

## **FINAL ADJUDICATION**

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**Bob Seely and IW Observer**

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### **Clause 4: Discrimination**

- 4.1. Publishers must not make prejudicial or derogatory reference to anybody based on the following characteristics: (a) Age (b) Disability (c) Health (d) Gender identity or reassignment (e) Marital or civil partnership status (f) Pregnancy (g) Race (h) Religion (i) Sex or sexual orientation (j) Any other characteristic that puts a person at risk of discrimination**

**Complaint Dismissed**

**No Breach of Code**

**Before Impress Regulatory Committee A**

**Ato Erzan-Essien, Cordella Bart-Stewart, Debrah Harding, and Richard Ayre (Chair)**

**23 August 2023**

## 1. Summary of Complaint

- 1.1. A complaint was made by Mr Bob Seely (“the Complainant”) about the potential breach of Impress Standards Code Clause 4.1 (Discrimination) in a letter written by a member of the public and published in IW Observer (“The Publisher”) on 31 March 2023 with the headline “Is our MP, OK?”.
- 1.2. The Complainant is a directly affected party who is the Member of Parliament for the Isle of Wight. The letter complained of appeared in the ‘Island Soapbox’ column, which is a regular feature of IW Observer in which readers are invited to send their letters to the editor expressing opinions on topics of public interest. The letter complained of was attributed to T Smith of Freshwater, Isle of Wight.
- 1.3. The Complaint is assessed against the Impress Standards Code. The relevant clause is:

*Clause 4.1 – Publishers must not make prejudicial or derogatory reference to anybody based on the following characteristics:*

*(c) Health*

## 2. Background

- 2.1. The letter concerned the Complainant’s appearance on Politics Live, a BBC programme broadcast on 28 March 2023. T Smith said it was ‘more than a little bizarre’, and said the Complainant was ‘fidgeting’, ‘constantly checking his phone under the table’, and ‘looking skyward’. Smith said that the Complainant exhibited ‘all the classic symptoms one would associate with someone suffering Attention Deficit Hyperactive Disorder (ADHD)’.
- 2.2. Smith then said that they would not normally be concerned, before stating the following:

*...one of the classic symptoms of ADHD is acting irrationally, which probably doesn’t go hand in hand when it comes to making sensitive assessments and balanced decisions on the Foreign Affairs Select Committee.*

- 2.3. The letter concluded with Smith expressing their hope that the Complainant was well and that he may 'have been just a little stressed'. However, Smith urged the Complainant to watch his 'discombobulated performance' on Politics Live and to 'speak with his GP if he feels it is necessary'.

### **3. The Complaint**

- 3.1. The Complainant submitted his complaint to the Publisher on 3 April 2023, with Impress acting as an intermediary between the two parties. The Complainant cited a potential breach of Clauses 4 (Discrimination) and 7 (Privacy). The Publisher did not consider that the article breached the Impress Standards Code and rejected the complaint. A full copy of correspondence between the parties was provided to the Regulatory Committee.
- 3.2. The Complainant was not satisfied with the Publisher's response and subsequently escalated the complaint to Impress on 19 May 2023. Following assessment, Impress judged that the complaint did not concern the disclosure of private information and therefore did not engage Clause 7. However, Impress determined there were grounds to investigate in relation to Clause 4. After seeking clarification of the basis for the complaint, Impress confirmed the substance of the complaint as follows, a full copy of which was provided to the Committee.
- 3.3. With reference to Clause 4.1(c) of the Standards Code, the Complainant argues that the Publisher had made derogatory and prejudicial references to his health through publication of the letter. The Complainant describes the use of 'very negative language' in the letter which he says implies there is a problem with his health which is affecting his ability to perform his job as a Member of Parliament. The Complainant specifically cites language such as 'suffering' Attention Deficit Hyperactive Disorder (ADHD) and 'acting irrationally', as well as the reference to making 'sensitive assessments' and 'balanced decisions'.
- 3.4. The Complainant adds that publication of the letter has caused him personal distress about the way his mental health has been portrayed to his constituents. He elaborates that the use of such language may have provoked readers into believing he had a medical condition that was

affecting his ability to think and act when making decisions. The Complainant states that the letter would result in his constituents having less confidence in him to represent them, damaging his reputation as a result.

- 3.5. The Complainant argues that the letter has a wider negative impact upon those who suffer from ADHD, who may conclude upon reading the letter that the disorder is to be perceived as something negative. The Complainant states that the promotion of this negative view is unhelpful at a time when considerable work is underway to aid the acceptance and understanding of ADHD.
- 3.6. The Complainant says that he is an advocate for free speech and expects to receive criticism as an elected Member of Parliament, and says that the Publisher regularly includes letters in its newspaper which comment negatively about him. However, he argues this letter was of a personal nature, and therefore he felt it was necessary to submit a complaint. The Complainant claims that publication of the letter was an attempt by the Publisher to undermine his reputation.

