denied any knowledge of the drugs and had not been charged with an offence.

The PCC agreed that identifying her house and showing the interiors in such circumstances without consent involved a degree of intrusion way out of proportion to any public interest served by highlighting the police raid or exposing a specific criminal offence. (*Popple v Scarborough Evening News: Report 77, 2008*).

The warning about the dangers of relying on police invitations to join such exercises was strongly reinforced when another weekly newspaper accompanied a raid on a house suspected of having stolen satellite navigation systems. No stolen goods were found, nor charges brought, but the newspaper published interior shots of the house including a teenager handcuffed in his bedroom.

Although the boy's face had been pixellated and no exterior pictures of the house were used, the Commission ruled that this was a serious intrusion. It made clear that, as no stolen goods had been found, there was no public interest in publishing the pictures. (*A woman v Barking and Dagenham Recorder: Report 78, 2008*).

The PCC also reminded editors that under both the Code and current guidance from the Association of Chief Police Officers, it is the media's responsibility when attending such raids to obtain permission from the owner to enter the property before doing so. ACPO Guidance says: "Consent should be in a form which is capable of proof, i.e. in writing, filmed or taped verbal comment."

Undercover, over the top: The Commission took a similar line about a snatched photograph of Christopher Bourne, dubbed by a regional Sunday paper "the greediest man in Britain". He had bought 30 Xbox games consoles so that he could exploit a pre-Christmas shortage and auction them at a profit on eBay. After refusing to be pictured himself, Mr Bourne was secretly photographed when he let his son pose with the consoles. The picture was published with the headline *Dad Cashes In On Xbox Misery*.

The PCC said that, while the paper was entitled to its strong views, there was no evidence of crime or impropriety by Mr Bourne. The intrusion into his privacy by photographing him surreptitiously

BRIEFING

Coverage of lottery winners

The PCC has revised its advice, first issued in 1995, on the reporting of winners of the National Lottery. The [Guidance Note](#) covers four main areas:

- **Winners who opt for anonymity:** Editors should generally respect a winner's wish for no publicity, unless there is a public interest in publication. The sheer scale of the win is not, itself, a justification. Publications should beware of seeking information about such winners by any means which might breach the Code — such as harassment.
- **Winners who opt for publicity** are still protected by the Code. They are entitled to expect journalists to take care not to publish inaccurate material about them, or harass them. Their privacy is protected by Clause 3 — although the PCC would take into account whether similar material had been put into the public domain with the winner's consent.
- **Vulnerable winners:** The very young, or old, or the sick or recently bereaved may make particularly good copy, but they are still entitled to strong protection under the Code — regardless of the sums involved.
- **Rewards and inducements:** Offering rewards to people to identify anonymous lottery winners is banned, unless it is in the public interest. The PCC also bars journalists from seeking information from Camelot staff which would breach the duty of confidence to the winners under the lottery organisers' licence.

in his own home was out of proportion to any conceivable public interest in publishing his picture. The complaint was upheld. (*Bourne v Sunday Mercury: Report 72, 2006*).

Gratuitous humiliation: Proportionality was the key to compliance when two newspapers reported on an affair between an aristocrat's wife — who it later emerged suffered from mental illness — and a former prisoner. One story breached the Code, the other did not.

The *Daily Mail* account — headlined *The Aristocrat's Wife, The Jobless Jailbird And The 'Lady Chatterley' Affair That Put Her Marriage Under Threat* — was based on information from the girlfriend of the man involved. It spoke of text messages and revealed where sexual encounters had taken place. But the newspaper deliberately omitted more intimate details about the relationship. A second story was published in the *News of the World*, based on the confessions of the adulterous boyfriend himself, under the headline *Lady Mucky Wanted Me Rough And Ready*. It included intimate details of sexual activity.

In each case, the PCC said the key issue was the balance of one person's freedom of expression versus another person's right to privacy. In the *Mail*, the girlfriend's right to give her side of the story had been maintained, without including "humiliating and gratuitously intrusive detail" about the wife. The complaint of an intrusion into privacy was therefore not upheld. (*A woman v Daily Mail: Report 74, 2007*).

