

***Mr Paschal Quigley v Zoo Weekly***

Clauses noted: 6

Mr Paschal Quigley of Isleworth complained to the Press Complaints Commission that an article headlined "Just like dad", published in Zoo magazine in its 12-18 May edition, contained a photograph of his daughter which was published without consent in breach of Clause 6 (Children) of the Code.

The complaint was not upheld.

The article included a photograph of the complainant and his ten year old daughter making offensive gestures at Old Trafford – described as "terrace bigotry" – following Chelsea's defeat to Liverpool in the FA Cup. The complainant was concerned that his daughter had been ridiculed by the magazine and that her face had not been pixelated, despite other newspapers doing so, in breach of Clause 6 (Children).

The magazine said that – while in certain cases it was appropriate to obscure a child's face to protect his or her privacy – this was not such a time. Firstly, the complainant and his daughter were in a public place, namely a football ground. Secondly, the subject matter of the photograph was not concerned with the child's welfare; rather, she and the complainant had made offensive gestures to other members of the public and their behaviour was open to censure, quite properly.

*Adjudication*

The Commission would not normally consider that a photograph of a child in a crowd at an FA Cup tie – a public event at which there would be many photographers and television cameras, as well as tens of thousands of people – was intrusive or involved the child's welfare. It was important for the Commission to state that despite the voluntary and commendable restraint frequently shown by newspapers and magazines in their treatment of children, it is not the case that any picture of a child taken and published without the consent of the parent will always breach the Code. The subject matter of the photograph is relevant, as is the context and manner in which the material is published and the way in which the photograph is taken.

What marked this photograph as different from a more innocuous face-in-the-crowd picture were the girl's anti-social gesture and her proximity to her father, who was simultaneously giving a Nazi salute for which it was said he had later been arrested. The Commission acknowledged the argument that, as the photograph revealed something about the manner in which the girl was being brought up – for which she was not herself responsible – her welfare was indeed involved.

The most important point to make in relation to this was a common sense one about the issue of consent. The Code says that children under 16 must not be photographed on issues involving their welfare without the consent of a custodial parent. While the complainant – her custodial parent – may not have actively consented for the photograph to be used, the Commission could not ignore the context in which it was taken. The complainant was at a significant sporting occasion, where he and his daughter would have been seen by a large number of people, and where the complainant must have been aware of the possibility of being photographed by press photographers or even appearing on television. In these circumstances, it was hardly unreasonable for some in the media to assume that the complainant was unconcerned about publication of pictures of him and his daughter using such gestures, and that consent had therefore been implied. If the opposite was true, there was nothing to stop the complainant from restraining his behaviour and that of his daughter. On balance, therefore, the Commission considered that there was no breach of the Code in the taking of the photograph.

Having reached this view, it therefore followed that there was no breach of the Code in publishing the photograph, even if the subject matter of the photograph could be considered to concern the girl's welfare.

There was one last point for the Commission to make. It has already stated that innocuous pictures of children in crowds would not normally breach the Code. To come to another conclusion in this case just because the subjects of the photograph were behaving in an anti-social manner would not, in the Commission's view, be sensible or fair.

Adjudication issued 23/06/2006