

CHEQUE-BOOK JOURNALISM

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1. Introduction

PressWise accepts that there are legitimate occasions when payments are made by editors in return for information. However enticing people to supply 'exclusive' information with offers of large sums of money is a pernicious corruption of the notion of press freedom, especially since the primary purpose is usually to boost the circulation/profits of a newspaper.

The purchase of an 'exclusive' which has the effect of restricting access to important information or limiting the choice of the public should be avoided.

PressWise advises people NOT to sell the exclusive rights to their story, largely because few appreciate the longer-term consequences of such 'deals'. They lose control of their lives and their image because they rarely retain the right to influence how the material is used or presented. Editorial control remains in the hands of the editor, and as a result many become 'victims of press abuse'.

When a newspaper pays for an exclusive, rival publications seek to undermine it with 'spoilers'. Little thought is given to the effect this can have on the 'victim'. People who sell their story are regarded as 'fair game' in the circulation battles that ensue. Women in 'kiss and sell' stories often discover too late the risk of being branded for their actions; others are victimised because newspapers encourage informants to embellish the stories the papers want to buy.

Desiree Ntolo is an Essene Rabbi from Cameroon who constructed an Oratory in which to conduct religious ceremonies. One of the founder members of PressWise, she was offered money for her story in 1992, but then found herself ridiculed in the national press for building 'a mud hut' in her back garden because she was 'homesick for Africa'. When she later told reporters they would have to pay if they were going to waste her time, she was vilified under the headline 'Mud hut woman demands cash'.

Some celebrated libel cases (including one involving Elton John and *The Sun*) have resulted from a newspaper's desire to believe the people it is paying. Newspapers have been hoaxed into accepting stories with high price tags (eg. *The Sunday Times* and the forged Hitler Diaries). The practice encourages those who make a living from selling false information about their clients, often with the intention of avoiding less savoury revelations. The papers and the clients may be happy with the results, but the readership have no way of distinguishing between fact and fiction.

Few people have much experience of dealing with the media, and fewer still appreciate the potential value of their story when blank cheques are brandished or pushed through letter-boxes by journalists scrambling to beat the pack. It would be far better if they obtained professional advice before entering into contracts, and provided a written text over which they have some control or copyright.

2. Background to the debate: the Rose West trial

The December 1995 House of Lords' debate on cheque-book journalism was provoked by controversy surrounding payments to witnesses at the trial of Rose West.

Immediately prior to the trial PressWise alerted the Press Complaints Commission and the BBC to concerns expressed by witnesses and relatives of victims about approaches made to them by print and broadcast journalists.

Several had begun to realise the implications of agreeing to sell their story. Quite apart from their own peace of mind, there was a risk that a miscarriage of justice might occur if testimony was considered tainted. Some had even moved home or gone into hiding to avoid further press/media attention. PressWise investigated their claims and discussed the issues with other agencies involved before contacting the PCC.

As a direct result of our intervention, PCC Chair Lord Wakeham, issued the following confidential Memo to newspaper editors on 27 Sept 1995:

'The PCC has been approached...by Presswise, who have received a number of calls from relatives of victims involved in the Gloucester murder case which comes to court on 3 October (1995). Callers are apparently concerned about the behaviour and persistence of some journalists seeking background information. PressWise have discussed the matter with Victim Support, the investigating police officers, representatives of both Gloucestershire County Council and Gloucester City Council, and the Lord Chancellor's Department.

'Other than the above the PCC has received no information suggesting any breach of the Code of Practice. Nevertheless, in view of the concern that has been expressed the Commission reminds editors to be especially mindful of the Code of Practice in dealing with this entire matter. It is of course particularly important to ensure that relatives of the accused and witnesses are not harassed or caused unnecessary anxiety by otherwise legitimate news-gathering activities.'

PressWise was pleased with the action taken by the PCC, and by the responsiveness of the BBC to whom we had also had to make representations.

However, in the aftermath of the verdict we noted with disquiet that some people who had earlier been pursued with offers of cash for their stories were criticised for continuing to expect payment for information or opinions by the very people who had made them aware of the 'market value' of their story in the first place.

The Attorney General has undertaken a review of the issues raised by cheque-book journalism in this case; in 1983 the Press Council produced a damning report on the practice after the Yorkshire Ripper trial; and in 1996 the Attorney General conducted a similar investigation after the Moors Murder trial.

