



**FINANCIAL  
TIMES**



## **ADJUDICATION**

by

**GREG CALLUS**

**EDITORIAL COMPLAINTS COMMISSIONER**

**Financial Times Limited**

1. This is an Adjudication of a complaint by Mr Mauro Libi Crestani (“the Complainant”), submitted to me by his solicitors Shutts & Bowen LLP of Miami, Florida (“Shutts”) on 17 August 2017. The complaint letter comes to 12 pages, and is extremely thorough. Rather than set it out in full, I append it to this Adjudication as **Appendix A**, which has the benefit of setting out the Complainant’s position on the facts in his own terms.
2. The complaint concerns an article (“the Article”) by John Paul Rathbone (“the Journalist”). The online version – which remains available to read online at <https://www.ft.com/content/25055a2a-6332-11e7-91a7-502f7ee26895> – was titled “*How Venezuela’s ‘Bolivarian bourgeoisie’ profits from crisis*” and was published on FT.com on 13 July 2017 (see **Appendix B**). The Article also appeared in the print version of the FT on Friday, 14 July 2017, with the headline “*Profits from Empty Shelves*” (**Appendix C**). Part of the FT’s series ‘The Big Read’, the Article is a mid-form piece, weighing-in around 2000 words.
3. The first complaint came on 13 July 2017 from the Complainant via his public relations firm, Comunica ASL, directly to the Journalist (but copying the Editor, CEO and Managing Editor). It is rather strongly worded, but relatively concise and does not specify exactly what in the article is said to be untrue or otherwise actionable. It did, however, allege malice.
4. Shutts then sent a much fuller complaint on ‘Grupo Libi’ notepaper to the FT Editor, Lionel Barber, on 23 July 2017. Lionel Barber wrote a response dismissing the bulk of the complaint, subject to some minor clarifications, on 28 July 2017.
5. A month later, the complaint was appealed to me by letter of 17 August 2017. The complaint was fuller still, and articulated specifically in terms of breaches of the FT Editorial Code of Practice (which is not necessary, but always welcome).
6. It will be immediately apparent that this Adjudication has taken me several months. This is partly due to the extensive range and complexity of several of the complaints, the lengthy correspondence I have had with the FT about the Article and my approach to adjudicating it under the Code. It is also reflective of the fact that this complaint coincided with several others of great seriousness, and sadly greater time-sensitivity. I warned Shutts of this in the Autumn, but nonetheless, the Complainant has my apologies for not being able to give this Adjudication more speedily.

## FRAMEWORK

7. I must break with my recent practice of setting matters out in full. This complaint is too long and too complex to allow for that approach. What follows is a mere summary of the complaint set-out in full at **Appendix A**:
- a. Breach of Clause 1.1 (Inaccuracy) of the IPSO Code, which is appended to the FT Editorial Code of Practice;
  - b. Breach of Clause 1.4 (Inaccuracy) of the IPSO Code, on the basis of failure to distinguish between comment, conjecture and fact;
  - c. Breach of the obligations under the Public Interest clause of the IPSO Code;
  - d. Breach of Articles 1(6) and 1(7) of the FT Editorial Code in relation to the protection of rights of individuals; and
  - e. Breach of Clauses 2.1-2.2 (Privacy) and Clause 6.5 (Children) of the IPSO Code.
8. A preliminary matter: I am adjudicating under the FT Editorial Code of Practice incorporating the IPSO Code *as it stood as of 17 August 2017*. There have been some (not-particularly-material) changes to the IPSO Code by the IPSO Code Committee (of which neither I nor anyone else at the FT is a member) which were made as of 1 January 2018, but I don't think any of them are relevant to this Adjudication.
9. Articles 1(6) and 1(7) are part of the pre-amble to the FT Editorial Code of Practice<sup>1</sup> and provide that:

**“Article 1(6)**                      *The FT’s general ethical standards, set out below, are aimed at protecting the rights of individuals and organisations, and also the public’s right to know.*

**Article 1(7)**                      *They should not be interpreted so narrowly as to compromise the FT’s commitment to respect the rights of individuals or organisations, nor so broadly that they constitute an unnecessary interference with freedom of expression or prevent publication in the public interest”*

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<sup>1</sup> FT Editorial Code:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/7f/55/7f55e593-0e9c-447e-8945-89ee919553eb/editorial\\_code\\_of\\_practice.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/7f/55/7f55e593-0e9c-447e-8945-89ee919553eb/editorial_code_of_practice.pdf)

10. Clause 1 of the IPSO Code provides that:

**“1. Accuracy**

- 1.1 *The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.*
- 1.2 *A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and – where appropriate – an apology published. In cases involving IPSO, due prominence should be as required by the regulator.*
- 1.3 *A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.*
- 1.4 *The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.*
- 1.5 *A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.*

11. Clause 2 of the IPSO Code provides that:

**“2. \*Privacy**

- 2.1 *Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
- 2.2 *Editors will be expected to justify intrusions into any individual’s private life without consent. Account will be taken of the complainant’s own public disclosures of information.*
- 2.3 *It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.”*

12. Clause 6 of the IPSO Code provides that:

**“6. \*Children**

- 6.1 *All pupils should be free to complete their time at school without unnecessary intrusion.*
- 6.2 *They must not be approached or photographed at school without permission of the school authorities.*
- 6.3 *Children under 16 must not be interviewed or photographed on issues involving their own or another child’s welfare unless a custodial parent or similarly responsible adult consents.*

- 6.4 *Children under 16 must not be paid for material involving their welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.*
- 6.5 *Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life."*

13. The concluding Public Interest Clause of the IPSO Code says that:

***"The public interest***

*There may be exceptions to the clauses marked \* where they can be demonstrated to be in the public interest.*

*1. The public interest includes, but is not confined to:*

- i. Detecting or exposing crime, or the threat of crime, or serious impropriety.*
- ii. Protecting public health or safety.*
- iii. Protecting the public from being misled by an action or statement of an individual or organisation.*
- iv. Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.*
- v. Disclosing a miscarriage of justice.*
- vi. Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.*
- vii. Disclosing concealment, or likely concealment, of any of the above.*

*2. There is a public interest in freedom of expression itself.*

*3. The regulator will consider the extent to which material is already in the public domain or will or will become so.*

*4. Editors invoking the public interest will need to demonstrate that they reasonably believed publication – or journalistic activity taken with a view to publication – would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time.*

*5. An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16."*

14. The reference in the pre-amble to the concluding (and un-numbered) 'Public Interest' clause indicates that it applies to asterisked Clauses 2 (Privacy); 3 (Harassment); 5 (Reporting Suicide); 6 (Children); 7 (Children in sex cases); 8 (Hospitals); 9 (Reporting of Crime); 10 (Clandestine devices and subterfuge); and 16 (Payment to Criminals).

