

Mr Adam Kelliher v British Medical Journal

Clauses noted: 1, 5

Mr Adam Kelliher complained to the Press Complaints Commission, on behalf of the family of the late Dr David Horrobin, that the obituary of Dr Horrobin published in the British Medical Journal on 19 April 2003 was inaccurate in breach of Clause 1 (Accuracy) and intrusive at a time of grief in breach of Clause 5 (Intrusion into grief or shock) of the Code of Practice.

Following an offer of remedial action from the editor, the Commission considered that no further action would be necessary under the terms of the Code.

The article was an obituary of the late Dr David Horrobin, published nearly three weeks after his death. His family contended that the text contained 29 factual errors of varying significance and 9 examples of 'negative editorialising' in which the journalist cast aspersions on the career and character of Dr Horrobin – suggesting, among other things, that he 'may prove to be the greatest snake oil salesman of his age' and reporting references to him as a 'rotter, unethical and given to escaping his responsibilities'.

The journal suggested that it had made an appropriate response to the issues under complaint: by offering to publish a correction and apology (for the factual inaccuracies, but not for the nature of the article) on the website and in the paper edition; publishing around 100 rapid responses on the website, including alternative obituaries; publishing a summary of these responses in the paper edition, including three shortened versions of the alternative obituaries; and by the editor publishing three responses himself, explaining the rationale behind this obituary and his philosophy of obituaries in general. However, it made clear its view that obituaries should contain critical material and not be a mere eulogy for the deceased. While it was happy to apologise for the factual errors, therefore, it would be hypocritical to apologise for its genuinely held view that a critical obituary was not necessarily inappropriate – an apology that might prevent the future publication of obituaries containing negative material.

The complainant made clear that his complaint was not about the publication of legitimate criticism but of unjustified slander. A correction of the minor points of fact was not acceptable as it left uncorrected the 'character assassination' of the original article, which was without foundation in fact or substantiation from the editor. The obituary contained judgements of Dr Horrobin that were not accurate or justified, as testified by the number of people who have raised objections to the article and the esteem in which Dr Horrobin was manifestly held by those who knew him. Nor did the editor's further responses respond to the issue under Clause 5, which was that the obituary – and the attendant dispute – had caused 'genuine hurt' amongst Dr Horrobin's family and friends. Indeed, subsequent to the complaint, both the editor and the journalist had been quoted reiterating their negative view of Dr Horrobin – calling him a 'chancer' and the 'John DeLorean of medicine' – which was a further example of the lack of sensitivity being exhibited towards the family. The editor's decision to defend the principle of negative obituaries was being made at the expense of this particular case.

Ultimately, the journal made clear that it believed the view espoused by the obituary – which contained negative points, but also made clear that Dr Horrobin was 'effortlessly prolific, handsome and charming, and well-read' – was 'essentially true'. There was no question that Dr Horrobin was 'in some ways a charlatan' and that evidence to this effect was provided in the obituary itself. However the journal was prepared to offer an apology to the complainants on the grounds that the article 'may have lacked sensitivity'.

The complainant did not consider that the apology was genuine or responded to their contention that the article was substantially inaccurate. He suggested a wording that would cover both issues, which the journal declined to publish.

Adjudication

The Commission – pointing to an inherent difficulty in the consideration of accuracy complaints about the posthumous reporting of people's lives – made clear that it was not in a position to make a reasoned or fully-informed judgement as to the veracity of the claims about Dr Horrobin's former conduct, which were largely presented as opinion in the obituary and subsequently have been robustly disputed by the complainant, his family and Dr Horrobin's colleagues. In the circumstances, therefore, it could not consider the complaint under Clause 1 as the central part of its investigation.

That notwithstanding, the Commission noted that the journal, while seeking to substantiate the stance it had taken, had been prepared to correct a number of basic factual inaccuracies and publish a large number of responses to the obituary. Such action enabled a contrary perspective – in defence of Dr Horrobin – to be voiced in the pages of the printed journal and the website and was, in the Commission's view, within the spirit of the Code of Practice.

The Commission was able, however, to come to a view in regard to the alleged insensitivity of the article under the terms of Clause 5 of the Code. It made clear that newspapers had a responsibility to ensure that the publication of obituaries – necessarily, of course, occurring at times of grief – was not handled in an insensitive fashion. This did not mean that it was unacceptable for newspapers to publish criticisms of the dead; rather that, in the manner which they do so, due regard must be paid to the circumstances of the case and the position of family members at such times. In this instance, the Commission considered that the tenor of the article – and some of the subsequent comments made by the journal – had certainly, and with some reason, been construed as insensitive by Dr Horrobin's friends and family. It was therefore pleased to note that, further to the publication of critical responses to the article, the editor had offered to publish an apology for the distress caused by the piece. The Commission considered that this action was appropriate in the circumstances and was now satisfied that no further action in regard to this complaint was required under the terms of the Code.

Adjudication issued 2003