

PCC Investigation v Daily Mirror

Clauses noted: 16

The Press Complaints Commission has investigated whether a payment by the Daily Mirror to Tony Martin – the farmer convicted of manslaughter after shooting a burglar who broke into his home – was made in breach of Clause 17 (Payment to criminals) of the Code of Practice.

Background

Mr Martin shot the intruder in August 1999. Initially he was convicted of murder and sentenced to life imprisonment – something that provoked a major public debate which focused mainly on the rights of homeowners to protect their property and the adequacy of the police response at such times. Later his conviction was reduced on appeal to manslaughter on the grounds of diminished responsibility.

Mr Martin was released from prison in July 2003. The Daily Mirror paid him for a series of interviews which it published between July 29th and August 1st. In line with its normal procedures, the Commission wrote to the editor of the newspaper on the 29th July to ask him to justify the payment under the Code. The Code of Practice makes clear that “payment [for] information must not be made directly or through agents to convicted or confessed criminals or to their associates ... except where the material concerned ought to be published in the public interest and payment is necessary for this to be done”. Mr Martin also spoke to the television programme *Tonight with Trevor MacDonald*, although any payment by that programme to him falls outside the remit of the PCC and within the jurisdiction of the Independent Television Commission, which has confirmed to the PCC that it will not be pursuing an investigation into the matter.

The newspaper provided the Commission with a number of detailed points relating to the public interest and the necessity of making the payment, which are incorporated into the Commission’s findings.

Adjudication

1. Necessity of payment

The Code requires that payments to criminals can only be justified when they are necessary to obtain material that is in the public interest. The Commission therefore enquired why the payment was necessary.

The newspaper told the Commission that they had been unable to obtain Mr Martin’s views without paying him. Indeed, they had been asked by Mr Martin’s representative to pay him a long time before he was released from prison. The representative made it clear that he had already received, on behalf of Mr Martin, a number of offers from other newspapers. There was no possibility therefore of obtaining the interview without payment. They contended that had Mr Martin not been paid, they would have been unable to conduct such an extensive interview with him and to give so much prominence to his views – views which had clearly informed a matter of national public debate. In other words, they argued, without the payment and the resulting articles “the public would have been deprived of information that was in the public interest”.

The newspaper also dismissed an argument that an interview that Mr Martin had given to his local newspaper – the *Eastern Daily Press (EDP)* – without charge proved that it was not necessary to pay him. They said that it was simplistic to reach this conclusion because it was a judgement made after Mr Martin had provided his extensive interview with the *Daily Mirror*, for which he had been paid. The circumstances in which Mr Martin came to give an interview to the *EDP* would therefore have been entirely different.

The newspaper also wished to make it clear that Mr Martin himself had said that he was not taking the money to enrich himself, but to defray numerous legal costs including the threatened civil action against him from another of the burglars who was injured in the shooting. That burglar had been granted legal aid to sue Mr Martin while Mr Martin himself had no recourse to such funds. He had announced on the Today programme on 15th August that the money was "not for me to do what I like. It is for a legal case and if there is any money over, it is not for me. It is for charity".

Dealing first with the argument about the Eastern Daily Press interview, the Commission did not consider that it was possible to reach any firm conclusions from the fact that it had been provided without charge. When the Daily Mirror interviewed Mr Martin his views had been unpublished and were therefore a valuable commodity – something which would have been apparent to Mr Martin and his advisers. By the time Mr Martin spoke to the EDP payment by the Daily Mirror had been arranged and his own circumstances were therefore very different. The fact that he later spoke without payment – after his views had been widely published – did not in the Commission's view indicate that these views could necessarily have been obtained without someone having paid for them in the first instance.

The Commission then turned to the newspaper's contention that it had been asked to pay Mr Martin some time before his release from prison, and that Mr Martin's representative had made it clear that several offers had already been made by other newspapers. There were no grounds for the Commission to challenge these assertions and, as in other cases, the Commission appreciated that it would have been highly unlikely that the newspaper would have offered to pay Mr Martin a large fee unless it was necessary to secure the interview. The Commission has made clear in the past that it appreciates that people increasingly demand payment in a variety of different circumstances and that payment for exclusivity is often part of the arrangement. Newspapers are allowed under the Code to make such offers to convicted criminals, providing the material is in the public interest.

2. The public interest

Having accepted the newspaper's justification regarding the necessity of the payment, the Commission then turned to the question of whether the material was in the public interest. While there can be no exhaustive definition of what constitutes the public interest, editors are expected to be familiar with previous rulings of the Commission which set out the sorts of circumstances where payment is in the public interest. One of the key tests is whether new material has been generated by the payment. Another is whether the payment actually illuminates wider issues of public policy.

