

***Ms Merlyn Brown v Ballymoney Chronicle***

Clauses noted: 1, 3, 10

Ms Merlyn Brown of Coleraine complained to the Press Complaints Commission that an article headlined "Merlyn's marathon effort" published in the Ballymoney Chronicle on 16 February 2005 was inaccurate and misleading in breach of Clause 1 (Accuracy) and intruded into her private life in breach of Clause 3 (Privacy) of the Code of Practice. The complainant was also concerned that information had been obtained in breach of Clause 10 (Clandestine devices and subterfuge) of the Code.

The Commission found a breach of Clause 3, but did not censure the newspaper. The complaint under Clause 1 was not upheld. The Commission made no finding under Clause 10.

The complainant had intended to run the London Marathon for charity and had produced a sponsorship leaflet in small numbers to give to family and friends. Information from the leaflet had been used by the newspaper in a front page article without the complainant's consent. The complainant contended that the leaflet had been taken from her desk at work without permission in breach of Clause 10 of the Code.

She explained that the newspaper had tried to contact her for further information but she had told them that she did not want any publicity. The complainant argued that the presentation of the article – which quoted her directly and included her photograph – was misleading as it suggested that she had given an interview to the newspaper. Furthermore, the complainant said that the inclusion of her home telephone number in the article, which had resulted in hoax telephone calls, and the publication of information about her family's health problems had intruded into her privacy.

The newspaper said that its intention was to promote a prominent charity and highlight a local 'good news' story. It provided a signed statement claiming that the complainant had given its staff photographer a copy of the leaflet at an event at her work. Moreover, 50 copies of the leaflet had been produced – with 35 being distributed to family, friends and local businesses. The information was therefore in the public domain. Nonetheless, the newspaper had attempted to discuss the article with the complainant and a breakdown in communication had occurred. The editor took responsibility for this and wrote her a letter of apology.

The complainant was unhappy with the letter. She also said that a reporter from the newspaper – not the staff photographer who provided the statement – had apologised directly to her for taking the leaflet from her desk.

*Adjudication*

The Commission first considered the complaint under Clause 3. While much of the information in the article was not of a private nature, it was clear to the Commission that some of it – especially the complainant's ex-directory telephone number – was.

Publication of an ex-directory phone number, in circumstances where the complainant had telephoned the newspaper in advance of publication to request no publicity, raised a breach of the Code. However, there were mitigating factors.

In particular, the Commission took account of the fact that the complainant had voluntarily placed the information into the public domain to some degree by publishing it in a leaflet, albeit for limited circulation. The purpose of the leaflet was to draw attention to her participation in the marathon and her fund-raising efforts. This would not have suggested to the editor that the complainant was especially concerned with keeping the information – which included her phone number – private.

This impression would have been corrected had the complainant's wishes been passed on, however, and it was regrettable that they had not. It was right for the newspaper to take responsibility and apologise for the breakdown in communications which led, in the Commission's view, to a breach of the Code.

That said – given the nature of the story, and the positive manner in which it was presented – it did not seem to the Commission that the editor had acted in bad faith, although he may have been ignorant of the complainant's wishes. The Commission was satisfied that the breach of the Code relating to the publication of the complainant's ex-directory phone number – while unfortunate – was inadvertent.

Against that background, the Commission did not censure the newspaper for breaching Clause 3.

Turning to the complaint under Clause 1, the Commission considered that the article had accurately quoted the leaflet, although it acknowledged that this was without the complainant's consent. The fact remained, however, that the information about the marathon was not misleading in breach of the Code.

Finally, the Commission noted that there was a sharp conflict of evidence in relation to the circumstances in which the newspaper had obtained the leaflet in question. In light of this – and taking into account the fact that the Commission does not have legal powers of sub poena or cross examination – the Commission could not make a finding under Clause 10.

Relevant ruling

Bing v The Mirror, 2002

Adjudication issued 2005