3. Definitions

It is important to define 'cheque-book journalism'. The practice of 'buying someone a drink' or covering 'out-of-pocket' expenses is a conventional way of obtaining stories, whether payments are by cash or cheque and whether or not they are covered by receipts.

Professional people (doctors, lawyers, scientists, and even politicians) expect to be paid a fee for use of their time or expertise in the development of a story. Freelance journalists and professional publicists make their living quite legitimately from selling stories.

However there is a growing trend within public relations for specialist information to be made available for payment. This is regarded by journalists as an abuse of power and a hindrance to press freedom.

It is the exclusive purchase of information from key players in a story which is usually the focus of most criticism.

Purchasing exclusive serialisation rights to a book may be a legitimate business transaction, but special problems have arisen (eg. in the case of Sonja Sutcliffe, Darius Guppy and Nick Leeson) when the author has a criminal record or is an associate or relative of a convicted criminal. Paying witnesses in court cases, or criminals, suspects and their associates, is regarded as the most offensive form of cheque-book journalism.

Even paying victims of crime or catastrophes, or their relatives, to obtain an 'exclusive' may be considered distasteful. Following the Hillsborough tragedy in 1989 many relatives of the dead and injured were offered money to tell their stories. This practice could be regarded as an unwarranted intrusion into grief.

4. Why are the payments made?

Newspaper editors or programme producers are willing to 'invest' often large sums of money to obtain the rights to a person's version of events because they believe it will increase their circulation/ratings.

These are primarily commercial rather than journalistic decisions. The main reason for doing so is to prevent other papers or broadcasters from obtaining access to information that may be in the public interest or, more usually, simply judged to be of interest to the public. There is a difference.

Although some will argue that this competitive approach to news-gathering is appropriate in the free market, it is worth stressing that the freedom of the press should not be 'a licence to print money'.

5. Why not ban the practice?

A blanket ban on cheque-book journalism would put many quite legitimate journalistic practices at risk. It would be very difficult to devise appropriate legislation to outlaw abuses of the chequebook, especially since there will be conflicting views about which stories are 'in the public interest' and which are merely 'of interest to the public'.

The degree to which one instance is more distasteful than another is also open to argument. However, in an audience poll of 14,000 people conducted by Central TV in autumn 1995, 82% of viewers called for the banning of cheque-book journalism following a mock trial of the practice on the CrimeStalker programme in which PressWise took part.

We highlighted some of the dangers of allowing the cheque-book to influence criminal cases. We would prefer the Attorney General to use his powers under the Contempt of Court Act rather than see a specific ban introduced.

6. The public interest

PressWise believes that press freedom is a responsibility exercised by journalists and editors on behalf of the public. Members of the public have a right to know about events and issues which could affect their lives or influence the decisions they take about their lives.

One danger of the more controversial forms of cheque-book journalism is that it becomes a form of restrictive practice. Any practice, such as the purchase of an 'exclusive', which seeks to restrict immediate access to important information, or limits the choice of the public, should be avoided. If something is in the public interest, it should not have a price tag.

Salacious stories may sell newspapers, but that does not make them the 'stuff' of good journalism. Many journalists would prefer to invoke a 'conscience clause' when told to produce material they find offensive, intrusive or inaccurate.

However, entry to the trade (few would insist it is a profession) is not limited to those with formal qualifications and has no formal career structure. In a highly competitive environment, where editors are appointed because they reflect the world view of the proprietor, it is not surprising that few journalists are willing to buck the system. The logic of the market place means that if they don't produce what is required someone else will. This attitude has a direct bearing on the quality of the end product.

There is much hypocrisy about the practice within the industry. Often the public only learns that stories have been paid for when a rival publication exposes the transaction in an attempt to rubbish the opposition. The tabloid newspapers that brandish the cheque-book most liberally are the ones most likely to criticise people who sell their story to a rival paper.

7. Cheque-book journalism and the law

It is not a criminal offence to sell or buy 'a story'. However, there can be a very serious risk to the judicial process when witnesses in criminal cases, or suspects and their associates, receive payments for telling their story.

The practice allows both prosecution and defence lawyers to challenge the validity of the testimony of those who have been paid. That could result in either a guilty person going free or an innocent person being gaoled. Anyone offering financial inducements to witnesses risks falling foul of the courts, with penalties ranging from fines to imprisonment.

