

Messrs Manches on behalf of the Tolkien family v Sunday Mercury

Clauses noted: 1, 2, 3, 4, 5

Messrs Manches complained to the Press Complaints Commission on behalf of the Tolkien family that articles published in the Sunday Mercury on 26 January 2003, headlined "Tolkien son's child abuse shame", "Tolkien, the archbishop and the lie" and "Church must come clean on perverts", were inaccurate in breach of Clause 1 (Accuracy) and intrusive in breach of Clauses 3 (Privacy) and 5 (Intrusion into grief or shock) of the Code of Practice. They also complained that the taking and publication of the photographs for the articles were in breach of Clause 4 (Harassment) and that their clients had not been given a sufficient opportunity to reply to the specific allegations in breach of Clause 2 (Opportunity to reply). A further article, headlined "Ex-communicated" and published on 2 February 2003, repeated the inaccuracies and compounded the intrusion.

The complaint was upheld under Clause 1 and 2 in conjunction with Clause 5. There was no case to answer under Clauses 3 and 4.

The main article was a front-page splash concerning the alleged paedophilic history of Father John Tolkien, who had recently died. It was based primarily upon the allegations of one man, Christopher Carrie, who had accused Father Tolkien of abusing him as a child, and indeed 'hundreds of' other children as well. The complainants' solicitors considered that the newspaper had breached the Code's provisions on accuracy in two ways: by failing to take care that material on which the articles were based was accurate; and failing to distinguish between comment, conjecture and fact concerning offences that had never been proven in court. The newspaper had uncritically published very serious allegations without full investigation and had not provided the complainants with an opportunity to reply in detail to the specific points raised in the story. Finally, the complainants' solicitors disputed the reference to the newspaper being 'gagged by Tolkien's lawyers' or 'legally prevented' from publication: no formal injunction has ever been sought, or granted, at the request of the Tolkien family that might explicitly prohibit publication.

The newspaper also carried a picture, taken in November 2000, of Father Tolkien standing in the corridor of the building outside his sheltered accommodation. It was clear that both the taking and subsequent publication of the photographs represented an intrusion into his privacy in breach of Clauses 3 and 4 of the Code. The complainants informed the newspaper in 2000 that the taking of the pictures had breached the PCC Code, but raised no official complaint with the PCC at the time. As regards the family itself, the subsequent publication of such sensational and insensitive articles (including the follow-up piece) intruded upon their lives at a time of particular grief in breach of Clauses 3 and 5 of the Code.

The newspaper maintained that it had reported an important story professionally and that there was sufficient evidence to suggest that it had 'got the right man'. Police had confirmed that 'high single figures' of alleged victims had been identified and the newspaper believed that, had a full investigation been mounted, more would have been uncovered. An initial investigation by police regarding four victims had passed the Crown Prosecution Service's evidential test - which indicates a professional assessment that there is a 70-80% chance of obtaining a conviction - and would have gone to trial had it not been for Father Tolkien's ill health. Subsequent to publication, a man from Canada has contacted the newspaper recounting his similar experiences with Father Tolkien, which gave it further indication that he was a serial abuser. The newspaper had made the family - through its solicitors - aware of what it was seeking to publish since late 2000 and reported Father Tolkien's denials in the main text of the story itself. Regarding the alleged 'gagging', the family had, since November 2000, required the newspaper to give solicitors a period of notice before publication: it was abundantly clear to the editor that, if the newspaper had sought to publish during Father Tolkien's lifetime, the solicitors would have sought an injunction.

On the other points of complaint, the newspaper did not consider that a dead person could have a

private life into which a newspaper might intrude through published material. In any case, the photograph had itself been taken in 2000 and no official complaint had been lodged at the time. There was, also, nothing in the article that might intrude into the privacy of Father Tolkien's surviving relatives. The newspaper contended that it was impossible to report the death of Father Tolkien sensitively, given his background and previous activities – the nature of which would inevitably upset his family.

The complainants made clear that the basis for the articles was not factually sound: the newspaper had not indicated that the story had been widely or satisfactorily sourced. Although a case had passed the CPS evidential test, the fact of the matter remained that Father Tolkien has never been found guilty of abusing anyone, let alone the 'dozens of young boys' for which he was accused in the newspaper. The complainants' central complaint was not that the allegations were inaccurate – which cannot now be proven – but that the newspaper had failed to present them accurately or take care that there was sufficient support for them. The reliance on one unreliable witness and unnamed police sources did not indicate a high level of care. Indeed, the subsequent evidence produced by the newspaper – which indicated that it had not sought or investigated such further substantiating material prior to publication – did not answer the charge that initial care had not been taken. On the gagging point, the complainants accepted that they had approached the newspaper prior to publication, but maintained that they did not apply for an injunction to prevent publication. The newspaper entered into a voluntary agreement not to publish, from which it subsequently withdrew in May 2002. The complainants contended that it was clear that the newspaper had waited till Father Tolkien had died before hastily publishing an insensitive story driven only by the commercial imperative of beating rival publications.

