

Ms Rachel Parkyn v The Mail on Sunday

Clauses noted: 3, 4, 10

Ms Rachael Parkyn of Newquay complained to the Press Complaints Commission that an article headlined "I was blind to my husband's flirting – but I don't find it hard to forgive him", published in The Mail on Sunday on 7 December 2008, intruded into her privacy in breach of Clause 3 (Privacy) of the editors' Code of Practice. She also complained that she had been harassed in breach of Clause 4 (Harassment) and that a photograph had been taken in breach of Clause 10 (Clandestine devices and subterfuge).

The complaint was not upheld.

The article was an interview with Sim Lawrence, the wife of a consultant surgeon called Hans Desmarowitz who had been suspended by the General Medical Council for secretly collecting and storing personal information about the complainant, who was his secretary. The complainant said that – following the hearing at which she had been referred to only by her initials – she had requested the media, through the hospital press office, to respect her privacy and maintain her anonymity in any reporting of the case. She had also made clear that she did not wish to speak to the media.

Despite this, the newspaper had made a number of approaches to the complainant's family and friends (including her mother, father and grandfather), and sent her a message through Facebook. The press office then asked the reporter to desist from making contact, to which he had agreed. The following day, however, the complainant's boyfriend had been contacted. She considered the approaches to represent harassment in breach of Clause 4, and speculated that the reporter might have obtained the contact details in breach of Clause 10 of the Code from the information which had been illegally obtained by the consultant.

The complainant was also concerned that the article had identified her against her wishes by naming her and publishing her photograph. She said that the photograph had been taken using a hidden camera from the inside of a car as she walked off private property onto the pavement outside her father's home.

The newspaper said that it had a duty to inform the complainant of Sim Lawrence's claims about the complicity of the complainant in the situation. There was no over-riding reason not to identify the complainant, who was not the victim of a sex crime or other matter which might have required anonymity. She had been photographed in a public place.

The freelance reporter denied engaging in any form of harassment or subterfuge. The contact details of the complainant's family and friends had not been derived from the illegally obtained information but rather from the Electoral Roll, the BT web site and, subsequently, from members of her family. None of those contacted said that the complainant did not wish to comment. Following the conversation with the press office, he made no further attempts to contact her or any members of her family. He contacted the complainant's boyfriend separately as he had also been a victim in the matter.

The newspaper offered to remove the photographs in question from its archive and to give an assurance that it would not approach or photograph the complainant again. It was also willing to write a private letter acknowledging her concerns.

The complainant queried the newspaper's account of how the addresses had been obtained, pointing out that her father, boyfriend and mother all had different surnames. She wanted the newspaper and the reporter to apologise for conducting their enquiries in an intimidating manner.

Adjudication

The general details relating to the case had been revealed during the GMC hearing, but the newspaper published new information in the form of the complainant's name and photograph, and Sim Lawrence's view about the complainant's alleged role in the matter.

The first question for the Commission was whether this new information intruded into the complainant's privacy in breach of Clause 3 (Privacy) of the Code. In particular, did identifying the complainant by name and in the photograph, when the GMC had respected her anonymity, amount to an unjustified intrusion?

The Commission sympathised with the complainant, but concluded that there had been no breach of the Code. There were a number of reasons for this.

First, it was relevant to consider whether the details with which the complainant had been publicly associated in the newspaper were private. While some of the information – such as the claim that text messages between the complainant and Mr Desmarowitz had been 'flirtatious' – may have been embarrassing, much of it had already been established in the public domain as a result of the GMC hearing: a professional standards tribunal in which the complainant had been an interested party.

Second, the Commission had to have regard to the right of Sim Lawrence to discuss the case involving her husband. She was entitled to speak about what had happened, provided that in doing so she did not reveal intrusive details about the complainant. The Commission appreciated why the complainant may have found Ms Lawrence's views about her to be disagreeable – but the matters that Ms Lawrence discussed were entirely proportionate, in the Commission's view, to what was already in the public domain as a result of the hearing.

The Commission noted that there had already been considerable publicity for the GMC hearing, in which Mr Desmarowitz had been named and the allegations made public that he had stalked his secretary, and in which the complainant had been referred to by her own initials, 'RP'. While publication in a national newspaper revealed the details to a much wider audience, it was still the case that anybody who knew that the complainant was Mr Desmarowitz's secretary – which would inevitably include colleagues at the hospital, as well as friends and family – would have already been likely to be aware that it was the complainant who was the woman involved in the case. The new details revealed by the paper about the complainant were limited to specifically identifying her as the other adult person involved in the case.

Of course, the complainant was an innocent party in the GMC proceedings, and the Commission could understand why she may have been distressed by the coverage. But members of the public are frequently caught up in newsworthy events on which the press are free to report. Sometimes, regrettably, they will find the publicity objectionable – but that is not generally a sufficient reason to restrict a newspaper's right to report on such matters.

In terms of the photograph, the Commission reviewed the circumstances in which it was taken, and considered that there was no breach of Clause 3 (ii) of the Code. It had been taken outside the complainant's father's house, in a place where she was visible and identifiable from the street. This was not a place where she had a reasonable expectation of privacy under the terms of the Code. That the complainant had not seen the photographer because he was sitting in a car with darkened windows did not mean that he had used a hidden camera in the sense of Clause 10, which concerns undercover devices.

The complainant also said that she had been harassed by the journalist. An initial request had been sent out by the hospital press office to ask the press to respect her anonymity and to say that she would not be available for interview. The paper said it had not received this request but, in any case,

the fact that Ms Lawrence had given the newspaper an interview constituted new information on which the Commission thought it reasonable for the newspaper to seek the complainant's comments. Only one direct attempt to contact the complainant – through Facebook – had been made, and once a further desist message had been sent by the hospital press office no further approaches to the complainant or her family had been made. Other approaches had been made to members of the complainant's family who were not covered by the hospital's initial request, and the Commission has in any case not received any complaints from those people about the journalist's behaviour. There was therefore no breach of Clause 4 of the Code.

Finally, the Commission did not consider that it was in a position to establish whether the reporter had gained access to the information obtained by the consultant, as the complainant had alleged. There was no evidence that the reporter had done so, and his account of how he had contacted the complainant's family and her boyfriend's family, although disputed by the complainant, had been made clear in correspondence.

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