

J K Rowling v OK! Magazine

Clauses noted: 3, 6

JK Rowling complained through solicitors Burness, of Glasgow, that photographs of her daughter published in OK! Magazine on 17 August 2001 intruded into her daughter's privacy in breach of Clause 3 (Privacy) and Clause 6 (Children) of the Code of Practice.

The complaint was upheld.

The photographs were taken on a beach while the complainant, her partner and her eight year old daughter were on holiday and showed the party in their swimwear. The solicitors said that the Mauritian beach on which they were photographed was only accessible to residents of a particular hotel. They added that since becoming a successful writer and in the public eye, Miss Rowling had endeavoured to protect the identity and privacy of her daughter and there could be no justification for taking long-lens photographs of the complainant's daughter when she was in a private place.

The editor wrote to the complainant directly to apologise for any distress that the photographs had caused. However, in her submission to the Commission the editor denied that the Code had been breached. She said that all beaches in Mauritius were public by law and that she had, with regard to the images of Ms Rowling and her partner, borne in mind the Commission's decision on the complaint from Anna Ford and the subsequent decision of the Court of Appeal rejecting Miss Ford's challenge to the Commission's decision (*Ford v Daily Mail and OK Magazine*, PCC Report 52). Regarding the publication of the image of the complainant's daughter, the editor said that she had wanted to include a 'family shot' as it was in keeping with the accompanying article. She had also taken account of a previous PCC decision – *Donald v Hello!*, PCC Report 52 – which held that the mere publication of a child's image when taken in a public place could not be considered by the Commission to be a breach of the Code. The editor did however undertake not to use the photographs again.

The solicitors disputed that either the Ford or the Donald cases were of particular relevance. Ms Rowling had never courted publicity for herself or her daughter and her daughter's image was not well known to the public. She had chosen the resort because of its private nature and visited it in the low season. With specific regard to the photograph of Ms Rowling's daughter, the solicitors said that there were a number of distinguishing factors from the Donald case, which had involved a photograph of a small child in a public street with no accompanying private details. Firstly, the photographs of the complainant's daughter had been taken with a long lens while she was in a place where she had a reasonable expectation of privacy. Secondly, by their nature the photographs harmed the welfare of the complainant's child – they had identified her to the public as the daughter of a very well-known individual and opened her up to scrutiny that would not have existed had her mother not been famous. The solicitors also pointed to the complaint from the Prime Minister and Mrs Blair against the Daily Sport about a photograph of their son. No consent for that photograph had been given, which had been taken and published simply because of who the boy's parents were. They also said that in upholding a complaint against The Observer in 1999 the Commission held that publications should seek consent from parents when publishing pictures of children that might embarrass them. The solicitors said that in this case the photographs had embarrassed the complainant's daughter, who was a young girl depicted in her swimwear.

Adjudication

While the Commission may have regard to its previous decisions, circumstances will necessarily vary from case to case and it therefore considers each complaint on its merits under the Code.

The Code entitles everyone – of all ages – to respect for their private and family life and deems unacceptable the use of long lens photography to take pictures of people in places where they have

a reasonable expectation of privacy. In addition it gives greater protection to children – it does not allow photographs of children under the age of 16 to be taken where the child's welfare is involved and requires a justification other than the fame of a child's parent for publishing material about the private life of a child. There may also be an exceptional public interest justification for breaching these provisions but none was provided in this case.

The Commission noted that it was not in dispute that Ms Rowling had gone to considerable lengths in the past to protect her daughter's privacy. This seemed to have been reflected in her selection of the holiday location – it had not been challenged that the beach was not overlooked by other holiday apartments and that the family had gone there in the low season to avoid unwanted attention. The Commission was not asked to consider whether the photographs of the complainant and her partner breached the Code, but it considered that in the circumstances outlined above, and given the high level of protection afforded by the Code to children, photographs of the complainant's daughter should not have been taken or published and therefore breached Clause 3.

Turning to the complaint under Clause 6, the Commission did not find any compelling similarities with the Donald case that was cited by the magazine. That case had involved a photograph – not apparently taken with a long lens – of a child of pre-school years sitting in a push-chair in a public street. The whereabouts of the respective children in the two cases were clearly quite different. Furthermore, the Commission considered in this case that the photographs could reasonably be held to have affected the girl's welfare. The photographs had shown a young child in her swimwear and were taken without her knowledge and only because she has a well-known parent. She was also of school age and vulnerable to comments from her peers – indeed the solicitors had said that the girl had been subsequently embarrassed by attention as a result of the photographs and there was no evidence to dispute this. This intrusion into a young child's private family holiday was unnecessary and in finding a breach of the Code the Commission wished to remind editors that publications should take particular care to seek full and proper consent when publishing pictures of children which might embarrass them, intrude into their privacy or damage their welfare in some other way.

Adjudication issued 2001