

***Professor Sir Roy Meadow v The Times***

Clauses noted: 1

Professor Sir Roy Meadow complained to the Press Complaints Commission that an article headlined "A moving response to our family justice campaign", published in The Times on 17 July 2008, was inaccurate and misleading in breach of Clause 1 (Accuracy) of the Code of Practice.

The complaint was not upheld.

The article was a comment piece about the newspaper's family justice campaign, which sought to end secrecy in family courts. The article mentioned that the Royal College of Paediatricians had warned that doctors would stop giving evidence for fear of vilification in the media, claiming that many paediatricians still supported the complainant who "went beyond his remit, and gave evidence that led to the jailing of innocent people".

The complainant – who had been one of many expert witnesses in the trials of Sally Clark and Angela Cannings – said that the newspaper could not justify such a claim. In the case of Clark, the only detailed review of his evidence was by the first Court of Appeal in October 2000. The appeal had been launched on five grounds, one of which was his medical evidence. In dismissing the appeal, the three judges stated that "Professor Meadow did not misuse the figure [that the statistical possibility of two deaths from Sudden Infant Death Syndrome (SIDS) in one family was one in 73 million] in his evidence, though he did not help to explain their limited significance". Moreover, the judgment had made clear that "in the context of the trial as a whole, the point on statistics was of minimal significance and there is no possibility of the jury having been misled so as to reach verdicts that they might not otherwise have reached". The second Appeal in April 2003 was upheld because of non-disclosure at her original trial of post mortem bacteriology findings known only to the pathologist. The three Appeal Court judges stated that they did not consider the statistical evidence in detail: "the matter was the subject of only brief argument before us and we certainly heard none of the evidence".

In the case of Cannings, the complainant said that the Appeal Court judges had concluded that the verdict was "unsafe" because of new evidence presented to them. In the judgment, reference had been made to the large numbers of experts called to give evidence at the original trial but there had been no suggestion that any of them – including him – had gone beyond their remit or deserved criticism.

The complainant said that the deliberations of juries in criminal trials were private and that – since many individuals gave evidence – one could never know how much, or how little, one person's evidence had influenced a jury, let alone led to an incorrect verdict.

The newspaper argued that its columnist had not said that only the complainant's evidence had been placed before the court in each case. Her point was that the complainant's submission of statistics-based evidence, when he was not a statistician, was an example of him going beyond his remit. The newspaper said that – at the second Clark appeal, at which her conviction was quashed – the judgment stated the following: "Putting the evidence of 1 in 73 million before the jury with its related statistic that it was the equivalent of a single occurrence of two such deaths in the same family once in a century was tantamount to saying that without consideration of the rest of the evidence one could be just about sure that this was a case of murder"; "Like the Court of Appeal on the first occasion we are quite sure that the evidence should never have been before the jury in the way that it was"; and "Quite what impact all this evidence will have had on the jury will never be known but we rather suspect that with the graphic reference by Professor Meadow to the chances of backing long odds winners of the Grand National year after year it may have had a major effect on their thinking notwithstanding the efforts of the trial judge to down play it".

In the Cannings judgment, the Appeal Court judges referred to the complainant's evidence in the Clark trial and said that it would "undoubtedly have carried great weight with the jury which tried Sally Clark. If it were flawed, as it was, the safety of the jury's decision was further called into question". They continued as follows: "We must reflect on the likely impact on the verdict in the present case if Mr Mansfield had been able to cross-examine Professor Meadow, and undermine the weight the jury would inevitably attach to his evidence, by exposing that, notwithstanding his pre-eminence, at least part of his evidence in the Sally Clark case was flawed in an important respect. To some extent at least, Professor Meadow's standing as a witness would have been reduced.

Therefore the flawed evidence he gave at Sally Clark's trial serves to undermine his high reputation and authority as a witness in the forensic process. It also, and not unimportantly for present purposes, demonstrates not only that in this particular field which we summarise as 'cot deaths', even the most distinguished expert can be wrong, but also provides a salutary warning against the possible dangers of an over-dogmatic expert approach".

As a means of resolving the complaint, the newspaper invited the complainant to submit a letter for publication outlining his concerns about the column. The complainant rejected such an offer.

### *Adjudication*

The Commission noted that the reference to the complainant was made in passing in an article about secrecy in the family courts, to illustrate a broader point concerning the fear that some professionals have about being expert witnesses in open court cases. The relevance of the complainant was that he had given evidence for the prosecution in the trials of two women who were convicted of murdering their children, and whose convictions were subsequently quashed on appeal. He had subsequently been criticised to some extent by the judges who granted the appeals.

The columnist boiled this criticism down to the complainant going 'beyond his remit', and giving evidence that 'led to the jailing of innocent people'. The question for the Commission was whether, in characterising the controversy in such a brief way, the published information was significantly inaccurate, misleading or distorted.

The first point to make was that the piece was the opinion of the named author, and properly distinguished as a comment piece. It was clearly the columnist's interpretation of the cases that the complainant's evidence had been a factor in the two unsafe convictions. Her grounds for coming to this view were the judgments in the two appeals. Given that how the complainant presented statistics (when he was not a statistician) was undeniably a feature in the Clark appeal, the Commission did not consider that there was any significant inaccuracy in characterising this part of the controversy as the complainant going 'beyond his remit'. Similarly, it appeared to the Commission that there were grounds in the second Clark appeal for the columnist to suggest that his evidence had 'led to' her jailing. This was the judges' criticism of the graphic comparison of the odds of two siblings dying of Sudden Infant Death Syndrome with repeatedly backing long-odds Grand National winners. Moreover, it was not suggested that the complainant's evidence was the only factor that led the conviction. It was also the case that, on a strict chronological basis, the complainant's evidence for the prosecution preceded the unsafe conviction, and in that sense 'led to' it.

In all these circumstances, the Commission did not consider that the references to the complainant were inaccurate or misleading in breach of the Code. However, the complainant clearly had another view about how the matter should be interpreted – not least because it would inevitably have been impossible for the brief reference to his case to have captured all its complexities. The Commission therefore welcomed the newspaper's offer to publish the complainant's response in the form of a letter. This represented a constructive approach to settling the complaint, and would have enabled

the complainant to give a fuller account of his position, and respond to the opinion voiced by the columnist.

Adjudication issued 18/12/2008