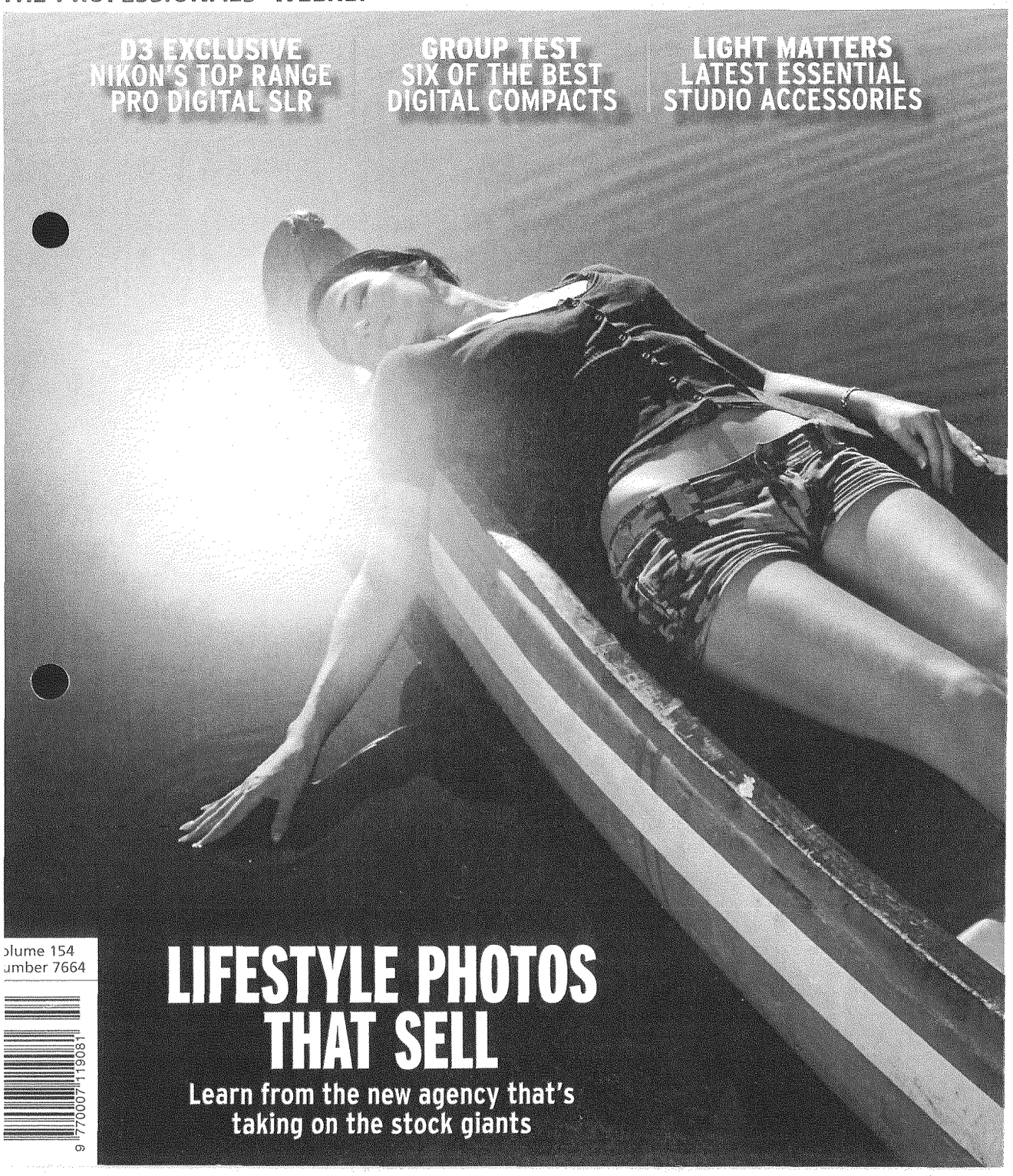
Jerwood Award | Nadav Kander | Privacy debate | Gallery listings | Jobs & classifieds

THE BRITISH JOURNAL OF
PHOTOGRAPHY
THE PROFESSIONALS' WEEKLY

12 | 12 | 07

www.bjp-online.com £2



D3 EXCLUSIVE
NIKON'S TOP RANGE
PRO DIGITAL SLR

GROUP TEST
SIX OF THE BEST
DIGITAL COMPACTS

LIGHT MATTERS
LATEST ESSENTIAL
STUDIO ACCESSORIES

olume 154
umber 7664

9 770007 119081

LIFESTYLE PHOTOS THAT SELL

Learn from the new agency that's taking on the stock giants

Common sense wins out

The British Press is free to self-regulate under the watchful eye of the Press Complaints Commission, but it's a right that depends on constant vigilance, writes PCC director Tim Toulmin

The news in the middle of 2004 was grim: we were told that the infamous European Court of Human Rights decision in favour of Princess Caroline of Monaco could lead to legal supervision of press photographers throughout Europe. It was predicted that the sweeping terms of the ruling, which seemed to suggest that a photograph needed to contribute to a 'debate of public interest' in order to be legitimate, would make it impossible to publish pictures without consent on anything other than serious subjects.

