



**FINANCIAL
TIMES**



ADJUDICATION

by

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EDITORIAL COMPLAINTS COMMISSIONER

Financial Times Limited

1. This is an adjudication of a complaint made by Alexander Wessendorff. It concerns part of two articles in the FT Due Diligence Daily Briefing.
2. The first (“the July Article”), headlined “*Tech M&A: it’s not boomtime*”, was published on 21 July 2017. The passage of the July Article about which complaint is made is in the fifth of six sections, sub-titled ‘Job Moves’, and says:

*“**Alex Wessendorff**, former communications manager at **Apax**, the European private equity group, abruptly left his post in May after close to two years in the position. He was previously at **Morgan Stanley** in corporate communications. **Greenbrook Communications** is now handling media inquiries for the buyout fund.”*
3. The second (“the August Article”), headlined “*Hands looks to bury EMI saga and raise first buyout fund in a decade*”, was published on the 9 August 2017. The passage of the August Article about which complaint is made is in the fifth of six sections, sub-titled ‘Job Moves’, and says:

*“**DD Exclusive: Andrew Kenny** has joined **Apax Partners**, the private equity group, as head of communications. He joins from **Epiris**, where he worked in a PR, marketing and investor relations role. He replaces **Alex Wessendorff**, the former communications manager who abruptly left the firm in May.”*
4. Solicitors for Mr Wessendorff wrote to the FT on 11 and 18 August 2017, complaining that the use of the word ‘abruptly’ conveyed the meaning that he had been dismissed from his position, or ‘marched out of the door’ which was not the case. Having spoken to him by telephone, Mr Wessendorff tells me the decision that he would leave Apax Partners was taken around 20 April 2017, and with outstanding holiday entitlement reducing his one-month notice period, he ceased to be employed as of 3 May 2017.
5. The FT’s response stood by its use of the word ‘abruptly’, saying that to an objective reasonable reader, the word did not connote dismissal. It relied on the fact that an FT journalist had had to postpone a work-related drink with Mr Wessendorff on 6 April, and that by the time came to rearrange in July, he learned that Mr Wessendorff had left Apax Partners in May. As reported, Apax Partners had relied on an external agency, Greenbrook Communications, to field media inquiries until Mr Andrew Kenny was hired in August (although Mr Wessendorff tells me that they have a long relationship with Apax, including the period while he was employed, and still to this day).

6. I wish to make one matter clear from the outset. Mr Wessendorff was not dismissed by Apax Partners, nor was he ‘marched out of the door’, nor is he accused of any wrongdoing. Importantly, nor does the FT suggest any such thing. On the limited information I have available, Mr Wessendorff’s departure from Apax was amicable, even to the extent that Apax’s Mr Kenny (whose hiring was reported by the August Article) wrote to the FT’s Javier Espinoza in support of this complaint. If anyone read the word ‘abruptly’ to impute some fireable offence, that imputation would be false.
7. The sole question for this Adjudication is the meaning of the word ‘abruptly’, and whether it carries the connotation of Mr Wessendorff being dismissed for cause.
8. The correspondence in this complaint has, perhaps inevitably, discussed this question in the context of the law of defamation. In English libel law, words are deemed (as a matter of law) to have a single natural & ordinary meaning. Absent further innuendo meanings (meanings which would occur only to particular knowledge of extrinsic facts at the time of reading), the law of libel imputes a single meaning, from the perspective of an objective hypothetical person: the ‘ordinary reasonable reader’. A system of principles has been formulated to allow Courts to discern the single meaning. The justification for the (much-criticised¹) rule is that it allows publishers to regulate their conduct by simple and objective standards, and makes a libel trial manageable.
9. My task is somewhat different to that of a libel judge. I am asked only to judge whether the FT has breach (in this case) Clause 1 of the IPSO Code as set out in Annex 1 of the FT Editorial Code of Practice². Clause 1 provides that:
 - “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 See the Court of Appeal in *Ajinomoto v Asda Stores Ltd* [2011] QB 497, holding that while the Single Meaning Rule applied in libel, it had no application in the tort of Malicious Falsehood

² The FT Editorial Code of Practice, including the IPSO Code, can be found online at https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldrvn-media.io/file_public/03/57/0357bc87-523e-4f1c-b93f-7c4dff04027/final-100117-ft-editorial-code-pdf.pdf

