

***Carole Caplin through Bates Wells and Braithwaite solicitors v News of the World***

Clauses noted: 3, 4, 10

Carole Caplin of London complained to the Press Complaints Commission, through Bates Wells and Braithwaite solicitors, that articles in the News of the World published on 26 June 2005 and headlined "Yesh, Prime Minister", "Caplin's right off her trolley" and "Time to dump Caplin, Cherie", were intrusive in breach of Clause 3 (Privacy) and followed harassment and subterfuge in breach of Clauses 4 (Harassment) and 10 (Clandestine devices and subterfuge) of the Code.

The complaint was not upheld.

The articles followed an undercover investigation into the complainant's professional activities. Two journalists posed as clients of the complainant's health and fitness organisation using false names. One attended exercise classes run by the complainant and was given lifestyle instruction by her for two months. He then recommended his associate – the other journalist – as a client. The articles contained details of conversations that the complainant had had with the journalists, including alleged references to the Prime Minister and Mrs Blair concerning (among other things) claims about the Prime Minister's fitness and alcohol consumption.

The complainant's solicitors complained that three clauses of the Code had been breached.

First, the journalists had obtained and published material acquired by using hidden cameras and clandestine listening devices, and had engaged in subterfuge in a way that could not be justified in the public interest. There was no evidence that the complainant had committed a crime, misled anyone or jeopardised public health and safety that might justify breaching Clause 10. Clause 10 also says that subterfuge can generally be justified 'only when the material cannot be obtained by other means'. The solicitors said that there was no evidence that other means had been pursued.

Second, such sustained underhand activity constituted 'persistent pursuit' in breach of Clause 4, and represented a failure to respect the complainant's private and family life in breach of Clause 3 of the Code.

Third, photographs of the complainant in a London hotel and at the gym where she worked were taken and published in breach of Clause 3, as she had a reasonable expectation of privacy when the pictures were taken.

The complainant did not complain under Clause 1 (Accuracy) of the Code, but said that the articles contained numerous inaccuracies – especially regarding the suggested level of contact between the complainant and the Blair family – that undermined any public interest argument.

The newspaper said that there was an overwhelming public interest in researching and publishing the articles. The complainant was known to have an extraordinary relationship with the Prime Minister and his wife, and its journalists had received information on several occasions that the complainant was willing to exploit that relationship and betray the family's trust in order to promote her business. Subterfuge was necessary as a direct approach from journalists would obviously not have yielded the information.

The newspaper said that the investigation showed that the claims were true: the complainant had spoken to a considerable extent about the Blairs and her influence over them, something that justified both the use of subterfuge and the taking of the photographs of the complainant. In any case, the photograph of the complainant at the gym was taken in a public area (a café) outside the gym's reception. By way of corroboration, the newspaper supplied the Commission with a partial transcript of the recorded conversations.

### *Adjudication*

The Commission first considered the complaint under Clause 10. As the newspaper had accepted that it had used subterfuge, the Commission's task was to consider whether there was a sufficient public interest to justify its use.

The Commission was satisfied that there was. The complainant was a well-known figure, who had a contentious relationship with the Prime Minister and his wife. The controversy surrounding the relationship was in part based on the complainant's professional role, and it was into that role – as opposed to her private life – that the newspaper had begun an investigation. This was because, it said, the complainant had exploited her relationship with the Blairs in discussions with clients. The Commission agreed that there was a public interest in testing such claims, and it was satisfied that it would not have been possible to do so satisfactorily without posing as a client. This was because the purpose of the article was to demonstrate what the complainant was prepared to reveal about the Prime Minister to her clients and potential clients. In these circumstances, it would not have made sense for the newspaper to have explored other means of obtaining the information.

Turning to the publication of the articles, it was clear from their content – and the transcript provided by the newspaper – that the complainant had made repeated references to the Prime Minister and his family in conversations with the journalists. This included comments about the Prime Minister's health, and claims that the complainant had spoken to the Prime Minister specifically in order to influence the government's position in respect of a European Directive. The complainant had not disputed the fact that she had spoken about these matters. In the Commission's view, there was clearly a public interest in publishing this information.

The complainant also complained about issues that did not relate to the Prime Minister – in particular the information in the article headlined "Caplin's right off her trolley", which contained her views on lifestyle issues. The Commission considered this article in the context of the pieces about the complainant's professional relationship with the Prime Minister and his wife. It did not believe that there was any reason why information about the sort of advice that the complainant may have been giving to the Blairs – obtained during a broader investigation for which there was a public interest – should be withheld from the public. It took this decision in circumstances where the material did not relate to the complainant's personal life but to her professional opinions. There was no breach of Clause 10 in publishing the articles.

There was also no breach of Clause 3: the subject matter was the complainant's work rather than her private and family life, home, health and correspondence.

Turning to the complaint about the photographs, the Commission agreed with the complainant that they had been taken in places where she had a reasonable expectation of privacy. However, there was a public interest in taking and publishing them. They showed her engaging in professional negotiations, scrutiny of which the Commission has already found to be in the public interest, and would have helped to authenticate the claims in the eyes of readers. Had the photographs revealed anything about the private life of the complainant that was not in the public interest, gratuitously humiliated her or been used to illustrate an article that did not itself serve the public interest, the Commission would not have found the newspaper's defence to be sufficient justification for taking and publishing the photographs. However, this was not the case and there was therefore no breach of the Code on this point.

Finally, the Commission did not consider that the terms of Clause 4 had been engaged by this complaint. The reference in the Code to 'persistent pursuit' is not generally applicable to undercover operations such as this but is designed to prevent journalists or photographers from chasing individuals, usually in vehicles, in a way that may endanger the individual's safety. That was not a feature here, so there was no breach of Clause 4.

Relevant rulings

HH Saudi Research & Marketing (UK) Limited v Sunday Telegraph, 2005  
Daniels v Sunday Telegraph, 2004

Adjudication issued 2005