In turn, there was considered to be a real danger that British courts would have to conclude that high-profile people could decide where and when they could be photographed, in order to protect themselves from harassment by paparazzi. This would then quickly lead to image rights for individuals – giving people the right effectively to decide which flattering photograph of them appeared in publications.

But, interestingly, in the three-and-a-half years since the Caroline ruling, the British courts have not been asked to consider a serious complaint of harassment against press photographers. True, JK Rowling is currently appealing a ruling after she failed to convince a judge that a picture of her small child in the street was intrusive. The appeal court judges may well take the opportunity to set out how the courts here should interpret the ECHR ruling as it relates to photographers' behaviour.

And there are some who predict that this will ease uncertainty and set out a welcome and favourable framework. But this would not have arisen from a complaint about serious, ongoing harassment such as the circumstances that provoked Princess Caroline.

> 'The PCC realises that the circumstances in which photographs are taken are often fluid and fast moving – conditions that suit professional guidelines based on a set of principles rather than prescriptive and exhaustive regulations.'

Public appetite

People who have a jaundiced view of photographers would perhaps be surprised that the courts are not inundated with complaints. There seem to be several reasons why this has been the case.

The first is cultural. Image rights do not sit well with the British tradition – and lawyers and PRs advising celebrities know it. Attempting to change the law in a way that would give celebrities even more power than they currently have would be unpopular with the public. Whoever tried it would have to consider the impact on their public reputation of doing so.

The second is that the public are also quite rightly wary about the state or courts supervising what they may see or read in the media. This is not a hunch – it is backed up by polling which shows that only a small minority of people think that judges or politicians should decide on complaints against the media.

The third reason is particularly important. It is this: there is no real need for the law to intervene. The Press Complaints Commission rules on harassment and photography are clear. Journalists and contributors to publications must not 'engage in intimidation, harassment, or persistent pursuit. They must not persist in...photographing individuals once asked to desist...Editors must ensure that these principles are observed by those working for them and take care not to use non-compliant material from other sources'.

And more significant than the rules being clear, both to the press and those inclined to complain, is the fact that their application is consistent throughout the British press. No one pretends that photographs are never taken contrary to these principles. But the PCC does not directly regulate photographers as individuals – it is concerned with the choices of editors over which pictures they purchase and publish. And what hardly ever happens is for editors deliberately to buy photographs which breach the Code. In minimising the market for pictures taken through harassment, there is less incentive for photographers to harass individuals unnecessarily.

Subtle hints

The situation so far as harassment and the British press is concerned is therefore controllable, and there is a good mechanism for complaining, which helps explain why the courts are yet to be troubled with a serious case. The PCC's system of private alerts to editors, which are triggered by a request for help from an individual, work extremely well to take the heat out of a situation and to ensure that editors are aware of the potential pitfalls before a formal complaint is even necessary.

For photographers, this state of affairs is surely far preferable to any alternative. The PCC recognises the competing freedoms here: those of the individual to be protected from serious harassment, naturally; but also the considerable and often unstated freedom of the public to see pictures of people in the news, as they are. The PCC also realises that the circumstances in which photographs are taken are often fluid and fast moving – conditions that suit professional guidelines based on a guiding set of principles rather than prescriptive and exhaustive regulations.

Perhaps that is why some agencies have asked to sign up to our system of alerts so that they can keep up to date with people's concerns before they mushroom into PCC or legal action, and react accordingly. With clear lines of communication and a common sense application of the rules, there is a chance that the numerous competing freedoms can be preserved. BJP

PCC – Guide for photographers on harassment

The Press Complaints Commission's Code of Practice has a clause specifically designed to guide photographers on harassment – clause 4, reproduced in full here.

i) Journalists must not engage in intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.

iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

There may be exceptions to this clause where they can be demonstrated to be in the public interest – as outlined in a further five clauses.

1 The public interest includes, but is not confined to:

- **i)** Detecting or exposing crime or serious impropriety.
- **ii)** Protecting public health and safety.
- **iii)** Preventing the public from being misled by an action or statement of an individual or organisation.

2 There is a public interest in freedom of expression itself.

3 Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.

4 The PCC will consider the extent to which material is already in the public domain, or will become so.

5 In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

For more information on the Press Complaints Commission, and to read its Code of Practice in full, visit www.pcc.org.uk.