

PRESS COMPLAINTS COMMISSION

The Minutes of the 170th Ordinary Meeting of
The Press Complaints Commission Limited held at
Halton House, 20/23 Holborn, London EC1N 2JD on
Wednesday 21st April 2010

Present: Baroness Buscombe Chairman
Matti Alderson
John Home Robertson
Anthony Longden
Ian MacGregor
Lindsay Nicholson
Esther Robertson
Eve Salomon
Simon Sapper
Julie Spence
John Waine
Ian Walden
Tina Weaver
Peter Wright

In attendance: Stephen Abell Director

1. Apologies

Apologies were received from Simon Reynolds, Ian Nichol and John McLellan.

The following members of the secretariat attended the meeting as observers: Elizabeth Cobbe, Jonathan Collett, Charlotte Dewar, Will Gore, Becky Hales, Lisi Ke, Scott Langham, Catherine Speller and Stephen Wheeler. Alison Hastings, consultant to the PCC, also attended the meeting as an observer.

2. Minutes

The minutes of the meeting held on 10th March were approved as a correct record of the meeting and for publication.

3. Matters arising:

There were none.

4. Complaints

(i) Complaint No 10-0221 Bromley against Loaded

After discussion, Commissioners agreed that it should not uphold the complaint and the following wording was agreed for the adjudication:

A woman complained to the Press Complaints Commission that an article headlined “Wanted! The Epic Boobs girl!”, published in the February 2010 edition of Loaded, intruded into her privacy in breach of Clause 3 (Privacy) of the Editors’ Code of Practice.

The complaint was not upheld.

The article featured a number of photographs of the complainant – who was said to have the “best breasts on the block” – taken from the internet and offered readers of the magazine a reward of £500 for assistance in encouraging her to do a photo shoot with it. The complainant said that the article was intrusive: the magazine had published her name and the photographs, which had been uploaded to her Bebo site in December 2006 when she was 15 years old, had been taken from there and published without permission. Given the length of time which had elapsed, she could not remember whether her site had any privacy settings in place and did not know the circumstances in which the photographs had been removed. The publication of the article had caused her upset and embarrassment.

The magazine said that that it had not taken the photographs from the complainant’s Bebo site; rather, they were widely available on the internet. The complainant’s photograph, for example, came up in the top three in a Google image search on the word “boobs”. At the time of complaint, there were 1,760,000 matches that related to her and 203,000 image matches of her as the “Epic Boobs” girl. Moreover, the complainant’s name had been widely circulated and achieved over 100,000 Google hits, including over 8,000 photographs.

The complainant said that – until the article appeared in the magazine – she was not aware that the images had been widely disseminated, something which the magazine considered to be surprising.

Adjudication

This case raised the important principle of the extent to which newspapers and magazines are able to make use of information that is already freely available online. The Commission has previously published decisions about the use of material uploaded to social networking sites, which have gone towards establishing a set of principles in this area.

However, this complaint was different: the magazine had not taken the material from the complainant's Bebo site; rather it had published a piece commenting on something that had widespread circulation online (having been taken from the Bebo page sometime ago by others) and was easily accessed by Google searches.

It was not a matter of dispute that images of the complainant had been freely available for some time (having been originally posted in 2006) or that she had been identified online as the person in the pictures. The Commission could quite understand that the complainant objected strongly to the context in which they appeared online: what were images of her and her friends in a social context had become proclaimed as "pin-up" material, the subject of innuendo and bawdy jokes.

It was, of course, within this context that the magazine article operated. This was an important point: the magazine had not accessed material from a personal site and then been responsible for an especially salacious means of presenting it; instead it had published a piece discussing the fact that this material was already being widely used in this way by others.

The Commission did not think it was possible for it to censure the magazine for commenting on material already given a wide circulation, and which had already been contextualised in the same specific way, by many others. Although the Code imposes higher standards on the press than exist for material on unregulated sites, the Commission felt that the images were so widely established for it to be untenable for the Commission to rule that it was wrong for the magazine to use them.

That said, the Commission wished to make clear that it had some sympathy with the complainant. The fact that she was fifteen-years-old when the images were originally taken – although she is an adult now

– only added to the questionable tastefulness of the article. However, issues of taste and offence – and any question of the legality of the material – could not be ruled upon by the Commission, which was compelled to consider only the terms of the Editors’ Code. The Code does include references to children but the complainant was not a child at the time the article was published.

The test, therefore, was whether the publication intruded into the complainant’s privacy, and the Code required the Commission to have regard to “the extent to which material is already in the public domain”. In the Commission’s view, the information, in the same form as published in the magazine, was widely available to such an extent that its republication did not raise a breach of the Code. The complaint was not upheld on that basis.

(ii) Complaint No. 10-0177 Lloyd v Closer

Commissioners were informed that the complainant had decided to withdraw her complaint in the days before the meeting. As a result, no adjudication was made on this case.

(iii) Complaint No. 09-5890 Monckton against The Guardian

After discussion, the Commissioners decided not to uphold the complaint and agreed the following wording for the adjudication:

Viscount Monckton of Brenchley complained to the Press Complaints Commission that a blog on the Guardian website, headlined ‘Has UKIP got more than it bargained for in recruiting Viscount Monckton?’ and first published on 11 December 2009, contained inaccurate information in breach of Clause 1 (Accuracy) of the Editors’ Code of Practice and discriminated against him in breach of Clause 12 (Discrimination).

The complaint was not upheld.

The blog entry, by George Monbiot, commented on the announcement that Viscount Monckton had joined the UK Independence Party. The complainant said that the piece listed a number of claims that he had made and wrongly cast doubt on their validity. These included the following: that he had read the Copenhagen Treaty and that the Treaty would create a ‘world government’; that he was a member of the House of Lords; that the IPCC had taken account of his contribution to its 2007 report; and that he had filed patents for treatments for infectious diseases. The complainant maintained that all of his assertions on these points were true, but the journalist had

suggested otherwise. The article also ascribed statements to him that he had never made: that he claimed to have won the Falklands war; that he had claimed to have made himself a gold pin to prove his Nobel-prize winning credentials; and that he had previously ‘boasted’ of telling untrue stories.

In addition, the piece referred to the complainant as a ‘swivel-eyed maniac’, which he said was a discriminatory reference to a physical disability (proptosis) he suffered as the result of having had Graves’ disease.

The newspaper defended most of the disputed points. While the complainant may indeed have read the draft Copenhagen Treaty, he could not have known with certainty, when speaking in mid-October, what precisely would be signed in mid-December. It was legitimate, therefore, for Mr Monbiot to jokingly refer to the complainant as a clairvoyant. As to whether the Treaty referred to ‘world government’, the newspaper acknowledged that it did but said it was clear that the Treaty was not envisaging a supranational government to replace national governments. It was fair, therefore, for Monbiot to take issue with the complainant’s expressed fears about the creation of a world government.

With regard to the complainant’s claim to be a member of the House of Lords, the newspaper pointed out that, while the complainant may have a hereditary title, this had been irrelevant to membership of the Upper House of Parliament since 1996. The complainant himself accepted that he had no right to sit or vote in the House of Lords. The question of whether the IPCC had taken account of the complainant’s ‘contribution’ to its 2007 report was irrelevant – the blog was simply, and within the bounds of fair comment, taking a swipe at Viscount Monckton’s claim that he could be reasonably termed a Nobel Prize winner because certain statistics in the report had been amended as a result of his intervention. As to the claim that he had ‘boasted’ of telling untrue stories, the newspaper pointed to an article from the Scotsman (to which the blog had itself linked) in which the complainant admitted to telling a tall tale for personal benefit. The blog had not disputed the complainant’s claim to have filed patents in relation to treatments for various diseases; it was simply raising questions about their efficacy.

The Guardian accepted that the complainant had not made himself a gold pin (it had been made for, and presented to, him by a third party) and it offered to place a clarification on the blog. It also noted that he disputed having once claimed to have won the Falklands War, contrary to a reported comment in an Observer article from 2007, to which the blog linked and which had not been the subject of a PCC complaint. The Guardian said that it was willing to clarify publicly the context in

which the remark had previously been reported. But, since there had been no complaint to the PCC about the Observer piece, and since the Observer journalist stood by his article, it did not consider additional action to be reasonable.

As to the complaint about discrimination, the Guardian said George Monbiot had been unaware of the complainant's illness. The blog had used the phrase 'swivel-eyed maniac' as part of a direct quote from another blog (about which there had been no complaint) and the author had intended it as a comment on the complainant's personal views, not appearance. Nonetheless, it understood the complainant's concerns and offered to remove the description from the blog.

The complainant said these measures were inadequate and asked the Guardian to publish a full letter of reply from him.