#### **4. Response of Publication**

- 4.1. Impress invited the Publisher to provide additional information in response to the Complainant. The Publisher's response is summarised below, a full copy of which was provided to the Committee.
- 4.2. Regarding its editorial procedure for publishing letters from members of the public on its Island Soapbox page, the Publisher says that it does not publish anonymous letters and does not withhold the name of the correspondent and their village/town without good reason. The Publisher states that, prior to publication, it first considers whether the letters adhere to the Standards Code. The Publisher adds that it will occasionally contact readers if the content of their submitted letters is unclear or any changes are required (for example, where it is suspected that a letter would breach the Standards Code). Letters are usually published unedited, except for any spelling or grammatical corrections. The Publisher may also reduce the word count of a letter, without diluting its original message, if it contains more than the maximum 300 words.

- 4.3. Further, the Publisher states that the selection of letters to feature on the Island Soapbox page is mostly reflective of the ones that have been received during the week leading up to publication. The Publisher says that it prefers to publish letters on local issues, but also publishes letters on national newsworthy or topical items. The Publisher adds that the subject it receives most letters on is local and national politics. The Publisher states that the editor always has final oversight of the Island Soapbox page before it is published; in the event of their absence, two staff members would take this role.
- 4.4. Regarding the letter complained of, the Publisher clarifies that the reader is a regular correspondent and often, but not always, critical of the Conservative Party. The Publisher states that when it asked the reader if they were willing to disclose their identity to the Complainant, who had requested a copy of the original letter, the reader did not wish to do so. In consideration of the reader's request, the Publisher provided redacted copies of the original letter and of its subsequent exchanges with the reader.
- 4.5. The Publisher states that both its editor and another member of staff carefully watched the recording of the Politics Live programme featuring the Complainant before deciding to publish the reader's letter. The Publisher says that it did so to ensure the accuracy of the comments made in the letter regarding the Complainant's behaviour.
- 4.6. The Publisher notes that although the Complainant complained on the grounds of Privacy (which has not been referred to the Regulatory Committee) and Discrimination, he has not disputed the accuracy of the reader's description of his behaviour. The Publisher refers to Clause 1.2 – Accuracy (guidance note 1.2.4):

*While entitled to a reputation, politicians must demonstrate greater tolerance to criticism than ordinary members of the public.*

- 4.7. Regarding Clause 4.1, the Publisher does not accept that the letter refers to the Complainant's health, arguing that it clearly refers to the Complainant's behaviour during the TV broadcast. The Publisher refers to the description of 'couldn't stop fidgeting, checking his phone under the table and looking skyward', as well as 'his discombobulated performance', as indicators of behaviour rather than health. The Publisher states that the reader did not claim that the Complainant had ADHD, but expressed the

opinion that his behaviour was likened to symptoms associated with ADHD.

- 4.8. The Publisher claims that the phrase 'suffering from ADHD' is used by some NHS Trusts, ACAS, the Royal College of Psychiatrists, and charities working in the field such as ADHD Embrace. The Publisher adds that the NHS.uk website lists the possible symptoms of ADHD in adults. The Publisher finds the reader's letter to be a reasonable and fair summary of these symptoms listed by the NHS and does not accept that reporting on these symptoms would have a negative impact on people with ADHD.
- 4.9. The Publisher also notes that Clause 4.1 relates to the treatment of individuals, not groups. The Publisher does not find that comparing the behaviour of a public figure on a TV broadcast to known symptoms of a medical condition is unreasonable.
- 4.10. The Publisher notes that while health is included as a relevant characteristic under the Standards Code, providing greater protection against discrimination than the Equality Act 2010, it does not cover behaviour. The Publisher claims that the complaint does not engage any part of the Discrimination clause, as the Complainant has not supplied details of any characteristic listed under Clause 4.1 which might explain his behaviour during the TV broadcast.
- 4.11. The Publisher submits that the starting point for interpreting discrimination is outlined under Section 13(1) Equalities Act 2010, which states the following:

*A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
- 4.12. The Publisher refers to guidance note 4.1.2 which states that 'characteristics are a person's identifying features'. The Publisher argues that in the absence of any health characteristic disclosure, it cannot agree that it has breached the Discrimination clause.
- 4.13. The Publisher contends that even if the letter had referred to the Complainant's health and he had confirmed the existence of a health characteristic, it would not engage the Discrimination clause as Clause 4.2

allows for reference to a characteristic should it be directly relevant to a story.

- 4.14. In response to the Complainant's argument that publication of the letter may result in his constituents losing confidence in him and his reputation being damaged, the Publisher contends that it was the Complainant's own actions on a national TV programme that caused its reader to conclude that his behaviour was 'bizarre'. The Publisher alleges that there have been many similar online comments regarding the Complainant's behaviour, including some published on the Complainant's own social media accounts and those of the BBC's Politics Live programme.
- 4.15. The Publisher argues the suggestion that someone's views and opinions should be censored because they mention an individual's health would be a disproportionate restriction on freedom of expression.
- 4.16. The Publisher says that publication of the letter was not an attempt to undermine the Complainant's reputation, arguing that its Island Soapbox page is clear that the letters published represent the views of their readers. The Publisher argues that while it is always careful to respect and uphold the Standards Code, its readers deserve a platform for their views and opinions. The Publisher refers to the following as stated under Clause 1.2 – Accuracy (guidance note 1.2.2):

*Opinion includes beliefs, judgments, evaluations, predictions, moral judgments, critical assessments, feelings, or the expression of a worldview.*

- 4.17. Regarding the Complainant's statement that the published letter is 'of a personal and private nature', the Publisher responds that the information published is its reader's opinion of the Complainant's behaviour on a nationally broadcast TV programme that he chose to appear on.
- 4.18. In response to the Complainant's argument that negative letters are frequently published about him, the Publisher says that it can only publish the letters it receives and suggests it is rare for those who are happy with the status quo to write to newspapers. The Publisher acknowledges that many letters it receives are critical of the Conservative Party and of Mr Seely in particular. The Publisher argues that, although not under an obligation to be impartial, it has endeavoured to strike a political balance on its letters page and, through prominent local Conservatives, has

encouraged residents who are supportive of the Conservative party and/or Mr Seely to write in to IW Observer.

## **5. Compliance**

- 5.1. IW Observer fully complied with the requirements of the Impress Regulatory Scheme (Paragraph 3.2) by acknowledging the complaint within the 7 calendar days and issuing a final decision letter within 21 calendar days.

## **6. Analysis and Findings**

- 6.1. Clause 4.1(c) of the Impress Standards Code states that publishers must not make prejudicial or derogatory reference to anybody based on their health. The Committee accepted that the Complainant is a directly affected party for the purposes of this clause. The Committee considered whether the letter concerned the Complainant's health or only his behaviour, which would not be a recognised characteristic under Clause 4.1. The Committee noted that while T Smith's recounting of the Complainant's actions on Politics Live appear to be in relation to his behaviour, by advising the Complainant to 'speak with his GP' for example, linking the behaviour to ADHD and its symptoms, and headlining the letter "Is Our MP OK?", the ordinary, reasonable reader would have been left with the impression that the Complainant's behaviour might have been the result of a health condition. The Committee therefore determined that the letter concerned both the Complainant's behaviour and his health, and as a result the complaint engaged Clause 4.1(c).
- 6.2. The Committee considered whether any descriptions of the Complainant's possible health were derogatory with reference to Clause 4.1(c). The Committee considered that the definition of 'derogatory' amounted to having the effect of lowering in honour or estimation, diminishing or disparaging the subject of the comment. The Committee noted that Smith had drawn attention to symptoms associated with ADHD, and how the disorder could impact upon a politician's ability to act rationally and perform in public life. The Committee specifically cited Smith's view that the disorder 'probably doesn't go hand in hand when it comes to making sensitive assessments and balanced decisions on the Foreign Affairs Select Committee', a committee of which the Complainant is a member.



The Committee determined that the ordinary, reasonable reader would be left with the impression that the Complainant's health or health condition could negatively impact on his ability to discharge his functions as a Member of Parliament, and that this was derogatory of him.

- 6.3. The Committee concluded that while the letter made derogatory reference to the Complainant based on his health, it was not prejudicial against people with ADHD overall.
- 6.4. Based on this finding, the Committee turned to broader considerations and determined that there is an overwhelming presumption in favour of freedom of expression in relation to the questioning of politicians' or public officials' suitability for holding public office. The right to freedom of expression is a protected right under Article 10 of ECHR and a right which underpins the Standards Code. The Committee felt that this right extends to speculation on the physical or mental health of a politician and how this might impact upon their ability to perform their duties.
- 6.5. The Committee recognised that the speculation voiced in the letter might have been distressing to the Complainant and damaging to his reputation for some of his constituents. However, any potential breach of the Code in this instance was eclipsed by the right to freedom of expression. The Committee therefore did not uphold the Complaint. However, each case must be judged on its own merits, and this finding does not presuppose that prejudicial or derogatory references to people holding or seeking public office would always be permissible despite the requirements of Clause 4.1.