

HH Saudi Research & Marketing (UK) Limited and its associated company Satellite Graphics Limited v The Sunday Telegraph

Clauses noted: 1, 2, 10

HH Saudi Research & Marketing (UK) Limited and its associated company Satellite Graphics Limited complained to the Press Complaints Commission through solicitors Wedlake Bell that a journalist from The Sunday Telegraph had engaged in subterfuge in breach of Clause 10 (Clandestine devices and subterfuge) of the Code of Practice. The complainants also said that an article published in the newspaper on 27 March 2005 headlined "Guess who prints the BNP's 'anti-Muslim' newspaper... a firm owned by Saudis" was misleading in breach of Clause 1 (Accuracy) of the Code and that they had been afforded no opportunity to reply in breach of Clause 2 (Opportunity to reply).

The complaint was not upheld.

The article reported how an undercover journalist, posing as a potential client, visited the printing company Satellite Graphics Limited, where staff confirmed that it printed the British National Party publication, 'The Voice of Freedom'.

The complainants – HH Saudi Research & Marketing Limited (HH Saudi) and Satellite Graphics Limited – respectively publish and print the Pan Arabic newspaper, Asharq Al-Awsat. They said that, subsequent to the reporter's undercover visit, he had telephoned a spokesman for Asharq al-Awsat to ask whether it was true that the BNP's publication was also printed by Satellite Graphics. That the spokesman later confirmed this demonstrated that subterfuge had not been necessary to obtain the information, they said, and that the Code had therefore been breached.

The complainants also contended that the article was misleading because it omitted the spokesman's comments, including his open acknowledgement that Satellite Graphics Ltd printed 'The Voice of Freedom'.

The newspaper said that its reporter was not asked to identify himself when he visited the premises of Satellite Graphics Limited. An employee had confirmed to him that the company printed 'The Voice of Freedom'. The reporter then suggested that he might place work with the company, and the employee had volunteered to show him the other magazines published by the company. If this was subterfuge then it was – in the newspaper's view – of a limited nature. It pointed out the information was potentially commercially embarrassing, and that there were therefore grounds to suspect that the company would not willingly have volunteered it. In these circumstances, subterfuge was necessary.

The newspaper added that in general it was often necessary to substantiate allegations through means such as subterfuge, before confronting organisations with evidence which it would be in the public interest to publish. To approach the organisation openly in the first instance would be to alert it about the newspaper's interest in the story, and therefore undermine the effectiveness of any subsequent subterfuge. In this case, the newspaper pointed out that the spokesman's confirmation of the information had occurred after the journalist said that he had irrefutable proof. There was nothing to say that he would have confirmed it had the newspaper not had the evidence it had obtained through subterfuge when it spoke to him.

Regarding the published article, the newspaper maintained that it had not included the comments made by the spokesman for Asharq Al-Awsat because it was unaware that he was also the spokesman for HH Saudi.

Adjudication

Dealing first with the complaint under Clause 10, the Commission noted that the newspaper itself had admitted that the journalist had engaged in subterfuge. The Code says that such behaviour is 'generally' justifiable 'only in the public interest and then only when the material cannot be obtained by other means'.

The wording of Clause 10 – in particular the use of the word 'generally' – allows the Commission to find no breach of the Code in some circumstances when material obtained by subterfuge is otherwise potentially available. This might be particularly appropriate where there are reasonable grounds for concluding that pursuing other means would compromise the ability of reporters to investigate matters subsequently. It might also be relevant where any subterfuge is not serious and causes little harm.

The Commission believed that this was one such case, for a number of reasons.

First, the journalist had not physically intruded into anyone's private life by his presence. He had turned up at a company and asked questions about its other clients, on a subject that was of some public interest. He had not gained entry into an individual's home under false pretences, or to an establishment where potentially vulnerable members of the public might congregate, such as a school or treatment centre.

Second, and allied to this point, was the fact that the material sought was commercial information. The information – that one of the company's clients was the BNP – while not well-known, was not private. The fact that the information sought did not concern anyone's private life meant that, in the Commission's view, the subterfuge was of a less serious order than it otherwise may have been.

Third, the Commission noted that the reporter was not engaged in a 'fishing expedition', but following up specific information about the company itself. The Commission has previously censured newspapers for seeking to obtain information speculatively about companies and individuals through subterfuge. That was not a feature here.

Finally, while the Commission was clearly in no position to decide whether or not the company would have divulged the information if it had only been approached openly by the newspaper, it noted that the paper did have a reason when deciding to embark on the subterfuge for supposing that the company might not have made it public. This was that the information was potentially commercially embarrassing.

In all these circumstances, the Commission did not find a breach of Clause 10.

There was also no breach of Clause 1. The Commission noted that the article had not claimed that the complainants had only confirmed its connection with 'The Voice of Freedom' as a result of the subterfuge, as the complainants had suggested. It instead reported that, during the course of the reporter's undercover inquiries, the company confirmed that it did publish the BNP's official publication. Omitting the spokesman's comments did not therefore lead to a breach of Clause 1 – and, given that, there was also no breach of Clause 2, which calls for a fair opportunity to reply to inaccuracies.

Relevant rulings

The Hon. Christopher Monckton v The Evening Standard 2003

Railtrack v The Independent 2002

Adjudication issued 2005