If there is evidence to suggest that the result of a trial may be prejudiced by the actions of a newspaper, a trial judge may halt the proceedings and the Attorney General may take action under the Contempt of Court Act 1981, Section 2(3) which says that an offence is committed if a publication 'creates a substantial risk that the course of justice in particular proceedings will be seriously impeded or prejudiced'.

During the Jeremy Thorpe trial in the 1970s it became clear that the main prosecution witness, Peter Bessell, would receive double the fee offered by a newspaper for his story if the defendant was found guilty. This discovery clearly undermined his credibility as a witness.

In 1988 the *Sun* was fined for contempt after declaring the guilt of a doctor accused of raping a child. It had agreed to fund a private prosecution after entering into an agreement with the mother which gave it exclusive access to interviews and pictures.

Several trials were halted during 1995 after prejudicial press coverage. The Attorney General is currently considering whether to issue contempt proceedings against *The Sun*, *Daily Mirror*, *Sunday Mirror*, *Daily Express*, *Daily Star*, *People*, *Today* and *Daily Mail* over reports described as 'unlawful, misleading, scandalous and malicious' by trial Judge Roger Sanders when he halted the trial of Geoff Knights, boyfriend of *EastEnders* star Gillian Taylforth. It is thought that payments had been made for information used in at least one of the offending articles.

The Attorney General is also examining evidence supplied by the defence counsel in the West case about payments made to witnesses.

8. Copyright

The copyright of a story that appears in a newspaper lasts as long as that for a published book - namely 70 years beyond the death of the author. Copyright of the typographical arrangements of the words and illustrations as they appear in a newspaper lasts for 25 years.

A problem arises over the terms under which the material is published. More often than not, someone who 'sells their story' merely agrees to talk to and supply evidence to an agent of the newspaper. The status of original material supplied by person doing the selling will depend upon the terms of any contract entered into.

There is no copyright in ideas or information, as such. The copyright resides in the written word or images and normally rests with the person who produces them.

A freelance journalist or ghost writer may be commissioned by a newspaper to write an article based on material supplied verbally by the person with a story to tell. The writer automatically retains copyright but usually assigns the first UK publishing rights to the paper in return for their commission fee.

If a publisher buys 'all rights', the material can be resold or republished by its new owner in any form. Material produced by a staff member belongs to the employer or publisher.

Of course the information contained in articles and books immediately enters the public domain, but where exclusive rights have been obtained, any further use of a significant proportion of the material requires the acknowledgement and permission of the owner of the copyright who may reasonably demand payment of a fee.

This is another reason why PressWise is concerned about the complexities of already vulnerable people selling their stories. Few people enter into such contracts with the benefit of competent legal advice.

What may appear to be generous payments initially may turn out to be paltry when set against the capacity of the material to earn revenue (through increased sales, advertising income, and syndication, dissemination via the electronic media, or film rights) for the publisher.

9. Payments in court cases: Contempt of Court Act 1981

The most worrying practice of making payments to witnesses in criminal trials is already covered by the Contempt of Court Act 1981, drafted at a time of controversy about payments to relatives of serial killer Peter Sutcliffe. The Attorney General has powers to issue proceedings against a newspaper if its coverage or actions in respect of a witness or potential witness might contaminate the evidence they give and so prejudice the outcome of a trial.

One difficulty for editors is that they are not to know who might eventually be called as a witness in a trial. Indeed journalistic enquiries may lead to the discovery of important evidence and the calling of their informant as a witness. And an editor would be perfectly justified in publishing material to prevent or rectify a miscarriage of justice.

Nonetheless the credibility of witnesses who have been paid or promised payments can easily be undermined, especially if they try to deny having such a contract - as happened to a key witness in the West trial. Both the payment of witnesses (especially where a bonus is offered on conviction) and challenges as to their reliability could lead to a miscarriage of justice, with a guilty person going free or an innocent person being convicted.

A witness who has been paid or promised payment may be tempted to embellish evidence, hold back information, or even stick to an inaccurate story under oath which had originally been given outside the court, in a misguided attempt fulfil a contractual obligation to a publication.

The person most likely to complain would be someone convicted on evidence supplied by witnesses who admitted a vested interest in obtaining a conviction. The most appropriate forum for such a complaint would be the Court of Appeal not the Press Complaints Commission. And were a jury to acquit solely because of doubts raised by such 'tainted' evidence, a ruling by the PCC would be insufficient compensation for such a miscarriage of justice.

