

Leslie Grantham, through solicitors The Simkins Partnership v Daily Star

Clauses noted: 3

Leslie Grantham, an actor, complained to the Press Complaints Commission through solicitors The Simkins Partnership that a number of articles contained material that intruded into his private life in breach of Clause 3 (Privacy) of the Code of Practice. The articles under complaint were published in the Daily Star, The Sun, the Daily Record, the Daily Mirror and the Sunday Mirror and were headlined respectively: 'Den told: Get Shrink or get the sack' (6 May 2004); 'Den to see sex shrink' (15 May 2004); 'BBC send Den to sex clinic' (15 May 2004); 'Dirty Den's telly ban' (15 May 2004); 'Den has his hard drive taken away' (16 May 2004).

The complaints were rejected.

The complainant's solicitors said that the articles intruded into their client's privacy by reporting that he had a specific medical condition in the form of an addiction and that he was undergoing, or was to undergo, treatment for that condition. By revealing the details they did, the newspapers had acted in breach of Clause 3 (Privacy) of the Code, which says that 'everyone is entitled to respect for his or her private and family life, home, health and correspondence.' The solicitors also repeated, at some length, arguments and decisions made in the recent legal action taken by the model Naomi Campbell against the Daily Mirror newspaper.

The Daily Star said it had not revealed any details of treatment that the complainant was to undergo nor that he was definitely to undergo any treatment at all. The complainant himself had revealed that he was suffering from an addiction by his own conduct and the newspaper had simply reported the position of his employers which was that the complainant should receive counselling.

The Sun said that the article had followed a large amount of press coverage regarding the revelation that the complainant had, on a number of occasions, conducted 'Internet sex sessions' with strangers. The report did nothing more than inform readers that, in the well known context of his sexual behavioural problems, the complainant had been told by his employers to seek professional help. The article did not reveal any detail of medical treatment, nor did it state that the complainant was undergoing such treatment.

The Daily Record also pointed out that its article had followed coverage of the complainant's 'bizarre' sexual behaviour and his subsequent apology, as well as the BBC's public statement on the matter. To report that the BBC had ordered the complainant to attend a clinic for sex addicts was legitimate and was very different from revealing details of a medical condition or treatment that was to be undergone as a result – the report did neither of those things. The newspaper argued that there was a significant difference between, on the one hand, revealing a medical diagnosis and treatment afforded and, on the other, revealing a sanction imposed by an employer – even if the latter might involve medical treatment.

Even if the information in the article was private and confidential – which the newspaper denied – there was a public interest in publication in light of the fact that the complainant's own actions had created substantial public concern at his behaviour.

The legal adviser for the Daily Mirror and the Sunday Mirror said that neither publication had printed any information that was not already in the public domain. In any case, the newspapers were at a loss to understand why the complainant had taken offence to publication of the fact that he has been advised to seek treatment for his 'sexual peccadilloes'. His behaviour had been the subject of much media coverage and to report the BBC's position that he should seek help for his problem was not an intrusion into his privacy. Neither report included details of any treatment he had received or was to receive.

The complainant's solicitors maintained that there was no public interest in the material's publication. The stories would still have been intrusive, they said, even if the newspapers had only reported the outcome of a confidential meeting between the complainant and his employers.

Adjudication

The complainant's solicitors had referred the Commission at some length to the recent House of Lords decision in an action by Naomi Campbell against The Daily Mirror. While the Commission has regard to the legal position in any particular case it is important to emphasise that a number of court decisions have underlined the broad discretion which the Commission retains in deciding particular cases under the Code.

The Commission turned to the substance of these complaints, and rejected them for a number of reasons.

First, it considered the nature of the information under complaint. The solicitors contended that it breached the Code of Practice because it 'concerned a medical condition suffered by [their] client and treatment for which [their client was] undergoing for his mental health'. The Commission did not agree with this assertion. The articles in fact reported that the complainant had been ordered by his bosses at the BBC to undergo treatment for a 'sex addiction'. They did not say that such an addiction had been diagnosed by a health care professional, or even that the complainant had complied with any such order made by the BBC. Neither did they say where any such treatment was taking place, nor contain any details about what the treatment did – or even might – involve. The information complained about – rather than comprising private medical details that might have been found in the complainant's medical record – in fact related to a requirement that had allegedly been made by the complainant's employer following a disciplinary hearing.

Second, the Commission had regard to the fact that the complainant's behaviour had become the subject of public debate following an alleged incident – reported in another newspaper without complaint – involving an explicit act carried out by the complainant and broadcast by him to a stranger over the internet, using a webcam. The complainant had apologised publicly for this incident. The Commission believed that in circumstances where the events leading up to the complainant's disciplinary hearing had been made public without complaint, the public had a right to know what the outcome of the disciplinary hearing was. Part of the outcome was apparently that the complainant should seek treatment for his 'sex addiction', and the Commission considered that it would have been artificial for the newspapers to have overlooked this fact.

In balancing the complainant's right to privacy with the newspapers' rights to freedom of expression, the Commission therefore took account of the following factors. The information, which concerned a disciplinary hearing with the complainant's employer, was in the Commission's view less private than the complainant had suggested – and certainly far less so than material obtained from a medical record, for instance. Moreover, the events leading up to the hearing had been firmly established in the public domain without complaint. The newspapers had a right to report developments in the story, and the public had a right to be informed of them. Convincing reasons would have had to exist to interfere with these rights – and in the Commission's view, they did not.

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The Daily Star said it had not revealed any details of treatment that the complainant was to undergo nor that he was definitely to undergo any treatment at all. The complainant himself had revealed that he was suffering from an addiction by his own conduct and the newspaper had simply reported the position of his employers which was that the complainant should receive counselling.

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The legal adviser for the Daily Mirror and the Sunday Mirror said that neither publication had printed any information that was not already in the public domain. In any case, the newspapers were at a loss to understand why the complainant had taken offence to publication of the fact that he has been advised to seek treatment for his 'sexual peccadilloes'. His behaviour had been the subject of much media coverage and to report the BBC's position that he should seek help for his problem was not an intrusion into his privacy. Neither report included details of any treatment he had received or was to receive.

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