The newspaper offered to publish a clarification making clear that the articles contained allegations that were based on the opinion of one of Father Tolkien's alleged victims and had never been proved in court. The text also reiterated that Father Tolkien had always denied the allegations. However, the newspaper maintained that there was compelling evidence that Father Tolkien was a multiple child abuser and that it had consulted sources within the CPS and police prior to publication. The thrust of the complainants' argument was inimical to freedom of speech, as it argued against the right of newspapers to come to reasoned conclusions about criminal behaviour independent of any courts' decision. A court is not the only tribunal to determine the truth and, in this case, Father Tolkien's ill health ensured that he was never tried. The subject of child abuse carries an enormous public interest, which was served by the newspaper exposing behaviour that would never reach a court. The newspaper was happy to correct the fact that the article should have contained qualification for the allegations, but not that the story should not have been told. It made clear that it would consider the points raised in the complaint when publishing future articles – given that other alleged victims have come forward – on the subject.

Adjudication

It was not the task of the Commission to come to a decision as to the veracity of the serious allegations levelled against Father Tolkien. Its primary role was to assess whether the newspaper had presented such allegations with sufficient care and accuracy. It decided that the newspaper had not. The Commission pointed to the terms of Clause 1 of the Code, which state that newspapers 'must distinguish clearly between comment, conjecture and fact'. In this case, while it was clear that the newspaper believed that Father Tolkien was guilty of abuse – based upon the evidence of an alleged victim and other sources – it had misleadingly presented its belief as an explicit statement of fact. By publishing such extremely serious allegations without sufficient qualification, the newspaper had therefore breached the terms of Clause 1 of the Code. Its offer to provide a short correction on this point did not constitute sufficient remedial action in light of the nature of the breach or thereby represent a sufficient opportunity to reply to the article. There was also, therefore, a breach of Clause 2 of the Code.

In coming to this decision, the Commission wished to make clear that it was not seeking to

circumscribe the vital role of newspapers in exposing crime or criminals and defended newspapers' right to serve the public interest in such a way. However, it emphasised that they could only do so by acting within the terms of Clause 1 of the Code of Practice. Therefore, while it accepted the newspaper's contention that there was some basis for a story about the past of Father Tolkien, it made clear that the manner in which the story had been executed did not meet the standards set out in the Code.

The Commission also emphasised that the nature of the articles (containing allegations of the utmost gravity) and the timing (soon after the death of Father Tolkien) placed an even heavier responsibility upon the newspaper to ensure that the story was presented in an accurate and appropriate fashion. The newspaper, of course, had a right to publish the serious allegations levelled against Father Tolkien – particularly as it was clear that they would not ever be heard in a court – but it also had a responsibility to do so fairly. Its failure to do this demonstrated, additionally, a lack of sensitivity towards the grieving family and a breach of Clause 5 thereby resulted from the breach of Clause 1 of the Code.

The complaint under Clauses 1, 2 and 5 was therefore upheld.

The Commission noted that the complainants' solicitors had raised concerns over the accuracy of the suggestion that the newspaper had 'been gagged' over, or legally prevented from, the publication of the allegations. However, it did not consider, given that it was not in dispute that the solicitors had been in touch with the newspaper to seek to ensure their non-publication, that the description represented an inaccuracy of such significance, within the article as a whole, as to raise a breach of Clause 1 of the Code. Indeed, the Commission did not consider this matter to be central to the main complaint of inaccuracy discussed above.

Regarding the taking and publication of the photograph, the Commission was satisfied that there was not a case to pursue under the terms of Clauses 3 and 4. It considered that, while the photograph may have been taken in questionable circumstances, it could not make a judgement concerning something that had occurred nearly three years ago and about which it had not received a complaint at the time. In any case, the Commission did not consider that questions of privacy and intrusion could relate to the deceased or that, as publication had been subsequent to the death of Father Tolkien, it could consider this aspect of the complaint further. Additionally, it made clear its view that the articles themselves had not intruded specifically into the private lives of other members of the Tolkien family in breach of the Code.

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