15. It will be immediately apparent that I need to somewhat reformulate the complaint from the categories set out in paragraph 7 above. There cannot be a breach of the ‘Public Interest’ clause: it does not impose a free-standing duty (material of no public interest at all can be published if it doesn’t breach one of the operative clauses). However, if considering complaints against asterisked Clauses (such as, in this case, Clause 2 (Privacy) and Clause 6 (Children)) I am directed to have regard to the public interest as defined by the Public Interest Clause, to see if an exception applies.
16. Similarly, in considering whether any Clause of the FT Code has been breached, I must have regard to the careful balancing exercise explained in Articles 1(6) and 1(7). Again, these Articles do not impose a separate duty on the newspaper: they are directions to me in construing the FT Editorial Code and the IPSO Code. By following Articles 1(6) and 1(7), I ensure that my construction of the Code and application to the facts of a particular complaint includes a balancing of fundamental rights and obligations.
17. Therefore, the *operative* obligations, against which I shall assess this complaint to determine whether the FT is in breach, are those in Clause 1 (Accuracy), Clause 2 (Privacy) and Clause 6 (Children). The other aspects of the complaint will be dealt with in the course of adjudicating on alleged breaches of these three Clauses.

## **Clause 2 (Privacy) & Clause 6 (Children)**

### *Article & Submissions*

18. I begin with the simpler and more straightforward element of the complaint: the complaint that the Article’s lede was a breach of the Code by infringing the privacy of the Complainant’s family, including his children.
19. The relevant passage, being the opening three paragraphs of the Article reads:

*“On a Saturday evening in April, Miami’s Four Seasons Hotel hosted a particularly lavish quinceañera – the party traditionally thrown by Latino parents to celebrate the coming-of-age of 15-year-old girls.*

*Outside, visitors watched limousines deliver their charges. Inside, girls in eveningwear teetered on high heels across the lobby, while their consorts wore black tie. Many chattered excitedly in Venezuelan-accented Spanish; Justin Quiles, a reggaeton star, was even rumoured to be playing. Guests said that spirits were high as the teenagers made their way to the Grand Ballroom on the sixth floor.*

*Yet the party's most notable feature was the twin hosts' father, Mauro Libi. This self-described "visionary" has built a remarkable business empire over the past two decades. As well as food businesses in Venezuela, Mr Libi is an owner, shareholder, director or legal representative of some 30 companies across three continents, according to public records reviewed by the Financial Times, including financial services companies in Panama and Spain, a \$7m Manhattan apartment and dozens of Miami-registered companies."*

20. The Complainant's letter of 23 July 2017 first made this complaint, with his fifth complaint being headed: *"Intruding into the private lives of my under-16 daughters without any justification and disrespecting my family"*.

21. The Editor, Lionel Barber, accepted in his response letter of 28 July 2017, a minor inaccuracy, such that 'limousines' in paragraph 2 was amended to read 'luxury cars'. Otherwise, on this aspect of the complaint, he wrote:

*"Finally, you complain of intrusion into privacy. However, the information in the first few paragraphs of the article about your 15-year-old daughters' coming-of-age party is not intrusive and there is no legitimate expectation of privacy in relation to it. The even was held in a public hotel, and the article contains no information that would not have been obvious to onlookers in public areas observing the events around the hotel. The article's writing style is certainly not "tabloid-like", as you say."*

22. The complaint letter from Shutts to me is in the following terms:

*"The intrusions in the private life of Mr Libi's under-16 daughters, without any justification, clearly violate the right to respect for his family and home. The article mocks a family party to the point of showing rejoice [sic] at how "excited" the teenager were, how they were dressed and even what their movements were like. Such interest in portraying the party as extravagant is unbecoming of a publication such as the Financial Times and is at odds with the preferences of its typical audience; additionally, the article's tabloid-like writing style and lack of fact-checking reaches the extreme of untruthfulness when it mentions that guests arrived in limousines when in reality not even the hosts used such means of transportation*

*There is no principle in journalism, not even the public interest, that justifies the publication of details on the private lives of children under 16 years of age, and even less, with statements that are lacking in truth."*

23. I sought, and have received further written submissions (on all issues) from the FT's Senior Editorial Counsel, Nigel Hanson. They were as helpful as they were detailed (which is to say 'very' on both counts). In summary, the party was reported by way of *"observations made from a public highway and public areas of the Four Seasons*

*hotel*". The article does not include the girls' names or photographs or intrusive detail. Mr Hanson also note that the *quinceañera* is "a very public celebration of coming-of-age" more akin to a wedding than a children's birthday party. This event is described as the 'talk of the town': it occurred (at least in part, concerning the descriptions of the teenagers attending) in a "public place with the concomitant hoopla of any large function held at the Four Seasons". I accept the factual basis of these submissions.

