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Paul Smith and The Mail: Adjudication by the Press Complaints Commission

IN FULL: PCC ruling following article about town website publisher

Mr Paul Smith complained to the Press Complaints Commission that articles headlined "Town website publisher's porn business", "The sickening porn behind this man's veil of respectability" and "Town website: the sordid truth", published in the Hull Daily Mail on March 4, 2010, were inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was upheld in part.

The articles reported that the complainant – who was responsible for publishing a local community website which had been promoted by the local council – had "designed thousands of hardcore pornography websites" (at one point giving the specific figure of 3,991 for sites he had "designed") and "owns the domain names to almost 4,000 sites". The complainant said that this was incorrect: he had only ever designed a hundred or so websites, including some adult sites, across a number of fields; and he had bought just over 100 domain names, nearly half of which were dormant.

The newspaper said that, at the time of its investigation, a web registration search showed that the complainant owned 3,991 domains under the name Smiths Media Solutions, the majority of which could be categorised as adult. Following publication of the articles, the relevant server was disconnected and it was unable to prove this figure conclusively. The precise claim was put to the complainant before publication: the complainant was unable to confirm the number of sites in which he was involved and did not deny the allegation.

Adjudication:

The commission accepted that there was a legitimate public interest in the newspaper examining the business activities of the complainant, given his role in publishing a local community website. However, such high-profile scrutiny carried with it the responsibility to be accurate.

While it was not in dispute that the complainant had designed some pornographic websites in the past – and owned a substantial number of domain names – the newspaper had not been able to corroborate the significant claims that the complainant had "designed thousands" of such sites (as many as 3,991) or owned the domain names to "almost 4,000 sites". These were crucial allegations and the newspaper should have been able to substantiate them fully (and been in a position to provide concrete evidence to the PCC).

Based on the available material, the commission considered that readers would have been misled as to the scale of the complainant's involvement in adult websites. The result was a breach of Clause 1 of the Editors' Code.

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> "The article made plain to readers the level of the complainant's involvement with pornographic websites: he had designed websites that hosted legal adult content."

> "It was not in dispute that, as part of her enquiries, the reporter had created a bogus Facebook page and had misrepresented her identity to the complainant. The reporter had then revealed her true identity when she met the complainant in person."

The complainant had raised a number of other points under Clause 1 (Accuracy) of the Editors' Code.

These aspects of the complaint were not upheld.

The complainant said that he built websites for a living and had, in the past, designed pages for the adult industry (in addition to the gaming, finance, retail and pharmaceutical industries). The front page headline wrongly suggested that he owned a "porn business"; this was not the case. In addition, the coverage misleadingly suggested that he was personally involved in the creation of pornographic content, rather than legitimately designing the layout for those sites. Finally, the coverage stated that he had "agreed" to design a website for a newspaper journalist posing as an escort girl when, in fact, he had merely discussed her requirements.

The newspaper defended its coverage: its readers had a right to know about the activities of the complainant who was responsible for running a prominent local website which covered a range of community issues and had been supported by the local authorities.

It had sought to obtain the complainant's comments on the allegations and his position had been published at length (together with positive comments from members of the community).

The coverage made the nature of the complainant's involvement with pornographic websites clear, outlining that there was no suggestion that any of the websites contained illegal material.

It was willing to publish a clarification on this point, which was rejected by the complainant.

The newspaper maintained that the complainant had agreed to build a website for the journalist posing as an escort girl and had quoted between £150 and £250 for doing so. It provided e-mails to support this position.

Adjudication:

The commission has consistently stated that headlines can only be fully understood in the context of an article when read as a whole. On this occasion, the article made plain to readers the level of the complainant's involvement with pornographic websites: he had designed websites that hosted legal adult content. It was clear that the complainant's role was as a designer, rather than a producer, of web content. He had also been quoted at length on the matter setting out his position. The nature of the complainant's discussions with the journalist posing as "Sarah" was also sufficiently clear, in the commission's view. No breach of Clause 1 (Accuracy) could be established on these points.

The complainant also complained that the coverage was intrusive, and that the newspaper had used subterfuge, in breach of Clause 3 (Privacy) and 10 (Clandestine devices and subterfuge) of the Editors' Code of Practice.

The complaint was not upheld.

The complainant was concerned that the journalist had misrepresented her identity, claiming that she was an escort girl (requesting his assistance in setting up a website) and using a fake Facebook account, when he was first contacted by the newspaper. This led to the reporter e-mailing him with further details of her enquiry. The complainant said this was unnecessary: he would have willingly spoken to the newspaper and his actions did not need to be exposed in such a manner. He also objected to the inclusion of his partner's name and employer in addition to his partial home address in the article. This was intrusive and had left his family feeling vulnerable.

The newspaper said that it was in the public interest for the complainant's professional involvement in the design and hosting of pornographic websites to be exposed, particularly as the local council had actively promoted him. Having established that he owned a substantial number of domain names for websites containing pornography, it wished to determine whether he remained actively engaged in the creation of adult websites at the same time as running the local community website. It did not consider that the complainant would have answered its enquiries directly. As soon as the reporter had established that the complainant was willing to design a website for an escort girl, she approached him in person and made clear her identity.

The newspaper said that publicly accessible Companies House records showed that the company secretary of Smiths Media Solutions was the complainant's partner. Naming her, and referring to her employment, was relevant to the story. The newspaper had published the complainant's street name for clarity given that his name was not uncommon. His home address was also his business address.

Adjudication:

It was not in dispute that, as part of her enquiries, the reporter had created a bogus Facebook page and had misrepresented her identity to the complainant. The reporter had then revealed her true identity when she met the complainant in person.

While it was clear that the journalist had used subterfuge, the commission had regard to the level of intrusion involved, which was not – in its view – of a particularly serious order. The actions of the journalist consisted of the use of a false name and social networking page, for the purpose of obtaining non-personal information about the complainant's business activities. There was no undercover filming or inappropriate access to private information about the complainant. The commission was satisfied that the public interest argument advanced by the newspaper – to the effect that the ongoing design of websites connected to the sex industry was incompatible with the complainant's role in a prominent local community website – justified the employment of such mild subterfuge in this case. It considered that the newspaper could legitimately claim that this method was necessary to obtain the information, believing that the complainant may not have been forthcoming to a direct journalistic approach about his willingness to consider designing a website for an escort. There was no breach of Clause 10.

The inclusion of the complainant's partial address – which also served as his business premises – did not represent an intrusion into his private life. In addition, the brief reference to the complainant's partner, her role in Smiths Media Solutions and her employment did not reveal anything especially private about her. There was no breach of the Code.

Relevant Ruling

Bretherick v County Times, report 75