

Section Four: News Gathering

VICTIMS OF SEXUAL ASSAULT

Danger in the detail

THE CODE SAYS...

Clause Eleven — Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

Preservation of the anonymity of victims of sexual assault is regarded as paramount under the Code and this clause is not subject to the defence that publication is in the public interest.

There are cases where a victim may waive his or her anonymity or where identification has been permitted by the courts, and the Code provides for these. But the PCC has made clear that it is unlikely to recognise the legitimacy of any other claims that the identity of a sex victim is already in the public domain.

Breaches are uncommon and almost always inadvertent. They fall into two main categories:

- Those caused by poor training, carelessness — or both; and
- Those resulting from the inclusion of some seemingly innocuous detail.

Lack of training can lead to the most blatant breaches. A woman victim of an office sex pest was distressed and embarrassed when a local newspaper report of the man's conviction broke all the rules and included her name, employment details and sexually explicit

evidence. The editor, also deeply embarrassed, apologised swiftly. Because of staff holidays, an inexperienced reporter had prepared the story and sub-editors had missed the error. But apologies and promises to tighten up procedures were not enough. The PCC censured the newspaper for a breach so serious that any remedial action would have been inadequate. (*A woman v Macclesfield Express: Report 74, 2006*).

Even when newspapers follow the fundamental rules about not naming sex assault victims without consent, risks arise if they are identifiable by some detail in the story.

For that reason the PCC has warned of the onerous burden this puts on editors and insists on 'scrupulous construction' of stories about sex crimes to ensure strict adherence to the Code.

Beware of the evidence: Assessing likelihood of identification is a potential minefield when reporting both the original crime and any subsequent trial. Details apparently insignificant to an outsider could be revealing to people living in a local community, who might otherwise not make the connection.

A report of a rape, which gave details of the victim's age, her health record and specific details of the attack, as well as the town where the offence occurred, was ruled by the PCC to have been likely to identify her. (*Thames Valley Police v The London Metro: Report 59, 2002*).

Adequate justification: As there is no public interest defence, it is

difficult to establish adequate justification unless a court lifts the automatic ban on identification of the victim, in the interests of justice, or the victim waives their rights to anonymity.

Even where they do — perhaps to warn others of dangers — that cannot necessarily be taken as permitting continuing publicity unless the victim maintains consent.

In those rare cases where courts permit the naming of sex victims, there are usually substantial grounds for doing so and these would constitute adequate justification under the Code.

Legal freedom to publish may appear relatively easy to establish, but it is not always enough under the Code, which applies in the spirit as well as the letter.

The PCC upheld a complaint against a newspaper whose report of a rape trial referred to evidence of what the victim was wearing at the time of the attack and to her hobby.

The combination of details was sufficient to identify her to local residents and — even though the evidence had been given in open court — the PCC held that the Code bound editors to rules over and above those stipulated by law and that anonymity should have been preserved. (*A woman v Clydebank Post: Report 41, 1998*).

In a similar case — involving an assault on an under-age girl — a weekly newspaper's court report reference to the victim's visible injury was sufficient to cause a breach, even though no third party had actually identified her.

The Commission ruled that while the mention of the injury might

have appeared insignificant, “it was a superfluous but specific detail which could have been sufficient to identify her, or confirm the suspicions of those who already knew something about the case.” The editor could have taken greater care by omitting the reference. The complaint, and corresponding breaches in Clause 5 (Intrusion into Grief or Shock) and Clause 6 (Children), were upheld. (*A woman v Strathspey & Badenoch Herald: Report 75, 2007*).

KEY RULINGS

- *A woman v Macclesfield Express* (Report 74, 2006).
- *Thames Valley Police v London Metro* (Report 59, 2002).
- *A woman v Clydebank Post* (Report 41, 1998).
- *A woman v Strathspey & Badenoch Herald* (Report 75, 2007).

KEY QUESTIONS

- Is the material published likely to contribute to identification?
- Is there adequate justification?
- Is it legal to publish — and is that enough under the Code?

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