

A woman v The Mail on Sunday

Clauses noted: 1, 3, 10

A woman complained to the Press Complaints Commission that an article headlined "Downfall of the silent witness" published in The Mail on Sunday on 10 July 2005 contained inaccuracies in breach of Clause 1 (Accuracy) and intruded into her privacy in breach of Clause 3 (Privacy). The complainant also raised concerns under Clause 10 (Clandestine devices and subterfuge).

Following an offer of remedial action from the newspaper, no further action was required under Clause 1. The complaints under Clause 3 and Clause 10 were not upheld.

The article was a feature on the complainant which focused on her occupation as a forensic lip-reader, following a decision by the Crown Prosecution Service to discontinue the use of her services. The complainant said that the article contained numerous inaccuracies, including the statement that she "helped convict scores of criminals", the amount of money she was able to earn and the fact that she was completely, not profoundly, deaf. The article also misquoted comments made in an interview with the newspaper – of which she had a transcript – and suggested that she had implied that she had been awarded an Oxford University degree.

The complainant also explained that she was still a police protected witness living under an enhanced security regime and supplied a letter from the Metropolitan Police Service to confirm this. An interview was arranged with the reporter on the specific basis (as, she said, was confirmed in the transcript) that no photographs of her would be used. In the event, the article was accompanied by two pictures of the complainant: the first was an old picture, while the second was a recent photograph taken by the newspaper of the complainant on her driveway. The complainant considered that the second photograph was taken in a place where she had a reasonable expectation of privacy, and that the use of the photographs by the newspaper failed to show respect for her private life in breach of Clause 3. The complainant also considered that the manner in which the photographs were obtained, contrary to her wishes, was in breach of Clause 10.

The newspaper denied it had given an assurance that it would not to publish the complainant's picture. It stated that many photographs of the complainant had appeared in various newspapers, mainly some years previously. The recent photograph was taken from a public road. The police document provided by the complainant (which was nearly three years old) asked only that her address be omitted in any article, which had been done. The newspaper had contacted Scotland Yard Press Office before publication, but no request had been made not to include a photograph of the complainant. The newspaper did not accept that it had endangered the complainant's security or that it had intruded into her privacy through the publication of her photograph. The newspaper also said that the complainant had been discredited in court as an expert witness since it had not been made clear that – although she had attended Oxford University – she had not completed her degree.

The newspaper offered to publish a letter from the complainant setting out her position on the points raised, many of which were – in its view – not especially significant. It offered to append to the letter an editorial note which regretted the inaccuracies and apologised for any distress caused. It also indicated that it would delete the recent photograph of the complainant from its files. When the complainant made clear that the offer to publish a letter was unacceptable, the newspaper proposed to publish a short correction and apology that encompassed the significant points under contention. This was also rejected by the complainant.

The complainant asserted that no photographs of her in the context of forensic lip-reading were in the public domain. She provided a diagram, and photographs, to show that her driveway was 18 metres long and bushes and trees obscured the front of the property. The complainant believed that the newspaper's proposals were insufficient to deal with all of her concerns.

Adjudication

The Commission first considered the complaint under Clause 3. Clause 3 (ii) states that it is unacceptable to photograph individuals in private places without their consent. In this instance, the complainant had been photographed on her driveway by the newspaper without her consent. The question for the Commission, therefore, was whether the driveway was a private place, in which the complainant had a reasonable expectation of privacy. The Commission decided that it was not. There was no dispute that the photographer had taken the picture from a public road, from which he had apparently been able to observe the complainant standing outside her house. The diagram and photographs provided by the complainant did not – in the Commission's view – demonstrate that the complainant would be necessarily obscured from sight at the front of her property. There was no breach of the Code on this point.

In regard to the newspaper's decision to publish photographs of the complainant at all, the Commission was aware that there was a conflict of recollection between the complainant and the newspaper as to whether the non-publication of photographs was a condition of the interview. The transcript of the conversation between the reporter and the complainant was inconclusive on this point, although the reporter was certainly aware that the complainant did not wish for her photograph to be published. It was a matter of regret that the complainant had felt misled by the newspaper on this point, and the Commission considered that the newspaper could have taken greater care to make clear its intentions regarding the publication of the photographs. That said, the key issue for the Commission was whether the newspaper was, in any case, entitled under Clause 3 of the Code to publish the photographs without the consent of the complainant. It concluded that it was.

The Commission did not consider that the publication of the photographs represented a failure to respect the complainant's private life under the terms of Clause 3 (i) of the Code. While it recognised the enhanced security regime surrounding the complainant, there was nothing to suggest that her appearance had originally been protected by the courts on the occasions in which she had appeared as an expert witness. In that context, the Commission did not consider that the publication of the photographs of the complainant (one taken in a public place, the other existing in the public domain), in an article that gave no details of her address, would have further compromised her security to any significant extent. Their publication did not raise a breach of the Code. The Commission was pleased, however, to note that – as a result of the complaint – the newspaper had undertaken to delete the recently-taken photograph from its records, which was a sensible response given the complainant's concerns.

In regard to the complaint under Clause 10, the Commission has previously made clear that this clause was principally designed to prevent journalists from misrepresenting their identities in order to obtain information through covert means which would not otherwise be available. The Commission did not consider that any there were any issues to pursue under this Clause.

Turning to the complaint under Clause 1, it had been accepted by the newspaper that there were various inaccuracies in the article. While many of the points under contention were comparatively minor, the Commission considered that their cumulative effect was significant and required a remedial response from the newspaper, which had evidently failed to take sufficient care to ensure the accuracy of the story in the first place. With that in mind, it was certainly necessary – in the Commission's view – for the newspaper to offer to publish a lengthy letter from the complainant, together with an editorial note of apology. While it noted the newspaper's additional offer to publish a short correction, the Commission considered that a published letter, and editorial note of apology, represented the more suitable remedy under the terms of the Code. As the newspaper had been willing to make this offer, no further action was required under this Clause.

Relevant rulings

Nancy Seltzer Associates on behalf of Sean Connery v Sunday Mail, 1999

Booth v Camden New Journal, 2004

Moore v The People, 2004

Adjudication issued 2005