

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 121/93

Dated the 16th day of September 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

COLLEEN MCCLOY AND 14
OTHERS
of Ranfurly

Broadcaster
CLASSIC GOLD RADIO
of Ranfurly

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

DECISION

Introduction

In a broadcast at 8.00pm on 5 May 1993, the Station Manager of Classic Gold Radio in Ranfurly announced that two weeks previously one named announcer, the Country Cowboy, had been suspended, but not dismissed, as his actions had caused the station to falter. His future was described as "shaky" until he had met with the station management.

Ms McCloy and 14 others complained directly to the Broadcasting Standards Authority that staff matters were not a suitable topic for public broadcast and that the item had breached the employee's privacy. The complaint under s.8(1)(c) of the Broadcasting Act 1989 was confined to the privacy issue.

The recently appointed temporary station manager advised the Authority that he had suspended one of the voluntary announcers as a temporary measure to deal with some staff conflict and had broadcast the statement complained about to ensure that the community was correctly informed of his actions. With hindsight, he expressed regret and apologised for the broadcast. In reply, Ms McCloy argued that both a personal and broadcast apology was required.



Decision

The members of the Authority have listened to a tape and have read a transcript of the broadcast complained about. They have also read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

At 8.00pm on Saturday 5 May, the Acting Station Manager of Classic Gold Radio in Ranfurly broadcast the following statement:

The Country Cowboy has not been dismissed. He was stood down by me about a fortnight ago after it is alleged his actions caused this station to falter and very nearly fall. He has not come to a meeting we organised and until he comes in from the cold his future with this organisation must be considered to be shaky at best.

Ms McCloy and 14 others complained that the broadcast, because it dealt with a staff matter, was not an issue which should be the subject of a public broadcast and, accordingly, breached the announcer's privacy. The complaint was made directly to the Authority, as is allowed for privacy complaints, under s.4(1)(c) of the Broadcasting Act 1989. The section requires broadcasters to maintain standards consistent with:

(c) The privacy of the individual:

Mr Rutherford, the Station Manager who made the announcement, explained that the broadcast was a damage control measure because the rumours being spread by the announcer and his friends were damaging the station's community goodwill and credit worthiness.

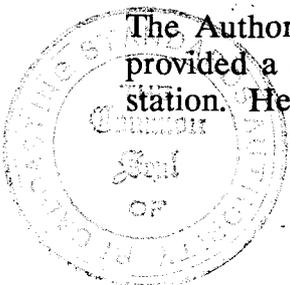
In his initial comment to the Authority, Mr Rutherford wrote:

In hindsight I regret taking this step as I now accept that both in terms of the Broadcasting Act and in the interests of the station such matters would best be dealt with privately and internally within the station.

I apologise for any difficulties which may have resulted from my broadcast and I am pleased to advise that the station's internal difficulties appear to have been resolved and that in future there will be no reasons for any further complaints to be made in respect of this station.

In response, Ms McCloy maintained that the part of the broadcast about the announcer's non-attendance at the meeting was inaccurate and that both a personal and broadcast apology was appropriate. The Authority also received a letter from the announcer (The Country Cowboy) who claimed that his work career had been damaged by the broadcast.

The Authority sought the broadcaster's response to these specific comments and he provided a detailed account of the problems between the named announcer and the station. He stated:



We had made attempts to discuss the situation privately with the announcer, but he seemed totally unprepared to co-operate with us, preferring to voice his misguided and misinformed opinion in several hotels and a local darts club.

He presented a reasonably detailed account of the events preceding the broadcast, adding that the problem had since disappeared.

The Authority's task was to decide whether or not the broadcast constituted an invasion of privacy in contravention of s.4(1)(c). Ms McCloy later challenged the accuracy of some of the broadcaster's comments. The accusation about inaccuracy has been denied by the broadcaster other than to acknowledge that the weather forecast for frost that evening was wrong. While the Authority will give due consideration to these matters when determining the privacy complaint, it records that it is legislatively confined to deciding only the privacy aspect of the complaint as complaints on all other grounds must be made first to the broadcaster.

There were two other points raised by the broadcaster which were noted by the Authority but, because they were not relevant to the decision, were kept distinct. The first was that the broadcaster had apologised to the Authority for any difficulties which resulted from the broadcast, and secondly, with hindsight, regretted having made the broadcast.

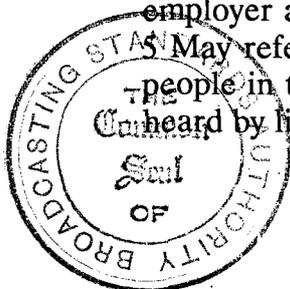
In an Advisory Opinion about privacy issued to broadcasters in June 1992, the Authority listed five privacy principles, noting by way of introduction:

- These principles are not necessarily the only privacy principles that the Authority will apply;
- The principles may well require elaboration and refinement when applied to a complaint;
- The specific facts of each complaint are especially important when privacy is an issue.

The relevant principle raised by this complaint states:

- i) The protection of privacy includes legal protection against the public disclosure of private facts where the facts disclosed are highly offensive and objectionable to a reasonable person of ordinary sensibilities.

Applying that principle, the Authority noted that the broadcast amounted to "public disclosure" of certain facts. However, the Authority was not entirely clear from the circumstances whether or not the information disclosed was "private facts". It was of the opinion that, as a general rule, staff matters are usually concerns which are kept to the employer and the employee and, possibly, to some close associates. The broadcast on May referred to a staff matter but it was an issue about which at least a number of people in the town of Ranfurly were aware. However, the broadcast would have been heard by listeners with no prior knowledge and who would be hearing about these staff



matters for the first time. In those circumstances, the probable conclusion is that the facts disclosed were sufficiently private to fall within the ambit of privacy principle i).

