

# **ADJUDICATION**

**GREG CALLUS** 

**EDITORIAL COMPLAINTS COMMISSIONER** 

**Financial Times Limited** 

# THE COMPLAINT

- 1. On 1 July 2016, Mr Anthony Kay complained to the *Financial Times* in respect of two separate articles one written in May, the other in June which both featured the same person whom I shall call "Mr A".
- 2. The June article, written by journalist X, made allusion to the fact that Mr A was a fan of the football club Tottenham Hotspur (nicknamed 'Spurs').
- 3. The May article, written by journalists Y and Z, mentioned in passing that Mr A was friends with a well-known individual ("Mr B") who is known to be Jewish, that the pair both grew up in "north London" and have a shared love of football (they both support Spurs).
- 4. Mr Kay's complaint was that these were 'coded reference[s]' designed to 'snidely identif[y]' Mr A as Jewish, which (if that were indeed the case) would not otherwise have been apparent from details in the articles (he noted that Mr A did not have an obviously Jewish surname). He considered the references to the football club and North London to be 'nugatory and irrelevant', such that their inclusion could not otherwise be justified.
- 5. I think it fair to say that the FT gave this complaint fairly short shrift, describing it as 'unfounded and without merit'. Senior Editorial Counsel responded the same day to say that:
  - 5.1 the commonalities complained of in the May article, which were included to explain the good relationship between Mr A and Mr B were 'unobjectionable biographical details which have no snide, pejorative or discriminatory meaning'; and
  - 5.2 the reference to the football club in the June article was relevant in that it played on a footballing metaphor that had been introduced by comments made by Mr A himself.
- 6 Mr Kay was alerted of his right to appeal to me, and did so by email the same day.

# FRAMEWORK

- 7 Where a complainant does not articulate the part of the FT Editorial Code of Practice<sup>1</sup> under which their complaint is made, it is my first function to determine the basis on which I shall consider whether there has been any breach. In this case, it seems to me to be most obviously a complaint under Clause 12 (discrimination) of the IPSO Editors' Code which is incorporated into the FT Editorial Code of Practice<sup>2</sup>.
- 8 Clause 12 (Discrimination) reads as follows:

12.1 The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.

12.2 Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

- 9 This is a somewhat unusual complaint in that it is a complaint under Clause 12 by someone who is not the subject of the article, or directly affected by it. Mr A has asked me to make quite clear in my Adjudication that he is not the complainant nor has any connection to the complaint, and I am happy to do so. Accordingly, had this appeared in an IPSO-member publication, it would not have been dealt with at all: IPSO can only consider third-party complaints (i.e. from those not directly affected by the article) under Clause 1 (accuracy)<sup>3</sup>.
- 10 I consider that it is irrelevant as to whether or not Mr A is, in fact, Jewish, although it might be relevant whether the journalists X, Y and Z knew or believed him to be Jewish at the time of publication. I have proceeded on the presumption that there is no inaccuracy as to the fact that Mr A grew up in North London and supports Tottenham Hotspur.

<sup>&</sup>lt;sup>1</sup> <u>http://aboutus.ft.com/files/2016/07/FT-Editorial-Code-03.07.16.pdf</u>

<sup>&</sup>lt;sup>2</sup> Although other clauses could be said to apply (hypothetically Clauses 1 (accuracy), 2 (privacy) or 3 (harassment)), I think these would only arise if the references in the articles bore the meaning that Mr Kay contends. As such, breach of Clauses 1, 2 or 3 would only arise if there was already a breach of Clause 12, which would therefore only matter if they gave rise to additional remedies.

