

**Mr Alan Bain v Scottish Mail on Sunday**

Clauses noted: 1

Mr Alan Bain complained to the Press Complaints Commission through Anderson Strathern Solicitors, Edinburgh, that an article headlined "Tartan Day chief facing m charity cash probe", published in The Mail on Sunday (Scottish Edition) on 20 May 2007, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Code of Practice.

The complaint was upheld.

The article reported that the complainant and the charity of which he was president, the American-Scottish Foundation ® (ASF), were at the centre of a criminal investigation into how charity money had been spent.

The complainant said neither criminal nor civil investigations were underway. The reality was that a freelance journalist working for the newspaper had made a complaint about him to the Office of New York's Attorney General (ONYAG) in the knowledge that any complaint she lodged would have to be 'evaluated'. However, no formal investigation had subsequently been initiated. Readers would have been misled into believing that complaints about the complainant had been made by third parties.

The newspaper said the journalist had lodged the complaint after concerns were raised with her by third parties. Indeed, it said, one source had told her that he had previously made a complaint to ONYAG, but she had been unable to obtain confirmation of this from the Attorney General's office – which was why she had lodged her own. The newspaper acknowledged that no investigation appeared to have been initiated at this stage, but said it had previously been told by an ONYAG representative that an investigation was underway. The complainant's solicitors said they had been told by the ONYAG representative in question that she had made no such statement.

*Adjudication*

The Commission considered that the article was clearly misleading as it failed to make clear that the complaint to ONYAG had been made by the article's author. While she may well have made the complaint as a result of concerns being raised with her by third parties, this was not reflected in the coverage.

There was also no evidence that, as a result of the complaint, the complainant or the ASF charity were 'at the centre of a criminal investigation'. Although there was some dispute as to whether a representative from ONYAG had confirmed the existence of 'an investigation' prior to the article being published, the only formal statement from ONYAG (made after the article appeared) stated that the complaint was being 'evaluated' and that an 'investigation' might follow. The Commission concluded that by overstating the position in this way the newspaper had failed in its duty under Clause 1 to take care not to publish inaccurate material. These were serious matters which could not easily or proportionately be resolved through publication of a clarification and apology. This part of the complaint was therefore upheld. The Commission also considered that the newspaper could have been quicker to provide a substantive response to the complaint.

\*\*\*\*\*

Mr Bain further complained that the article contained a number of particular inaccuracies. He had not 'wined and dined' a string of politicians; ASF had not paid for any flights he had made to Scotland ; he had not flown to Scotland solely to present a Tiffany gift; ASF had not sanctioned any donation to the Harris Tweed industry. The article failed to make clear that the complainant and his family had made donations to ASF in excess of \$450,000 over the years. Moreover, one of the

complainant's companies – World-Wide Business Centre (WWBC) – had provided cut-price services to the charity since 1991. All payments to WWBC had been sanctioned by the board of ASF and there was simply no evidence of the complainant being involved in illegitimate financial practices.

The newspaper offered to publish a statement making clear that the complainant and his family had made significant donations to ASF and that WWBC had donated reduced-cost services to ASF. In addition, it would make clear that the complainant had no interest in the Harris Tweed industry when ASF made a donation to The Highland Fund. The statement included an apology for any distress caused.

On the other points the newspaper said the following: the complainant had hosted several high profile events attended by politicians; sources had indicated that ASF had paid for flights taken by the complainant; the article did not state that the complainant had flown to Scotland solely to present a Tiffany gift. It did, however, accept the complainant's assurances that flights to Scotland had not been funded by ASF and agreed to include this in the proposed statement.

The complainant rejected the newspaper's offer and put forward an alternative, longer wording, which the newspaper was not prepared to publish.

#### *Adjudication*

The Commission did not consider that the reference to 'wining and dining' politicians was significantly misleading given that the complainant had, in his role as president of ASF, hosted various functions attended by political figures. Whether there was food and drink available at those functions was not a significant issue. Nor did the Commission consider the article necessarily would lead readers to believe that Mr Bain had flown to Scotland on one occasion solely to present a Tiffany gift.

On the other points of dispute – regarding the ASF paying for flights, the Harris Tweed industry and, most importantly, the donations made by the complainant and his family and by WWBC (through reduced-cost services) – the Commission agreed that it was appropriate for the newspaper to offer some form of remedy. It was satisfied that the newspaper's proposed statement, including as it did an apology, was a proportionate response to this part of the complaint.

It therefore hoped that the complainant would now take up the offer.

Adjudication issued 31/10/2007