However, that principle also requires that the facts disclosed be "highly offensive and objectionable to a reasonable person of ordinary sensibilities". The Authority appreciated that there could well be some facts or some aspects of the broadcast and the broadcaster's role in the community of which it was not aware. However, while it accepted that the facts disclosed by the broadcast could be described as "offensive", it was not prepared to conclude that they were sufficiently so to amount to a breach of s.4(1)(c) of the Broadcasting Act. Moreover, the Station Manager's apology and expression of regret will be further publicised by the issue of this decision and the announcer's complaint that his work career had been damaged can be pursued elsewhere if he so chooses.

For the reasons set forth above, the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson



16 September 1993

Appendix

Ms McCloy's and 14 others Complaint to the Broadcasting Standards Authority

In a letter received on 24 May 1993, Ms Colleen McCloy of Ranfurly and 14 others complained to the Broadcasting Standards Authority under s.8(1)(c) of the Broadcasting Act 1989 about a broadcast on Classic Gold Radio in Ranfurly at 8.00pm on 5 May.

Ms McCloy stated that the Station Manager had broadcast the following announcement:

The Country Cowboy has not been dismissed. He was stood down by me about a fortnight ago after it is alleged his actions caused this station to falter and very nearly fall. He has not come to a meeting we organised and until he comes in from the cold his future with this organisation must be considered to be shaky at best.

As staff matters should not be subject of a public comment, she described the broadcast as a breach of the announcer's privacy.

Classic Gold Radio's Response to the Broadcasting Standards Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 24 May 1993 and Classic Gold's reply, dated 4 June, was received on 13 July. The broadcaster's lawyer in a covering letter apologised for the delay in forwarding the response.

The Station Manager (Mr M P Rutherford) stated that Classic Gold, a small community station, had recently experienced some conflicts among staff members. To avoid the attenuation of community goodwill and as a recently appointed temporary station manager, he had suspended a voluntary announcer. The announcer's friends had spread the rumour, among others, that he had been dismissed and the station's credit worthiness had been affected.

Mr Rutherford continued:

In the interests of resolving the station's problems and again as an urgent damage control measure, I made a broadcast to clarify the situation which was being discussed widely within the community. At the time I made the broadcast the situation was urgent and I was relying on the close-knit community radio audience accepting the broadcast as a genuine effort to keep them informed and prevent any further unfortunate developments.

He added:



In hindsight I regret taking this step as I now accept that both in terms of the Broadcasting Act and in the interests of the station such matters would best be dealt with privately and internally within the station.

I apologise for any difficulties which may have resulted from my broadcast and I am pleased to advise that the station's internal difficulties appear to have been resolved and that in future there will be no reasons for any further complaints to be made in respect of this station.

Ms McCloy's Final Comment to the Authority

When asked if she wished to comment on Classic Gold's response, in a letter dated 26 July 1993 Ms McCloy maintained that it was inaccurate when it claimed that the announcer had failed to turn up at a meeting with Mr Rutherford. She stated that the announcer had telephoned Mr Rutherford to explain that he was unable to attend the meeting.

Maintaining that the broadcast was an invasion of the staff member's privacy, she wrote:

We believe that what is required is a personal apology to the staff member concerned and also, a pre-advertised public apology on air.

Further Correspondence

The Authority received a letter from Mr Graeme Wilson dated 28 July 1993. He said that he was the announcer - the Country Cowboy - referred to in the 5 May broadcast and maintained that he had done nothing which could justify Mr Rutherford's comment that his actions had almost caused the downfall of the station. Complaining that Mr Rutherford's actions had damaged him, he said that his lawyer had written to Mr Rutherford but had not yet received a reply.

He asked the Authority to order a written and broadcast apology to him from Classic Gold Radio.

In response to the Authority's request for a comment on the letters from Ms McCloy and Mr Wilson, in a reply dated 22 August 1993 Mr Rutherford provided a reasonably detailed account of the events leading up to the 5 May broadcast.

The announcer (Mr Wilson) and his associates, he began, had brought the issue into the public arena and:

After months of attempts by various staff members to dissuade the announcer from discussing matters publicly (much or all of what was being said was untrue), my broadcast was made as a last resort to save the station which was under great pressure to remain on air.



We had made attempts to discuss the situation privately with the announcer, but he seemed totally unprepared to co-operate with us, preferring to voice his misguided and misinformed opinion in several hotels and a local darts club.

Emphasising the pressure that the announcer and his associates were placing on the station's programme director at the time, Mr Rutherford referred to the station's past achievements and to the increased morale apparent since the broadcast. Disputing the factual situation as outlined in Ms McCloy's letter (other than to acknowledge that his forecast for frost was wrong), Mr Rutherford enclosed copies of two earlier letters to the announcer in which attempts had been made to resolve the problems with that particular announcer. The broadcast, he argued, had been necessary at the time to save the station from collapse.

In response to Mr Rutherford's letter, and noting that the issues had become somewhat clouded, Ms McCloy stated that the complaint arose because a staff dispute was dealt with on the public airways and a person's privacy had been invaded.

In another letter dated 3 September, two Ranfurly business proprietors said that letters in support from them supplied to the Authority by the broadcaster had supported an earlier application for funding - not the broadcaster's action in the current dispute or its current operations.