<sup>&</sup>lt;sup>3</sup> <u>https://www.ipso.co.uk/make-a-complaint/</u>

- 11 I consider this complaint is better dealt with under Clause 12.1 than Clause 12.2. Although I accept entirely that 'North London' is a part of the UK which famously has a large Jewish population<sup>4</sup>, and that Tottenham Hotspur is a club which has a notable Jewish element to its heritage<sup>5</sup>, neither could properly be described as 'details of an individual's ... religion'. There are plenty of Gentiles who live in the capital's northern suburbs, and even more who support Spurs. However, if Mr Kay was correct, and those biographical details were intended to convey that Mr A was Jewish, I have no difficulty in holding that that would *per se* be a 'prejudicial or pejorative reference'. The gratuitous identification of a person as being Jewish is, in my view, intrinsically capable of being an anti-Semitic act: see, for example, the story of the recently uncovered far-right Chrome Extension<sup>6</sup>.
- 12 As to the mental element of Clause 12, it appears to presume that the author or editor is at least aware that they are making a reference or giving details to the subject's protected characteristics. I take the view that they do not have to intend that the reference (under 12.1) is prejudicial or pejorative, but I also think they do have to intend to make the reference (i.e. it is a strict liability offence, not an absolute liability offence). Similarly, the use of masculine pronouns in respect of a transgender man who prefers a gender-neutral pronoun such as 'Mx' might only be capable of breaching the clause if the author or editor knew that the subject was transgender: they could not be guilty of giving an irrelevant detail as to the subject's gender identity if they were unaware that person was transgender: in such circumstances, they would not have been wilfully giving a 'detail' about 'gender identity' by the mere use of personal pronouns. However, as in law, subjective recklessness, but not negligence, suffices as to any intention element.

<sup>&</sup>lt;sup>4</sup> By way of example, all but one of the UK's community *eruvin* are in North London, and – depending on how the map is drawn – North London has almost as many synagogues as the rest of England combined. I'm not sure, however, how well-known this is to non-Jews outside of London.

<sup>&</sup>lt;sup>5</sup> Tottenham Hotspur FC enjoyed footballing success around the turn of the Twentieth Century, when England saw its first major post-emancipation surge in Jewish immigration from Russia and Eastern Europe. Many Jewish immigrants, then living in the East End of London, preferred Spurs to the local West Ham United (Arsenal, now of North London, was located in Plumstead until 1913). When Spurs was the target of anti-Semitic abuse from rival fans in the 1960s and 1970s, many Spurs fans (Jewish and Gentile) united in the face of hostility, and began to call themselves "the Yid Army", a term which persists to the present day in the face of continued anti-Semitic abuse at English football grounds (such as hissing, a reference to the gas chambers in Nazi concentration camps). For more details see: <u>http://www.spiegel.de/international/europe/football-why-tottenham-and-ajax-fanshave-a-jewish-identity-a-926095.html</u>

http://gizmodo.com/what-happened-with-that-anti-semitic-chrome-extension-1780420435

#### INVESTIGATION

- 13 As I explained to Mr Kay at the outset, this was an allegation of such seriousness that I was compelled to treat it with the utmost gravity and I was adamant that my approach would err towards being thorough over being quick. I am grateful to Mr Kay for his patience. Summer vacations have intervened, which has meant it has taken me five weeks to produce this Adjudication. In that time, I had many fruitful conversations, most notably with:
  - 13.1 The FT journalists who wrote the May and June articles;
  - 13.2 The FT's Senior Editorial Legal Counsel, Nigel Hanson;
  - 13.3 The FT Editor, Lionel Barber;
  - 13.4 Mr A (who communicated his views by way of his office, whom I would like to thank for their support and co-operation); and
  - 13.5 Various lawyers and journalists whose views I gathered without having reference to any or all the facts of this particular case.
- 14 As to the June article, I was told that the journalist X had never considered whether Mr A was Jewish before the complaint was received, and so had no view on the question when the article was published. Indeed, X was insulted and aggrieved that such a serious accusation had been made, and insisted vociferously that the only reason for mentioning the football team was because the *leitmotif* of football had been introduced higher up by the footballing metaphor introduced by Mr A's own newsworthy comments. It had not occurred to X or any other editor, at the time of publication, that the reference might be problematic.
- 15 As to the May article, one of the journalists did now believe that Mr A was Jewish, but could not say whether that belief had existed at the time of publication. The journalist denied that the references were to being Jewish or otherwise prejudicial, saying that had the club been Chelsea FC and the home actually in West London, then 'west London' and 'Chelsea FC' would have been the references in the text. The details were partly biographical colour, but they also served to illustrate the close personal relationship between Mr A and Mr B, which was clearly newsworthy. Again, neither the authors nor their editors expressed any concern at the time of publication.