10. Several of my previous Adjudications have set out the difference between Clause 1.1 and 1.2³. The former is a ‘negligence’ test (is the inaccuracy such that its inclusion in the article demonstrates a failure to take proper care?); the latter concerns the attitude of the FT in dealing with first-instance complaints about inaccuracy (did the FT act to remediate ‘significant inaccuracies’?).
11. However, this construction of Clauses 1.1 and 1.2 presumes that ‘inaccuracy’ (in the strict sense of ‘inaccuracy’, counterpoised to breaches by virtue of words being ‘misleading’ or ‘distorted’) is obvious on its face. I have previously articulated the test for ‘inaccuracy’ as being: “*does comparing the published information with a provably true version of the information demonstrate a discrepancy which is ‘significant’?*”⁴
12. The answer to that question in the present case is “*it depends on what you take the word ‘abruptly’ in the articles to mean*”. If it suggests or imputes that Mr Wessendorff was summarily dismissed, then it is clearly inaccurate and significantly so. But if it does not mean that, then it is not necessarily inaccurate. It all comes down to meaning.
13. I have in several previous Adjudications (especially those concerning breach by ‘misleading’ words⁵) on Clause 1 determined breaches by reference to the effect of the words on the ‘objective [and] reasonable reader’ (of the *Financial Times*).

³ See my Adjudication of the complaint (dismissed) by Matt Berkley on 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

“*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”*

⁴ See my Adjudication of the complaint (partly-upheld) by Jonathan Portes on 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

⁵ *ibid*, paragraphs [23]-[27], [33], [45]

14. Whilst I am not obliged to follow the approach of the law of defamation of England & Wales, the very purpose of the FT Editorial Code of Practice and the system for adjudicating it (including my role, and that of the Committee that oversees my work) is to give complainants a degree of redress that does not require them to litigate. The very existence of 'press regulation', whether internal, or by IPSO or IMPRESS, is to give a cost-effective substitute to bringing litigation against newspapers. Therefore, in an early Adjudication⁶ on Clause 3 (Privacy), I had regard to the case law on Article 8 ECHR, which is the mechanism by which the UK & other signatory states of the European Convention on Human Rights give protection to private and family life.
15. To that end, it seems to me that the long-standing principles of the law of meaning, including the Single Meaning Rule, are apt to assist me⁷:
- (1) The governing principle is reasonableness.
 - (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
 - (3) Over-elaborate analysis is best avoided.
 - (4) The intention of the publisher is irrelevant.
 - (5) The article must be read as a whole, and any 'bane and antidote' taken together.
 - (6) The hypothetical reader is taken to be representative of those who would read the publication in question.
 - (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation ...' ...
 - (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.'
 - (9) The context and circumstances of publication should be taken into account.

⁶ Complaint by PA (dismissed), 7 April 2015 at paragraphs [8]-[13]: https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/de/e2/dee28afo-d416-48d9-a9fa-624f8b2e5215/2015-02-17_pa-final-adjudication.pdf

⁷ See, most recently, the formulation of the Court of Appeal in *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529 at [11]-[17].

16. It seems to me that the Second Principle is the real area of dispute. It has recently been explained by Mr Justice Warby (an experienced defamation practitioner, and lead judge of the Media & Communications List of the High Court):

“The second principle should not be misunderstood. It is not an instruction to the Judge; it describes a characteristic of the ordinary reasonable reader. That reader will not always select the bad meaning, but nor will they always select the less derogatory meaning: Lord MacAlpine v Bercow [2013] EWHC 1342 (QB) [66] (Tugendhat J), approved in Elliott v Rufus [2015] EWCA Civ 121 [11] (Sharp LJ)...”⁸

17. I do not doubt Mr Wessendorff when he says that he knows of some people who may have read the article have assumed that he was fired. He certainly believes that is the proper meaning, which he took from the two articles. But I do not think this is the natural and ordinary meaning that an objective reasonable reader (or indeed the overwhelming majority of reasonable readers of the FT) would draw. I am firmly of the view that they would take ‘abruptly’ to mean “suddenly” or “without much notice”, but that this could be for such a wide range of reasons (for example: a new role elsewhere, a change of career, personal circumstances such as parental or caring responsibilities, illness, a sabbatical to study or travel, dismissal for gross misconduct, or a lottery win). I think that the ordinary reasonable reader would not (per the Second Principle) “*select one bad meaning where other non-defamatory meanings are available*”.

18. Given my conclusion on meaning, Mr Wessendorff’s complaint does not automatically succeed, but nor does it automatically fail. Given that he served his notice period (albeit one that was abbreviated by vacation entitlement) was ‘abruptly’ still inaccurate?

19. “Abruptly”, as an ordinary English word, is broadly synonymous with ‘suddenly’, ‘unexpectedly’ or ‘without notice’. It derives from the Latin “abruptus” (ab + rumpere) meaning “broken off” or “steep”. In describing an action, it can connote a curt or impolite manner by the actor. It is an evaluative word: its applicability is subjective.

20. Mr Wessendorff’s departure was notified on or around 20 April 2017 and his last day was 3 May 2017, a period of around a fortnight. Clearly if a person took 2 weeks to leave a meeting or a party, their departure could not be said to be ