

Section Three: Intrusion

HARASSMENT

When persistence doesn't pay

This Clause, formulated following the death of Diana Princess of Wales, is one of the toughest and most explicit in the Code, yet relatively few cases go to adjudication. This is largely down to the success of informal guidance.

Complaints, when they come — often via the PCC's 24-hour Helpline for the public ([See Contact Numbers](#)) — are usually from people who want the physical removal of journalists, perhaps from their doorstep. The Commission staff will either advise complainants what they should say to journalists who they believe are harassing

them, or alert editors directly to the fact that a complaint has been received.

As Clause 4 requires *journalists* — which under the Code covers all editorial staff, including contributors — not to *persist in questioning, telephoning, pursuing or photographing individuals once asked to desist nor remain on their property when asked to leave*, they usually comply. In most cases, the matter is resolved and no complaint follows.

Since October 2009, the Code has required that journalists in such situations should — if requested — identify themselves and those they represent. In reality, this underwrites standard practice. It would be unusual for journalists not to identify themselves to the person they wanted to interview or photograph, unless there was a legitimate public interest reason for not doing so.

Media scrums: The PCC has been particularly effective in dealing with media scrums, which are often the most high profile instances of persistent pursuit, caused by particularly intense cross-media interest in a major story.

The PCC and the Editors' Code Committee have taken the lead in trying to co-ordinate efforts to avoid this form of collective harassment. The PCC agreed to act as a clearing house for 'desist' requests by passing them on not only to print media, but to broadcasting organisations not covered by the Code. PCC advice to journalists to pull out of areas affected by tragedy — such as

THE CODE SAYS...

Clause Four — Harassment*

- i) *Journalists must not engage in intimidation, harassment or persistent pursuit.*
- ii) *They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.*
- iii) *Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.*

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

Dunblane, Omagh and the Paddington rail disaster — is usually heeded by press and broadcasters alike.

Often, the PCC will, proactively, offer its services to those suddenly caught in the media spotlight. It did so, for example, in the Soham murder inquiry, when the killing of two schoolgirls shocked the nation; and again in the case of the Ipswich murders, where a serial killer preyed on prostitutes. It routinely assists families of military personnel killed or wounded on active service, or captured.

Royal siege: Most notably, the Commission intervened when Kate Middleton, girlfriend of Prince William, found herself under virtual siege by press and TV cameras when rumours were rife of an imminent royal engagement. PCC officials were in touch with Ms Middleton's lawyers from the outset, offering to assist as soon as requested.

That situation was defused without need for a formal complaint. But just months later a photograph of Ms Middleton in the *Daily Mirror* led to a complaint that it had been taken in circumstances that amounted to harassment. The PCC launched a formal investigation and the newspaper issued a public expression of regret for the error on the same day. (*Middleton v Daily Mirror: Report 75, 2007*).

While formal complaints are therefore rare, adjudications are even less common. And they are often difficult as there tends to be wide discrepancy between the accounts of complainants and journalists of the contact between them.

Desist means stop: However, if it is demonstrable that the journalist persisted, having been asked to desist, then the Commission will usually find a breach of the Code, unless there is a public interest involved. A BBC radio weather girl complained of harassment over a story that she was involved in a 'D-I-Y pregnancy' with her female partner.

The reporter admitted making three approaches to the complainant, but denied being asked on the first approach to desist.

On the second approach, via the BBC, the reporter was assured by an official — acting on the woman's instructions — that the presenter did not wish to speak.

The newspaper admitted making a direct approach to the complainant herself the next day. The PCC, in this case, accepted the BBC's representation as a request to desist, which made the third approach a breach. The complaint was upheld. (*A Woman v News of the World: Report 59/60, 2002*).

The PCC also found against a Sunday newspaper, which — after twice being told a young woman did not want to be contacted — then approached her with an offer to write a column, and followed up with another visit from a reporter and photographer. While the newspaper may not have been acting in bad faith, it was in breach. (*Swire v Mail on Sunday: Report 54, 2001*).

Even without a request to desist, repeated unwelcome approaches could be against the spirit of the Code and amount to harassment. A couple whose daughter, aged 16, committed suicide declined a weekly newspaper's offer to publish a tribute, saying they would be in touch if they changed their minds.

