

Naomi Campbell, Privacy and Data Protection

On 27th March 2002 the High Court awarded £3,500 damages to Naomi Campbell following the publication of an article and photographs in the *The Mirror* about her leaving a meeting of Narcotics Anonymous. The trial judge ruled that the supermodel had established she was entitled to damages for both breach of confidence and under the Data Protection Act 1998. (*Campbell v Mirror Group Newspapers*).

This case is similar to one heard last October when Newham Council agreed to pay a disabled girl £5,000 in damages after using her photograph without her permission. The child was shunned after friends saw her face on the front of a brochure setting out Newham's Aids strategy. Her legal action cited breach of confidence as well as the Data Protection and Human Rights Acts 1998.

The significance of the Naomi Campbell case, apart from being the most high profile case citing the Data Protection Act (and perhaps having the most glamorous subject) lies in the fact that it is the first time that a trial court has awarded compensation under the Data Protection Act 1998. The Newham case did not receive much judicial comment due to the terms of the settlement being agreed between the parties outside court.

In *Campbell* the trial judge, Mr Justice Morland, stated that even celebrities are 'entitled to some space of privacy'. The judge said that inevitably a top fashion model such as Campbell would be the subject of media interest. He assumed that she expected and, to a degree, welcomed, some media attention and intrusion when she was engaged in public promotions and appearances.

He said that Campbell had lied about her drug addiction in interviews. Her assertions to him in evidence that a 1997 hospital visit in Gran Canaria was caused by an allergic reaction rather than a drug overdose were “deliberate lies”.

The judge said: “Although many aspects of the private lives of celebrities and public figures will inevitably enter the public domain, in my judgement it does not follow that even with self-publicists every aspect and detail of their private lives are legitimate quarry for the journalist.”

To conform with the European Convention of Human Rights, the media should respect information about the private lives of celebrities, certainly “sensitive personal data”, unless there is an overriding public interest to publish. “Clearly *The Mirror* was fully entitled to put the record straight and publish that her denials of drug addiction were deliberately misleading.”

On the Data Protection Act, the judge said that the information contained in the *Mirror* article as to the nature of, and details of, the therapy that Campbell was receiving, including the photographs with captions, was clearly related to her physical or mental health or condition and was therefore “sensitive personal data” as defined by the Act. He ruled that *The Mirror* did not have one of the legitimising conditions in Schedule 3 of the Act to enable it to lawfully publish such material.

The case also shows that the courts will use the Human Rights Act 1998 and article 8 of the European Convention on Human Rights to protect individuals privacy. This was not the case prior to the Human Rights Act (see *Gordon Kaye v Robertson* (1991)). Just three months after that legislation was implemented, Michael Douglas and Catherine Zeta Jones took *Hello!* magazine to court over the publication of unauthorised wedding photos. The magazine ran pictures of the couple's wedding in New York three days before its rival, *OK!*, with which the stars had struck a £1m deal for exclusive coverage. Although there was no full trial on the issue, the Court of Appeal said that the couple were likely to succeed at trial in claiming a breach of privacy by *Hello!*. Lord Justice Sedley said that the law had to protect those "who find themselves subjected to an unwarranted intrusion into their lives."

All these cases are a further reminder to local authorities that they must be aware of privacy issues, especially when using photographs of people and when processing sensitive personal data as defined by the Act. The majority of cases in this area will be brought by celebrities but you don't have to be a media darling to take advantage of the principles established by them. The man or woman on the Clapham omnibus is equally protected.

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