However the *News of the World* story failed the PCC proportionality test. The Commission ruled that the public interest involved in exposing adultery by someone who had married into an aristocratic family was insufficient to justify the level of intimate detail that had been given. (*A woman v News of the World: Report 74, 2007*).

A similar test of *gratuitous humiliation* was applied when two newspapers published images that had led to the suspension of a woman teacher at a military college. The explicit photographs had

30

PRIVACY
Gratuitous humiliation

The panel
colour code

What the
Code says

Key
questions
editors need
to ask
themselves
when Code
issues arise

Briefings
on specific
areas where
the Code
applies

Back to
contents

Index

KEY QUESTIONS

- **Was consent given for publication** — formally or by implication?
- **Has the entitlement to privacy been compromised?** For example, by the subject courting publicity or selling it on their own terms?
- **Is the individual a public figure, or role model** — and does the material reveal conduct reflecting on their public or professional status or image?
- **Was the information already in the public domain** — would it be reasonable for it to be retrieved and made private?
- **Did individuals photographed without consent have a reasonable expectation of privacy?** Were they out of public view and engaged in private activity?
- **Was publication in the public interest?**
- **Was the breach proportionate to the public interest served?**

been sent between the teacher and her partner, but were discovered by her employers. The *Daily Mirror* published one picture of the teacher as a headshot only, and the *Workshop Guardian* published a topless picture, but duly censored to preserve her modesty.

The PCC cleared both newspapers. It said while the publication of the story was legitimate, this was not sufficient to deprive the teacher of all rights to privacy. The pictures themselves were intimate and taken in the context of a relationship. By cropping the picture, the *Mirror* had avoided gratuitously humiliating the teacher. (*A woman v Daily Mirror: Report 70, 2005*).

Similarly, for the *Workshop Guardian* to have published its picture in full would have caused unnecessary embarrassment. Censoring it showed some respect for the woman's privacy, ensuring no breach of the Code. (*A woman v Workshop Guardian: Report 70, 2005*).

The Commission has also issued guidance (*See Briefing panel*) that those National Lottery winners who request anonymity should not be identified. The sheer scale of the sum involved could not justify publication in the public interest.

KEY RULINGS

- *Attard v Manchester Evening News* (Report 55, 2001).
- *Macleay MP v Mail on Sunday* (Report 72, 2005).
- *Rowling v Daily Mirror* (Report 72, 2005).
- *Rowling v Mail on Sunday Scottish Edition, Daily Mirror, Daily Record* (Report 77, 2008).
- *Edmonds v The Mail on Sunday* (Report 72, 2005).
- *Riding v The Independent* (Report 73, 2006).
- *Church v The Sun* (Report 75, 2007).
- *Miliband v The Mail on Sunday* (Report 69, 2005).
- *Coonan v News of the World* (Report 74, 2007).
- *Ms Dynamite v Islington Gazette* (Report 63, 2003).
- *Charters v The Scottish Sun* (Report 48, 1999).
- *Prince William v OK! Magazine* (Report 52, 2000).
- *McCartney v Hello* (Report 43, 1998).
- *Macpherson v Hello!* (Report 74, 2007).
- *Ford/Scott v Daily Mail / OK! Magazine* (Report 52, 2000).
- *Tunbridge v Dorking Advertiser* (Report 58, 2002).
- *Kisby v Loaded* (Report 73, 2006).
- *Sheridan v The Scottish Sun* (Report 75, 2007).
- *Allason v Daily Mirror* (Report 37, 1996).
- *Robson v Evening Standard* (Report 42, 1998).
- *Tomlinson v Peterborough Evening Telegraph* (Report 60, 2002).
- *Popple v Scarborough Evening News* (Report 77, 2008).
- *A woman v Barking and Dagenham Recorder* (Report 78, 2008).
- *Bourne v Sunday Mercury* (Report 72, 2006).
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- *A woman v News of the World* (Report 74, 2007).
- *A woman v Workshop Guardian* (Report 70, 2005).