## Discussion

24. I have, in previous Adjudication, indicated (as per paragraph 32 of my published Guidance to Policies & Processes<sup>2</sup>) that I will construe the FT Editorial Code in such a way as to accord with the general civil and criminal law as of England & Wales (and to the extent they continue to apply to English law, the law of the European Union and the decisions of the Strasbourg Court on the European Convention on Human Rights).
25. Thus in the *Wessendorff Adjudication*<sup>3</sup>, I relied on English defamation law to determine 'meaning' in a complaint under Clause 1 (Inaccuracy). More pertinently to this Adjudication, in the *PA Adjudication*<sup>4</sup>, I applied the developing jurisprudence on misuse of private information to answer the two key questions:
  - a. Whether the Article 8 ECHR (privacy) is 'engaged' (usually on the basis that the person concerned has a 'reasonable expectation of privacy')? And
  - b. If Article 8 ECHR is engaged, does it outweigh the [newspaper's] Article 10 ECHR right to freedom of expression, having regard to the public interest?
26. This two-stage test is essentially reflected in Clause 2.1 (the wording of which closely mimics Article 8(1) ECHR), Clause 2.2 (reflecting Article 8(2)), and the Public Interest Clause (which applies because of the asterisk on Clause 2) which closely traces the ambit of Article 10 ECHR.
27. The only relevant and operative parts of Clause 6 are Clauses 6.1 and 6.5.

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<sup>2</sup> Guidance to Policies & Processes of the Editorial Complaints Commissioner:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/31/c8/31c8f888-7e54-42f5-88e7-1c06e7a7d12e/editorial-complaints-guidance.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/31/c8/31c8f888-7e54-42f5-88e7-1c06e7a7d12e/editorial-complaints-guidance.pdf)

<sup>3</sup> *Wessendorff Adjudication*, 31 October 2017 at [8], [14]-[15]:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/c9/71/c971ea46-1c8d-47f4-940c-8132b412c7fe/wessendorff\\_adjudication.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/c9/71/c971ea46-1c8d-47f4-940c-8132b412c7fe/wessendorff_adjudication.pdf)

<sup>4</sup> *PA Adjudication*, 7 April 2015 at [8]-[13]:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/de/e2/dee28af0-d416-48d9-a9fa-624f8b2e5215/2015-02-17\\_pa-final-adjudication.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/de/e2/dee28af0-d416-48d9-a9fa-624f8b2e5215/2015-02-17_pa-final-adjudication.pdf)

28. Children have a somewhat special place in the Article 8 caselaw: sometimes as claimants in their own right (see, for example, *Murray v Big Pictures Ltd* [2008] EWCA Civ 446; *AAA v Associated Newspapers* [2013] EWCA Civ 554; *Weller v Associated Newspapers* [2015] EWCA Civ 1176) but more often they are prayed in aid to bolster the privacy claim of a parent (see, for example, *PJS v News Group Newspapers* [2016] UKSC 26; *ETK v News Group Newspapers* [2011] EWCA Civ 439).
29. Of course, children are not a ‘trump card’ in any privacy action, and their own privacy rights are far from absolute, but are nonetheless very strong and operate in a way that is different to the privacy rights of adults. The UK Supreme Court in *Re JR38* [2015] UKSC 42 considered a Northern Irish judicial review arising from police publishing (through the media) CCTV stills of a 14-year-old who was wanted for offences in relation to public riots.
30. The majority (Lords Clarke, Toulson and Hodge) held the boy had no ‘reasonable expectation of privacy’. But the minority (Lords Kerr and Wilson), while agreeing that his privacy would have been outweighed by the public interest in publication, held that the boy’s Article 8 rights were ‘engaged’, having regard to all the circumstances including his age and the effect upon him of mass publication.
31. In case there is any doubt, I do not find that the Complainant’s **own** privacy rights are even engaged, even at his daughter’s party. He is an adult, and a man of significant prominence. There is no detail about his role at the party, except the anodyne feature that he was present. I find his Article 8 rights would not even be engaged by this Article. Even if I was wrong, I would not hesitate to find that – to whatever small extent his privacy rights were engaged – that they would be massively outweighed by the FT’s Article 10 rights. I therefore consider this complaint, as it was made by Shutts, solely on the basis of the privacy rights (if any) of his daughters.
32. It is often said that the Article 8 privacy right has two different components: what Tugendhat J in *Goodwin v News Group Newspapers* [2011] EWHC 1437 (QB) at [85] called the ‘confidentiality component’ and the ‘intrusion component’. The former concerns information that is private because it is ‘confidential’ or ‘secret’, and speaks to the personal life and dignity of the person such that the loss of confidentiality (of information, whether as a written fact about them, or visual image of them, or otherwise) would breach the person’s privacy rights.

33. The second aspect – the ‘intrusion component’ – has been explained in relation to unwanted media attention that focusses on the child, or their immediate family, or upon the family home (whether in an intangible sense just by the focus of media articles, or by the physical presence of journalists and paparazzi in the bushes outside). There is a detailed discussion of ‘intrusion’ as it relates to children’s Article 8 rights in the decision of MacDonald J in *HRH Prince Louis of Luxembourg v HRH Princess Tessy of Luxembourg* [2017] EWHC 3095 (Fam) at [60]-[61] and [89].
34. It is with regard to this case law that I construe Clause 6.1 – “*All pupils should be free to complete their time at school without unnecessary intrusion*” – as referring to children of school age, rather than just children in their capacity as school pupils. This is contrary to the construction that Nigel Hanson urged upon me, which was that Clause 6.1 only applied in respect of ‘pupils’ who were ‘at school’, which was not part of the context here, and that Clause 6.2 should be read as building upon that specific protection. I am afraid I disagree. Clearly, to intrude upon a pupil (whether under 16, or even under the age of 18) while ‘at school’ would be extraordinarily difficult for a newspaper to justify, but that is largely to be dealt with by Clause 6.2 (which is akin to Clause 8 (Hospitals)). The FT’s construction would leave Clause 6.1 almost otiose.
35. In my judgment, the primary purpose of Clause 6.1 is to articulate the **time** before which a person should have enhanced protection from the media. This is defined, not by reference purely to their age (some pupils – including footballers or child actors - leave school and begin working at 16; others will stay in school until they are almost 19), but instead to whether or not they are still at school. The privacy right of a 17-year-old playing for Manchester United or winning a Tony Award or otherwise working as an ‘adult’ will be distinct from a 17-year-old still in full-time education ‘at school’.
36. It is clear that ‘children’ (under Clause 6.1) can be 16, or 17 or even a fraction older, if still at school. If Clause 6.1 is engaged, such that the ‘intrusion’ would also engage Clause 2.1 (Privacy), then it can still be outweighed by the Public Interest. Therefore, if the child is 16-year-olds or older, the normal public interest balancing test will apply, but an ‘exceptional’ public interest will be required if the child is under the age of 16 (per paragraph 5 of the Public Interest Clause itself). This is because the rights of under-16s are said by the IPSO Code to be ‘normally paramount’. It strikes me that this is a rather stricter balancing exercise than the tort of Misuse of Private Information.

