

**Mr Andrew Cowles v Daily Mail**

Clauses noted: 1, 5, 12

Mr Andrew Cowles complained to the Press Complaints Commission through Mishcon de Reya Solicitors that an article headlined "A strange, lonely and troubling death..." and an online article (originally) headlined "Why there was nothing 'natural' about Stephen Gately's death", published in the Daily Mail on 16 October 2009, and a further article headlined "The truth about my views on the tragic death of Stephen Gately", published in the Daily Mail on 23 October 2009, were inaccurate, intrusive at a time of grief and discriminatory in breach of Clause 1 (Accuracy), Clause 5 (Intrusion into grief or shock) and Clause 12 (Discrimination) of the Editors' Code of Practice.

The complaint was not upheld.

The article was a comment piece by Jan Moir about the death of Stephen Gately, who had passed away suddenly in Majorca on 10 October 2009. It was followed by an article the next week, in which the columnist sought to respond to the criticism she had received and which contained an apology to Mr Gately's family.

Mr Cowles ("the complainant") was Mr Gately's civil partner and said that the original article was inaccurate and misleading in a number of ways. Although a post mortem had been conducted and the results published - confirming that Mr Gately had died from natural causes through an acute pulmonary oedema, believed to have been brought on by a heart attack - the thrust of the article was that this was questionable ("something is terribly wrong with the way this incident has been shaped and spun"; "the sugar coating on this fatality is so saccharine-thick that it obscures whatever bitter truth lies beneath"). The columnist had also referred to the circumstances as "sleazy" and "less than respectable". The complainant said all of these interpretations were incorrect.

In the complainant's view, the sting of the article was that the death must have been caused by drugs, or some other vice, which were endemic to a gay lifestyle. The article had referred variously to "vices", "troubles" and "damaging habits", in addition to mentioning several high profile celebrities who had previously been associated with Class A drugs. While blood tests showed that Mr Gately had consumed alcohol and marijuana, the post mortem did not consider this to be a factor in the death. Mr Gately had never used Class A drugs.

The article also claimed that "healthy and fit 33-year-old men do not just climb into their pyjamas and go to sleep on the sofa, never to wake up again". However, the tragic fact was that adults did die prematurely, though thankfully rarely, from previously undetected heart problems as well as SADS (Sudden Arrhythmia Death Syndrome).

The claim, in addition, that after returning to their property the complainant and a third gentleman, Mr Dochev, "went to the bedroom together while Stephen remained alone in the living room" was inaccurate. In fact, all three men spent time together in the living room and Mr Gately had died while he and the complainant were asleep together on the sofa. He had not therefore died a "lonely" death.

The complainant was also concerned that the article had made a number of pejorative references to Mr Gately's sexuality ("he could barely carry a tune in a Louis Vuitton trunk") with the final section of the article focusing exclusively on the fact that he was gay. To describe civil partnerships as a "happy-ever-after myth" in addition was highly pejorative generally towards gay people, not to mention offensive.

The complainant said that the article had appeared the day before the funeral at a time of immense grief. The complainant had read the piece on the day of publication and it had disgusted him, not least because the columnist had appeared so determined to conclude that the death was not an

unexplainable tragedy. The follow-up article was not seen as an 'apology': while the columnist had regretted "any affront caused" - and was "sorry if [she had] caused distress by the insensitive timing of the column, published so close to the funeral" - this was seen as disingenuous. The remainder of the piece was unrepentant and indignant, failing to mitigate the offence and hurt caused by the article. The coverage represented a breach of Clause 5.

\*\*\*\*\*

At the time of publication of the first article, the Commission received around 25,000 complaints from members of the public - and Stephen Gately's record company, Polydor - about the article. These complainants had argued that the article was insensitive to Mr Gately's family and that it was homophobic.

These complaints included other assertions of inaccuracy in the article: the claim that the death "strikes another blow to the happy-ever-after myth of civil partnerships" and the article's reference to the death of Matt Lucas' former partner, Kevin McGee, were seen as misleading and irrelevant, based purely on the two individuals' homosexuality; the use of the words "a very different and more dangerous lifestyle" and "sleazy" were misleading, suggesting that homosexuals generally engaged in deviant and unnatural pursuits. Others claimed that the piece inaccurately suggested that Mr Gately had died an 'unnatural' death and that the death itself was somehow caused by his sexuality.