Adjudication

This case was another example of a complaint about a blog appearing on a newspaper or magazine website. As the Commission has previously stated, the same standards set out in the Editors' Code of Practice apply to such blogs as they would to articles appearing in print editions.

The Commission recognised that the blog was a comment piece, clearly distinguished as such, and that many of the points of complaint were about matters of interpretation rather than disputed points of fact. The columnist was entitled under the Code to be scornful of the complainant and his piece linked to several other sources so that readers could see where he had taken much of his information. Most of the issues under complaint did not raise a breach of the Code on that basis.

The Guardian was right, however, to offer remedial action on two points of disputed fact which did not fall within the bounds of interpretation or opinion. One was the issue about the complainant's gold pin, which, though not a point of great significance, did warrant public clarification. Similarly, it was helpful to clarify the context in which the complainant's alleged claim about the Falklands War had been made. While the Commission acknowledged that the complainant denied having even made the claim, it noted too that it had not been challenged through the PCC when it first appeared in the Observer. While the complainant had contacted the journalist to raise a number of concerns, no correction had been made to this particular point and it had, therefore, remained online since 2007. The Observer journalist maintained that his article was accurate. In these circumstances, the Commission did not consider it necessary for the Guardian to take further action than it had already offered.

With regard to the complaint under Clause 12 (Discrimination), the Commission could understand why the complainant objected to the phrase ‘swivel-eyed maniac’, given that he suffered from proptosis as the result of having had Graves’ disease. It regretted that he had been caused distress by this reference. However, it was clear that the author of the blog had only used the phrase because it had been previously said by a third party. The Commission felt that the author was discussing that comment (and its implications), rather than making his own description of the complainant. Indeed, the phrase could be said to be a commonly used description of an attitude rather than any physical reference. There was no reasonable suggestion that the phrase had been used to highlight the complainant’s physical illness or denigrate him on that basis. In these circumstances, the Commission welcomed the Guardian’s offer to remove the relevant phrase from the blog as a response to the complaint.

Following the removal of this phrase, and the proposed clarification on the other points, the complaint was not upheld.

(iv) Complaint No. 10-0249 Penn v The Times

Commissioners were informed that the complaint had, in fact, been resolved through mediation to the satisfaction of the complainant in the days leading up to the meeting. As a result, no adjudication was made on this case.

However, Commissioners expressed concern with the way in which the newspaper had dealt with the complaint and agreed that the Chairman should write to the editor to make him aware of the concern.

(v) Complaint Nos. 09-5897/09-5898 A Woman v Paisley Daily Express/The Gazette, Renfrewshire

After discussion, Commissioners concluded that it was not currently in a position to reach a final decision on these complaints. It asked the complaints officer responsible for the case to obtain more information so that it could re-examine the matter in due course.

(iv) 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: 4742, 4743, 4745, 4746, 4747, 4748, 4749, 4750, 4751, 4752, 4753, 4754, 4755, 4756, 4757, 4758, 4759, 4761, 4762, 4763,

4764, 4765. All papers had been circulated since the previous Commission meeting.

- (v) Charter Commissioner: Formal approval of PCC Paper No. 4760 (circulated) (subject to any comments raised with his office).

5. Working group on Online Issues

Following discussion of a paper that had been prepared by the Director, Commissioners endorsed the idea of establishing a working group to consider relevant online issues on an ongoing basis, so that the Commission as a whole would be better placed to shape its thinking in this area.

6. Discussion with Guy Black, Chairman of Pressbof

The Chairman welcomed Guy Black, Chairman of the Press Standards Board of Finance (Pressbof), to the meeting. He updated Commissioners on the role of Pressbof and answered a number of questions concerning funding and the industry's relationship with the PCC.

7. Chairman and Director's meetings

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

8. Any other business

The Commission received an update on issues discussed at a recent meeting of the Editors' Code of Practice Committee.

The Chairman informed Commissioners that the Digital Economy Bill had been passed but that some potentially worrying sections had been amended or dropped.

Members of the Business Sub-Committee confirmed that they had examined the financial figures for 2009. The Commission would receive the audited accounts at a later meeting.

Commissioners were informed that the Chairman and several members of staff would be running in the Cancer Research UK Race for Life. Sponsorship would be most welcome.

9. Date of next meeting

2.00pm on **Wednesday, 2nd June 2010** at Halton House, 20/23 Holborn, London EC1.