

## GD MEDIA LAW BULLETIN 17

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GD Media Law Bulletin is a news review compiled quarterly by Goodman Derrick's Media Group. The aim of the Bulletin is to provide a brief summary of interesting developments in media law and regulation. The Bulletin is directed at journalists, producers and compliance officers. Detailed guidance on how those developments may impact upon programme makers and broadcasters is available from any member of the Media Group.

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### LEGAL

#### **The Privacy: European Court rules on suicide footage.**

The recent case *Geoffrey Peck v United Kingdom* may have significant privacy ramifications. As readers will be aware, there is no specific law of privacy. The area is dealt with in the privacy provisions of the ITC and BSC Codes and the Press Complaints Commission's Code, by remedies for breach of confidence and the statutory offences under the Data Protection Act 1998, and a right to privacy is recognised in the Human Rights Act 1998. However in the Peck case the European Court of Human Rights held that UK law gave no effective remedy and therefore applied the articles of the European Convention on Human Rights.

The case involved Brentwood District Council who had obtained CCTV footage of Mr Peck attempting to commit suicide by slashing his wrists in public. The footage was released to newspapers and broadcasters and was subsequently broadcast on Anglia Television and the BBC's programme "Crime Beat". Mr Peck complained to the BSC, ITC and PCC on the grounds that this was an intrusion into his privacy. The BSC and ITC upheld his complaint but the PCC rejected his complaint. Mr Peck also brought a claim for judicial review claiming that the Council's disclosure of the CCTV footage was unlawful. The English courts held that the Council was entitled to make this disclosure and Mr Peck therefore took his case to the European Court of Human Rights.

The European Court held that the disclosure of the footage was a breach of Article 8, the right to respect for his private life, and of Article 13 since he did not have an effective domestic remedy because the UK regulatory bodies were not empowered to award him damages and he did not have a claim for breach of confidence.

Readers will no doubt be aware of the *Hello!/Zeta Jones/Douglas* case which despite its outcome did not create a law of privacy and was decided on the basis of a breach of commercial confidentiality and the Data Protection Act 1998.

It will be interesting to see what the courts and parliament do in the wake of the Peck case. Parliament may have to introduce specific legislation if the courts do not acknowledge a tort of infringement of privacy.

#### **Privacy: Celebrity Pay-off**

Sara Cox has received a £50,000 pay-off from the People newspaper over topless pictures of her on her honeymoon. This case could have helped to address the deficiency identified by the ECHR in Peck (above) since Ms Cox sued under the privacy clause of the Human Rights Act 1998 having

first gone to the Press Complaints Commission and received a printed apology. But the case does not change UK law since it was settled out of court.

The settlement nonetheless has significant ramifications. First it may set a commercial precedent. It is only the second time a celebrity has recovered substantial damages as a result of suing under the privacy clause of the Human Rights Act 1998. The first was Amanda Holden who recovered a £40,000 out of court settlement from the Daily Star for publishing topless photos. It will become apparent to celebrities that they can seek redress from the courts even if they have received apologies from the media.

The pay-off is also a blow to the PCC. Despite the apology which was brokered by the PCC, Sara Cox went on to sue. Questions have been, and will continue to be, asked about the PCC's power. In the wake of Peck and Hello!/Zeta Jones/Douglas, this case is perhaps another indication that legislation implementing a UK law of privacy is merely a matter of time. The PCC defended its role in the light of this settlement and argued that Cox's agent had agreed the apology and that the case is not a landmark since celebrities have always been able to take legal action against a newspaper. It also argued that since the implementation of the Human Rights Act 1998, there had been fewer than a dozen privacy cases heard.

Incidentally Naomi Campbell has now been granted permission by the House of Lords to appeal against the Court of Appeal's decision (see our October 2002 issue) which overturned her victory against the Daily Mirror in a claim for breach of confidentiality and infringement of data protection rights.

### **Contempt: Reporting Ban ignored by Media**

In the Soham school girls' murder case, Mr Justice Moses made a court order on 9 June 2003 banning any report of anything relating to the suspect Ian Huntley. It appears the order was made in the light of Huntley's suicide attempt and the possibility that if he had killed himself the media would have published material which could have prejudiced the trial of the co-defendant, Maxine Carr. However the media ignored the order and covered the suicide attempt by Mr Huntley. An amended order was issued on 10 June 2003, by which time Huntley was out of danger, omitting the section banning publication of any evidence about him. However the order reminded the media of the reporting restrictions under the Contempt of Court Act 1981 and stated "there should be no report published which speculates upon how or why Ian Huntley came to be in his present position or to speculate upon what effects, if any, his condition might have on the future trial of either or both defendants". Reporters should therefore be careful when reporting on this case that they comply with the order. The trial begins on 6 October 2003.

### **Libel: Offer of Amends**

A defendant who offers a correction, apology and damages to the complainant is given a defence by s2 of the Defamation Act 1996. The defence is not available where the defendant knew or had reason to believe that the comments complained of were both false and defamatory.

The recent case of Diana Rigg v Associated Newspapers Ltd shows the dilemmas a claimant faces when deciding whether to accept an offer of amends. In this case Diana Rigg sued the Daily Mail over a headline which stated "Diana Rigg attacks British Men - and announces her retirement: my husband's affair with Joely Richardson left me mourning for years. Now I'm finished with marriage and men".

