

## PRESS COMPLAINTS COMMISSION

The Minutes of the 173<sup>rd</sup> Ordinary Meeting of  
The Press Complaints Commission Limited held at  
Halton House, 20/23 Holborn, London EC1N 2JD on  
Wednesday 8<sup>th</sup> September 2010

Present: Baroness Buscombe Chairman  
Matti Alderson  
John Home Robertson  
Anthony Longden  
Ian MacGregor  
John McLellan  
Ian Nichol  
Lindsay Nicholson  
Esther Robertson  
Eve Salomon (who arrived during discussion of item 4(i))  
Simon Sapper  
Julie Spence  
John Waine  
Tina Weaver  
Peter Wright

In attendance: Stephen Abell Director

The following members of the secretariat attended the meeting as observers: Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Becky Hales, Amber Mun, Scott Langham, Catherine Speller and Ben Milloy.

Alison Hastings, the PCC's consultant, also attended as an observer.

1. Apologies

Apologies were received from Simon Reynolds and Ian Walden.

2. Minutes

The minutes of the meeting held on 14<sup>th</sup> July were approved as a correct record of the meeting and for publication (with one minor amendment).

3. Matters arising

There were none.

4. Complaints

(i) Complaint No. 10-1983/1984 PCC Investigations (Express Newspapers and The Mail on Sunday).

Peter Wright took no part in the discussion of these matters. Eve Salomon joined the meeting during the discussion.

The Commission had proactively initiated investigations into two instances of newspaper payments being made to individuals, who could have been regarded as witnesses (or potential witnesses) in the meaning of Clause 15 (Witness payments in criminal trials) of the Editors' Code of Practice.

The first case related to the Mail on Sunday's payment for an interview of a woman, who was convicted at trial of a criminal offence. She had sold her story to the newspaper prior to the trial but after she had been arrested; the existence of the payment was made clear during the trial.

The Commission had to assess whether the Code applied to defendants, as distinct from witnesses. While it was clear that a defendant was likely to give evidence at their own trial (assuming they entered a not guilty plea), their interest in the trial could already be said to be determined, in a way that a third party witness's might not.

The Commission did not consider that the wording of the Code was clear on this point. It decided to use this case as a means of better clarifying the issue, and referred the matter to the Editors' Code of Practice Committee to consider the scope of the Code in this area.

The second case related to a payment by Express Newspapers to a woman who claimed to have been assaulted by a police officer (who was subsequently acquitted at trial) during the G20 protests of 2009.

Following discussion, the Commission concluded that Clause 15 of the Editors' Code had not been breached and agreed the following adjudication:

*The Press Complaints Commission has launched an own volition investigation into a payment made by Express Newspapers in April 2009 to Nicola Fisher. Ms Fisher had claimed to have been assaulted by a police officer on the second day of the G20 protests on 2 April 2009.*

*The Commission decided that there had been no breach of Clause 15 (Witness payments in criminal trials) of the Editors' Code of Practice.*

*The articles, which appeared on 17 April 2009 in the Daily Star and the Daily Express, were based on an interview with Ms Fisher in which she outlined the nature of her allegations against the police officer in question, later confirmed to be Sgt Delroy Smellie. Ms Fisher described the alleged assault in detail, claiming that the experience was "like [she'd] been whipped by the Taliban", that she feared for her life and that the officer was a "thug" who "got his kicks out of hurting a woman". Her injuries were described in the articles which included photographs of them. Ms Fisher was paid for her involvement in the story.*

*At the time of publication, the police officer had been suspended, but had not been arrested or charged with any offence. In September 2009 he was charged with common assault, pleading not guilty in November 2009. Sgt Smellie was subsequently cleared of the charge in March 2010. At his trial, Ms Fisher did not give evidence, apparently citing concerns that the defence would focus on her lifestyle and background.*

*The newspapers said that the incident with Ms Fisher, which left her badly injured, had occurred the day after the high-profile death of Ian Tomlinson, at a vigil and memorial for him. There had been extensive CCTV and mobile phone footage of each incident (which was placed immediately online).*

*At the time of the interview – while Ms Fisher had already spoken to the Independent Police Complaints Commission (IPCC) whose investigation was in its preliminary stages – proceedings against the officer were not active, not least because his identity had yet to become known. The CPS had been made aware of the payment to Ms Fisher – who would not have agreed to the interview without remuneration – through her representative. There was no question of her evidence being embellished (as she had already given her statement to the IPCC before her interview). In addition, the trial took place before a District Judge rather than a jury.*

*The newspapers said that the police tactics and conduct during the G20 protests was a matter of legitimate public interest: the IPCC had received over 270 complaints about the actions and Metropolitan, City of London and British Transport Police during the demonstrations.*

*Given the actions of the police, including their controversial practice of 'kettling' and the death of Mr Tomlinson, it was right and proper that Ms Fisher's account be published. The footage of the incident had been widely disseminated on the internet and, at the trial, the officer did not deny the assault; rather, he defended his actions on the basis that he had used reasonable force in all the circumstances. While he had been acquitted of the charge, the decision had come in for some considerable public criticism.*

#### *Adjudication*

*Clause 15 of the Editors' Code imposes strict rules on payments to witnesses in criminal trials, in essence to avoid any threat, or perceived threat, to the integrity of the judicial process. It was significantly strengthened in 2003 to limit the circumstances in which payments could be made. The Commission receives relatively few complaints under this Clause (where the individual who receives payment is unlikely to complain) and is able proactively to launch an investigation of its own volition when legitimate concerns exist about the decision by a newspaper to make a payment. The Commission is committed to vigilance in this area, and will investigate any suggestion that Clause 15 is being breached by publications.*

*On this occasion, it became clear that the newspapers had paid Ms Fisher for the story, and she had subsequently not testified in court. The Commission wished to satisfy itself that due consideration had been given by the newspapers to ensuring that they had abided by the terms of the Code in its dealings with Ms Fisher.*

*Specifically, Clause 15 prohibits paying potential witnesses in circumstances where proceedings are not active, but are "likely and foreseeable", unless "the information ought demonstrably to be published in the public interest and there is an overriding need to make...payment for this to be done".*

*It was arguable that proceedings in this case were likely, given the allegation of assault against a police officer. However, he had not yet publicly been identified at the time of publication. In those circumstances, Ms Fisher would certainly have been a witness for the prosecution and her evidence could have formed an essential part of the case, despite the existence of video evidence in the public domain.*

*The central question was whether the published information was in the public interest. The Commission considered that it was. Ms Fisher's experiences related to the allegedly violent behaviour of police at a vigil for Ian Tomlinson (who had himself notoriously been the victim of alleged assault by a police officer), which left her with visible injuries. Footage of the incident had been posted online, and the specific*

*comments of the woman featured in it were – in the Commission’s view – a key part of an ongoing story. There was no doubt that the behaviour of police at the demonstrations was a matter of intense and legitimate public discussion at the time, especially following the death of Mr Tomlinson. In these circumstances, the Commission was satisfied that there was a public interest in publishing Ms Fisher’s own contribution, which she would not have apparently made without financial remuneration.*

*Of course, concerns may be raised about the fact that Ms Fisher did not subsequently attend the trial of the officer in question. The Commission was not in a position to comment upon her personal decision not to attend, and was aware of no evidence that the necessary disclosure about the payment had been the influencing factor. Clearly, if there had been such evidence, this would have been a matter of some concern to the Commission. In any case, the Commission believed that, at the time when the offer was made, there were sufficient public interest grounds (inherent in the subject matter of the story) to justify the newspapers’ decision to pay her. It did not find a breach of the Code as a result.*

