

***Mr Neil Armstrong Nash v News of the World***

Clauses noted: 10

Mr Neil Armstrong Nash, the owner of Liberty Hotel in Lutterworth, complained to the Press Complaints Commission that journalists from the News of the World had engaged in subterfuge in breach of Clause 10 (Clandestine devices and subterfuge) of the Code of Practice.

The complaint was rejected.

The complainant runs a hotel (Liberty) which occasionally hosts a members-only club for 'swingers' called Liberation. Two journalists from the newspaper had joined the club and taken undercover photographs of the activities. The complainant claimed that this behaviour had breached the Code because they had not declared themselves to be journalists. There was nothing at the club to expose in the public interest - activities there were entirely legal, and the complainant and his wife had always been honest about what went on. Neither was subterfuge necessary: the club had been quite happy to welcome journalists openly in the past, as the newspaper would have known.

The newspaper said there was a public interest in making unsuspecting individuals aware of the kind of activity that went on from time to time in an apparently normal hotel. Moreover, the complainant had garnered a lot of publicity for the 'swingers' events – it was perfectly legitimate for the newspaper to probe whether the claims that had been made about the club were true. It could not have done this satisfactorily if the journalists had revealed their occupations at the outset. The use of subterfuge was therefore justified. Moreover, the photographs taken by the journalists could not have been obtained overtly. This point was something that the complainant accepted as to do so would have been contrary to club rules.

The complainant dismissed the newspaper's public interest defence by disputing that members of the public could accidentally have gone to the club. The 'swingers' event was only open to members, and its nature was made clear to anyone entering the hotel. Indeed, guests could not pass the lobby area during club events unless they became a member – and no sexual activity took place within sight of the lobby.

*Adjudication*

The Commission was restricted to considering the complaint under Clause 10 – about the reporters' behaviour in allegedly using subterfuge – rather than coming to a view about whether publication of the article was intrusive or justified in the public interest. This was because the people who were photographed and featured in the article did not want to complain.

Clause 10 of the Code relates to the manner in which news is gathered. The complainant had alleged that the journalists had employed subterfuge unnecessarily in order to obtain material for an article. The evidence for this appeared to be simply that they had not announced to the hotel's management what their professions were. Documents submitted by the complainant appeared to confirm that the journalists had used their own names on the membership forms. There was no allegation that the reporters had been asked whether they were journalists and then lied. It seemed to the Commission that the complainant's principal objection under Clause 10 – given that he had said that many journalists had visited the club and that this alleged subterfuge was therefore unnecessary – was to the fact that the journalists had not organised their visit officially and could not therefore be supervised.

If the journalists' behaviour amounted to subterfuge then the Commission did not consider that it was of a particularly serious order. But in any case, the Commission considered that there was a public interest for it. The complainants were operating a controversial club, and had sought and obtained a large amount of publicity in order to put one positive view of it into the public domain. It

was not for the Commission to interfere with a newspaper's right to test whether or not this view was accurate or not. To conclude otherwise would arguably be to grant organisations the right to control media coverage on their own terms.

The Commission wished to emphasise that in rejecting the complaint under Clause 10, it was not coming to a view under the Code about the published article. Its ruling related to the manner in which material for the story had been obtained. The decision to research the story in this manner was of course taken before anything was known about what an unofficial visit to the club might reveal. Once the information had been acquired, a separate public interest assessment would have been made by the editor about whether it should be published.

The Commission came to no view about the taking of the photographs of people at the club as the complainants were not authorised by the subjects of the pictures to pursue a complaint on their behalf.

Adjudication issued 2005