37. Given that the Complainants' daughters were aged only-just-15 at this party, then if their privacy rights are engaged (whether by way of the confidentiality component or the intrusion component of Article 8), then an 'exceptional public interest' will need to be made out in order to justify that interference in their privacy rights.
38. The first question is therefore whether the Complainants' daughters' privacy rights are even 'engaged'? I must consider this in relation to both the 'confidentiality component' and the 'intrusion component'. Only if engaged must there be a balance against the public interest and free expression rights of the newspaper.
39. As to the confidentiality component, the information about the girls' private lives is relatively limited. It includes their gender, the fact that they are twins, the month and year of their birth, the location of their 15<sup>th</sup> birthday party and some description of it, including who might be performing there. This might not seem like private information of earth-shattering importance, but I must consider that this information would likely mean rather more to a fifteen-year-old girl than the same information about an adult of my age.
40. I should consider (having regard to section 12 of the Human Rights Act 1998) what information about the girls is already in the public domain. I have not found, as I might have done with other complainants, a significant volume of photographs of Mr Libi with his family, or showing-off his children at public events. Prior to the 13 July 2017, in the English-language media, at least, I was unable to even find online corroboration of the fact that he has twin daughters of that age. My efforts to search Google for Spanish-language references to his children (searching the Complainant's name alongside "hijas" (daughters) or "geremos" (twins)) yielded only a single tweet from the same period: on 5 May 2017 from an account that even now has only 462 followers.
41. Anodyne as the information arguably was, these were not children who had been given a public profile by their famous father, or whose details were substantially in the public domain. The lack of, or loss of, confidentiality hinges entirely on the fact that aspects of the information were available to anyone on the public street or public lobby. The law in this area (following *Peck v United Kingdom* (2003) 36 EHRR 41) has been helpfully summarized by Arnold J in *Ali v Channel 5* [2018] EWHC 298 (Ch) at [157]-[158] and [170]: while a highly-relevant factor, a person can still have a 'reasonable expectation of privacy' in respect of some activities in or around a public place.

42. I have paused to consider the fact that the Four Seasons hotel in question was that in Miami. It is commonly known and understood that the United States has vigorous press freedoms under the First Amendment to the US Constitution, and correspondingly weak privacy protections as against the media (counter-balanced, it is sometimes said, by a more measured culture of newsgathering than in the UK). Insofar as the capture (and indeed publication) of this ‘confidential information’ was in the US, then should not the local law (which applied at that event) be taken into consideration when assessing the ‘reasonable(ness of the) expectation of privacy’?
43. The answer is almost certainly ‘yes’, on the basis of treating ‘foreign law as a *factum*’. However, I give it relatively little weight here, because the subjects in question here are children who are not independently in the public, and so will not have any real degree of sensitivity to the affect of the varying laws of a particular place to their privacy, as a celebrity adult might have. I also note that the ‘local law as *factum*’ made no ultimate difference in the case of Paul Weller’s children in *Weller v Associated Newspapers* at [66]-[71], where those photographs had been taken on a street in California. However, it must be acknowledged that photographs or video have long been held to be more intrusive of privacy rights than text accounts (especially those that do not use names).
44. I find this very finely balanced, but allowing for the public domain details (and indeed nature) of the *quinceañera*, I do not think that the month of the girls’ birth, the fact they are twins, or even the identity of the performer at their private birthday party are truly ‘*confidential*’ details in which they would have a reasonable expectation of privacy under the confidentiality component of Article 8.
45. If the confidentiality component is finely balanced, the intrusion limb is less so. These girls are not celebrities in their own right – they are not (as far as I can ascertain) commonly used by their father as a publicity prop, as so often happens in politics. They are teenagers with extremely wealthy lives, but nonetheless teenage lives that they are entitled to keep private. It is often hard for journalists to appreciate the impact (even on adults) of being featured in the mass media. The *Financial Times* has over 910,000 subscribers, and I am satisfied that to merely feature in its pages would be an ‘intrusion’ into the private life of a child who was not accustomed to media attention.
46. Had the girls’ names and/or photographs been used, I would have found the breach by intrusion incredibly easy to find (see *Weller* or *AAA*). But even in cases where the children’s photograph and names were not released, the intrusion limb has been

enough to found a breach of the children's Article 8 rights (*PJS v News Group Newspapers*) and thus an injunction. Had this been an entirely laudatory article, or a soft-focus interview with a celebrity promoting their latest work, perhaps the intrusion would be lesser (assuming it wasn't consented to by the parent anyway). But in circumstances where the Article is a fairly sharp-teethed examination of the morality and legality of their fathers' business practice, I consider the intrusion is heightened.

47. I do accept the submission that the intrusion was not gross or exceptional. There were no photographs taken, their names were not used, and they were not directly contacted. I do not agree with the Complainant that the Article "*mocks a family party*" or that it is an example of "*tabloid-like writing style*" (not that I find there is anything inherently wrong with the style of writing in tabloid newspapers: it is simply not the style of the FT). I consider that would require an unfair and ungenerous reading.
48. Although not an egregious intrusion, I am fortified in my conclusion by Clause 6.5, which provides that: "*Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life*". I do not accept that the details of the party were in any way important to a larger narrative about contrasting wealth standards in Venezuela, or expat Venezuelan lives in Miami.
49. Had these girls been the daughters of an unknown man of no importance whatsoever, I am quite sure their *quinceañera* would never have graced the pages of the FT. Absent the FT's legitimate public interest in covering the Complainant, these girls and their friends would not have featured. Whilst the coverage was not untoward in any serious way, the sole justification for *these* girls to feature in the Article is the fame and notoriety of their father, and that is specifically what Clause 6.5 is intended to prohibit.
50. I mention the friends who attend the party in passing, but there is one important point to make about them. Unlike other UK press regulators, the FT does not operate a rule of 'standing' to make a complaint. You do not have to be the subject of an article to complain, and clauses like Clause 6 in relation to children apply to *all* children, not just those of persons featured in the FT, or just to children of FT readers. Had any of the children attending the party been identifiable (including by jigsaw identification, or by mention of their being related to named persons), I would have considered a breach of Clause 6 in relation to them as well.