Following the issue of proceedings the newspaper made an offer of amends. Diana Rigg's counsel

argued that before she could accept the offer of amends she needed to inspect the reporter's notebook. Clearly the claimant wanted to know whether the notes proved that the reporter had the necessary knowledge that the statements were false and defamatory. The defence argued that it would be wrong to give the claimant the advantage of early disclosure, just as it would be wrong to make an order against a claimant enabling the defendant to consider the prospects of a defence of justification.

The judge held that in the circumstances an order for disclosure of the notes was required. Part of the defendant's defence relied on the notes and the judge stated that the notes would be disclosable later on in the proceedings whether the offer of amends was accepted or not. The judge therefore felt there was no need to postpone disclosure. Whilst the judge did warn that his decision was not approving the disclosure of notes on a wide scale basis the case does highlight that reporters should have their notes in an orderly manner. The case also shows that before making an offer of amends the newspaper should be certain that the notes will not invalidate the defence.

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## REGULATORY

### War bias

Concerns have been raised about the impartiality of US news coverage of the Iraq war. John Willis, a writer for the Guardian who spent a year in the US as a television executive, stated in his article "The War brought to you by the White House" that "much of the coverage, particularly on cable channels, could have been written and produced by the White House". Viewers obviously felt this was true of cable channel, Fox News. The ITC received 9 complaints of bias from British viewers over Fox's coverage of the war. The coverage included the American flag in the corner of the screen and the American troops were referred to as "our troops". Under the ITC Programme Code licensees are required to show due impartiality when reporting on matters of political controversy. Furthermore the Code states that "reporting should be dispassionate and news judgments based on the need to give viewers an even-handed account of events".

The ITC rejected all the complaints of bias. The ITC's reasoning hinged on the interpretation of "due". It held that the term "due" means "adequate or appropriate". This interpretation is specifically referred to in the ITC Code. The ITC held that Fox's coverage must be viewed differently from British news services since it is targeted at a US audience. The ITC decided that Fox was entitled to view events from its own particular perspective as these views were appropriate. Furthermore the ITC felt that a range of different opinions was aired by Fox.

### Involvement of Children in Programmes

The ITC has rejected complaints from viewers regarding the programme "Loving You" in which a six year old girl played the part of an abused child. The girl had to describe her abuse on a video tape as part of a court case and viewers felt that this would have an adverse effect on the child. Section 2.10 of the ITC Programme Code states that "particular care should be taken to avoid causing any distress or alarm to children involved in programmes". The ITC held that there was not a breach of the ITC Code because they were satisfied that Granada had taken sufficient measures to ensure the welfare of the child. Granada had consulted police officers and a child psychologist. The child understood she was acting and that she was playing the part of a girl hurt by a grown up and was unhappy. She was encouraged to treat it as a game and the girl's mother was present and satisfied that the scene was dealt with in a responsible and careful way. Having reviewed the video

the ITC did not feel that the girl appeared distressed in the interview.

## Advertising

The ITC has held that Channel U has breached section 8.1 of the ITC Programme Code. Channel U is a music channel which allows viewers to vote for their favourite video. Each video was followed by the promotion for the sale of mobile ring tones. The issue before the ITC was whether this blurred the distinction between advertising and programming. The Channel argued that the ring tones were owned by the licensee and therefore under section 8.1 of the ITC Programme Code they were entitled to promote these products. However section 8.1 states that "books, videos, CD Roms, DVDs and music may be promoted only at the end of the programme". These products must have a clear relationship to the content of the programme. In this case the ITC held that the ring tones did not have a sufficiently close relationship with the music videos.

## Undue Prominence

The ITC has held that an episode of "As If" broadcast by Channel 4 breached section 8.4 of the Programme Code. This section states that "no undue prominence may be given in any programme to a commercial product or service. In particular, any reference to such a product or service must be limited to what can clearly be justified by the editorial requirements of the programme itself". The programme featured a character working as a pizza delivery boy for Pizza Hut. There were numerous occasions where the character wore a uniform, drove a moped and carried pizza boxes all featuring the Pizza Hut Logo. Channel 4 argued that there was no arrangement with Pizza Hut and was therefore no question of product placement. They also argued that using a real brand helped to strengthen "the dramatic veracity of the story line" and was therefore necessary. However the ITC felt that an imaginary brand should have been used and that the overall prominence and airtime given to Pizza Hut was excessive and could not be justified on editorial grounds.

## Violence

The ITC has upheld a complaint about a programme entitled "Infamous Fives: Five Plumb the Depths of Depravity". The series features the behavioural excesses of celebrities. This particular episode featured pop star Michael Hutchence who committed suicide in 1997. The programme included a demonstration of auto-erotic asphyxiation and a viewer complained that this was explicit and extremely irresponsible due to the risk that it could be copied. Section 1.7(c) of the ITC Programme Code states that "portrayals of dangerous behaviour, capable of easy imitation, must always be justified by the dramatic and editorial requirements of the programme. Unfamiliar methods of inflicting pain and injury capable of easy imitation should not be included". The licensee, E4, argued that there were warnings that this activity should not be attempted and the demonstration was required to substantiate the programme's claims regarding Michael Hutchence's death. E4 also argued that details about the activity were wide-spread and available on the internet.

However the ITC did not agree with E4's internet argument and also felt that the warnings contained in the programme did not necessarily deter experimentation which would have been easy because of the details provided in the programme. The ITC did not feel that the demonstration was required to substantiate the reasons behind Michael Hutchence's death.

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This guide is for general information and interest only and should not be relied upon as providing specific legal advice. In relation to any particular matter, readers are advised to seek advice.

**further information:**

If you would like more information about any of Goodman Derrick's Media Law services please telephone and ask to speak to a member of the Media Group.

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