

Ms Sue Turner v Birmingham Mail / Birmingham Mail Extra

Clauses noted: 3, 5, 8

Ms Sue Turner, Chief Executive of the Birmingham and Solihull Mental Health NHS Trust, complained to the Press Complaints Commission that articles in the Birmingham Mail and Birmingham Mail Extra of 20 February and 25 February 2010, headlined "Suicide pact" and "Our suicide pact" respectively, were intrusive in breach of Clause 3 (Privacy), Clause 5 (Intrusion into grief or shock) and Clause 8 (Hospitals) of the Editors' Code of Practice.

The complaint was not upheld.

The front-page articles reported that three patients at a Birmingham psychiatric unit, Main House, had - several days before publication - attempted suicide over concerns about the future of the unit. They had subsequently been informed that Main House was indeed to be closed down, which prompted the newspapers' articles. The articles were accompanied by pixellated photographs of the patients being informed of the decision - said in the coverage to have been "supplied by the patients themselves via their psychiatrist" - in which they were shown to be distraught at the news.

The complainant said that the residents were extremely vulnerable adults to whom the Trust owed a duty of care: they were not in a position to give any clear consent for the taking and publication of these photographs, which had been taken inside Main House. The complainant argued that the newspaper should have obtained consent from not only the patients but also their respective carers, consultants and/or relatives before publication. Indeed, while there is some assumption under the Mental Capacity Act 2005 that patients have capacity to make their own choices, it is not automatically the case that they do and the newspaper should have sought further guidance from appropriate individuals. The Trust was now unable to assess retrospectively whether the patients had the capacity to make decisions about the photographs, but considered that they would not have had the capacity to make such a decision due to their vulnerability.

The complainant said that the photographs had also been taken in breach of patient confidentiality by a GP who worked with the patients once a week, and was not their consultant or primary carer. He had been dismissed following a disciplinary hearing and the case had been referred to the General Medical Council.

The complainant stated that the Trust had received a number of complaints about the articles from the family of one of the patients and another former service user. The former service user said that she had been identified as her car had been recognised following the publication of a photograph of the exterior of Main House. The Trust was prepared to contact the concerned parent to support its complaint, but was worried about causing additional stress by doing so.

The newspapers said that the closure of Main House was a major local issue. When they received the photographs of the distressed patients they gave careful consideration to their publication. They felt justified in publishing for the following reasons: the photographs had been taken with the knowledge of the patients; they had been taken by a medical professional working with the patients; the patients, who were all adults, had given their consent for publication and were actively keen for them to be shown; and a parent of one of the patients had supported the use of the images. The newspapers added that they had taken steps to protect the identities of the patients by pixellating their faces.

The newspapers said that they had given a voice to mental health patients who said that they were being ignored and distressed by the sudden closure of the unit midway through a public consultation. They had received no complaints from the patients or their families directly. They also said that - given the small size of the photograph of Main House - it would not have been possible to identify registration numbers of the cars.

Adjudication

In making this decision the Commission wished to make clear that it took into consideration the many special circumstances of the case. While the Commission had not received a complaint from the individuals at the centre of the coverage, it decided that it was able to investigate a complaint from the NHS Trust, which was certainly a relevant party in the matter. In making this ruling, the Commission had to be particularly aware of the potentially competing positions of the Trust and the patients themselves, who were apparently content for publication to go ahead.

The protection of vulnerable individuals is at the heart of the Editors' Code and the question of intrusion in regard to patients at a mental health facility was clearly a serious matter. An attempt by the newspapers to ignore - or bypass - the terms of the Code, and compromise the welfare of patients, would be the subject of vigorous censure by the Commission. However, the Commission did not believe that the newspapers had made any such attempt on this occasion.

The key consideration for the Commission related to the question of appropriate consent. In normal circumstances, editors are rightly able to rely on the consent of affected parties to publish private information about them. In this case, the three patients at Main House had provided explicit consent (and apparent encouragement) for the publication of the images. However, the complainant had argued that this consent was insufficient, due to the vulnerable nature of the patients and concerns over their ability to make an informed decision.

This was an important point and one which the Commission weighed heavily. There were also two other significant factors, relating to the photographs, for it to bear in mind: they had been provided by a doctor, who was employed by the facility; and they had been pixellated by the newspapers, to prevent identification of the patients (who had also not been named in the articles). There was a final issue relating to the public interest inherent in the story, which reported the closure of a mental health unit and its impact on the patients who lived there (which had even led the patients apparently to seek to take their own lives).

At this stage, it was not possible for the Commission (or indeed the Trust) to establish the specific capacity of the patients to offer informed consent about publication. The Commission did recognise, though, that legitimate concerns would exist about the patients' capacity in this area. This was something which the newspapers had a responsibility to take into account. The Commission considered that patients' consent on its own may not be sufficient always to justify publication.

In the Commission's view, it was the existence of the other factors that tipped the balance in favour of the newspapers' decision to publish: the involvement of the doctor; the decision to pixellate; and the public interest in the story as a whole. The Trust's position was that the doctor, who had provided the images, had acted inappropriately and in breach of his own professional standards. However, it did not necessarily follow that the newspapers, in making use of the images, had acted in breach of their own professional standards. At the time of publication, the newspapers had to be able to give weight to the fact that the image had been provided by a medical professional, who was involved in the care of the patients. In any case, the newspapers had not published the photographs unaltered, but had ensured that the patients' identities were not revealed to a wide audience.

In all of these circumstances taken together, the Commission did not consider that the newspapers' actions represented a failure to respect the private lives of the patients in breach of either Clause 3 (Privacy) or Clause 8 (Hospitals) of the Code. This was not an easy decision, but the Commission in the end found that the newspapers had managed to balance their duty to behave responsibly towards vulnerable individuals with the need to cover a story of important public interest.

Clause 5 refers to publication being "handled sensitively" at times of grief or shock. This clause normally applies to the aftermath of a death or serious accident, which was not the case here. The

Commission did not consider that the newspapers had handled their coverage of what was a distressing time for the patients in an insensitive way.

Finally, the Commission did not consider that the publication of a photograph of the outside of Main House, which showed a number of cars in the car park without clearly showing their registration numbers, represented an intrusion into the private life of a former service user in breach of Clause 3.

Adjudication issued 04/08/2010