51. Having held that there has been an intrusion – albeit a relatively mild and modest intrusion – into the private lives of the Complainant’s daughters by the publication of details about their 15<sup>th</sup> birthday party in the Article. The question of breach of Clause 6.1 and 2.1 therefore comes down to whether it is outweighed by the newspaper’s own rights (in freedom of expression) and any public interest in publication.
52. As I explained above, because the Complainant’s are only 15 years of age, the Public Interest Clause itself (at paragraph 5) requires that public interest to be ‘exceptional’. The FT, believing that Clause 6.1, 6.5 and 2.1 are not breached, eschews specific reliance on the Public Interest Clause *in relation to these Clauses* save noting the principles which underpin it, including public interest in freedom of expression *per se*.
53. I have no difficulty finding that the Article in the general sense is an Article in the public interest, in that the allegations made against the Complainant are very serious and merit the scrutiny of the press. Where this relates to the malnutrition of a nation, all but the ‘miscarriage of justice’ elements in Paragraph 1 of the Public Interest Clause may well be engaged. But that is not the test I am applying at this stage of the Adjudication. In looking at a *prima facie* breach of Clause 6.5 and 2.1 by ‘intrusion’, I must consider the public interest in those passages.
54. In my view, whilst the *quinceañera* may make for a colourful, engaging lede, it does not fulfil any of the criteria in Paragraph 1 of the Public Interest Clause. I accept entirely that there is a public interest in freedom of expression *per se* (Paragraph 2), and I have already considered the material in the public domain prior to publication in assessing whether or not there was a *prima facie* breach of Clauses 6.1, 6.5 and 2.1 (as I am enjoined to do per Paragraph 3).
55. However, I cannot possibly find an exceptional public interest in publishing the details about the Complainants’ daughters *quinceañera*. Insofar as the justification is that it demonstrates his wealth, and the contrast that strikes when compared to the poverty of his customers in Venezuela, the point is powerfully made. But it could be equally powerfully made by any example of significant expenditure: there is no particular reason why the birthday party of children below the age of 16 is the chosen anecdote for the lede. In an article so condemnatory (whether reasonably so or not) of the Complainant, the introductory paragraphs have brought into play the lives of children who have no relevant place in that story.

56. If the girls had been 17, I might have found it a finer balance, as to whether the importance of freedom of expression *per se* outweighed their rights. But Paragraph 5 of the Public Interest Clause requires the public interest to be ‘exceptional’ where children are under 16, and the ever-present importance of freedom of expression for its own sake cannot be ‘exceptional’ in the sense required by the Code.

57. All cases of Clauses 2 and 6 must be assessed on their particular facts. This Adjudication sets no precedent that the FT can somehow never mention under-16s without parental consent. Context is everything. Many mentions about younger children will be with the consent – express or implied – of their parents, or because they have appeared at major public occasions. Some will be extraordinary in their own right, or inextricably linked to important events. But others will be private children whose only reason ever to appear in the FT will be because of a famous parent: absent any consent, the FT *must* have regard to Clause 6.5 and consider *in advance* what public interest there is in including the details about the child. The Code requires that.

58. Accordingly, I find the *Financial Times* in breach of Clauses 6.1, 6.5 and 2.1 of the FT Editorial Code of Conduct.

### **Clause 1 (Inaccuracy)**

59. The complaint (set-out in full at **Appendix A**) is wide-ranging, but can broadly be summarized as follows:

- a. That the promise of the online headline is ‘how’ the Bolivarian Bourgeoisie profit from crisis, but then devoting so much of the Article to the Complainant without making specific allegations of fraud against Mr Libi, instead describing general corruption in Venezuela, means that the headline misstates or overstates the text of the Article (“the Headline Complaint”);
- b. Whether or not there is still an open investigation by the Venezuelan National Assembly into the Complainant or his companies, or whether all such inquiries have been closed (“the Open Inquiry Complaint”);
- c. Whether the report of the Venezuelan National Assembly proceedings is accurate in respect of the Complainant’s evidence (“the Evidence Complaint”);

- d. Objection to the use of a tweet by Minister Torres, and whether or not Gen Torres had the power to distribute US dollars (“the Torres Complaint”);
- e. Complaints as to the details given of companies said to be owned and/or controlled by the Complainant (“the Interests/Investments Complaint”);
- f. That describing Grupo Libi as having ‘pummeled’ Quaker Oats is hinting at allegations of abuse of a dominant position (“the ‘Pummeled’ Complaint”).

60. The letter from the editor, Lionel Barber, acknowledged some minor errors and offered some modest corrections and/or clarifications:

- a. A reference to ‘limousines’ in paragraph 2 became ‘luxury cars’;
- b. the reference to the Complainant producing ‘sales receipts’ before the National Assembly was changed to ‘list of customers’;
- c. A change was made to reference that General Torres had, in the past, distributed hard currency, and that he had done so in his capacity as director of the Central Bank of Venezuela, not in his capacity as head of Banco de Venezuela CA, which had part-financed the Complainant’s company, Frimaca;
- d. The reference to the Complainant’s ‘directorship’ of Banplus was amended to show that it was his ‘former directorship’ and the reference to involvement in ‘banks’ in Panama and Spain was changed to ‘financial services companies’.

61. I shall consider the facts of each of these complaints in turn, but first I need to consider the framework that applies to complaints under Clause 1 (Accuracy) of the IPSO Code.

