

Elle Macpherson v Hello!

Clauses noted: 3

Ms Elle Macpherson complained to the Press Complaints Commission through her representative Alexander Carter-Silk that photographs published in Hello! magazine on 29 August 2006 intruded into her privacy and that of her children in breach of Clause 3 (Privacy) of the Code of Practice.

The complaint was upheld

The complainant's solicitors said their client had been holidaying on the private island of Mustique, where she had stayed in a private house with a private beach. She had deliberately chosen such an environment for her family holiday, mindful of the protection it would give her children. Access to the beach was prohibited to the public – indeed, said the solicitors, there are no public beaches on Mustique. The complainant was not aware that photographs of her and her children had been taken.

The magazine said that the agency which provided the images had indicated that the pictures were taken on a public beach. While the magazine was not certain that the images were taken using a telephoto or long lens, the complainant seemed to be looking directly at the cameraman in one of the photographs, suggesting she was aware of his presence. In the circumstances, the magazine questioned whether the complainant really had a reasonable expectation of privacy. However, it did say that it did not intend to use the photographs again, and had not uploaded them to its website. In addition, the magazine's editor offered to write a personal letter of apology to the complainant, and to provide an assurance that she would pixelate the faces of the complainant's children in any future photographs of them.

Adjudication

The Commission noted the solicitors' explanation that their client had made a particular effort to choose a private holiday location, staying at a private villa on a secluded island. The Commission took this into account when making a decision under the Code. By contrast, the Commission was not satisfied that the magazine had been able to demonstrate convincingly that the complainant and her children were not in a place where they had a reasonable expectation of privacy. It therefore found that publishing the photographs represented an intrusion in breach of the Code. The complaint under Clause 3 was upheld.

The complainant also suggested that, under Clause 6 (Children), there was a further breach of the Code. While the children had general privacy rights under Clause 3 as set out above, the Commission did not consider that there was automatically also a breach of Clause 6, as the subject matter in the photographs did not concern the children's welfare. The pictures themselves obscured their faces and were innocuous and not embarrassing. As such, there was no breach of Clause 6 – although the Commission has already said that they did breach Clause 3 in relation both to the children and the complainant because of the location in which they were taken.

Adjudication issued 29/01/2007