

***Ms Ruth Kelly MP v Daily Mirror***

Clauses noted: 6

Ms Ruth Kelly MP complained to the Press Complaints Commission that an article published by the Daily Mirror on 8th January 2007 headlined "Ruth Kelly's child sent to private school" intruded into the private life of her child in breach of Clause 6 (Children) of the Code.

The complaint was not upheld.

The article reported how the complainant had decided to send one of her children to a private school that could provide assistance for a pupil with learning difficulties. It followed a report of her decision in the previous day's Mail on Sunday, which did not name the complainant.

The complainant considered that, by naming her, the newspaper had identified her child. The article thereby constituted an unnecessary intrusion into his ability to attend his new school. It also contained details of the child's private life – the fact of his learning difficulties (including a specific reference to his particular condition in the first edition) and the need to attend a new school – that had only been published because of the position of his parent. There was no exceptional public interest served by identifying the complainant's child in this way, as required by the Code of Practice. The complainant made clear that she has never made any statement that would mislead the public about the education of her children. The complainant's sole concern was the welfare of her child, which had been negatively affected by the publication of the article.

The newspaper said that the article had sought to highlight how the complainant had decided that there was "inadequate help in the East London schools near her home" and had therefore turned to the private sector. It contained the contrary position from the local council, which insisted that it provided "tailored support" to state schools to help pupils with learning difficulties. It quoted three Labour MPs who were critical of the complainant's decision, and the Trade and Industry Minister Margaret Hodge, who admitted that there was a "legitimate public interest in whether Labour MPs educated children privately". The newspaper's editorial argued that readers "had a right to know when those who run crucial public services – and repeatedly tell us how much they are improving – conclude they are actually failing their own families and can then afford to opt out". This was a matter of profound public interest. The newspaper made clear to the PCC that it had taken deliberate steps to include minimal detail about the complainant's child in a bid to protect his welfare. It did not publish the following: the child's name, sex or age; any photograph; the names of his new or previous school; or details of the facilities of the new school that were not in the public domain. In the first edition of the newspaper, there was reference to a particular type of learning difficulty – which had been cited in an article in the Sunday Times that did not name the complainant – but this was removed in later editions.

Against this background, the newspaper argued that it had not "unnecessarily intruded" into the child's time at school. If there was intrusion, it was to the limited extent of identifying the complainant as the mother of a child with learning difficulties who was attending an unnamed private school. It also argued that the information contained in the Mail on Sunday piece – which described a minister who "has been closely involved in Tony Blair's education policy" – was such that the complainant was likely to be identifiable even if it had not named her.

The newspaper made clear that the Commission had previously accepted – in a decision regarding the children of the Prime Minister – that the press might legitimately relate "scrutiny of Government policies to the children of politicians where their conduct in matters relating to their children has an impact on policy or gives rise to reasonable charges of hypocrisy" and that this might involve the naming of the child "in a manner proportionate to the issues and facts involved". The newspaper considered that it had acted in a proportionate manner, especially by only specifically identifying the complainant and not her child.

Publication was also in the public interest because the complainant's actions were against the underlying ethos of her political party, which was that children ought to be educated in the public not private system. The complainant was a member of a Government that considered education to be its "number one priority". Its 1997 manifesto declared support for "the greatest possible integration into mainstream education of pupils with special educational needs"; the 2001 manifesto referred to the need for "access to the best possible education, with appropriate support, whether mainstream or special schooling most suits their needs". A document signed in 2005 by the Prime Minister and the complainant (then Secretary of State for Education and Skills) stated that "children with special educational needs are entitled to as good an education as everyone else, with proper support for their special needs", and that "it is not for national government to dictate the proper pattern and provision from the centre, but it is essential that provision is adequate in each locality". In an interview with the newspaper in 2005, the complainant indicated that she was "totally committed" to the "state education system". She has also spoken on the importance of good local state schools.

There were other examples of the government's approach to Special Educational Needs [SEN] which seemed to be at odds with the complainant's decision. Moreover, in both 2005 and 2006 – while the complainant was at the Education department – thousands of places at special schools were lost. It remained an issue of great public concern whether the necessary provisions exist in mainstream schooling to accommodate pupils with SEN. A story in the Sunday Times of 14th January 2007 revealed that the complainant had "presided over the closure of more state special school places annually than any other Labour education secretary since 1997".

Ultimately, the newspaper considered that the story clearly gave rise to "reasonable charges of hypocrisy" on the part of the complainant. It argued that the scrutiny of – and debate about – an important political and social issue like education should be encouraged in a democratic country. The story also allowed a debate about the educational provisions within Tower Hamlets, as the locality where the complainant lived. It was right for residents within that community, and those in the complainant's constituency, to know about her decision.

