
ADJUDICATION

This complaint is inferred to have been made under Clause 3 (Privacy) of the FT Editorial Code of Practice. The FT Appointments & Oversight Committee have determined that adjudications of complaints under Clause 3 shall not identify the complainant, irrespective of whether or not there is a breach found by the Commissioner, unless the Committee determines that it is in the public interest to name the complainant.

Background

1. On 17 February 2015, I received a complaint from SA on behalf of PA, who is described as her client. PA is the founder and executive chairman of a major international company.
2. PA's success has meant that he has been mentioned on several occasions in the *Financial Times*. One of those instances, still available to read on FT.com, includes mention of his current age. The grounds for the complaint were that PA's age was not relevant to anything in his professional life and therefore was an infringement of his right to privacy.
3. SA had previously complained on PA's behalf to a senior editor at the Financial Times seeking the removal of PA's age. In both instances, Tony Major declined to remove the information, stating that there were no valid grounds for doing so. He alerted SA to her right of appeal to the Editorial Complaints Commissioner.
4. SA terms her complaint in terms of overseas (which to avoid identifying the country and thus PA, I shall call 'Ruritanian') privacy law, specifically the right to privacy in Article Q of the Ruritanian Constitution. She says that, by development of Ruritanian case law, "even a public persons have 'a right to be left alone'".

5. SA asserts, although I have no direct evidence on the point, that it is an 'important issue' to her client, and 'actually affecting him to a great extent'. I am prepared, within reason, to presume a degree of distress.

FT Editorial Code of Practice

6. The relevant clause of the FT Editorial Code of Practice is Clause 3, which provides that:

3. Privacy

- 3.1 *Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
- 3.2 *Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.*
- 3.3 *It is unacceptable to photograph individuals in private places without their consent.*
- 3.4 *Note - Private places are public or private property where there is a reasonable expectation of privacy.*

7. No other clauses of the FT Editorial Code of Practice appear applicable to me. Having consulted the complainant AS, no point is taken as to the accuracy of the information of which she complains. Indeed, she expressly confirmed to me that the age the FT has published is correct. Therefore, no complaint is made or could be entertained under Clause 1 (Accuracy) of the Code.

Discussion and Decision

8. My role is ordinarily limited to adjudicating whether or not there has been a breach of the FT Editorial Code of Practice. However, where the test is such a close parallel of that conducted by the courts, and where there is a wealth of domestic and Strasbourg jurisprudence on the scope and limits of privacy rights, I consider I would do well to bear them in mind (although they cannot determine my ultimate decision).
9. Clause 3 of the FT Editorial Code of Practice reflects the principles of Article 8 of the European Convention on Human Rights, which states:
 1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
10. Only public authorities are prohibited from unjustifiable interference with an individual's Article 8 rights, but the Editorial Code of Practice provides the means by which newspapers like the *Financial Times* bind themselves to respect individuals' right to privacy in the course of their journalism.
11. I consider that Article 8 ECHR and the Editorial Code of Practice give stronger definitive statements of the rights to privacy than have been read into the Ruritanian Constitution. Absent further evidence, I am satisfied that if there was no breach of the Editorial Code of Practice or of PA's Article 8 rights (if he indeed has rights under the ECHR), then there would be no breach of his constitutional privacy rights in Ruritania either.

12. Article 8 (the privacy right) is often in conflict with rights (both of the press and of the public) under Article 10 ECHR, which provides for freedom of expression and the freedom to receive information. Neither set of rights has automatic precedence over the other, and balancing of the two sets of rights is usually a highly fact-sensitive exercise.
13. I take some general principles from the case-law into account:
 - a. Public figures, especially those who are accountable to the public by virtue of their professional or governmental roles, still have rights to privacy, but these may well be circumscribed by virtue of their roles and the information which is sought to be published;
 - b. Freedom of expression and to receive information is itself a public good, though it will be elevated where the information is published responsibly and in the public interest, and diminished where it is inaccurate or published with malicious intent;
 - c. Privacy rights attach to information in which an individual has a reasonable expectation of privacy, based on all the circumstance, which include how it was obtained, whether it relates to intimate details of his or her life, and the extent to which it is already public or the person has demonstrably sought to keep it confidential.
14. I find that PA is a public figure, and that he does not give his consent to the continued publication of his age in years. I am prepared to assume that publication has caused him some limited distress.
15. Tony Major, who dealt with the complaint at first instance, highlights that the private information sought to be removed from FT.com is relatively anodyne. Journalists often lawfully and reasonably publish information about a person's health, or personal relationships, or correspondence. I agree that, by comparison, this is not information of an especially private character. I also accept that PA's age is information which was lawfully obtained from a reputable third-party.

16. On balance, I consider that PA can have no *reasonable* expectation of privacy in his age, and even if he does have such reasonable expectation it is easily outweighed by the journalistic justification for publishing it. I have included in my balancing exercise: the nature of the information, the way in which it was obtained, the limited and proportionate use of that information in the *FT's* journalism, and PA's status as a successful businessman of a public company. Assuming it to be an intrusion in his private life, it is one which is clearly justified in the present case.

17. Two further factors have fortified me in this conclusion:
 - a. First, corporate literature available on the open internet which has been published by PA's present company, includes in his biography the year which he was allegedly born. This information has been transposed into a profile of him by *Forbes* magazine, also available online, published some six years ago. However, the age/year of birth given by PA's company and by *Forbes* are not consistent with the age published by the *Financial Times* which SA has confirmed to be accurate. Therefore:
 - i. To the extent that the corporate publication is accurate, I consider this constitutes PA (whether by himself or by authorising an agent) putting this information into the public domain, which greatly diminishes any privacy right in it he might assert against the *Financial Times*.
 - ii. To the extent that the corporate publication is inaccurate, it might further be said that the FT would have the benefit of a freestanding public interest in correcting erroneous autobiographical information published by a public figure in the course of his public role.

On either account, this complaint would necessarily fail.

- b. Second, a plain-text reading of Ruritania's most-recent legislation concerning the management of companies makes clear that there is both an upper and a lower age limit for the appointment (including the continued appointment) of certain directors. As such, a person's age (as a means of determining whether or not they are lawfully appointed a director of a company, and indeed how much longer they may continue to serve in currently-held directorships) is important information which the investing public, Ruritanian regulators, and the press as guardians of the public interest all have a right to know. Were the complainant correct that a right to privacy could be used to prevent publication of the age of a company director, the public interest would be harmed, not served. This is particularly acute in the present case, as the information which SA has confirmed to be accurate suggests that PA is approximately five years younger than previously thought.

Conclusion

18. In all the circumstances, I have little doubt that there has been no breach of Clause 3 of the Editorial Code of Practice, and this complaint must therefore be dismissed.

GREG CALLUS
Editorial Complaints Commissioner
Financial Times Ltd
1 March 2015
(updated 7 April 2015)