

***Mr Christopher Bourne v Sunday Mercury***

Clauses noted: 1, 3

Mr Christopher Bourne of West Bromwich complained to the Press Complaints Commission that an article headlined "Dad cashes in on Xbox misery", published in the Sunday Mercury on 4 December 2005, was inaccurate and misleading in breach of Clause 1 (Accuracy) and contained a photograph of him which was published without consent in breach of Clause 3 (Privacy) of the Code of Practice.

There was no breach of Clause 1. The complaint was upheld under Clause 3.

The article reported that the complainant had bought 30 Microsoft Xbox 360 games consoles to sell them for profit on eBay. The complainant said that the article's characterisation of him as "the greediest man in Britain", a "modern-day Scrooge" and a "shameless dad-of-two" was inaccurate and misleading in breach of Clause 1 (Accuracy). Moreover, the article's estimation of the amount of profit that he was to make from selling the consoles was inaccurate.

Although he spoke to the paper, the complainant refused its request to pose for a picture. However, he agreed to allow his son to be photographed with the consoles. In the event, the article was critical of the complainant and the published photograph was of him, not his son. The complainant said that it was taken surreptitiously and printed without permission.

The newspaper said that the purpose of the report was to expose the complainant as a greedy opportunist intent on making a substantial profit by exploiting the pre-Christmas retail shortage of Xboxes. It said that the complainant had sought to auction the consoles to make the highest profit possible and had not set a fixed price for them, which was an option available to him. He had freely explained to the reporter that he expected to make a profit of about £5,000.

There was a real public interest in reporting the complainant's behaviour and in publishing his picture. As the complainant had invited its photographer into his house in order for his young son to be photographed, the newspaper did not consider that he could complain if, in the event, the photograph used was of him and not his son.

*Adjudication*

The article's description of the complainant as "the greediest man in Britain" was clearly the newspaper's forceful opinion about the complainant, something it was entitled to express. Readers generally would have been able to decide for themselves whether the facts merited such a description or not, and would have realised by the manner in which the accusation was presented that this was not the only view to be taken on the matter. Indeed, part of the article invited readers to make a judgment as to whether the complainant was either "cruel" or "just making an honest buck". There was also no significant inaccuracy in the newspaper's calculation of the estimated amount of profit to be made by the sale of the consoles. There was no breach of Clause 1 on either of these two issues.

With regard to Clause 3, the editor had not denied that the complainant had refused permission for his picture to be taken and published. The complainant was in his own home – a place where he clearly had a reasonable expectation of privacy – when the photograph was taken. There would have had to have been a convincing public interest defence for surreptitiously taking and then publishing a picture of someone in their own home.

While the newspaper clearly had a strong view about the complainant's behaviour in trying to make some money from reselling the consoles, the Commission believed that its conduct was out of proportion to any conceivable public interest there might have been in publishing the complainant's image. There was no evidence that the complainant had, for example, committed any crime or

serious impropriety or sought to mislead any of his potential customers. The public interest argument for ignoring the complainant's express wishes regarding the photograph was therefore limited – and certainly not sufficient to justify the intrusion into the complainant's privacy. The complaint under Clause 3 was therefore upheld.

Relevant rulings

Goodyear v The People, 2003

Tunbridge v Dorking Advertiser, 2002

Adjudication issued 2005