\*\*\*\*\*

The newspaper said that the article was a comment piece clearly marked as the opinion of its columnist and that no-one who read the piece could be led to believe otherwise. A contrary opinion had been expressed strongly by a separate columnist, Janet Street-Porter, the following Monday. It had also published a selection of letters on the controversy. Its website comment function had been kept open for all sides to set out their views. The record number of complaints was an internet phenomenon "whipped up in a few hours on the social networks of Facebook and Twitter" and had to be kept in perspective. A large majority of the comments from complainants - many of whom, it said, had evidently not read the article itself - had been expressed in much more violent and vicious language than that employed by the columnist. Her home address had been published, provoking considerable concerns about her safety.

The newspaper said that the deeply shocking death of Stephen Gately had been widely discussed by the media at the time of publication. These reports had referred to Mr Gately returning with his partner to his flat with Mr Dochev, and had claimed that Mr Gately had been left alone on the sofa. Other published reports also contained the claims that considerable amounts of alcohol had been consumed, as had drugs, and the three had become intimate. In the face of the presentation of the death in other media outlets, the columnist had made the serious point that it was important that the exact circumstances of the death should be made clear, especially in view of Mr Gately's position as a role model for young people. Although the post mortem had confirmed the cause of death, the underlying condition had been unknown at the time of publication. Toxicology reports had yet to emerge. In addition, the account of events outlined by the complainant had been contradicted by the account given publicly by Mr Dochev.

The newspaper said that its columnist had added nothing that was not in the public domain about the tragedy and its Irish editor had chosen not to publish it. The article had appeared on page 37 of the newspaper, six days after the death. In contrast, a number of other newspapers had covered the case in lurid detail with much greater prominence.

The recent death of Kevin McGee was a relevant comment in view of the preceding paragraphs about the "happy-ever-after" myth of civil partnerships when, in fact, same-sex marriages had as many problems as heterosexual ones. She was referring to the unlucky coincidence that these two high-profile civil partnerships had ended in such sadness, which was her right.

The newspaper argued that the points raised by the columnist would have been just as pertinent had Mr Gately been a heterosexual: it was “emphatically not homophobic to ask questions and express opinions about what happened that night, his tragic death and the facts surrounding it”. The newspaper was unable to find any pejorative references to Mr Gately’s sexuality in the article.

The columnist had apologised to Mr Gately’s family in the second article for any upset caused by the original piece. This article had also explained the thinking behind the reference to the death not being ‘natural’ - this was “intended to mean that the natural duration of his life had been tragically shortened in a way that was both shocking and out of the ordinary”.

#### *Adjudication*

The publication of the article had clearly caused serious concern to not only the complainant but also the 25,000 who lodged formal complaints with the Commission - by far the largest number of complaints the PCC has ever received on a single issue. Many had argued strongly and convincingly that the article was tasteless and offensive. While the Commission has made clear previously that issues of taste and offence do not fall under the remit of the Code, it wished to state from the outset that it could quite understand how the column had generated wide anger, given the stance taken by the columnist.

The complaint also raised an essential point of principle for the Commission: the extent to which a newspaper has the right to publish opinion that many readers may find to be unpalatable and offensive. However, the Commission did not lose sight of the fact that at its heart was the tragic death of a young man, and the expression of anger and grief by not only his civil partner but also a large number of readers. The Commission wished to express its sympathy especially to the complainant, who had clearly been caused distress by the publication of the article.

Freedom of expression is a fundamental part of an open and democratic society. This is enshrined in the Code of Practice which states that there is a “public interest in the freedom of expression itself”. Individuals have the right to express honestly-held opinions, and newspapers have the right to publish them, provided the terms of the Code are not otherwise breached.

As a general point, the Commission considered that it should be slow to prevent columnists from expressing their views, however controversial they might be. The price of freedom of expression is that often commentators and columnists say things with which other people may not agree, may find offensive or may consider to be inappropriate. Robust opinion sparks vigorous debate; it can anger and upset. This is not of itself a bad thing. Argument and debate are working parts of an active society and should not be constrained unnecessarily (within the boundaries of the Code and the law).

Indeed, the reaction to the article, and the publicity which had ensued as a result of its publication, was a testament to freedom of expression, and was indicative of a broader process at work, demonstrating the widespread opportunity that exists to respond to an article and make voices of complaint heard. The newspaper itself had published a response to the piece the following Monday, which criticised the columnist’s views; the article online had attracted over 1,600 comments, mostly from individuals criticising the columnist; and the column itself had been widely circulated on social networking sites.

This highlighted that there were a number of forums in which challenges could be made to the columnist’s opinion. Ultimately, this was evidence of a healthy system, in which an initial viewpoint could be so publicly analysed and countered. Both the newspaper and the columnist were confronted with the impact of what had been published. This published adjudication by the PCC is another means by which general discontent can be registered in the form of a public judgment, even though the Commission has not found a breach of the Code. The fact that the complaint has not

been upheld does not mean the concerns did not need to be addressed, but rather that the Commission did not find that it was right for it to censure the newspaper on the grounds of the Code.

*Clause 1*

The first question for the Commission to consider was whether the article had breached Clause 1, which states that comment, conjecture and fact should be clearly distinguished, in addition to making clear that newspapers should take care not to publish inaccurate or misleading information.

The article was a comment piece, clearly attributed to the columnist, representing her views on the sudden death of Mr Gately, in which she speculated on the manner of his death and employed conjecture widely. Her overarching argument was that all the circumstances of the tragic night had not been fully explored, and led her to question - in effect - the propriety and morality of what had taken place.

In the Commission's view, it was important to recognise that the article had clearly referred to the official verdict on the cause of death that was available at the time ("all the official reports point to a natural death, with no suspicious circumstances"; "acute pulmonary oedema, a build-up of fluid on his lungs"). It was against this context that the columnist had stated her views on the matter. In her opinion, the events leading up to the death were "sleazy" and showed a glimpse of "a very different and more dangerous lifestyle"; it was also her view that Mr Gately's death was "lonely". The complainant may have disagreed with these claims, and many readers had objected to them, but the Commission felt that these individual judgments did not constitute assertions of fact.

The Commission would not be in a position (and nor would the columnist) to know what had taken place on the night of Mr Gately's death. The article was essentially a compendium of speculations by the columnist who was removed from the events she was describing, based on material that had been placed in the public domain by other coverage, including the suggestion that Mr Gately had been left alone by the complainant and Mr Dochev. In the Commission's view, her conjecture would be taken as such by readers.

The article did not state that the death had, in some way, been caused by Class A drug use (as some had interpreted the piece) and the Commission noted that she made no assertion in relation to this at all.

It was clearly the columnist's opinion that "healthy and fit 33-year-old men do not just climb into their pyjamas and go to sleep on the sofa, never to wake up again". This was a general and rhetorical point, based on the view of the prevailing health of young men. It admittedly did not take into account the possibility of SADS or similar, but the Commission did not consider that it could be read to be an authoritative and exhaustive statement of medical fact. Equally, the Commission was fully aware of the widespread objection to the reference to Mr Gately's death as not being "natural". This was undoubtedly a highly provocative claim which was open to interpretation, and many people had considered this to be distasteful and inaccurate. It was a claim, nonetheless, that could not be established as accurate or otherwise. The article had set out the official cause of death so it was clear that this was a broad opinion rather than a factual statement.

Finally, the Commission considered the concerns about the reference to Kevin McGee and the claim about the "happy-ever-after myth of civil partnerships". While complainants had sought to dismantle this aspect of the article, and the inferences drawn by the columnist about same-sex marriage, the fact that a newspaper had published what might be considered to be an illogical argument (connecting two entirely separate individuals and seeking to draw a general conclusion) in itself did not equate to a breach of the Code. The columnist's opinion on same-sex marriages was clearly presented as such. There was no established inaccuracy or misleading statement here.