The necessity of ensuring that an accused person receives a fair trial should be the over-riding concern when considering the use of the cheque-book in criminal cases. An action for contempt is the most appropriate means of adjusting the balance in favour of a fair trial.

It would be necessary to prove that payments to witnesses had been offered with the intention of prejudicing the outcome of a trial. No editor would admit to such a base motive. Nonetheless, financial benefit is acknowledged as a motive in many crimes. Editors who buy stories may not deliberately set out to pervert the course of justice, but it has yet to be established whether a commercial transaction which hangs upon a verdict might lay an editor or a witness open to a charge of conduct likely to be prejudicial to the outcome of a trial.

10. Codes of conduct

Clause 5 of the Code of Conduct first adopted by the National Union of Journalists in 1936, insists that:

'A journalist shall obtain information, photographs and illustrations only by straightforward means. The use of other means can be justified only by over-riding consideration of the public interest. The journalist is entitled to exercise a personal conscientious objection to the use of such means.'

The preamble to the more recent Code of Practice devised by the industry to stave off statutory control of the press, makes it clear that:

'Editors are responsible for the actions of journalists employed by their publication. They should satisfy themselves as far as possible that material accepted from non-staff members was obtained in accordance with this Code. While recognising that this involves a substantial element of self-restraint by editors and journalists, it is designed to be acceptable in the context of a system of self-regulation. The Code applies in the spirit as well as the letter.'

Clause 16 of the Code, which is policed by the Press Complaints Commission, offers no 'conscience clause' but states:

(i) Payment or offers of payment for stories or information, must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give. (An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence must be disclosed to the prosecution and the defence and the witness should be advised of this).

(ii) Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or their associates - who may include family, friends and colleagues - except when the material concerned ought to be published in the public interest and payment is necessary for this to be done.'

Neither Code deals adequately with the issue of what is now known as 'cheque-book journalism', and it would be helpful if both bodies were to issue clearer guidance. Both the NUJ and the PCC are currently reviewing their Codes.

Following criticism of the *Daily Mirror* for offering cash to convicted fraudster Darius Guppy for his story, and the *Daily Mail* for paying £300,000 to publicise gaoled Barings' trader Nick Leeson's book, the Chair of the industry's Code of Practice Committee, Sir David English, suggested that it may be time to revise or revoke the clause. Sir David is Editor-in-Chief of the Mail group. He admits that his committee has not considered the 'out-of-date' clause for 3 years, and says it owes its origin to 'some grandiose announcement of the old Press Council around the time of the (Yorkshire) Ripper trial'.

The *Mail* was at the centre of controversy about the purchase of stories from relatives of Peter Sutcliffe when Sir David was its editor in the early 1980s. In 1983 he described the Press Council's finding on the issue as 'short-term, short-sighted and smug' which 'proves yet again that the Press Council does not truly understand the concept of a free press.'

11. Remedies

PressWise believes that sufficient remedies already exist to deal with the most damaging consequences of cheque-book journalism in respect of court cases.

In Scotland the Procurator Fiscal has made it abundantly clear that any behaviour likely to constitute an interference with due process of law will be sternly dealt with. All that is required in England, Wales & Northern Ireland is for the Attorney General to be similarly forthright with the press and media.

However, much could be done to strengthen the industry Code of Practice which forms the basis upon which the Press Complaints Commission currently regulates the behaviour of editors.

The newspaper industry could make a joint declaration that the practice will cease in all court cases (some papers, like *The Daily Telegraph*, have made a virtue of refusing to pay for such information in the West case).

It should be standard practice for all newspaper editors who make payments for exclusive rights to stories to declare the terms of the transaction on the same page as the main story. That would at least allow readers to make up their minds about the credibility of the material, in much the same way as the jury must when such contracts become known in a trial.

Some have proposed that newspapers should contribute to an industry fund out of which payments might be made to successful complainants where breaches of the Code of Practice occur. The main difficulty with this proposal is that regional newspapers will not want to provide cover for the excesses of national newspapers, and national newspapers would be unwilling to underwrite their rivals.

Nonetheless consideration might be given to a fund based on a levy on advertising revenue or circulation figures, in much the same way that broadcasters were obliged under the Broadcasting Act 1990 to provide 'quality bonds' to cover breaches of pledges in their contracts with the regulatory bodies.