### *Framework*

62. First, the specific rule about breach by “headlines not supported by the text” of an article is a free-standing basis of complaint, even though it falls within Clause 1.1.

63. Second, as I noted in the *Berkley Adjudication*<sup>5</sup>, there is a critical difference between Clause 1.1 (which concerns negligence prior to first publication) and Clause 1.2 (which concerns the newspaper’s willful refusal to amend serious matters post-publication, once the alleged breach has been communicated:

*“However, it is important to understand what exactly constitutes a breach of Clause 1 (Accuracy):*

8.1 *Clause 1.1 will only be breached if the Press has not taken care to avoid publishing inaccurate information. It is a rule against slapdash journalism that is negligent about setting out the facts. It is not a rule which is breached by the mere presence of any inaccuracy however minor. It is breached only by such inaccuracies that a careful newsroom could and should have avoided publishing.*

8.2 *Clause 1.2 will only be breached if the Press has refused to properly correct, clarify or apologise for a ‘significant inaccuracy, misleading statement or distortion’. Clause 1.2 is therefore different to Clause 1.1 in two material respects: first, the inaccuracy must be ‘significant’; and second, the breach is not one of negligent omission, but intentional refusal to amend”*

64. Third, Clause 1 is not an ‘asterisked’ clause, so there is not a general exception to Clause 1 by virtue of the Public Interest Clause. However, I must construe Clause in accordance with Article 1(6) and 1(7) above, so as to recognize the rights of the FT and its readers in balance with the rights of complainants and subjects of articles.

65. Fourth, this is relevant insofar as I have (in the *Portes Adjudication*<sup>6</sup>) opined on the meaning of Clause 1’s “inaccurate, misleading, or distorted”.

*“23. Although headed “Accuracy”, Clause 1 actually concerns itself with three forms of error: statements of fact may breach by being either inaccurate, misleading, or distorted. The forms of remedy available if Clause 1 is breached are: correction, clarification, and apology. It is implicit in both the distinction between ‘inaccurate’ and ‘misleading’, and in the distinction between a ‘correction’ and a ‘clarification’ that a statement of fact may be entirely correct, and yet still breach Clause 1.*

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<sup>5</sup> Berkley Adjudication, 29 March 2015, at paragraph [8]:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/aa/27/aa27c09e-86e3-45f6-b063-ed809df43foo/2015-01-28\\_matt-berkley-adjudication.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/aa/27/aa27c09e-86e3-45f6-b063-ed809df43foo/2015-01-28_matt-berkley-adjudication.pdf)

<sup>6</sup> Portes Adjudication, 29 May 2015, at paragraphs [23]-[27]:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/60/9f/609fb246-1319-4841-8d2f-a7a9b2c5ee2f/2015-05-11\\_ferguson-adjudication-with-ps.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/60/9f/609fb246-1319-4841-8d2f-a7a9b2c5ee2f/2015-05-11_ferguson-adjudication-with-ps.pdf)

24. *Whether a statement is ‘inaccurate’ (in the narrow sense of factually wrong, and requiring a correction) can be judged by comparing the published information to a provably true version of the information. If they differ, and the difference is ‘significant’, a correction will be directed.*
25. *A statement will be ‘misleading’ where the objective reasonable reader of the FT would take away an erroneous belief about the subject of that statement, even though the statement was true. The words “John Doe has been caught in bed with woman who isn’t his wife” may be perfectly true because John Doe has never married, but if a reasonable reader would take away that John Doe is both married and having an extra-marital affair, the statement is misleading. Significant misleading statements will require clarification, not correction, given that the information is not intrinsically inaccurate.*
26. *What then of ‘distorted’? It clearly is intended to mean something distinct from ‘misleading’. My provisional view is that whereas a misleading statement misinforms the reasonable reader about the factual content of that statement, a ‘distortion’ is an assembly of statements that are neither inaccurate, nor misleading, but collectively give an impression that a reasonable and fair-minded person in possession of all the facts would not have. To say of Adolf Hitler that he was a vegetarian, liked dogs, painted watercolours, and never cheated on his wife might not be inaccurate or misleading in any of the specifics, but would give the most grossly distorted view of his character.*
27. *An alleged distortion therefore requires me to find the limits of fair and reasonable views of an article’s subject matter, to see if the article (although the facts are true) is a distortion of the picture generally. Partly for the reasons discussed above, I will be much more wary of doing so where the complaint is about an OpEd (where readers should expect a columnist to be giving a particular, subjective view on ‘the truth’) than in the news sections (where there is a reasonable presumption of objectivity and fairness).”*

66. In one respect, these definitions need some refinement, in particular as to ‘distortion’ (which was not in issue on that occasion). Nigel Hanson of the FT rightly objects to my reference to ‘fairness’ (a subjective standard), where Clause 1 concerns objective error, and so references to the ‘fair and reasonable reader/views’ should simply be read as saying ‘reasonable reader/views’.

67. The further objection is that my definition of ‘distorted’ requires the ‘reasonable reader’ to be in possession of ‘all the facts’, which is itself a subjective definition (what are ‘all’ the facts? Who decides what facts must be included in the mix?) and cuts against editorial judgment and freedom. I can appreciate the concern, but this may be a matter of infelicitous phrasing, rather than a real obstacle to adjudication.

68. The FT's submission is that 'distortion' means "*a statement or series of statements that, when a publication is read and considered in its entirety, bear(s) for the ordinary and reasonable FT reader in possession of important relevant facts pertaining to the particular matter in question and in-existence and available pre-publication, a meaning that significantly and insupportably twists or misrepresents the true position or state of affairs*". This represents that 'distortion' is still (being in Clause 1) a species of 'inaccurate' or 'misleading' information. I accept this submission.
69. It is important to recognise that while the latitude afforded editorial will be at its greatest in opinion pieces, there is also a wide discretion afforded to editorial as to the picture painted with true facts. Where there are not many or major elements of a story that are false, it will be very rare that a news article will be outside the bounds of that editorial discretion. It is not for me to substitute my view for that of the editor.
70. On the basis of the above construction of Clause 1, I must now apply it to the facts.