In this case, the newspaper made a number of points about the public interest within the broader context of Mr Martin's own rights to freedom of expression. It suggested that the Commission should be aware of how the story had tuned into – and even generated – the national debate about law and order in the following respects: why people fear crime so much; why people have such strong views on the rights of homeowners (including what rights they should have to defend their own property); how the legal system should deal with people who defend their property and whether it has struck the right balance between the victims and perpetrators of property crimes; the behaviour of the police in these circumstances; and the rights of intruders to take legal action if they are wounded in other people's property. Mr Martin's own experiences informed this debate in a unique manner. The newspaper pointed to the fact that the government itself had announced – as a direct result of Mr Martin's case – that it would be looking at ways of preventing intruders from suing people they had burgled. That the issue may lead to changes in legislation clearly underlined the public interest inherent in the case.

The newspaper added that every other national newspaper – except the Financial Times – had

published Mr Martin's views as they had appeared in the Daily Mirror. Clearly it was not only the editor of the Daily Mirror who thought that the material was in the public interest.

The newspaper also told the Commission that by publishing Mr Martin's views it "did not necessarily agree with them. Nor is it the case that the Daily Mirror condones what Tony Martin did". This point went to an important issue which the Commission wished to address before making a wider assessment of the public interest value of the material. The Commission has made clear on a number of occasions that payment for the glorification of crime is unacceptable under the Code – and that one of the chief purposes of Clause 17 is to prevent this from happening. In this case, having reviewed the material, the Commission considered that there was no evidence that the newspaper had glorified or praised Mr Martin for what he had done. Indeed, it had said in a leading article that he had 'done a terrible wrong'. Neither did Mr Martin seem to have been given a platform from which to boast about, or glorify, his crime. The Commission was satisfied that on this point the coverage did not breach the Code.

The Commission believed that the broader public interest justification for publishing the series of interviews with Mr Martin was convincing. He had a unique insight into an issue of great public concern as set out by the newspaper in its defence. His name and his crime have been inextricably associated with public policy on these issues since his arrest in 1999 and the Commission believed that it was perfectly legitimate in the public interest to seek his views at the moment of his release.

Furthermore, it appeared that the public had engaged in major debate through the media on the issues involved. Most other newspapers had reported Mr Martin's observations and opinions, and a current affairs television programme had paid for and broadcast an interview with him (something that had not led to any ruling by the Independent Television Commission). In this context it was worth noting that after announcing its intention to investigate the issues raised by the payment, the Commission was contacted by several dozen members of the public – by telephone, e-mail and letter – to register their support for the newspaper's decision to pay Mr Martin. Such a level of public reaction to an announcement that the Commission is to investigate a matter has correctly been characterised as unprecedented. While this in itself did not lead the Commission to conclude that there was a sufficient public interest, it did seem to reinforce the editor's view that the public's desire to debate the issues raised by the story was intense.

It was clear to the Commission that what Mr Martin had to say was of considerable importance in generating a major debate about law and order – and it could not ignore that part of that debate (relating to the ability of intruders to sue home-owners if they are injured) had apparently contributed to the government's announcement of a review of the law.

To have concluded that there was a breach of the Code would have been unacceptably to conclude that the public had no right to read in newspapers information that had quite clearly informed a matter of important national debate. Furthermore, it would have put the newspaper industry in the unfair position of not being able to buy and publish information that was available through other media, notably television.

In reaching this conclusion, however, the Commission was keen to emphasise that it was aware that not all of the material was directly relevant to this debate and included perhaps by way of background or for colour. In the Commission's view it would have been artificial to divorce this information from the generality of the coverage – which was in the public interest – and considered that it was reasonable for the newspaper to include such inoffensive material at its discretion. It accepted that no new significant facts about the crime itself had emerged as a result of the articles, largely because they had all been made public as a result of the legal process which had included two trials. However, the Commission believed that new information was provided in the form of Mr Martin's perspective on his time in prison and his views on public policy. The Commission also believed that the articles would have enabled the public to draw its

own conclusions about the man who had in some circles been lauded for his actions. Exposing him to public scrutiny in this way allowed people to decide whether the popular image of him was correct. In this sense, the newspaper articles contained new information that was in the public interest.

In considering matters under Clause 17, the Commission has regard to the individual's – as well as the newspaper's – right to freedom of expression. It is also conscious that newspapers operate under a voluntary system of self-restraint that imposes greater restrictions on payments to criminals than those required by the law, or those governing the book publishing industry. The Commission has just published a paper detailing how it has applied the clause on payments to criminals in a clear and consistent manner. It underlines that the Commission has so far only found a breach of the Code in cases where a criminal has been paid "exclusively [for] stories about romance and sex, irrelevant gossip, and the glorification of crime". None of these factors was inherent in this case, which quite clearly illuminated a topic of national debate and public policy.

For the reasons set out above, the Commission was satisfied that there was a sufficient public interest for the payment to Mr Martin and found no breach of the Code.

Adjudication issued 02/10/2003