

### ***Levy & McRae Solicitors v The Digger***

Clauses noted: 1

Levy & McRae Solicitors of Glasgow complained to the Press Complaints Commission that an article headlined "Law firm Levy & McRae 'incompetent'", published in *The Digger* on 24 June 2010, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Editors' Code of Practice.

The complaint was not upheld.

The article was an editorial opinion piece on a court case, concerning the suspension of two individuals' security licences. The complainants were the solicitors for the individuals. The outcome was that Sheriff Principal Bruce Kerr QC ruled that Sheriff Simon Fraser had gone beyond his powers in making a decision (to overturn the original suspension), and therefore the decision was "incompetent".

The complainants said that the article, and in particular the headline, was inaccurate and misleading: the judgment had not referred to them as "incompetent" in any way. Rather, the judgment had stated that the original decision was "incompetent", in the legal sense (in that it was outside of Sheriff Fraser's powers). Sheriff Kerr's decision was summarised in the judgment as follows: "For these various reasons I consider that the Sheriff's interlocutor [judgment] of 26 January 2010 went beyond his powers and was incompetent".

The complainants also objected to other claims in the article that wrongly suggested their incompetence: that "most solicitors know how to present a summary cause while blindfolded"; and "the Private Security Industry Act 2001 taught Watson and his crew that being a solicitor means more than wearing a suit". Any such suggestions were inaccurate and misleading. The complainants were the instructing solicitors on the case: the presentation of the case to the court was a matter for Counsel. It was, therefore, misleading to use the outcome of the case to criticise the complainants.

The magazine said that the article was an opinion piece on a matter of public interest and represented fair comment on the basis of the circumstances of the case, which had been reported in the same edition in a news item. It was entitled to hold the opinion that the complainants should not have asked the Sheriff to make a decision he was not competent to make. The term "incompetent" had been clearly presented in the headline in inverted commas, satirically combining both the legal and layman senses of the word. In its view, readers would not have been misled by the article.

#### ***Adjudication***

Newspapers and magazines are generally entitled to publish reports of court verdicts and to offer their views and opinions on them provided that, in doing so, the terms of the Editors' Code are not breached.

In reaching its decision on the case, the Commission had regard for the fact that the piece: was an editorial; was clearly presented under the banner 'Opinion'; and was explicitly linked to a news report in respect of which no complaint had been made. The Commission had to decide whether the magazine's coverage was inaccurate or misleading in breach of Clause 1 (Accuracy) of the Code. On balance, the Commission did not find that it was.

The term "incompetent" had been used, in the headline, with single inverted commas, in a manner which suggested that the remark was not a statement of fact. The editorial itself did not claim that the complainants had been found by the court to be incompetent and the news report (in which the judgment was quoted) made it clear that the term "incompetent" had been used by Sheriff Principal

Kerr, in a legal sense, to describe the decision of Sheriff Fraser. The Commission reached the view that the use of the term in the headline would have been understood to be the opinion of the magazine given that the editorial argued that the complainants should not have asked "a Sheriff to do things they are not competent to do". The editorial contained the opinion - clearly marked as such - that the appeal ruling constituted, in effect, a legal defeat for the complainants and their clients. The complainants were, of course, entitled to challenge that interpretation, but on balance the Commission found that the magazine had adequately distinguished between comment and fact and that the coverage as a whole was not misleading.

The Commission had some sympathy with the view that the headline was ambiguous. It was clear that the complainants had not been criticised by Sheriff Principal Kerr or labelled by him as incompetent. Following the complaint, it would have been preferable if this issue had been clarified by the magazine. However, even without such clarification, the Commission considered that the editorial was not significantly misleading such as to breach the Code. The remarks made by the magazine about the complainants were clearly made under the banner of 'Opinion' and were not, in the Commission's view, statements of fact. It did not consider that a breach of the Code had been established in this case.

● Adjudication issued 01/03/2011