

***The Rt. Hon. David Maclean MP v The Mail on Sunday***

Clauses noted: 1, 3

The Rt. Hon. David Maclean MP, the Conservative Party Chief Whip, complained to the Press Complaints Commission that an article, headlined "Top Tory who quizzed Boris over Petsy affair cheated on his own wife with Chief of Staff to Duncan Smith" published in The Mail on Sunday on 21 November 2004, was inaccurate and intrusive in breach of Clauses 1 (Accuracy) and 3 (Privacy) of the Code of Practice.

The complaint was not upheld.

The article reported the claim that the complainant had previously had an affair with a civil servant. The newspaper linked its account of this relationship – which allegedly occurred in the 1990s – to more recent allegations of an affair between Conservative MP Boris Johnson and Petronella Wyatt. Mr Johnson had been dismissed from his position as party arts spokesman after allegations that he had lied about the affair.

The complainant contended that there was no justification for what he regarded as an intrusion into his private life. He also denied that he had 'quizzed' Boris Johnson over his affair.

The newspaper said that the affair was in the public domain. It had twice published – in July and December 2002 – the fact that the complainant had had an affair with the civil servant. On neither occasion was there a complaint. The newspaper then argued that, notwithstanding the fact that the information was in the public domain, there was a public interest in referring to it in the context of the sacking of Boris Johnson. This was chiefly because the complainant's own domestic circumstances were the subject of legitimate scrutiny in light of his involvement in the Mr Johnson's dismissal. The newspaper was satisfied that the complainant had spoken to Mr Johnson about the affair. Its editor had a shorthand note of a conversation with Michael Howard's press secretary in which it was claimed that a meeting between the complainant and Mr Johnson had taken place in which Mr Johnson had denied his affair. It was after this conversation that Mr Johnson was sacked. The newspaper's claims about the complainant's role in Mr Johnson's sacking were accurate, and publication of details of the complainant's own affair was justifiable.

The newspaper advanced further public interest arguments in favour of publication. The complainant had had the affair while serving as a minister in a government publicly committed to family values. He had then refused to accept a Cabinet position in that government, which some people speculated was because of the alleged affair. The newspaper considered that readers were entitled to be informed of this, whether it was topical or not. The newspaper also pointed to the fact that the Conservative party's website still misleadingly claimed that the complainant was living with his wife, which was clearly not the case. It could suggest other factors that reinforced its argument that the story served the public interest: people were entitled to know that a man in public office was capable of deception and double standards; a secret affair could leave a politician open to blackmail; voters were entitled to know of details that might affect a politician's decision-making; newspapers were entitled to report official relationships, and should therefore have a right to discuss unofficial ones; and there was a general public interest in a free press being allowed to report on the personal indiscretions of public figures.

The complainant denied that the article served the public interest. The allegations levelled in the article – which he neither confirmed nor denied – related to incidents several years old. There was no possible public interest in their publication at the current time, some ten years after the event. He had announced the end of his marriage in 2002 through his local newspaper so as to inform his constituents, who were therefore aware of his marital status. There had been no inconsistency between his private behaviour and his public actions for the newspaper to expose, not least because Mr Johnson had not been sacked because of his affair but for having lied to the media.

There were therefore no 'double standards' for the newspaper to expose. His only involvement in the case had been to point out to Boris Johnson the importance of telling the truth to the media: he had not 'quizzed' him about the affair. He suggested that the full transcript of the editor's conversation with Michael Howard's press secretary would make this clear. Finally, he did not consider that two small diary pieces published over two years previously placed the matter into the public domain to a sufficient degree to justify publication of the story.

### *Adjudication*

The Commission first examined the complaint under Clause 3. It started by considering whether or not the information was actually private. The article under complaint had not revealed the existence of the alleged affair. That had been done in previous articles about which there had been no complaint. The complainant asserted that the article under complaint was of an 'entirely different character' from the two diary pieces which had discussed the affair, which were 'small'. The Commission agreed with that assessment. However, while the pieces may have been of a different character, the Commission does not distinguish between types of stories in the manner that the complainant had hoped. The Commission has previously investigated complaints against diary pieces and found material contained within them to be intrusive. It is important for editors to be aware that the Code applies as much to material contained in diary pieces as to the rest of a newspaper. It is also important for people who are the subject of such pieces to realise that not to complain about them may limit their ability to complain about future articles which repeat the same thing: the Code itself specifically directs the Commission to 'consider the extent to which material is already in the public domain' when listing possible public interest exceptions to the Code's clauses. The Commission would therefore urge anyone to complain who thought that a diary piece about them raised a breach of the Code.

It was undeniable that the matter was in the public domain. The Commission did not consider that repeating it – for a second time – represented a breach of the Code. This was particularly the case given that the article did not appear to contain significantly more detail on the subject of the alleged affair, or additional information that could be seen as intrinsically private. The Commission appreciated, however, that the complainant may have been alarmed at the scale of the article, which differed considerably from the previous pieces – although this was not a matter that could have any bearing on its decision under the Code.

The question of whether the newspaper should have repeated the information in connection with a subsequent news story was, then, a matter of editorial selection. The Commission understood that people would have divergent views about the newsworthiness or otherwise of repeating the allegations about the complainant, and whether or not the story about Boris Johnson was sufficiently similar to the allegations about the complainant to make the link especially relevant. That, however, was a matter for the editor of the newspaper, and beyond the scope of the Code.

The Commission noted the public interest arguments that had been rehearsed by the newspaper and disputed by the complainant. However, they were somewhat redundant in light of the Commission's decision as outlined above. As the information was effectively not private – by virtue of it having been published twice before – it was not necessary for the Commission to consider whether publishing it was in the public interest or not. The complaint under Clause 3 was not upheld.

The Commission then turned to the complaint under Clause 1. It appreciated that the complainant had sought to claim that the article inaccurately described his involvement in the dismissal of Boris Johnson in order to challenge the newspaper's public interest defence for the alleged intrusion. However, it had not been necessary for the Commission to take a view about the public interest for the reasons outlined above. The Commission therefore considered the complaints under the two clauses entirely separately.

There was clearly a dispute about whether or not it was accurate to describe the complainant as having 'quizzed' Mr Johnson, or whether his involvement in the sacking amounted to a 'key role'. The Commission noted that it had not been disputed that the complainant had spoken to Mr Johnson about the affair before his dismissal, although the complainant denied that his involvement went further than to warn Mr Johnson that it would be advisable to tell the media the truth. Nonetheless, the complainant was the party's Chief Whip and had had some sort of role in talking to Mr Johnson before his dismissal. Its precise nature was not something that was within the Commission's powers to determine for certain one way or the other. Describing it as a 'key role' was, however, the newspaper's interpretation of the matter. In all the circumstances, this description – and the statement that he had 'quizzed' Mr Johnson – did not seem to the Commission to amount to significant inaccuracies which would require correction under the Code.

Relevant ruling

Prime Minister and Mrs Blair v The Daily Telegraph & Daily Mail, 2002

Adjudication issued 2005