

***Mrs Gail Sheridan v Scottish Sun***

Clauses noted: 3

Mrs Gail Sheridan complained to the Press Complaints Commission, through solicitors Bannatyne Kirkwood France & Co., that an article in The Scottish Sun of 11 October 2006 headlined "Gail's pain" was illustrated by a photograph of her taken in a private place in breach of Clause 3 (Privacy) of the Code.

The complaint was not upheld.

The complainant said the photograph showed her in her back garden, a place where she had a reasonable expectation of privacy, and was taken with a long lens. There was no public interest in its publication, particularly as she had appeared in public at a press conference the previous day. She provided a photograph of the garden where she had been pictured.

The newspaper disagreed that the complainant had had a reasonable expectation of privacy. The photographer was on a public road – and did not leave his car – when he took the picture of the complainant at the side of her house, which was on the corner of two roads. The newspaper provided a series of photographs, detailing the complainant's exact location in relation to the photographer and to the road. It said that the complainant was visible to the public at the time when she was photographed, both from the photographer's vantage point and – more clearly – from the street to the side of the property where a passer-by would have only been metres away from her. Although the image was taken using a long lens, she would have been visible to someone on the street without such magnification. The newspaper argued that the complainant was not involved in any private activity as she was merely standing on her driveway with her keys in her hand. Had she been doing anything private, the newspaper would not have published the photograph. Finally, it argued that the complainant was a public figure with a high media profile, and had previously posed for photographs in her garden that were published in a magazine. However, it agreed to annotate its records to reflect the complainant's concerns and, as a gesture of goodwill, gave an undertaking about future publication.

*Adjudication*

In considering whether individuals have a reasonable expectation of privacy in particular locations, the Commission applies a common sense test that is not confined simply to whether or not the land someone is on is privately owned. For instance, there are publicly accessible places such as cafes, churches or offices where there is a reasonable expectation of privacy, while ground which is privately owned but completely visible to passers by may be considered less private.

In this case, it seemed from the evidence provided that the complainant would have been visible and identifiable from the street when the photograph was taken. She was standing to the side of her house in relative proximity to an opening onto the road and was not hidden from public view in an enclosed back garden. Had she been hidden from view in an enclosed space, the Commission may well have come to a different decision. It further noted that the photograph did not appear to show the complainant engaging in any particularly private activity. In circumstances where the complainant was outside and visible to passers by – and where the photograph was innocuous – the Commission found no grounds to uphold the complaint. This was the case even though the photograph appeared to have been taken with a long lens. The Code does not distinguish between long lens and other types of photography. It is the location of the individual – in this case, whether the complainant was visible and identifiable from the street – that is important, not the means by which a photograph is taken.

Adjudication issued 03/05/2007