

## Private lives and public interest

If the Code of Practice lies at the heart of self-regulation of the press, then serving the public interest lies at the heart of the Code, and of the very best of journalism, synthesising its democratic role

### THE CODE SAYS...

#### The Public Interest

*There may be exceptions to the clauses marked \* where they can be demonstrated to be in the public interest.*

- 1. The public interest includes, but is not confined to:**
  - i) Detecting or exposing crime or serious impropriety.*
  - ii) Protecting public health and safety.*
  - iii) Preventing the public from being misled by an action or statement of an individual or organisation.*
- 2. There is a public interest in freedom of expression itself.**
- 3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.**
- 4. The PCC will consider the extent to which material is already in the public domain, or will become so.**
- 5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.**

and providing its moral base. Yet the public interest is impossible to define. So the Code does not attempt to do so. Instead, it provides a flavour of what it regards as the public interest — a non-exhaustive list that attempts to reflect the values of the society the British press serves:

- Detection or exposure of crime or serious impropriety;
- Protection of public health and safety;
- Prevention of the public from being misled,
- Upholding freedom of expression.

The Code also makes clear that if the information is already available in the public domain — or likely to be so — that too is a factor.

The list could go on, but it deliberately does not. The spirit of the Code, set out in the Preamble, requires that these areas should not be interpreted too widely; the Code does not work, for example, on the basis that the public interest is essentially whatever the public is interested in. But nor should the list be interpreted too narrowly, so as to discourage or prevent investigative journalism or exposure of serious wrongdoing, for instance. That would itself be against the public interest.

It was to protect such investigative journalism that the Code's test for invoking the public interest was changed in October 2009. Previously, editors were required to *demonstrate fully how the public interest was served*. But this did not specifically allow for publication or investigative activity that genuinely appeared to be in the public interest, even where none actually emerged.

So the Code committee introduced the test that editors would

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

need to *demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.*

Under the spirit of the Code, the PCC would always have been likely to take into consideration whether such activity or publication would have seemed reasonable. Now that has been codified. It means editors must convince the PCC that their belief that their action was in the public interest, was genuine and based on reasonable grounds. It is a stiff test. Fishing expeditions, or pretexts for them, won't do.

The Public Interest defence is available for all or part of nine of the 16 clauses and is marked by an asterisk.

***The areas where it does NOT apply are:***

**Accuracy and opportunity to reply** — it would not be in the public interest to fail *to take care to avoid inaccuracy*, or to deny a *reasonable* request to put something right;

**Intrusion into grief or shock and victims of sexual assault** — it could not be in the public interest not to show due *sensitivity* at such times;

**Discrimination against individuals** — which the Code assumes could not be in the public interest;

**Financial journalism, confidential sources** — which are clauses, by their nature, designed to *uphold* the public interest.

**Payments to witnesses once proceedings are active** — when any possible risk to the judicial process would be potentially at its most potent.

***The areas where the public interest exemption can apply:***

In judging publications' claims that otherwise prohibited information or methods were justifiable in the public interest, both the Code and

the PCC set high thresholds. The burden is on the editor to *demonstrate fully* how the public interest was served.

**Protecting children:** That burden is particularly onerous in cases involving children under 16, where the Code insists that it would take an *exceptional public interest to over-ride the normally paramount interests of the child.*

It is a very tough test. A newspaper which identified schoolboys expelled for fighting and racial abuse (*Colgan v Manchester Evening News: Report 43, 1998*) and another which named a schoolgirl whose mother committed suicide (*Brown v Salisbury Journal: Report 46, 1999*) were each found to be in breach. *So far, the Commission has accepted no such claim of exceptional justification.*

To succeed, any justification of the public interest must be clearly primary and not just an excuse to try to sneak a story in under the Code radar. The PCC will usually require evidence that any supporting pictures and personal details were necessary elements to the main thrust of the story.

**Exposing crime:** Use of a private photograph was thus accepted as an essential part of a Sunday newspaper's exposure of a plot where an individual offered an undercover reporter money to kill his mistress. A complaint of intrusion was rejected. (*Khare v News of the World: Report 48, 1999*).

The father of a 15-year-old boy who had posted on *YouTube* images of himself and other teenagers firebombing a freight train, complained when the video was uploaded onto a local newspaper website. He said the interests of the youths outweighed any public interest in showing their faces.

The PCC disagreed. It ruled that material showing anti-social or criminal acts committed in a public place by individuals over the age of criminal responsibility could not be considered private. The Code should not shield the perpetrators from public scrutiny. Also, the complainant's son had put the material into the public domain

voluntarily. The complaint was rejected. (*A man v Northwich Guardian: Report 75, 2007*).

**Protecting public health and safety:** A reporter used subterfuge to see CCTV pictures which substantiated claims that a dying man had been badly treated by a hospital. That was ruled by the PCC to be in the public interest. (*Northwick Park Hospital v Evening Standard: Report 57, 2002*).

So too was the naming, without consent, of a teacher at the centre of a school tuberculosis scare. Her complaint against an evening newspaper was rejected because she was widely known to parents and pupils as the source of the TB outbreak and as such some otherwise private matters would become a necessary part of the public debate. (*A woman v The News, Portsmouth: Report 66, 2004*).

