

***Claris Powell v The Sunday Telegraph***

Clauses noted: 1, 2, 5, 12

Claris Powell complained to the Press Complaints Commission through Deighton Guedalla Solicitors that an article headlined "The obsessive pursuit of 'racism' hobbles the police", published in The Sunday Telegraph on 20 December 2009, contained inaccuracies in breach of Clause 1 (Accuracy) and that she had not been given a fair opportunity for reply to inaccuracies in the article, in breach of Clause 2 (Opportunity to reply) of the Editors' Code of Practice.

Following an offer of sufficient remedial action, no further action was required on the part of the newspaper.

The complainant's son, Michael Powell, who was black, had died in police custody in 2003. The events preceding his death were contested, but an inquest jury found that Mr Powell had died of positional asphyxia, having been initially placed on his side in a police van but later observed on his front on arrival at a local police station. The jury also found that he was more vulnerable to suffering death as a result of one or more of the following: his contact with a police car; being sprayed with CS gas; being struck with a Casco baton; and being restrained on the ground whilst suffering a psychosis.

The article, a comment piece, suggested that Mr Powell's family's concern that race had played a role in his death was mistaken, and served as an example of a "syndrome", the symptom of which was an assumption that racism must be the explanation when police interactions with people from ethnic minorities are "less than perfect".

The complainant said that the newspaper had misled readers as to the jury's verdict: the jury had not "decided that Mr Powell did not die because the police treated him in a way they would not have treated a white man", as it had not been asked to make any finding on the subject of race. Nor had the jury "rejected ... the allegations that the way officers restrained him had caused his death". The article's account of the evening was misleading and reflected only the police version of events. Furthermore, the attribution of the family's concern about Mr Powell's treatment to a "syndrome" was unfounded and misleading.

The complainant also disputed the newspaper's reference to the results of two post mortem examinations, and said the IPCC had not concluded that there were "no grounds for disciplining" the officers involved, only that there was not a greater than 50% chance of conviction at a disciplinary tribunal. The complainant said that the newspaper's description of Mr Powell as "a user of crack cocaine" with "a history of mental instability" was misleading. He had been steadily employed and had three children. There was evidence that he had taken cocaine, but it was not a cause of his death and was irrelevant.

The newspaper said that the jury's verdict implied no wrong-doing by any police officer. The central allegation had been that Mr Powell was placed in the van on his front and restrained in this position throughout the journey to the police station. A jury finding that this had occurred would have constituted endorsement of the suggestion that restraint by police officers had caused Mr Powell's death. Its rejection of the claim - in a verdict that found Mr Powell had initially been placed on his side in the van (although he had arrived at the police station on his front) - also represented rejection of the suggestion that he had died because of discriminatory or differential treatment by the police. The newspaper noted that the Coroner had ruled that there was no basis for the jury to return a verdict of unlawful killing or neglect.

The newspaper said that its account of the events did reflect the police view and had emphasised some points over others, but it stood by its description of Mr Powell's circumstances, the details of his confrontation with the police, and the IPCC decision. It offered to publish a letter from the

complainant expressing her point of view in relation to the article. In addition, it also proposed the publication of the following clarification:

*A 20 December article said that at the inquest into the death of Michael Powell the jury decided that Mr Powell "did not die because the police treated him in a way that they would not have treated a white man", and further that the jury rejected the allegations that the way officers restrained him had caused his death. To clarify, the jury was not asked to and did not make a direct finding as to whether race or racism played a role in Mr Powell's death. It found that Mr Powell died of positional asphyxia in a police van prior to his removal from it.*

*Adjudication*

The newspaper was clearly entitled to comment on the manner of Mr Powell's death, which had been the subject of a lengthy public inquest. The article had considered the case against the background of the debate over the problems of race in policing, a contentious and often emotive issue which has long been the subject of robust debate.

Clause 1 (iii) of the Editors' Code, however, requires a clear distinction between comment, conjecture and fact. On this occasion, it was accepted that the jury had not made - and had not been asked to make - a specific finding on the role that race might have played in Mr Powell's death. As such, it was wrong for the newspaper to have stated - as fact - that the jury had "decided that Mr Powell did not die because the police treated him in a way they would not have treated a white man". The jury made no such explicit decision. The result was a breach of the Code, which required remedial action. The Commission noted that the newspaper had offered to clarify this point specifically, and considered that this constituted a sufficient remedy to the breach of Clause 1 of the Code.

There was also dispute about the article's assertion that the jury had "rejected ... the allegations that the way officers restrained him had caused his death". The newspaper's case was that the jury had found that Mr Powell had not been initially placed in the van on his front, and that therefore it had "rejected" the central allegations against the officers. The Commission noted this argument, but considered that readers would have been significantly misled as to the full position, which included the fact that "positional asphyxia" was found to be the cause of death and "being restrained on the ground" was held to be a possible factor in making Mr Powell more vulnerable to suffering death. This was also a breach of the Code and remedial action on the part of the newspaper was, therefore, required. The Commission considered that it was appropriate for the newspaper to clarify the cause of death and to offer the complainant the chance to comment further on the surrounding circumstances in a published letter. This constituted sufficient action under the Code.

Publication of a letter would also answer the other points of complaint, which were largely matters of interpretation. It could certainly be said - and indeed the newspaper had accepted - that the article's account of the events leading to Mr Powell's death had relied on the perspective of the police officers rather than the complainant. However, no specific inaccuracies had been established on this point, and it was not for the Commission to make a finding as to which was the conclusive account. Equally, the account of the IPCC decision, the reference to the alleged "syndrome", and the impression given of Mr Powell's circumstances could not be said to contain significant inaccuracies or misleading information. A letter appeared to be an appropriate opportunity, as provided for under Clause 2 (Opportunity to reply) of the Code, for the complainant to set out her views on these points.

In the Commission's view, these offers represented sufficient forms of remedial action under the terms of the Editors' Code.

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Separate complaints under Clause 12 (Discrimination) and Clause 5 (Intrusion into grief and shock) of the Editors' Code were not upheld.

The complainant said that the article contained prejudicial and pejorative reference to her race by virtue of its attribution of her concerns to a "syndrome"; in doing so she considered that the newspaper had denied the validity of her feelings and experiences in a discriminatory way. In her view, the description of Mr Powell had reflected a racist stereotype: a black male mentally ill drug user in police custody. Furthermore, the newspaper had not handled publication sensitively.

The newspaper said that the article was not insensitive, prejudicial or pejorative. It had not belittled or mocked those opposed to racism. It was not pejorative to make accurate reference to Mr Powell's history of mental illness and drug use.

#### *Adjudication*

While the Commission could understand the complainant's unhappiness with the columnist's description of her feelings, it could not agree that this represented a pejorative or prejudicial reference to her race. Mr Powell's race and mental health had been integral to the story, and the Commission did not consider that the article had referred to them either in pejorative or prejudicial terms. As such, there had been no breach of Clause 12.

The Commission sympathised with the complainant's grief over the loss of her son. But it had to have regard for the fact that some years had passed since his death, during which time it had become the subject of a number of legal proceedings of significant public interest. Although the newspaper had taken a strong view with which the family had disagreed, it had referred to the death and the issues it raised seriously, not frivolously or gratuitously. The Commission did not uphold the complaint under Clause 5.

Adjudication issued 15/12/2010