But the reporter, with deadline pressing, called four times in a few days. The PCC said commonsense should have dictated that repeated calls in a short time to recently-bereaved parents were inappropriate. The complaint was upheld. (*Kimble v Bucks Herald: Report 53, 2001*).

Time limit: A *desist* request does not last forever. The passage of time may lessen the risk of harassment. Circumstances can alter, sometimes rapidly, and a fresh approach may then be legitimate. There can be no set formula for deciding this. These are difficult judgment calls for journalists and the Commission assesses each case on merit. But it would normally require editors to show reasonable grounds, such as a material change in circumstances, for a renewed approach.

Kimberly Fortier (Quinn) complained that a picture taken of her

BRIEFING

Judiciary and harassment

Guidance on the conventions surrounding the circumstances where judges can make comments to the press has been issued by the PCC.

It warns that:

- Judges cannot comment outside a courtroom on any case over which they are presiding, or have presided, or discuss any decision they have made, or any sentence they have imposed.
- They are equally prohibited from commenting on or discussing other judges' decisions.

The PCC advises that as there are no circumstances in which judges can speak to the press about such matters, there is a risk that approaches to them, or their family, by reporters could breach Clause 4 (Harassment) of the Code.

The PCC suggests editors should make sure that their staff — and any freelance contributors — are aware of the issues this sort of approach to judges could raise under the Code.

in August 2004 walking with her son in Los Angeles and published in the *Sunday Mirror* breached a 'desist' request issued by her lawyers ten days before, when the story broke of her affair with the then Home Secretary, David Blunkett.

The complaint was rejected. The PCC said it was artificial not to recognise that situations change. There had been major developments in the story, since the desist request had been made, including the revelation that Ms Fortier had contacted Mr Blunkett to end the relationship. The picture was taken in a public place, without physical intimidation and — while Ms Fortier denied being a public figure — her relationship with a senior politician had been put into the public domain, without complaint. (*Fortier v Sunday Mirror: Report 68/69, 2004-5*).

Similar issues arose when Greater Manchester Police complained that the *Daily Telegraph* had breached a request not to approach either the family of ten-year-old Jordon Lyons, who drowned in a pond, or two Police Community Support Officers who had arrived at the scene soon after, but did not enter the water to rescue him.

The PCC accepted that following the police 'desist' request, the story had moved on as it had been highlighted by Opposition leader David Cameron in a speech to his party's annual conference. It said the newspaper's approach had been proportionate to that development and the complaint was rejected. (*Greater Manchester Police v Daily Telegraph. Report 77, 2008*).

Approaching judges: The PCC has highlighted the problems of approaching members of the judiciary for comment on cases. In a Guidance Note, the Commission warns that because judges are not allowed to speak about cases outside court, approaches to them or their families could lead to complaints of harassment. (*See Briefing panel: Judiciary and harassment*).

Other sources: The Code puts the onus on editors to take care to ensure that the rules are observed not only by their own staff, but

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Approaching judges

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- **Was there a request to desist?** Subsequent pursuit, etc, would need to be justified in the public interest or by changed circumstances.
- **Was a request for identification complied with?** If not, was there a public interest reason for not doing so?
- **Did non-staff contributors comply?**
- **Was there a public interest?**

also by their contributors, such as agencies. That responsibility is underlined here. Pictures and stories from freelance contributors obtained by harassment would not comply with the Code.

If a complaint arose, the PCC would expect an editor to show how reasonable care had been taken to ensure that such material complied with the Code. Extra checks might be advisable, for example, when taking potentially sensitive material from previously untried sources, such as ‘citizen journalists’.

The public interest: It would be possible to claim that a degree of harassment — such as persistent questioning and pursuit — is necessary in the public interest. In such cases, the Commission would normally expect that the harassment was not disproportionate to the public interest involved.

A magazine that published pictures of Prince William on an adventure break in South America claimed they were in the public interest as they showed him being groomed for kingship. The PCC rejected any notion that the public interest was served. (*Prince William v OK! Magazine: Report 52, 2000*).

KEY RULINGS

- *Middleton v Daily Mirror* (Report 75, 2007).
- *A woman v News of the World* (Report 59/60, 2002).
- *Swire v Mail on Sunday* (Report 54, 2001).

- *Kimble v Bucks Herald* (Report 53, 2001).
- *Fortier v Sunday Mirror* (Report 68/69, 2004-5).
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