

A man v The Observer

Clauses noted: 10

A man from Tweedale complained that a journalist obtained material for an article headlined "Gunsmiths in arms race face revolver ban" published in The Observer on 12 July 1998 by using subterfuge in breach of Clause 11 (Misrepresentation) of the Code of Practice. The complainant also complained that he was photographed in breach of Clause 3 (Privacy) and that he had been harassed in breach of Clause 4 (Harassment) of the Code.

The article revealed that the complainant was developing a revolver which would not fall under the terms of the 1997 Firearms Act and that the government was looking at ways to curtail such weapons. The article was accompanied by a photograph of the complainant brandishing a stick.

The complainant said that the journalist had telephoned him about the revolver pretending to be a shooting enthusiast. Elements of this conversation were reproduced in the article. In the evening the journalist arrived at the complainant's home with a photographer, and only then did he reveal his identity as a journalist. Flash photographs were taken of the complainant, who became alarmed and angry and who, in his anger, was photographed waving a stick.

The complainant accepted that the matter was one of legitimate public interest but maintained that the subterfuge was unnecessary. An interview he had given with Scotland on Sunday had shown his willingness to talk to the press about the matter and he would have spoken to the journalist had he been approached in the normal way.

The newspaper replied that a government minister had told the reporter about his concerns that the legislation was possibly being circumvented. In order to investigate the matter the journalist made enquiries which revealed the complainant's name - which had not been disclosed in the Scotland on Sunday article. The initial telephone call to the complainant, described by the newspaper as a "light subterfuge", was to establish, before the journalist asked him in person to justify his activities, whether he was the same gunsmith. The journalist "did not believe [the complainant] would have admitted he was developing a new handgun had he revealed from the outset that he was an Observer reporter". However, as soon as the journalist went to the complainant's house he identified himself.

Adjudication

The Commission agreed with both parties that the subject was one of legitimate public interest. However, the key to the Commission's consideration was whether or not, as the Code states, the material obtained by subterfuge could have been obtained in any other way. The Commission noted that the newspaper had apparently not made any efforts to obtain the material about the new form of gun without the use of subterfuge, however "light" it considered it to be, and was not persuaded that the newspaper had shown that its use was necessary in this case.

With regard to the alleged harassment, the Code makes clear that photographs of people must not be taken in private places without their consent. In this case, the newspaper had supplied the negatives of the photographs, some of which clearly showed the complainant inside his house albeit with the door open. Although the published photograph had been taken when the complainant was in his front garden, where the Commission does not normally hold that there is a reasonable expectation of privacy, the Commission was concerned that he had been drawn there having been alarmed by the journalist and photographer.

The complaints were upheld.

Adjudication issued 1998