### CONCLUSION

- 16 After much deliberation and consultation, I have decided that there has not been a breach of Clause 12.1 of the FT Editorial Code of Practice.
- 17 I believe, and have had no reason to disbelieve, the protestations of the journalists in question that they had not intended the references to 'north London' and Tottenham Hotspur to be references to Mr A's religion (if indeed he is Jewish). Although it would be possible for there to be a breach by recklessness i.e. if such references, whether by volume or nature, inevitably caused readers to draw that inference, and the lack of intent could only be explained by the author and editor being utterly uncaring as to whether such inference would be drawn this is not such a case. Neither growing up in North London or being a Spurs fan are <u>intrinsically</u> connected with Judaism, and I do not think their inclusion (and the subsequent level of risk of the identification of Mr A as Jewish) could be described as 'reckless'.
- 18 However, I was somewhat concerned that no-one in the heavy editorial process in operation at the *Financial Times* spotted the risk of a complaint such as this, in the case of either the May or June article. I do not say that this fell below the (objective) standards expected of the FT, but a newspaper that was *hyper*-sensitive to the risk of an apparent-if-accidental anti-Semitic reference, might have asked whether particular care needed to be taken in respect of these particular biographical details. Of course, any realisation and assessment against the required level of care is premised on the author and/or editor knowing that the subject of the article is in fact Jewish: that was not the case of all involved here. I emphasise that the appropriate degree of sensitivity to such risks is a matter for Editorial, not for me.
- 19 Whilst I have found no breach of Clause 12, it should be obvious that I do not entirely agree with the original first-instance assessment that this complaint was 'unfounded and without merit'. Although the complaint was not remotely substantiated in respect of the alleged <u>motives</u> for the reference – even taken at its highest, this was an unintended inference and I have found no basis for the suggestion of any anti-Semitic intent – I consider that there <u>was</u> a *prima facie*

case of an unintended breach of Clause 12 that justified fuller appellate consideration.

20 This complaint has also forged an opportunity for me to have a fuller conversation about the risk of anti-Semitism (primarily the risk of unintended repetition of tropes in the context of financial journalism) with the FT Editor, Lionel Barber. He has given this question a great deal of thought, not only as a result of this complaint but throughout his time as editor, and he is alert to that risk and attuned to potential infractions, however innocently meant. I am grateful, therefore, to Mr Kay for raising such an important issue and for giving the FT a renewed opportunity to keep these questions under review, as part of a commitment to pursuing the highest journalistic standards.

GREG CALLUS Editorial Complaints Commissioner *Financial Times* 6 August 2016

## **POST-SCRIPT**

Given that this complaint concerned the gratuitous and unnecessary identification of a subject's religion, and that I needed to explain the precise references and to identify the religion in question in order for this Adjudication to make sense, I considered it would be perverse to identify the subject in the Adjudication. His privacy and that of his family could easily be respected without detracting from my attempts to explain my reasoning in respect of any alleged breach of the FT Editorial Code.

The subject of the two articles therefore became "Mr A", and as I explain, it was not relevant to my determination to discover whether he was in fact Jewish or not. Having determined not to identify Mr A by name, it would a;sp have been perverse to identify the two articles, whether by headline, date of publication, or author. Accordingly, the May and June articles are said to have been written by X, Y and Z.

The sole reason for not naming the journalists is to make it fractionally harder for the casual reader to identify Mr A. There is no question of anonymising journalists against whom a complaint is made on the basis of their own privacy rights: that would not be consistent with the FT's commitment to transparency. Had I found a breach of Clause 12, whether intentional or not, I would have had to name the journalists in question, even at the risk of making it marginally more likely that Mr A would be identified as a result.