*Clause 5*

The Commission was only able to consider this aspect of the matter with the complainant's input and it was grateful to him for setting out his concerns in regard to the article under this Clause.

Newspapers are under an obligation under Clause 5 to ensure that publication is handled sensitively at a time of grief. In this case, the article had been published on the day before Mr Gately's public funeral in Dublin, six days after his sudden death. The Commission understood that the coverage had upset the complainant personally, and that he had been "disgusted" by the article when he was at his most vulnerable.

In coming to a view on this aspect of the complaint, the Commission considered that the context of its publication was paramount. The article was a comment piece by a columnist whose regular readers were aware of the provocative nature of her articles. It was not a news item, reporting the fact of the death, for example; nor did it seek to provide new information about what had happened. The piece was published in the comment section of the paper, where readers would expect subjective opinion on issues in the public eye. It had also not been published in Ireland, where Mr Gately was from and where his memorial was to take place.

It was also relevant that Mr Gately was a famous individual in a successful pop group. His life had attracted a large degree of public and media attention, as did his death. The immediate context of the column was therefore a body of public comment about what had happened to Mr Gately, and the forthcoming event at which his life was to be celebrated by many. The columnist was not commenting on an issue that had otherwise been kept private.

Moreover, the Commission has previously ruled that the Code's provisions do not mean that it is "unacceptable for newspapers to publish criticisms of the dead; rather that, in the manner which they do so, due regard must be paid to the circumstances of the case and the position of the family members at such times". It cannot agree that it is inherently wrong for newspapers to publish items that present a negative slant on a person's death. The article had questioned the circumstances which led to the tragedy, yet it had not sought to do so in a flippant manner, or present gratuitous details about the death. The basis for all of the information in the piece had been previously placed into the public domain, and the family were likely to have been aware of the scale of the coverage and the fact that the tragic death had been the subject of attention.

With all this in mind, the Commission did not consider that the publication of the article had breached Clause 5 of the Code. To rule otherwise would be to say that newspapers are not entitled to publish certain opinions (which may be disagreeable to many) on events that are matters of public discussion. This would be a slide towards censorship, which the Commission could not endorse.

None of this meant that the Commission sought to deny the validity of the strong reaction against the article or of the notion that the article could be held to be in questionable taste. It was indisputable that the article had caused the complainant great distress, as it had many others. This was regrettable, and the newspaper had to accept its responsibility for this. Indeed, the columnist had acknowledged that the column had been ill-timed and had apologised to the family. It was right for her to do so. The timing of the piece was questionable to say the least, and the Commission considered that the newspaper's editorial judgement in this regard could be subject to legitimate criticism. However, after extensive debate, the Commission did not consider that it would be a proportionate response to proscribe a certain type of comment purely on the basis of the proximity of a funeral or memorial service. It was the overall context of the article that was important. On balance, the Commission felt that it should not deny the columnist the freedom to express her opinions in the way she had.

*Clause 12*

Clause 12 makes clear that the press must avoid prejudicial or pejorative reference to an individual's sexual orientation. The question of whether the article was homophobic or discriminatory to gay people in general did not fall under the remit of the Code.

While many complainants considered that there was an underlying tone of negativity towards Mr Gately and the complainant on account of the fact that they were gay, it was not possible to identify any direct uses of pejorative or prejudicial language in the article. The columnist had not used pejorative synonyms for the word "homosexual" at any point.

The Commission made clear that this part of the Code was not designed to prevent discussion of certain lifestyles or broad issues relating to race, religion or sexuality. There was a distinction between critical innuendo - which, though perhaps distasteful, was permissible in a free society - and discriminatory description of individuals, and the Code was designed to constrain the latter rather than the former.

The Commission may have been uncomfortable with the tenor of the columnist's remarks on the topic; it did not consider, however, that the column had crossed the line on this occasion such as to raise a breach of the Code.

Relevant rulings

Dale v Daily Mail, 2009

Kelliher v British Medical Journal, 2003

Adjudication issued 19/02/2010