

REPORTING ON COURT CASES INVOLVING SEXUAL OFFENCES - 2011

Introduction

As the PCC has often made clear, it is a fundamental principle of open justice that court proceedings are reported by the media. However, the Editors' Code of Practice places a number of restrictions on such reporting, particularly in relation to cases involving sexual offences, where protecting vulnerable victims is of paramount importance.

During the last twelve months, the PCC has upheld a number of complaints in this area, which has prompted the Commission to set out the following guidance. The guidance has two purposes:

- a) to remind editors of the Code's provisions in this area and;
- b) to explain how the requirements in the Code can best be met.

Protecting victims of sexual assault

In any court case involving charges of sexual assault (including rape, sexual assault and other similar offences) the media can name the defendant and record the verdict of the trial. In fact, best practice will generally be to do so, although editors should take account of information about the case that is already in the public domain in order to avoid "jigsaw identification" of the victim (see below).

When it comes to the victim, Clause 11 (Victims of sexual assault) of the Editors' Code makes clear that they must not be identified. In addition, the press must not publish material "likely to contribute to such identification unless there is adequate justification and they are legally free to do so". In practice, the Commission has never examined a case in which "adequate justification" was shown to exist.

The requirement to avoid this kind of indirect identification places a considerable responsibility on editors. Sometimes, it will be obvious that a piece of information would be likely to contribute to a victim's identification – the inclusion of an address (full or sometimes even partial) or specific reference to the relationship between the victim and the accused, for instance. On other occasions, information will seem insignificant and yet, to people who know something about the accused, it may be sufficient to lead to the victim's identification. Editors must bear this in mind: what at first glance may seem trivial, could in fact lead to a breach of the Code if it is published. For instance, even such apparently incidental details as the precise dates on which offences were alleged to have taken place have contributed to identification.

Other examples of where publication of such information led to a complaint being made and upheld include:

- Reference to a defendant (who was named) meeting his victim, who he regarded as his “girlfriend”, at an unnamed church. Even though the newspaper had not named the church, to those who attended it and knew something about the defendant, identification of the victim became highly likely especially as her age was given. (To see the full PCC decision go to: <http://www.pcc.org.uk/news/index.html?article=NjEwMg>)
- Reference to a victim of sexual assault having previously suffered a specific injury during a lesson given by the accused (a former teacher). Even though the case related to offences that had taken place some years before, the complainant (the boy, who had since grown up) was effectively identified to those who had been at the school when the injury occurred. (To see the full PCC decision go to: <http://www.pcc.org.uk/news/index.html?article=MjEzNg>)
- Reference to a teenage victim (whose age was given) having recently suffered from a specific form of cancer. Since the article also gave broad details about where the victim lived, it was likely to contribute to identification. (To see the full PCC decision go to: <http://www.pcc.org.uk/news/index.html?article=MjA4Mg>)
- Inclusion of a photograph that, while not showing the victim’s face at all, did show a hat that was likely to be recognisable to her colleagues. (To see the full PCC decision go to: <http://www.pcc.org.uk/news/index.html?article=MjAzOA>)
- Indication by road name of where the offences had taken place. Two of the partial addresses were those of the victims and since both the roads in question had only a few houses on, and since the victims’ ages had also been referred to in the report, identification became almost inevitable. (For the full PCC decision go to: <http://www.pcc.org.uk/cases/adjudicated.html?article=NzA4NQ>)

Cases involving children under 16

In addition to the general requirements of Clause 11 (Victims of sexual assault), the Editors’ Code also contains a section that deals specifically with the identification of children under 16 in reports of cases that involve sex offences. This section (Clause 7 of the Code) is designed primarily to protect child victims but it also applies to children who are witnesses or defendants in such cases.

For victims, Clause 7 (Children in sex cases) goes into some detail about how reports should be compiled:

- i) The child must not be identified.
- ii) The adult (if there is one) may be identified.
- iii) The word ‘incest’ must not be used where a child victim might be identified.
- iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

However, the Code is not an absolute guide on how reports should be constructed and editors must remain aware of the need for considerable care in what details they include in these cases, especially when there is a familial connection between the abused and the abuser. Part iv) above is an especially stringent test for it requires that “nothing” in a report even “implies” the relationship between the accused and a child victim. It can also be particularly relevant in cases involving offences committed by teachers against pupils (although there is no explicit ban on identifying an individual as a teacher).

Jigsaw identification

The reason the Code goes into some detail in this area, especially in Clause 7, is to ensure that all publications follow the same format for reporting – and do so from the first occasion that a particular case is written about. This is important because otherwise there is the risk of “jigsaw identification”, where different pieces of information appear in different newspapers allowing readers, who have seen these reports, to work out who the victim is. Editors should take all steps to make sure they and their newsdesks are aware of what information has already been published in the public domain by other media outlets – and by their own publication in any previous reports on the case.

As has already been noted, identification can come about by the publication of information that might, to those not fully in the know, seem of only minor significance. It can also result from the use of a combination of details that on their own would not imply the relationship. In one case, a combination of the following information led to a breach of the Code:

- The child’s age;
- The child’s gender;
- The number of years during which the abuse had taken place;
- Certain comments made by the judge and by prosecuting counsel during the court hearing.

(To see the full decision go to: <http://www.pcc.org.uk/news/index.html?article=NzEwNQ.>)

Summary

It is an important function of the press to report court proceedings in order properly to inform local communities. But when reporting cases involving sexual offences, editors and journalists should never lose sight of the fact that the victim will often be in a particularly vulnerable position. It is the duty of the press to ensure that their vulnerability is not deepened by failures to abide by the requirements of the Editors’ Code of Practice. If in doubt, editors should err on the side of caution.

Occasionally, editors have defended the publication of information on the basis that it came from reliable, external agencies or that neither the court nor police had given specific directions on what details could or could not be included. These justifications are never likely to be regarded as satisfactory by the Commission. It is the responsibility of the editor and his or her staff to ensure that the requirements of the Code are met.

Editors should also be aware that senior PCC staff are available (24 hours a day) to discuss any concerns in advance of publication. They will be happy to talk through specific cases and offer advice on how the requirements of the Code apply. During office hours please call 020 7831 0022. (For urgent advice outside office hours please call)