

## **COMPLAINT ADJUDICATION**

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**A Person (the Complainant)**

**and**

**Byline**

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**Clause 5. Harassment**

**5.1. Publishers must ensure that journalists do not engage in intimidation**

**Clause 6. Justice**

**6.3. Publishers must preserve the anonymity of victims of sexual offences, except as permitted by law or with the express consent of the person.**

**Clause 7. Privacy**

**7.2. Except where justified by the public interest, publishers must take all reasonable steps not to exacerbate grief or distress through intrusive newsgathering or reporting**

**Complaint Dismissed**

**Before IMPRESS Regulatory Committee A**

**Patrick Swaffer (Chair), Walter Merricks, Máire Messenger Davies and David Robinson**

**28 August 2018**

## 1. Summary of Complaint

1.1. The Complainant is a person and directly affected by an alleged breach of the Code.

1.2. The Publisher is Byline Media, that has been regulated by IMPRESS since 14 September 2016.

1.3. The complaint is assessed against the IMPRESS Standards Code. The relevant clauses are:

*Clause 5 (Harassment)*

*5.1. Publishers must ensure that journalists do not engage in intimidation.*

*Clause 6 (Justice)*

*6.3. Publishers must preserve the anonymity of victims of sexual offences, except as permitted by law or with the express consent of the person.*

*Clause 7 (Privacy)*

*7.2. Except where justified by the public interest, publishers must take all reasonable steps not to exacerbate grief or distress through intrusive newsgathering or reporting.*

## 2. The Complaint

2.1. The complaint is made about a reference to the Complainant in an article published by Byline. The Complainant is a victim of sex offending. The

Complainant complained directly to IMPRESS. After seeking clarification for the basis of the complaint IMPRESS confirmed the substance of the complaint with the Complainant, as follows:

**2.2.** *The Complainant is an affected party seeking the removal of any reference to themselves in the published article. The grounds of complaint taken forward are:*

*The publisher failed to preserve the Complainant's anonymity as a vulnerable witness;*

*Publishing of the Complainant's name was an act of malice and intimidation and unacceptable conduct by a journalist; and*

*Publishing of intimidatory reference to the Complainant was done in an invasive manner.*

**2.3.** IMPRESS provided the Complainant with a full copy of Byline's response (summarised in Section 3 below). The Complainant was given the opportunity to provide a final reply to that response.

**2.4.** No consent was given by the Complainant to waive their right to anonymity as a victim of sex offending and the Complainant considers the publisher was not entitled to name the Complainant in the publication.

**2.5.** The Complainant feels that the use of their name was unnecessary and an intentional act of intimidation. The Complainant received a large volume of abusive emails from a third party, known to the Author, and the Author was copied in on numerous occasions to these emails. The publication, the Complainant says, had impacted on their right to privacy and has caused significant distress.

**2.6.** A full copy of the Complainant's comments was considered by the Regulatory Committee in determining the complaint.

### **3. Response of Publication**

**3.1.** IMPRESS invited Byline to provide information in response to the Complaint.

**3.2.** The publisher says it is quite clear that in this case the victim named themselves, voluntarily, to various media organisations in the UK and further afield.

**3.3.** The publisher believes that victims of sexual offences and their privacy should be protected, but, does not believe that this means that such victims can selectively waive their rights of anonymity with respect to specific journalists or publishers.

**3.4.** The Author argued that the Complainant had made public, multiple times, that they are a survivor of sexual abuse. The Complainant had been named in the UK national press, the Washington Post, TV, YouTube, social media and on numerous national websites.

**3.5.** The publisher argues that, in these circumstances, a requirement to request specific permission from the Claimant to publish material in the public domain would amount to a form of targeted prior restraint and censorship, in breach of its Article 10 rights.

**3.6.** The Author refuted that the naming of the Complainant was in any way malicious or any part of a campaign of intimidation made against the Complainant.

**3.7.** The Author believes that 'it would be egregious if it is held that no one could link to the article [already in the public domain] and discuss it without their permission'. Therefore, the Author disagrees with the Complainant's point that publication had caused enormous distress.

**3.8.** A full copy of the Publisher's response, and further comments were considered by the Regulatory Committee in determining the outcome of the complaint.

#### **4. Further investigation**

**4.1.** IMPRESS sought legal advice on the issues arising in the case.

**4.2.** A full copy of the legal advice and further comments by the Complainant and Publisher were considered by the Regulatory Committee in determining the outcome of the complaint.

#### **5. Compliance with the IMPRESS Regulatory Scheme**

**5.1.** The complaint was escalated to IMPRESS, per clause 4.3 of the IMPRESS Regulatory Scheme. IMPRESS was satisfied the complaint met the grounds for urgency.

**5.2.** Byline has complied with all other requirements of the IMPRESS Regulatory Scheme concerning this complaint.

#### **6. The Committee's Conclusion**

**6.1.** The Committee considered that merely referring to the Complainant in this article did not constitute an act of intimidation in the course of journalistic activities, particularly so in light of the fact the Complainant had identified themselves to the media as a victim of sex offending. The published information was also limited in scope to what had already been published. The Committee understood that the Author had not corresponded with the

Complainant directly and had not made contact or approached the Complainant in relation to the publication of the article. The fact the Author had been copied into various emails from a third party to the Complainant, was not in and of itself evidence of intimidation in the course of journalistic activities. Following this, the Committee considered that the publisher did not breach Code Clause 5.

**6.2.** The Committee understood that a victim of sexual offending is entitled to anonymity under section 1(1) of the Sexual Offences (Amendment) Act 1992 (the Act); however, there is no settled legal position on the issue of whether subsequent reporting by a secondary media organisation once a victim has been identified by a primary media organisation breaches the Act, but in practice it does occur and goes unchallenged. This approach is consistent with Article 10 ECHR: - the right to freedom of expression. The publisher did not preserve the Complainant's anonymity and neither the Author nor the publisher sought the express consent of the Complainant to be identified in the article. The Committee noted that the Complainant had voluntarily and publicly identified themselves as a victim of sex offending in the month prior to the publication, in various publications. The Committee noted that the article did not identify any details about the Complainant that had not been reported in other publications and, therefore, its use was acceptable in the context of the article. Following this, the Committee considered that the publisher did not breach Code Clause 6.

**6.3.** The Committee noted that the article only cited information that had been reported in other publications. Therefore, there could be no reasonable expectation of privacy on the part of the Complainant in the published information. The Committee considered that it had been reasonable for the publisher to believe that the citation of this information (given its recent widespread dissemination at the date of publication) would not significantly exacerbate the Complainant's grief or distress. Furthermore, the Committee

considered that in this case there had not been 'intrusive newsgathering or reporting'. Following this, the Committee considered the publisher did not breach Code Clause 7.

**6.4.** It follows that the complaint is dismissed, and no further action is required.