

John Smith v The Sun

Clauses noted: 1, 3, 10, 16

John Smith of London complained to the Press Complaints Commission that an article headlined 'Tom, 17, blows £12k on his dad's card' published in The Sun on 9 February 2004 contained inaccurate and intrusive material in breach of Clause 1 (Accuracy) and Clause 3 (Privacy) of the Code of Practice, some of which had been obtained in breach of Clause 11 ii (Misrepresentation). He also suggested that his son, a confessed criminal, had been offered payment for the story in breach of Clause 17 (Payments to Criminals) of the Code.

The complaint was rejected.

The complainant said that the newspaper had interviewed his 17-year-old son, who had recently stolen and spent money on his father's credit card, and had been paid or offered payment for his story. Since his son was a confessed criminal such action appeared, he said, to breach the Code of Practice (Clause 17 – Payments to criminals). With regard to the content of the article, the complainant claimed, firstly, that there were a number of inaccuracies. These related to his stated occupation and salary and the alleged value of his home. Secondly, he contended that the inclusion of his photograph intruded into his privacy.

The newspaper said that no payment had been made or offered to the complainant's son. The person who first tipped its journalists off about the story was promised payment but he had assured the newspaper that no money would be passed to Mr Smith Jnr. In fact, after the complaint was made, the payment to the tipster had been frozen. Ultimately, said the newspaper, the complainant's son had been happy to tell his story. With regard to the photograph used in the article, the newspaper said that it had been provided by the complainant's son, as had the information regarding the complainant's occupation and salary – as well as the value of the family's home. Its journalists had no reason to doubt the details he gave them and in addition a reporter had contacted the complainant for his comments on the story.

The complainant contended that his son had been offered money through an intermediary – presumably the original tipster. He claimed that the payment had been withheld as a result of the complaint being made. On the issue of the photograph, the complainant emphasised that the image had been taken on his wife's camera, at his request and while his son was not present. The picture had been removed from his home – which his son shared – and published without his consent, potentially in breach of both Clause 3 and Clause 11 ii. In relation to the alleged inaccuracies, the complainant said that when a journalist had contacted him about the story, questions regarding his occupation, salary and the value of his home had not been asked. He added that the article was inaccurate in claiming that he had branded his son 'a little s***'.

The newspaper said it was happy to attach the correspondence relating to the complaint to its files and databases to ensure no further reproduction of words and pictures without senior editorial approval.

Adjudication

The Commission first considered the allegation that the article contained inaccurate material in breach of Clause 1 of the Code. The Commission noted the complainant's assertion that there appeared to be some inaccuracies in relation to his job, his salary and the value of his home, and it certainly understood his irritation at their publication. When dealing with such complaints under Clause 1, the Commission examines whether newspapers have taken sufficient care not to publish inaccurate information, and, if such material has been published, whether the inaccuracies are of such significance to warrant the publication of a correction.

In this case, the Commission noted that it appeared to be the case that the information had been provided by the complainant's son, an obviously close relative. Moreover, the journalist had approached the complainant for comment, although it accepted that there was some dispute over the extent to which issues were, or could have been, put to the complainant.

In any event, these points were subsequently disputed by the complainant, and the Commission had to consider whether they were of sufficient significance to require the publication of a correction or an apology. Bearing in mind the context of the article as a whole, and the fact that the newspaper had shown that the claims came from someone who was close to the complainant, the Commission did not consider that the newspaper was obliged to publish a correction. However, it was pleased to note that it had agreed to amend its internal records to ensure that there would be no republication of the material without senior editorial approval. This appeared to the Commission to be a proportionate response to the complaint of inaccuracy.

The Commission then considered the complaint that the removal and publication of the complainant's photograph amounted to a breach of Clauses 3 and 11 of the Code. While the latter clause makes clear that documents and photographs should not be removed without the consent of the owner, this has generally been taken to refer to the actions of journalists or their agents. There might also be an issue under the Code if children under the age of 16 are approached and asked for information without the consent of a responsible adult. In this case, however, the complainant's 17 year old son seemed willingly to have collected the photograph from the family home in which he lived and passed it to the journalist for publication. There was no allegation that the journalist himself had been into the home and removed the picture. In these circumstances, while it quite understood the complainant's unhappiness with the removal and publication of his image, the Commission could not conclude that there had been a breach of Clause 11.

For similar reasons, the Commission also rejected the complaint under Clause 3. The complainant was closely involved with the story as the victim of a crime that had been perpetrated by his son. His identification in the story was therefore inevitable (as was the identification, therefore, of his wife). The photograph had not been obtained surreptitiously – having been passed to the journalist by the complainant's son – and it simply depicted an image of the complainant's face. It did not show him engaging in any obviously private activity. The Commission sympathised with the complainant but did not consider that the newspaper could be held responsible for the behaviour of his son. The Code allows journalists to speak to people aged over 16 without the consent of their parents. Given the boy's age, the journalist did not breach the Code by asking the complainant's son for a photograph of his father, and, having received the photograph in this way, the newspaper did not breach the Code by publishing it.

The Commission then had to consider the complaint under Clause 17, which forbids payment or offers of payment to criminals or their associates except in certain limited circumstances. The Commission noted that both parties accepted that the complainant's son had not in fact been paid – although there was a dispute about whether or not he had at some stage been offered a payment through an intermediary. In the absence of any payment to the complainant's son there was insufficient evidence to show that payment had been offered and that the Code had been breached on this point. This part of the complaint was therefore rejected.

The Commission finally considered the complaint that the newspaper's offer to pay the tipster amounted to a breach of the Code's rules on paying associates of criminals. This part of the Code has never been interpreted to restrict payments to individuals for tip offs when there is no conceivable benefit to the criminal, and when the tipster is not connected to the offence concerned. Its purpose is twofold: to prevent individuals – in certain circumstances – from exploiting crime by selling specific material to which they only have access as a result of their association with a criminal, and to inhibit circuitous payments to criminals themselves. As the material in the article had evidently come from the complainant's son rather than the tipster, and as there had been no

circuitous payment – ultimately, indeed, no payment at all – the Commission concluded that there had been no breach of this part of the Code.

Relevant rulings

Clark v Closer, 2004

Ibberson v Brighthouse Echo, 2004

Collie v Sunday Sport, 2000

Hunt v The Guardian, 1999

Pollock v Daily Record, 1998

Adjudication issued 2004