

***The Hon. Christopher Monckton v Evening Standard***

Clauses noted: 3, 10

The Hon. Christopher Monckton complained to the Press Complaints Commission on behalf of Consistent Hotel Staff Ltd that the Evening Standard had sought to obtain information through subterfuge in breach of Clause 11 (Misrepresentation) of the Code and by doing so had intruded into the privacy of a number of the company's employees in breach of Clause 3 (Privacy) of the Code.

The complaint was rejected.

The complainant said that a reporter from the newspaper had gained employment with the company by misrepresenting herself and failing to identify herself as a journalist. He said the company accepted that there was a public interest in the question of illegal working, but under the Code subterfuge must not be used unless the information sought could not be obtained by any other means. In the present case, he contended, subterfuge could not be justified on the basis that material could not be obtained in any other way - the company had made it clear to the newspaper that it was happy to answer any questions that the newspaper cared to put to it, and had answered promptly and fully all questions which the newspaper eventually asked.

Further to his complaint under Clause 11 (Misrepresentation) the complainant contended that the actions of the undercover reporter were in breach of Clause 3 (Privacy) of the Code. This contention was based on the fact that the journalist had shared company accommodation with genuine employees without identifying herself as a journalist - contrary, said the complainant, to the explicit statement in the Code that there is an expectation of privacy in a person's place of residence - and had spoken to them, wilfully asking them questions that were designed to embarrass and distress them.

The newspaper said that it had received information from several sources that the company was employing and exploiting illegal workers. It considered that the use of subterfuge in order to establish whether the allegations were true was in the public interest as, consequently, was any resulting intrusion into the privacy of company employees.

The company said that it had given the newspaper clear, compelling and independently-verifiable evidence that it did not employ or exploit illegal workers and pointed out that the newspaper had provided no evidence to the contrary. For instance, it said, the newspaper had alleged that the company employed illegal workers and withheld their passports, but in fact the passport of each member of staff was sent to the Home Office on the day of recruitment, preventing illegal working and it was the Home Office that retained the passports pending the determination of the staff members' applications for business visas. The company added that the newspaper had provided no evidence that its alleged sources existed or that, if they existed, their testimony was reliable. Moreover, it contended, the newspaper's allegations were so unspecific that the company could not investigate them so as to put anything right that might be wrong.

The company said that the newspaper was under a duty to bear in mind the possibility that the company was innocent and would therefore have been willing to answer any questions the newspaper might have. The newspaper should, therefore, have telephoned the company to ask for information it sought before and not after it resorted to subterfuge. The newspaper could also have obtained the information it sought by a wide variety of other means but it had made no attempt to do so.

*Adjudication*

The Commission has previously ruled that newspapers must not undertake 'fishing expeditions' - they can employ subterfuge only when they have a public interest justification for doing so and there are no other means of gathering the required information. In this case, the Commission considered that the allegations of impropriety made to the newspaper about the company were sufficiently serious and specific to justify further investigation in the public interest.

In coming to this view the Commission noted the concerns of the complainant that the newspaper had failed to identify its sources and provide proper details of the allegations that had been made about the company. However, it did not consider that simply because the sources were anonymous it could automatically discount their existence – indeed, newspapers have an obligation to protect confidential sources under Clause 15 (Confidential sources) and the Commission could not ignore this.

Moreover, the newspaper had provided what was, in the Commission's view, sufficient detail of how it had received initial information from two separate sources – a freelance journalist and a former employer of the company – as well as further testimony from an individual whose clients had spoken of the company. Although much of the information was 'second-hand' the newspaper had given a clear indication of the nature of the allegations and had referred to specific, though unnamed, persons that their sources had cited. In particular the Commission noted that the newspaper had referred to alleged actual instances of apparent impropriety or illegality. The Commission did not consider that the newspaper's inability to provide further, potentially compromising, details affected the decision in this case in relation to Clause 11 (Misrepresentation).

Having concluded that the newspaper had sufficient grounds to employ subterfuge in the public interest, the second task for the Commission was to decide whether other means of news-gathering were available to it. Ultimately, it accepted the newspaper's argument that, given the nature of the allegations, it was appropriate to use subterfuge at the outset, before approaching the company directly. While appreciating that the complainant had said the company was ready to answer promptly any questions which were asked of it, the Commission did not consider it an unreasonable assertion that any company involved in wrongdoing might seek to suppress evidence of that wrongdoing were it to be questioned on its actions in a more traditional fashion.

At this juncture the Commission wished to stress that this adjudication does not deal with the truth or otherwise of allegations in a published article. The Commission's task in this matter is to decide whether the newspaper has grounds for employing subterfuge within the terms of the Code. In doing so it acknowledged that the company had made the point that the allegations were wholly untrue and could have been checked by other means.

Ultimately the Commission concluded that the newspaper had legitimately sought to test serious allegations that had been made about the company – first by undercover investigation and subsequently by direct means. Previously the Commission has censured newspapers that have published intrusive or insignificant material that has been obtained as a result of subterfuge. In this case it noted that, having investigated this matter in the public interest, the newspaper had decided – at the current time – not to publish anything. Notwithstanding this, the Commission wished to state that this adjudication should not be taken as restricting the right of the newspaper to publish information in the future if it is in the public interest.

In relation to Clause 3 (Privacy) of the Code, the Commission emphasised that Clause 3 (i) has generally been taken to refer to published material. In this case, of course, nothing had appeared in the newspaper and the Commission did not consider that an approach to the company's employees by the newspaper's reporter – even undercover – constituted an invasion of their privacy in breach of the Code.

Relevant rulings

Munro & Bancroft v Evening Standard, 2001

Railtrack Plc v The Independent, 2002

Adjudication issued 2003