

***Cornwall County Council v Falmouth Packet***

Clauses noted: 3, 6, 10

Richard Williams, Head of Legal Services for Cornwall County Council, complained to the Press Complaints Commission that the publication of an image in The Packet on 01 November 2006 to accompany an article headlined "‘Sting was entrapment’ claim" intruded into the privacy of a child in breach of Clauses 3 (Privacy) and 6 (Children). The complainant also raised concerns that the publication of the image was in breach of Clause 10 (Clandestine devices and subterfuge) of the Code.

The complaint was not upheld.

The article reported that a Truro businessman had complained after Trading Standards officers 'deceived' his staff into selling alcohol to a fifteen year old. The businessman sent the CCTV footage of the sale to the newspaper to support his view that the child looked at least eighteen years old. The newspaper then published an image from the footage which showed the transaction taking place between the shop assistant and the child.

The complainant said that the publication of the image was in breach of Clauses 3 and 6 of the Code. He did not consider there to be an 'exceptional public interest' in its publication, as required in cases involving children under sixteen.

The newspaper said that individuals would not have a reasonable expectation of privacy in a shop, which was a place to which members of the public would have extensive access. Customers would expect to be seen by strangers, and to be filmed on CCTV cameras. Moreover, the image itself did not convey any confidential information. Indeed, the transaction was most significantly in the public domain as it consisted of a 'sting' operation by officers, employed by the council, with the intention of catching a shopkeeper breaking the law. The child's parents would have known when they consented to his volunteering that it might lead to him being a witness in a public prosecution, and the CCTV footage used as evidence.

If there was any intrusion into the child's privacy – which the newspaper did not accept – there was also an exceptional public interest in publishing the image. The shopkeeper's criticism was that the council had used a child who looked much older than his actual age, which amounted to 'entrapment'. Sight of the picture was necessary for readers to come to a view on that criticism. The newspaper agreed, as a gesture of goodwill, to suspend the picture from its website pending determination of the matter.

The complainant maintained that the publication of a photograph of a child, known to be voluntarily assisting the council, was neither appropriate nor in the public interest when balanced against the interests of the child. He included a statement made by the child's parents detailing the concerns they had about how the published image would affect him. He also emphasised that the council always took care to preserve the anonymity of children voluntarily assisting it, and that it was the trading standards officers, rather than the child, that would give evidence in any criminal proceedings.

***Adjudication***

Dealing first with the position under Clause 3, the Commission was presented with some unusual circumstances. Normally, photographs of individuals taken without their consent going about their normal business in small, quiet shops might be considered to be intrusive in breach of the Code. In this case, however, the youth photographed was not an ordinary shopper, but someone carrying out an activity on behalf of the council to see whether the shop would sell alcohol to someone under the

age of 18. He was in fact 15. As the boy had been served alcohol, and the store issued with a fixed penalty, the reputation of the shop locally was clearly at stake.

At the heart of the shop owner's defence was the contention that the boy looked over 18. He had therefore released the CCTV footage of the transaction to prove his point. The boy had not been named and the only information about him was in the photograph – which showed a side view of his face – and the fact he had been acting under cover for the council. The shop owner clearly felt he had been the victim of entrapment and had made an official complaint. The merits of this claim rested entirely on the physical appearance of the boy.

The Commission rejected the complaint under Clause 3 for three main reasons. First, the activity was not essentially private – it was council business researching an issue that may have ended up in court. This removed some of the protection that would normally be available to ordinary shoppers in such circumstances. Second, the appearance of the boy was directly relevant to the story – which had become a matter of public dispute following the shop owner's formal complaint – and publication necessary for the public to be able to understand the nature of the dispute. Third, the information about the boy was limited and he was not named.

There was a further consideration. To have found that the photograph breached the Code would significantly have interfered with the shop owner's ability to conduct his arguments freely and fairly in public. Such a decision may therefore have been incompatible with his rights to free expression.

Under Clause 6, the Commission was satisfied that the subject matter of the photograph did not concern his welfare in the sense of the Code. There was nothing embarrassing or inherently private about the activity – he was, as outlined above, working on council business – and there was nothing in the article that in any way suggested that he personally was at fault for the ensuing dispute.

Finally, the Commission emphasised that Clause 10 of the Code states that the press must not seek to obtain or publish material acquired by using hidden cameras. The Commission noted that the article used footage taken from a CCTV camera in the shop. It made clear that it did not consider such a camera to be 'hidden' under the terms of Clause 10 of the Code.

There was no breach of the Code raised and the complaint was not upheld.

Adjudication issued 25/01/2007