The complainant considered that the Mail on Sunday article did not identify her to a wide constituency of readers, or specifically inform her child's friends and their parents about details of his health and education. The consequence of the Daily Mirror naming her was that all the other media followed suit. That was why the complaint was framed solely against this newspaper. The intrusion into the child's private life was not justifiable or necessary; it was solely due to the position of the complainant. The debate around fee-paying schools could have been held without the complainant – and therefore her child – being identified.

In any case, the complainant's decision was not at odds with Government policy on special needs, which explicitly envisaged that some children would be educated in fee-paying schools. The complainant said it was accepted that meeting the needs of every locality might involve some of the children in the area being educated outside the locality, including by arranging and funding appropriate placements in independent or non-maintained schools. There was no hypocrisy on the part of the complainant in sending her child to a fee-paying school; it did not reveal that the complainant, or the Government, had misled the public in any way. The complainant's position was clear and consistent: every child should have an equal opportunity through the education system. For those with special needs it may mean a special school, which may be fee-paying. The complainant said that she could have raised a complaint under Clause 1 (Accuracy) regarding the newspaper's claims about inconsistency and hypocrisy, but was only interested in protecting her child.

The newspaper had quoted a Commission decision – regarding the schooling of Kathryn Blair – but omitted the fact that this complaint was upheld, and that the verdict had said that "the Code is rightly designed to give the maximum possible protection to children who in many circumstances may be vulnerable". The complainant said that some difficulties had been caused to her child which

constituted an unnecessary intrusion. She was concerned that this intrusion should not be repeated when her child returned to the state sector in a couple of years.

The Code was designed to protect vulnerable children. If the complaint were not upheld, it would mean that the Code offered no material protection to the complainant's child.

#### *Adjudication*

It was entirely understandable, in the Commission's view, that the complainant would have concerns about the effect of publication on her child, who was about to start a new school and was therefore in a vulnerable position. Children are rightly given strong protection by the terms of the Code.

However, there was also no doubt that the subject highlighted in the article was a matter of considerable public interest. The fact that a Cabinet Minister – who had previously been Secretary of State for Education and Skills – had elected to remove her child from the state system to be enrolled in a private school raised important issues for public debate. Even if government policy included an acceptance of private schooling for those with special needs, the fact that the complainant did not feel that the current state system could meet her child's requirements raised questions about the nature of publicly-funded schooling and its ability to cater for children with special needs (including those whose families would not be able to pay for private schooling).

The issue for the Commission was whether the newspaper had struck an appropriate balance between taking care to avoid unnecessary intrusion into the privacy – and schooling – of the child, and publishing a story that served the public interest. The Commission judged that the newspaper had.

In coming to this decision, the relevant parts of Clause 6 (Children) were as follows: "young people should be free to complete their time at school without unnecessary intrusion"; and "editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life". The Code also requires that "in cases involving children under 16, editors must demonstrate an exceptional public interest to override the normally paramount interests of the child".

The first question, therefore, was whether publication of the article constituted an "unnecessary intrusion" on the part of the newspaper. While there was unquestionably an intrusion felt by the complainant and her child, it was clear that the newspaper had taken steps to limit the nature of that intrusion by omitting the name of the child, his school and precise details of his condition. Had further details been included, the Commission may well have considered the intrusion to be unnecessary. It judged that the naming of the complainant herself – even though it carried with it an implicit identification of her child – was necessary in the context of the story and enabled a fuller, legitimate discussion of the issues at stake, including whether the state in general and Tower Hamlets Council in particular was able to offer appropriate schooling for children with special needs.

The second question was whether the newspaper had used the position of the complainant as sole justification for publishing details of a child's private life. In coming to a view on this, the Commission had again to take into consideration the fact that the child and his new school were not named. The story was about the decision of the parents – one of whom was a minister and MP who had been responsible for the national policy on education – rather than the private life of the child. The newspaper had omitted specific reference to the child's private life and instead had concentrated on the public position of his parent. The Commission did not consider that the Code was designed to prevent scrutiny of this sort.

On balance, the Commission was satisfied that the newspaper had acted within the requirements of Clause 6 of the Code on this occasion. The complaint was not upheld on that basis.

Relevant rulings

Blairs v Mail on Sunday, 1999

Blairs v The Daily Telegraph & Daily Mail, 2002

Adjudication issued 15/03/2007