

A woman v Scottish Sun

Clauses noted: 1, 3, 4, 10, 11

A woman complained to the Press Complaints Commission that an article published in the Scottish Sun on 14 November 2009, headlined "Lying dad caged", contained inaccuracies in breach of Clause 1 (Accuracy) and identified her in breach of Clause 11 (Victims of sexual assault) of the Editors' Code of Practice. She also complained that a representative of the newspaper had harassed her and misrepresented himself in breach of Clauses 4 (Harassment) and 10 (Clandestine devices and subterfuge) and had obtained an intrusive photograph - which was subsequently published - in breach of Clause 3 (Privacy) of the Code.

The complaint was not upheld.

The article reported that a man had been imprisoned after forging evidence in an employment tribunal. The complainant was the victim who had been awarded compensation for sexual harassment at the tribunal.

The complainant had been approached at her home by a news agency reporter prior to the trial. She said that he had failed to identify himself as a journalist and she was led to believe that he was an employee of the court. During the conversation, her husband came to the door and it became clear that the man was a reporter. Having exchanged contact details, the complainant said that she would contact the journalist if she wished to comment but she made clear that she did not wish to be named or quoted in print. After further contact between the two - by phone and text - the reporter informed the complainant that a story was to appear. The complainant made clear that under no circumstances did she wish for a photograph of her to be taken. In the event, the published article named and quoted her, in addition to featuring a photograph of her inside the vestibule of her own home. She said she had a reasonable expectation of privacy in such a place.

The complainant said the quote in the article which was attributed to her misleadingly suggested that she had issued an official statement on the matter, when this was not the case. She also said that she had been identified as a victim of sexual assault.

The newspaper said that the agency journalist had identified himself as a news reporter who reported on events at the local Sheriff Court. The complainant had offered to speak about the individual involved in the forgery case and provided her contact details willingly. The reporter left his official business card with the complainant (who later contacted him via the agency office) and a number of conversations and text messages followed during the trial, in which the complainant was an active and willing participant. The conversations formed the basis of the quote attributed to the complainant in the article. The newspaper said that the complainant had initially agreed to a picture being taken on her doorstep before changing her mind. As it was, the published photograph had been taken from a parked car on a public street when the complainant was fully visible to passers-by from her doorway.

Adjudication

This was a difficult case, not least because a number of the points resulted in a conflict of evidence, based on the different version of events put forward by the parties. However, the Commission sought to determine, insofar as it was able, whether it could be established that the Code had been breached. Throughout, it was conscious of the fact that the complainant was not accustomed to dealing with the press, and had been in a difficult situation following the sentencing of her former boss. It regretted that, to some extent, a misunderstanding appeared to have arisen between the reporter and the complainant.

Clause 4 of the Code relates to the physical harassment of individuals in the newsgathering process and states that journalists must not persist in "questioning, telephoning, pursuing or photographing individuals once asked to desist". On this occasion, there was no suggestion that the reporter had been harassing the complainant generally. Indeed, whatever the intentions of the complainant, there was evidence of repeated, consensual contact between her and the reporter, during which details of the case were discussed. The key consideration for the Commission was whether - despite the complainant's request that she not be photographed - the decision to send a photographer to her home amounted to harassment in breach of the Code.

It decided that it did not. The complainant had been unaware of the presence of the photographer at her home, who had not physically approached her or subjected her to any unwanted attention, such that might cause her distress. This is what this clause of the Code was designed to prevent. Her refusal of consent for a picture was not the same as a request for persistent photographing to desist. In the circumstances, the Commission did not agree that the taking of the photograph amounted to a breach of Clause 4.

Clause 3 of the Code states that it is "unacceptable to photograph individuals in private places without their consent", making clear that a private place is where there is a "reasonable expectation of privacy". It was clear that the complainant had not provided consent, and so the question for the Commission was whether she was in a private place at the time.

The photograph in this instance showed the complainant in the entrance to her home, standing on the doorstep. It is not the case, however, that taking a photograph of an individual on privately-owned property necessarily results in a breach of the Code. Taking previous decisions into account, the Commission had to determine whether the complainant would have been visible and identifiable from the street when the photograph was taken. Having noted the photographic evidence provided by both the complainant and the newspaper, it took the view that she would have been. The complainant had been standing on the doorstep to the front of her house and was not obscured from public view. Additionally, the Commission had regard for the fact that the photograph was innocuous and did not reveal any information about the complainant - whose name had previously been publicly connected to the story, following the reporting of the legal process - other than what she looked like. The Commission was satisfied that there was no breach of the Code here.

Whether or not it was a result of her husband's intervention, it was not in dispute that the complainant was aware that she had been speaking to a reporter by the end of their first conversation. The complainant had also understood this prior to engaging in direct contact with him on numerous occasions. The Commission was not of the view that the nature of the reporter's approach raised any breach of Clause 10 of the Code.

There were two final points for the Commission to consider: the complainant's insistence that she had not provided an official statement on the case; and her position that she had been identified as a victim of sexual assault. On the first point, the complainant may not have issued an official statement to the newspaper but she had willingly taken part in a number of conversations with the journalist. There had been no agreement these were provided off-the-record. The complainant had not suggested that the quotations were inaccurate and the Commission did not consider that readers would have been misled to any great degree in their presentation. Clause 11 was designed to protect vulnerable individuals involved in criminal cases. It was not the case that the complainant had been involved in a criminal case and, therefore, the Code was not engaged.

Relevant ruling

Sheridan v The Scottish Sun, 2007

Adjudication issued 07/04/2010