(ii) Complaint No. 10-3875 Balding v The Sunday Times

Peter Wright rejoined the meeting. After discussion, the Commission concluded that it should uphold Clare Balding’s complaint and it agreed the following adjudication:

*Miss Clare Balding complained to the Press Complaints Commission that an article headlined “Humping in tents: a great British tradition”, published in the Sunday Times Culture section on 25 July 2010, discriminated against her in breach of Clause 12 (Discrimination) of the Editors’ Code of Practice.*

*The complaint was upheld.*

*The article, by AA Gill, reviewed the complainant’s television programme, Britain by Bike. In it, he referred to the complainant as a “dyke on a bike”. She considered this to be a pejorative reference to her sexuality and irrelevant to the programme. The hurt was compounded by a mock apology by the columnist for previously saying that she looked “like a big lesbian”.*

*The newspaper said that its columnist was well known for his acerbic and sometimes tasteless sense of humour: he was a “controversialist who pursues the English tradition of lampooning and ridiculing public figures”. It pointed out that Mr Gill had been the subject of 62 PCC complaints in the last five years, which had not been upheld (on*

*freedom of expression grounds). There was no reason why – in an age where homosexuality carried little social stigma – the reviewer could not discuss the sexuality of a TV presenter who had no problem with being openly gay.*

*In addition, the newspaper drew attention to two organisations called Dykes on Bikes (an American lesbian motorcycling movement; and a UK-based cycling movement) whose members had reclaimed the word “dyke” as an empowering, not offensive, term. It argued that an individual’s sexuality should not give them an “all-encompassing protected status”.*

*The complainant indicated that she was not demanding special treatment, simply the same treatment as everybody else. She asked the newspaper to apologise.*

#### *Adjudication*

*The right to legitimate freedom of expression is a key part of an open and democratic society and something which the Commission has sought to defend in the past. In this case, the columnist was clearly entitled to his opinion about both the programme and the complainant. As the paper had pointed out, the Commission has previously upheld his right to offer such opinions in his columns.*

*Of course, freedom of expression is – and should be – appropriately restricted by the Editors’ Code of Practice. Clause 12 of the Code is clear: newspapers must avoid prejudicial, pejorative or irrelevant reference to (amongst other things) an individual’s sexual orientation. The Commission itself has said that the use of pejorative synonyms for homosexual individuals would represent a certain breach of the Code.*

*In this case, the Commission considered that the use of the word “dyke” in the article – whether or not it was intended to be humorous – was a pejorative synonym relating to the complainant’s sexuality. The context was not that the reviewer was seeking positively to “reclaim” the term, but rather to use it to refer to the complainant’s sexuality in a demeaning and gratuitous way. This was an editorial lapse which represented a breach of the Code, and the newspaper should have apologised at the first possible opportunity.*

#### *Relevant rulings*

*McCormack v Sunday Life*

*Cowles v Daily Mail*

*Dale v Daily Mail*

(iii) Complaint No. 10-3933 Hampshire Constabulary v Aldershot News & Mail

After discussion, the Commission agreed an adjudication on this case. However, because of ongoing, associated legal proceedings, it agreed (after discussion with the parties) that details of the adjudication would not be made public at the current time.

(iv) Complaint No. 10-3620 Nicol-Harper v Southern Daily Echo

After discussion, the Commission concluded that the newspaper had taken sufficient care in its report and had not, therefore, breached Clause 5 (ii) of the Code. It agreed the following adjudication:

*Ms Rosie Nicol-Harper complained to the Press Complaints Commission that an article headlined ‘Man used balloon kit to take his own life’, published in the Southern Daily Echo on 12 July 2010, contained excessive detail about a method of suicide in breach of Clause 5 (ii) (Intrusion into grief or shock) of the Editors’ Code of Practice.*

*The complaint was not upheld.*

*The article reported an inquest hearing into the death of a man who had taken his own life by inhaling helium. The piece noted that the man had bought a ‘blow up balloon kit’, which included ‘helium canisters’, and had died after ‘inhaling too much’ of the gas. The complainant said that this method of suicide was uncommon and that, by revealing such excessive detail, the newspaper was likely to encourage copycat suicides.*

