

Mr John Foster v Cambridge News

Clauses noted: 1, 3, 5, 14

Mr John Foster of Bromley complained to the Press Complaints Commission that an article published in the Cambridge Evening News on 6th May 2006, headlined "Ultimate act of betrayal", was inaccurate and intrusive at a time of personal grief and shock in breach of Clauses 1 (Accuracy) and 5 (Intrusion into grief or shock). He was also concerned that the article was based upon his private correspondence with the editor, the publication of which he considered to be a breach of Clauses 3 (Privacy) and 14 (Confidential sources) of the Code.

The complaint was not upheld.

The article revealed the details of an e-mail exchange between the complainant and the newspaper's editor about the stabbing of the complainant's mistress (Julie Simpson) by his wife (Alethea Foster). In it, the complainant discussed the coverage of the case, including the possibility of the sale of photographs or the story of Ms Simpson to the media. The article suggested that the e-mails represented a further 'betrayal' by the complainant of his wife.

The complainant said that his contact with the editor was on a confidential basis, and that this had been made clear at an early stage during a telephone conversation and at several points during the correspondence. He argued that publishing their contents was a breach of Clauses 3 and 14, and that the article had caused him grief and shock in breach of Clause 5.

He said that, once published, his remarks were taken out of context and published misleadingly. His behaviour was not a betrayal of his wife. The e-mails were not secret, being known to his wife, family and Ms Simpson – something they all confirmed in letters to the Commission. Neither was it correct that he had 'secretly' sent 'a series of pictures of his wife and ex-lover within days of the knifing'. Both women knew that he had sent a picture of his wife, followed by one of Ms Simpson several weeks after the incident.

The complainant also said the reference to his description of his wife as 'an old slag or old lag' was taken out of context. In fact, she had herself made such a remark in relation to a previously published photograph, and he had wanted to provide a better one. Other inaccuracies included that he was continuing to 'go between both women', and that he had initially contacted the newspaper to find out the condition of Ms Simpson when she was in hospital. Once contact with the newspaper had been established, he had responded to the newspaper's requests for further information, but was not trying to manipulate the newspaper's coverage of the case.

The editor did not consider that he had any moral obligation to keep the correspondence confidential or private; in fact, he said, it was in the public interest to reveal the ongoing actions and attitudes of the complainant, which amounted to evidence of his 'serious impropriety'. It also helped to place into context the violent attack that had taken place at a college in the country's leading university.

He explained that the complainant had initially made contact just eight days after the knife attack, when he had telephoned to correct some minor errors in an earlier report and offer a picture of his wife. He said at this point that he was having difficulty obtaining information about the condition of Ms Simpson. The only subject that the editor explicitly agreed to keep confidential concerned the money raised from the photograph. The subsequent email correspondence showed that the editor at no stage promised to treat the information, or the correspondence, as private or confidential.

The editor said that the material that emerged during the trial shed new light on the e-mails the complainant had been sending the editor, as it became clear that he had been having an affair with Ms Simpson for many years and had 'play[ed] off one woman against the other'. This behaviour was

also apparent in the e-mails the complainant had sent to the editor, in which it was clear that he was still in touch with both women and refused to accept any responsibility for the situation. Indeed, he had been prepared to feed the newspaper with information – including tasteless jokes about the plight of both women – while otherwise painting himself as an innocent bystander. The article had accurately quoted the complainant's e-mails in their proper context.

The editor said that the complainant had then proceeded to send unsolicited emails to the newspaper as the case progressed. The newspaper considered that its attitude to the complainant over the period had been sympathetic and discreet in terms of the contact with him and Ms Simpson. There was no breach of Clause 5, the editor argued, as the published material to which the complainant took exception did not appear until after the trial, some seven months after the incident itself.

The complainant said that while the newspaper could have used some of the factual information he provided, it should not have revealed his identity as the source of the material. It should have been perfectly clear that the contact between him and the newspaper was to remain confidential. The editor had, after all, stated at one point that: 'I appreciate you having the courage to phone and chat off the record' and 'our conversation remains between the two of us' – which the complainant took to mean the entire subject under discussion, not merely the agreement surrounding the picture. When on another occasion the complainant had ended another e-mail 'please treat this as confidential', the editor had said 'no problem' in the first line of his reply. The complainant disputed the newspaper's account of what had happened between him, his wife and Ms Simpson, because he was not called as a witness at the trial, so the newspaper's claims about him in correspondence with the PCC had not properly been tested in court.

Adjudication

The Commission first considered the complaint under Clause 14. It was clear to the Commission that there was a considerable dispute between the complainant and the editor, particularly about what had been agreed during the initial conversation that set the tone for the subsequent correspondence. It seemed that the complainant considered that this conversation established that their contact would be kept confidential, and that the content of his e-mails – which included several specific statements to that effect – reinforced this. It was not, however, within the Commission's power to establish what had been agreed during that conversation, and it had to adjudicate on the basis of the evidence before it.

It was true that the complainant regularly made clear in his e-mails that he regarded the contents as confidential. The difficulty was that there was no evidence that the newspaper had accepted that it would treat the complainant as a confidential source in all its dealings with him. Clearly the complainant felt that he had this status with the newspaper. But there was no explicit recognition of this – something that would have been important for Clause 14 (Confidential sources) to be engaged in the context of this case, which was that the complainant was central to the story, and it had been suggested that he may have been seeking to influence the coverage of the case on his own terms.

The Commission did not believe that in these circumstances there was a moral obligation on the newspaper to avoid identifying him in the subsequent article. On that basis, the Commission did not consider that there was an issue to pursue under the terms of Clause 14.

The complainant also claimed a breach of Clause 3 (Privacy) in regard to the newspaper's alleged failure to respect his private life, which specifically includes "correspondence, including digital communications". This part of the Code is taken to protect people from the unauthorised publication of correspondence between two private individuals – not information sent directly to a newspaper. There was nothing private about the relationship between the editor and the complainant, and much of the material was in any case for a wider audience, albeit on an unattributable basis. Moreover,

the information could not reasonably be considered to relate to the complainant's private life, but rather was background to a public and high profile trial about which there had been much public discussion. Against that background, the Commission was satisfied that there was no breach of Clause 3 (Privacy) of the Code.

The Commission then turned to the complaint under Clause 1 (Accuracy) of the Code. Much of this part of the complaint appeared to rest on the critical manner in which the newspaper had presented the complainant's comments. While the complainant doubtless objected to the conclusions about his behaviour that the newspaper had reached, the paper was entitled to form a robust view of the matter and did not appear to have quoted inaccurately from the e-mails. It was clearly the newspaper's view that the content of the e-mails amounted to a 'betrayal' of the complainant's wife, for the reasons that the editor outlined, and the Commission saw no breach of the Code in the description of the messages as secret given the complainant's strong view that he should not have been publicly associated with them.

There were a number of discrepancies highlighted by the complainant – most notably the claim that he had contacted the newspaper in order to find out information about the condition of Ms Simpson – but the Commission did not consider that any of them, in the context of the article read as a whole, were so significant as to raise a breach of the Code or require a remedial response on the part of the newspaper. There was no breach of Clause 1 established by this complaint.

Finally, the Commission considered the complaint under Clause 5 (Intrusion into grief or shock), which is generally relevant in the immediate aftermath of a bereavement or other shocking event. On this occasion, the article had been published several months after the incident, following a high-profile trial. The Commission did not consider that there could be a possible breach of Clause 5 in such circumstances.

Adjudication issued 25/09/2006