#### *The 'Pummeled' Complaint*

71. This is the most straightforward of the Clause 1 complaints. The Article says "*His oatmeal business has pummeled the famous Quaker oats brand made locally to win a 65 per cent market share.*" It is said in the complaint letters that this is "*clearly hinting at some kind of abuse of dominant position in the market, to the detriment of a disabled competitor*".
72. Applying the 'meaning' framework I adopted from the English law of defamation in the *Wessendorff Adjudication* (see footnote 3 above) I consider that the allegation that 'pummeled' connotes – even in the context of this article – an implicit allegation of wrongdoing by way of abuse of dominant position or other breach of competition law to be unsustainable. I have conducted a search of FT.com to see when the term has been used elsewhere, and in almost no context is that use of the word made out. It is a "*strained*" interpretation, and not reasonable. I reject this aspect of the complaint.

#### *The Interests/Investments Complaint*

73. The Grupo Libi complaint letter of 23 July 2017 said: "*I do not have banks in Panama or Spain. I hold a minority share in a funder in Panama, which is directed and managed by its main partner. The alleged bank in Spain does not exist. I had an*

*investment in a company that never came into operation, so I sold the minority share that I owned. Nor is it true that I capitalized by the company by subscribing 5 million euros worth of its stock prior to selling my interests.”*

74. The Shutts appeal of 17 August 2017 is worded slightly differently: *“Mauro Libi does not have banks in Panama or Spain. He holds a minority share in a funder in Panama, which is directed and managed by its main partner. That company is not a bank but Mr Barber deliberately insists otherwise by stating in his answer to our reply that Mr Libi “is a director and shareholder in a bank in Panama”. // As for Mr. Libi’s business in Spain, he had an investment in a company that never came into operation, so he sold the minority share that he owned. The amount of the capital increase subscribed by Mr Libi prior to the sale was not the one indicated by the publication”.*

75. The matter of the Panamanian company being a bank or not has been corrected since publication: the Article now refers to ‘financial services companies’ in Panama and Spain, rather than ‘banks’. The Article has also been corrected to show that the Complainant is a *former* director of Banplus. I do not consider the matters so obvious as to qualify for a breach of Clause 1.1 (negligence in advance of publication). Had these not been changed, I may have held a breach of Clause 1.2 (failure to correct a significant error), but it having been corrected I cannot find a breach of Clause 1.2.

76. The only remaining question is the size of the capital increase subscribed by Mr Libi’s Inversiones Valentina 15402 in the Spanish AFC Investment Solutions, of which he held an 18% share. The article says it was \$5 million. The appeal letter says that is incorrect but does not give its own figure. If the Complainant would like to furnish the FT with the correct figure and evidence that, then I think it is for the Editor to consider whether he would wish to correct the \$5m figure. In the absence of a competing figure or any evidence as to what it might be, I find no breach of Clause 1.1 or 1.2 to be proven.

### *The Torres Complaint*

77. The Article says: *“Everything is ambiguous in the shell game of Venezuelan finance. As Gen Torres, who as head of Banco de Venezuela [and at the time a director of the central bank also distributed] ~~also distributes~~ hard currency, wrote in an October 2014 tweet: “Meeting with Mauro Libi . . . Efficiency!” That same month, Mr Libi*

*opened a chilled food distribution business, Frimaca, a venture part-financed by Banco de Venezuela.” [as corrected: original]*

78. The appeal letter says that the FT erred in believing (per the Editor’s response) that prior to the DICOM system, Banco de Venezuela had any ability to distribute hard currency, and that this was always the sole preserve of the Central Bank of Venezuela. If that is correct – as I assume it to be – the correction is well-made, and avoids any breach of Clause 1.2. Again, I do not consider such an error – even if it were so – to be so egregious as to breach Clause 1.1.

79. The real nub of this aspect of the complaint is that there is an insinuation of illegality of financing of Frimaca, and/or of a *“hidden and privileged relationship with that official called a “shell game”, when in fact this meeting was public, as are all meetings that the government periodically holds with food companies”*.

80. I do not consider there is any inaccuracy here as to engage Clause 1. To describe the system of financing in Venezuela as a ‘shell game’ is perfectly legitimate and within the editorial discretion afforded to the FT. The Article clearly states that it considers there to be a privileged relationship between the Complainant and Gen. Torres: I accept it is not ‘hidden’, but neither do I consider that the Article insinuates that it is (it even includes a public tweet, which demonstrates the lack of concealment of a relationship: indeed this is an aspect about which the Complainant takes issue). The ‘ambiguity’ comes from the multiple roles played by Gen. Torres, and so the different forms of relationship he thereby has with the Complainant and his companies.

### *The Evidence Complaint*

81. The original complaint of 23 July 2017 objected to describing the Complainant producing ‘sales receipts’ to prove that his companies were not ghost companies. The Complainant said: *“Also, I did not show ‘sales receipts’ to defend myself, as the report falsely claims. What I did unfailingly demonstrate was the bona fide character of the companies involved and the existence of hundreds of well-known and long-standing customers (with full identity data for verification) who were in fact the country-wide recipients and distributors of the imported food that, according to Congressman Montoya, was non-existent and never reached store shelves”*.

82. The response of the Editor was to amend ‘sales receipts’ to ‘customer lists’, but this did not satisfy the Complainant, whose lawyers appealed, saying: “*Subsequently, the article replaces the phrase [‘sales receipts’] with ‘customer list’ as a mere unimportant formality, as acknowledged by Mr Barber in his answer to the reply we sent.*” In making the change, the Editor did say he didn’t think this was “a significant issue”. I can see the importance of all reports of legislative proceedings must be accurate – it is right that the correction was made, and so there is no breach of Clause 1.2.
83. The purpose of citing this evidence was to make clear the central charge had been disproven: I do not see what more could be done to faithfully recount the *facts*. Insofar as the complaint is about the framing of the proceedings, I do not consider the FT to be outwith its editorial discretion as to *how* those facts are presented. The Article is careful to make clear the conclusion in the Complainant’s favour: that “*On December 7, the commission decided “no fact, act or omission was found to have impaired the public patrimony” and closed its investigation*”.
84. I therefore find no breach of Clause 1.1 or 1.2 on this aspect of the complaint.