*The newspaper said it was aware of the Code’s requirements on reporting suicide and had sought to remove detail about the method used in this case, in order to limit the chance of others copying it. For instance, it had not reported how precisely the gas had been inhaled, or the quantity that would generally lead to death. In the context of a straightforward inquest report, the newspaper argued that it would have been improper and misleading not to have revealed the basic means by which the man had died.*

*Adjudication*

*The Commission has made several rulings under Clause 5 (ii) of the Editors’ Code, which was introduced in 2006 specifically to deal with concerns about copycat suicides. The key part of this Clause relates to*

*care being taken to prevent the publication of “excessive detail” about suicide methods.*

*In this case, even though it was a fairly uncommon method of suicide, the Commission did not consider that the newspaper had breached the terms of the Code. The newspaper was entitled to cover the inquest proceedings and to report the basic details of the method. Details about the precise apparatus that had been constructed – and how much gas had been inhaled – might well have been excessive in breach of the Code, but they had not been included. This was a difficult balancing act, but the Commission was satisfied that the newspaper had published a suitably limited level of detail.*

*As a result, while the Commission wishes newspapers to remain vigilant in this area, it did not uphold the complaint.*

(v) Complaint No. 10-1893 Clark v Canterbury Times

After discussion, the Commission agreed that the newspaper – which had shared its content with the Herne Bay Times and the Whitstable Times – had breached the Code of Practice and it upheld the complaint in the following terms:

*Mr Edward Clark complained to the Press Complaints Commission that an article headlined “Storm over ‘drug addict’ accusation”, published in the Canterbury Times on 30 April 2010, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors’ Code of Practice.*

*The complaint was upheld.*

*The articles reported an allegation, sent in an anonymous email to the newspaper, that the complainant – who had been awarded the lead role in his local operatic society’s latest production – was an “ex-heroin user”. The complainant said that this was incorrect: he had never used heroin in his life. He had made clear his absolute denial of the claim to the newspaper before publication and this had been included in the article. He said that the newspaper should not have published the story based on the unsubstantiated claims of a single anonymous source.*

*The newspaper said that deciding to run the article was “a difficult call”. However, the anonymous email contained a serious allegation about the complainant and it had decided to investigate by contacting the complainant and the chairman of the operatic society for their comments. The article gave the complainant the opportunity to deny the allegation. Following the complaint, the newspaper: removed the*

*online version of the article; published letters of rebuttal from the complainant's mother and the chairman of the operatic society; and published an apology to the complainant for any distress caused.*

#### *Adjudication*

*The Commission accepts that newspapers often receive anonymous tip-offs which, after further investigation, lead to published stories. However, it is important that newspapers are able to demonstrate that they have taken care to ensure the accuracy of the material, in accordance with the terms of Clause 1 of the Editors' Code.*

*In this instance, the newspaper had reported a serious allegation of drug use which had been made by an uncorroborated, anonymous source. Although the complainant's denial had been obtained (and was reported), there was no suggestion that newspaper had made other efforts to ascertain whether the original claim had any basis in fact. This, in the Commission's view, constituted a clear editorial lapse. The fact that the complainant's denial had been published did not absolve the newspaper of its own responsibility for care over the accuracy of the claim against him. The Commission was surprised that the newspaper had assumed the contrary.*

*While the Commission welcomed the subsequent attempts made to resolve the complaint, it concluded that the newspaper had failed to take care not to publish inaccurate information in breach of the Code. The complaint was upheld.*

*The Commission also wished to record its concerns about the length of time the newspaper had taken to respond to its enquiries.*

#### (vi) Complaint No. 10-3726 Sheppard v Daily Star

After discussion, the Commission upheld the complaint and agreed the following wording for its adjudication:

*Mr Adam Sheppard complained to the Press Complaints Commission that an article headlined "Muslim-only public loos", published in the Daily Star on 15 July 2010, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.*

*The complaint was upheld.*

*The front-page article reported that a Rochdale shopping centre had installed "Muslim-only squat-hole loos", and that the local council had wasted "YOUR money" on them. The complainant – who did not represent Rochdale Council or the Rochdale Exchange Centre, neither*

*of whom had complained to the Commission – said that it was inaccurate to say that the toilets were “Muslim-only”: the facilities, which were common to many countries, would be available to all. In addition, the decision to pay for the ‘nile pans’ was taken by the shopping centre itself, rather than the local council. It did not therefore involve taxpayers’ money.*

*The newspaper said that – while non-Muslims could have used the loos – they were designed with Muslims in mind. Nonetheless, it accepted that the headline was inaccurate in that non-Muslims would be free to use the toilets. It also accepted that the loos were paid for by a private developer. It suggested the publication of the following correction on page 2, in addition to the removal of the article from its website:*

*Our 15 July article said that squat style loos at Rochdale Exchange Centre were for Muslims only and were a waste of the council’s money. We are pleased to make clear that the loos may be used by non-Muslims and that they were paid for by the developer.*

*The complainant asked for the newspaper to publish an apology.*

#### *Adjudication*

*In this prominent story, there were two clear errors of fact which, in the circumstances, would have misled readers in a significant manner: the toilets could not be described as “Muslim only”; and were not paid for by the local council. While the newspaper had accepted that the article was wrong – and offered to correct the item – the Commission was particularly concerned at the lack of care the newspaper had taken in its presentation of the story. This led to a breach of Clause 1 of the Code which makes clear that newspapers must “take care not to publish inaccurate, misleading or distorted information”. The complaint was upheld.*

- (vii) The Commission formally approved (subject to individual queries on specific complaints raised with the office) the following PCC Papers, which had contained draft adjudications for Commissioners’ ratification or otherwise: 4843, 4844, 4845, 4846, 4847, 4849, 4850, 4851, 4852, 4853, 4854, 4855, 4856, 4857, 4858, 4859, 4860, 4861, 4862, 4863, 4864, 4865, 4866, 4867, 4868, 4869, 4870, 4871, 4872, 4873, 4874, 4875, 4876, 4883, 4884, 4885, 4886. All papers had been circulated since the previous Commission meeting.

## 5. Chairman and Director’s meetings

Commissioners received an update on appointments undertaken by the Chairman and Director.

6. Any other business

*Phone Hacking* – The Commission discussed the issue at length, with particular regard to recent allegations published by the New York Times and the Guardian. It recognized the gravity of the issues at stake, but also that the allegations were the subject of ongoing legal proceedings and that it was not appropriate to comment further at this stage.

The Commission considered a letter from the editor of the Guardian and agreed the basis for a response from the Director.

*Media attention following a death* – The Director updated Commissioners on a meeting he and the Head of Complaints had recently had with a freelance journalist about his family’s difficult experience of dealing with media attention following the death of a young relative. In light of that meeting – which had followed the PCC providing assistance to the family – the office undertook to examine (and improve) PCC literature directed at the bereaved.

*Legal action* – Commissioners received an update from the Director about a legal action to which the PCC is a party.

*Complaints* – One Commissioner expressed concern about the conduct of a complainant’s legal representative in his dealings with PCC staff. It was agreed to keep the matter under review.

*Bishop Waine* – The Chairman informed Commissioners that this was to be Bishop John Waine’s final meeting as a member of the PCC. She thanked him for his many years of exceptional service and for his friendship to Commissioners and PCC staff. In response, Bishop Waine wished the Commission well, saying that he remained a great believer in press self-regulation.

7. Date of next meeting

**2.00pm** on **Wednesday, 27<sup>th</sup> October 2010** at Halton House, 20/23 Holborn, London EC1.