However, it was not appropriate for a local newspaper to identify a boy admitted to hospital suffering from meningitis. The legitimate public interest in alerting the local community to the case could have been met without disclosing the name — especially as he was a child — said the Commission. (*King v Reading Evening Post: Report 37, 1997*).

**Preventing the public from being misled:** The PCC has held that it is fair to expose hypocrisy in public life by contrasting private behaviour and public pronouncements and responsibility. A Sunday newspaper's use of subterfuge to obtain photographs of a Nazi shrine at the home of a policewoman married to a member of the British National Party, was supported by the PCC. (*Daniels v The Sunday Telegraph: Report 65, 2004*).

It was justifiable to put into the public domain the question of whether the wife's specific police role as an investigator of racially-motivated crimes was compatible with living in a home containing Nazi memorabilia, said the Commission.

But any intrusion needs to be in reasonable proportion to the

exposure. The PCC regards bugging private telephone conversations and publishing transcripts as one of the most serious forms of physical intrusion into privacy — and therefore sets a particularly stiff public interest test to justify it.

A national daily investigating the Cheriegate Affair — where the Prime Minister's wife used Peter Foster as a go-between to buy property in Bristol — failed that test. It published transcripts of intercepted calls between Foster and his mother, claiming they clarified events surrounding Cheriegate.

The PCC said no significant new information had been provided and upheld Mr Foster's complaint. Not to have done so would have exposed anyone involved in high profile stories to unjustified physical intrusion. (*Foster v The Sun: Report 52, 2000*).

**The public's right to information:** The twin rights of freedom of speech and the public's right to know are enshrined in both the Preamble to the Code and the Public Interest defences.

The Commission, in a landmark decision, ruled that a serialisation of Gitta Sereny's book about child-killer Mary Bell was not a breach of the Code's rules on payments to criminals and their associates because it had ensured that important information was made widely available. If no payment had been made, the wider public would have been deprived of information that was in the public interest. (*The Times and Mary Bell serialisation: Report 43, 1998*).

The same was not true, however, for an article by Victoria Aitken about her father's crimes. The PCC said the piece added nothing in the public interest, but merely glorified Jonathan Aitken — in a manner that breached the Code. (*Barlow v Daily Telegraph: Report 47, 1999*).

The public's right to information is vital in covering major events such as terrorist attacks or natural disasters — and may sometimes justify publication of graphic images of the victims without consent. But the same is not usually true of a routine car accident and

## KEY QUESTIONS

- **Was it *reasonable* to believe that publication or journalistic activity would have served the public interest?** The PCC would require a full explanation showing that the grounds were genuine and sound in the circumstances.
- **If clandestine methods, subterfuge, harassment or payments to criminals or witnesses are involved, could the information have been obtained by other means?**
- **Is the information in the public domain, or likely to become so?**
- **If children are involved, is the public interest in publication exceptional?**

caution is needed when publishing images of people receiving medical treatment, even in public places.

So when a local newspaper website uploaded pictures of an elderly crash victim being treated at the scene, before her condition was known, or her family told, the PCC ruled that there was insufficient public interest to override her privacy.

However, the newspaper's speedy action in taking down the material and apologising, was a proportionate remedy. (*Kirkland v Wiltshire Gazette: Report 77, 2008*).

**Upholding freedom of expression:** Council officers using a 15-year-old boy in an undercover 'sting' operation to curb alcohol sales to underage customers complained when an angry shopkeeper's CCTV image of him appeared in a local paper. They claimed this infringed his privacy and rights as a child under the Code. But the shopkeeper, whose staff sold the boy alcohol, wanted to demonstrate publicly that he looked at least 18.

The PCC rejected the complaint. It said that the boy's welfare wasn't involved and the story of possible entrapment rested entirely on his physical appearance.

To have found that the picture breached the Code would have

interfered with the shopkeeper's ability to conduct his arguments freely in public — and could have been incompatible with his rights to free expression. (*Cornwall County Council v The Packet, Falmouth: Report 74, 2007*).

**Could the information have been obtained by other means?** A key test of the validity of the public interest defence is whether the information could have been obtained without intrusion or other breach. This applies particularly in cases involving clandestine listening devices, subterfuge, harassment, or payments to witnesses or criminals.

## KEY RULINGS

- *Colgan v Manchester Evening News* (Report 43, 1998).
- *Brown v Salisbury Journal* (Report 46 1999).
- *Khare v News of the World* (Report 48, 1999).
- *A man v Northwich Guardian* (Report 75, 2007).
- *Northwick Park Hospital v Evening Standard* (Report 57, 2002).
- *A woman v The News, Portsmouth* (Report 66, 2004).
- *King v Reading Evening Post* (Report 37, 1997).
- *Daniels v The Sunday Telegraph* (Report 65, 2004).
- *Foster v The Sun* (Report 52, 2000).
- *The Times* and *Mary Bell* serialisation (Report 43, 1998).
- *Barlow v Daily Telegraph* (Report 47, 1999).
- *Kirkland v Wiltshire Gazette* (Report 77, 2008).
- *Cornwall County Council v The Packet, Falmouth* (Report 74, 2007).

Back to  
contents

Index