#### *The Open Inquiry Complaint*

85. The Article [after describing the conclusion of the National Assembly investigation into the Montoya allegations] says: “*On June 15, the National Assembly opened an investigation into an alleged \$207m fraud at a subsidized food programme, called CLAPs. It said it was continuing other fraud investigations, including into Mr Libi, and would “release more information soon”. (Mr Libi says he never participated in CLAPs and reopening the assembly’s probe “lacks logical and legal sense”).*”
86. I understand that both the Complainant and the FT agree that the investigation into the Complainant by the National Assembly, arising out of allegations made by Congressman Julio Montoya, is closed and that it found in the Complainant’s favour. This is apparently recorded in closed Case File No. 1651.
87. It is also not in dispute that there is a separate open investigation by the National Assembly into ‘CLAPs’, a government subsidized-food programme, but that investigation does not concern the Complainant or his companies. This CLAPs investigation, unrelated to Mr Libi, was brought by a Mr Carlos Papanoni.

88. It seems clear to me that the Article is saying that beyond the closed investigation, and the CLAPs investigation, there are further open investigations into fraud, and that it is these latter investigations (about which more information will be forthcoming in due course) – and not the closed or CLAPs investigations – that concern the Complainant.
89. On that basis, I am not hugely assisted by the assertions in the complaint letter and appeal letter as to the finality of the Case No 1651 proceedings which it is agreed are closed, or the protestations of the Complainant (recorded expressly in the Article) that he is not involved in the CLAPs programme or the investigation into it. The question – and it is a simple one – is whether there is an adequate factual basis for saying there are *other* investigations by the National Assembly into the Complainant.
90. The Editor’s response letter makes clear that *“In June this year the National Assembly confirmed, separately from an investigation into the CLAPs food programme, that it was also investigating allegations by Socialist Tide and others regarding suspicious imports by Grupo Libi and the irregular allocation of more than \$500m for imports and that it would be releasing more information soon. That was also confirmed to Mr Rathbone in an interview with Mr Carlos Paparoni, a senior lawmaker and vice-president of the commission. The article makes it clear that that is separate from the investigation into CLAPs and it does not suggest you have participated in CLAPs”*.
91. On the basis of the material before me, I do not find any inaccuracy. Carlos Paparoni – who was apparently not on the Commission at the time of the closed investigation (Case File No 1651) – has told the FT of an investigation separate to that which he has launched into CLAPs. It is this *further* open investigation, not the CLAPs investigation, in which the Complainant is said to be implicated. That allegation may, of course, turn out to be entirely without foundation. I have no further details. But it is sufficient for my purposes that this has been conveyed to the FT by Congressman Paparoni, and I am satisfied that it has been. The complaint, insofar as it objects on the basis that the investigation in Case File No 1651 is closed and that the Complainant was never in CLAPs, fails to isolate any inaccuracy at all in the Article.
92. In the circumstances, I find there has been no breach of Clause 1.1 or 1.2 in respect of this aspect of the complaint.

### *The Headline Complaint*

93. Finally, I must consider that *sui generis* aspect of Clause 1.1, namely whether the Headline misrepresents the text. The test is whether there is a form of inaccurate, misleading or distorted information by way of a “*headline not supported by the text*”.
94. The headline of the online version was “*How Venezuela’s ‘Bolivarian bourgeoisie’ profits from crisis*” with the standfirst “*Amid unrest over shortages and corruption, the rise of a business empire draws questions*”. In the print edition, the headline was “*Profits from Empty Shelves*” with the standfirst “*As protests and violence engulf Caracas, the country is beset by shortages and endemic corruption. Amid the chaos, Mauro Libi has built a huge food business empire but his critics want to know how*”.
95. Again, applying the framework I adopted in the *Wessendorff Adjudication* (see footnote 3 above), a headline must be read with the article in context. I consider that the Article makes allegations of corruption and profiteering, which I would assess as being *Chase Level 3* (reasonable grounds to investigate), or at most *Chase Level 2* (reasonable grounds to suspect). I consider that this same *Chase level* is reflected in the Headlines/Standfirsts (which may be a little higher when read independently, but not so differently as to breach Clause 1.1). The text broadly delivers on the headline.
96. I have considered, separately and within the context of the Headline Complaint, whether the Headline and Article could be consider a ‘distortion’. I have come to the clear view that they cannot: the Article carefully avoids putting its case higher than it can substantiate, and makes sure to include both bane and antidote: the Complainant’s vindication before the National Assembly (which the appeal letter notes made him almost unique: both for being prepared to answer questions, and for the proceedings being resolved without finding of wrongdoing). The Complainant therefore questions why he is chosen as the face of an article about generic food corruption in Venezuela. It is not an unfair question: I’m afraid the answer lies in the difficulty in reporting this issue without the benefit of the legislative proceedings that have taken place in his case.
97. I am satisfied that, notwithstanding that the Article is critical, even ungenerous, towards the Complainant, it falls within the wide ambit of editorial discretion. I can well understand why the Complainant feels aggrieved at the portrayal, but I do not think it sufficiently ‘inaccurate’ to find that there has been a breach of Clause 1.

## **Conclusion**

98. I therefore find that there has been no breach of Clause 1 (Inaccuracy), but that there has been a breach of Clauses 2 (Privacy) and 6 (Children) of the FT Editorial Code.

99. Had the breach of Clause 2 related to the confidentiality limb, I would have ordered the removal of the information from the online version of the Article. Given that the breach is based solely on the intrusion limb, and that such intrusion cannot be undone, I do not consider it necessary or proportionate to compel removal. The remedy in respect of the breach I have found will be that a link to this Adjudication be added to the online version of the Article for as long as it remains available to the public.

**GREG CALLUS**  
**Editorial Complaints Commissioner**  
*Financial Times*  
**10 April 2018**