

Mr Peter Coonan (formerly Sutcliffe) v News of the World

Clauses noted: 3

Mr Peter Coonan (formerly Sutcliffe) complained to the Press Complaints Commission through Bindman & Partners, solicitors of London that an article headlined 'The Ripper Tapes' published in the News of the World on 23 July 2006, and material on the newspaper's website, intruded into his privacy in breach of Clause 3 (Privacy) of the Code of Practice. He also complained that information had been obtained by use of a clandestine listening device in breach of Clause 10 (Clandestine devices and subterfuge) of the Code.

The complaint was not upheld.

The article contained a transcript of a telephone conversation between the complainant – who is a patient in Broadmoor Special Hospital – and another individual. The complainant's solicitors said their client had not consented to the recording or publication of this conversation, which he considered to be private. They pointed out that the transcript included reference to their client's mental health, medical treatment and relationships, all of which was private information deserving of the highest level of protection. The recording of the conversation had been made available on the newspaper's website, which was a further intrusion. In addition, the complainant's solicitors said that publication of extracts from letters written by their client was an intrusion into his privacy.

There was, said the complainant's lawyers, no public interest defence to the actions of the newspaper, and they contended that Clauses 3 and 10 of the Code of Practice had been breached. While they acknowledged that their client had been convicted of the commission of serious crimes, the complainant's solicitors argued that this did 'not strip him of his right to conduct a private conversation'. Following a ruling by the Commission in which the complaint was not upheld, the solicitors made a number of further submissions which the Commission had agreed to consider.

In their further submission, the solicitors said that the Commission had been wrong in its original ruling about the extent of the information in the public domain, and added that it had incorrectly applied the test for determining whether the information was private. They said that details of their client's medical condition and the nature of the treatment he receives are not widely known. The factors on which the Commission relied were not sufficient to justify a breach of the complainant's privacy.

The solicitors also complained about the disclosure of information relating to their client's personal and private relationships and the fact that he maintains a relationship with his ex-wife. They claimed that the Commission had illogically described some of the information as "anodyne," yet also regarded the story as a matter of public interest. They added that the Commission's earlier decision not to uphold this complaint may impair the freedom of mental health patients who have been convicted of a crime to communicate with others in the future.

The newspaper argued that that there was no duty of confidentiality between the complainant and the other individual concerned, and therefore no reason why the latter should not pass on the information to the newspaper. The complainant was one of the most notorious murderers of the twentieth century, and it was therefore in the public interest to record and publish the material in question. It pointed out that the complainant had blamed his crimes – in least in part – on his mental state. Now, however he claimed that the medication had worked and that there was an appeal underway. In the circumstances, the prospect that he might be released at some point in the future and the related issue of his mental state were, "of the highest order of public interest".

Adjudication

The Code of Practice states that 'everyone is entitled to respect for his or her private and family life'. Individuals do not forfeit their rights to privacy under the Code or the European Convention if they have committed serious crimes. In this case, the Commission acknowledged that the complainant suffered from mental illness for which he had received treatment at a special hospital. Whether a breach of those rights was established depended on a close examination by the Commission of the particular facts of this case.

The complainant had committed some extremely grave crimes which had bestowed on him a considerable notoriety and earned the enduring scrutiny and interest of the press and the public. He can therefore be regarded as a 'public personality' whose criminal career, medical condition and the circumstances of his treatment and detention are properly the subject of public discussion and investigation in a democratic society. In those circumstances, the Commission did not agree that any discussion of the complainant's medical condition – which in this article appeared to be in the context of a release application – should be restricted only to court proceedings, or that information about his own view of his medical condition – which had been made public before – should necessarily be withheld from the public. Since his conviction many articles and books have continued to be written about his case and mental state. Certain facts were already well known – in particular that he had been diagnosed with and had received treatment for schizophrenia in Broadmoor Special Hospital.

In this case, the material published by the newspaper came from correspondence and conversations between the complainant and another person. The newspaper referred to this person as a "pal," while the solicitors described the person as a "friend." In fact, the individual was somebody who had made contact with the complainant, had corresponded with him on a weekly basis for around nine months and spoken to him on only four occasions on the telephone, the final time being some three weeks before the article appeared. They had never met. These circumstances were relevant when the Commission considered whether or not the complainant had a reasonable expectation of privacy arising from a confidential relationship with the other party involved, whether contractual or presumed.

The solicitors argued the case on the basis that their client had not consented to the release of any information in respect of which he would otherwise have a reasonable expectation of privacy.

The Commission had concluded that the information contained in the article and sourced to the complainant had been disclosed voluntarily by him and therefore a confidential relationship could not be inferred from such a casual acquaintance without other evidence to support it. It also appeared to be the case that there are eleven books in print about the complainant, that hundreds of his letters have found their way into the public domain and been auctioned, and that there are thousands of articles and comment pieces online about him. Many of these items may be regarded as anodyne, in the sense that they are of a trivial nature and do not rise to a level which might require protection as confidential under the Code of Practice. Moreover, since he has been in Broadmoor the complainant appears to have been happy to carry on a considerable correspondence with many members of the public (as well as reporters posing as such), who had contacted him and to discuss freely with them matters concerning his crimes and personal circumstances. Indeed he must have been aware that such information has, from time to time, been provided for publication to newspapers.

The Commission invited the complainant's solicitors to comment on the above, and after taking instructions they agreed there had been a considerable amount of public interest in the complainant's offences which he had not sought to restrain. However, they said that Mr Coonan had never consented to publication of information which he considered to be private. They accepted that he had corresponded with members of the public, but he had not done so on the basis that such correspondence would be made public, and Broadmoor hospital had objected directly to newspapers about the appearance of such letters. It is, however, clear that Mr Coonan carried on correspondence with people with whom he was not previously acquainted, who wrote to him over a

long period of time and who published the contents of his letters without any previous indication from the complainant that such material was confidential.

Against the backdrop of considerable public interest about his case and the large volume of material relating to him in the public domain, the Commission considered the specific information under complaint. The solicitors argued that the nature of the drug treatment the complainant had received, the length of time he had received it and how he has responded to medication were confidential matters of a high order. In fact, the only reference to the complainant's treatment in the article was to the use of anti-psychotic drugs, which is simply a generic term for medication used for the treatment of schizophrenia. It is well known that the complainant had suffered from schizophrenia, and remains as a patient in a Special Hospital. With this in mind, the Commission did not consider that the information about the complainant's treatment, such as it was, was particularly intrusive in its detail or disproportionate to what was already in the public domain. Clearly, it would have been obvious that, as a patient in a hospital, he would have been receiving treatment, but the information about that treatment was not particularly revealing, and certainly not of such a confidential nature as for example that which may be found in medical records.

The solicitors also objected to the fact that the article included information about the state of their client's mental health. This related to the complainant's claim that he believed his medication had been successful, and that the state of his mental health had improved. These remarks were set in the context of the complainant's reference in the conversation to a possible forthcoming appeal against the sentence and conviction. The solicitors did not accept that any such appeal was being pursued and said that the publication of their client's informal view of his condition was intrusive. Whether or not there was to be an appeal – something that would add a further public interest dimension to any suggestion that he had been cured – it seemed that this claim had been established in the public domain through other sources for some time, and in newspaper articles without official complaint. Having found that the information was in any case submitted voluntarily within the context of a casual relationship, the Commission did not consider that its republication – the claim having already been established in the public domain through another source – breached the Code.

The solicitors also complained that information about the complainant's relationships had been revealed in breach of Clause 3. The solicitors did not identify to which relationships they were referring, but the only other living people mentioned in the piece appeared to be the complainant's ex-wife, who was said to visit him, and the relatives of his victims, who were said to be dissatisfied with the amount of compensation they had obtained from him. The information about his ex-wife's visits concerned the facts that she visited him, that they caught up on the news, and that he gave her a peck on the cheek. The Commission did not consider that publication of this sort of anodyne information was intrusive. It did not convey to the public anything particularly private or personal about the complainant, and was certainly not disproportionate to material in the public domain. Publishing the complainant's comments in relation to the relatives of the victims of his crimes did not reveal anything private about the complainant but was illustrative of his general approach to the crimes, which the public was entitled to know.

In arguing that Clause 3 of the Code of Practice includes a public interest exception which is at variance with its counterpart, Article 8 of the European Convention, the solicitors, noted that, "derogation from Article 8 is allowed only where the public authority can show that the breach of the right is necessary to protect another right (here the newspaper's Article 10 right to freedom of expression)." In fact, the principle of derogation has nothing to do with the content of either Articles 8 or 10 but arises under Article 15, and refers to the right of a contracting State to withdraw from its obligations arising from the European Convention in times of war or other public emergency.

In summary, the Commission's conclusions under Clause 3, was that the information in the article was either anodyne – and did not therefore have the qualities that would require the protection of

the privacy provisions of the Code – or in the public domain to such a significant degree that it could not be regarded as private.

In view of the findings above, the Commission has not needed to examine the contents of the tape recordings, which have been removed from the website and to which the same considerations and conclusions in respect of the printed article apply.

So far as the complaint under Clause 10 is concerned, the Commission noted that there was no suggestion that the individual concerned had done other than to simply take a recording of the conversations concerned. The newspaper's responsibility in this regard was to ensure there was a sufficient public interest in publishing information that it knew had been obtained through the use of a tape recorder of which the complainant was unaware. In view of the fact that the Commission was satisfied that the information was freely given, that no confidential relationship arose between Mr Coonan and the other person, and that there was a legitimate and enduring public interest in scrutiny of the complainant, the Commission took the view that the complaint under Clause 10 was not upheld either.

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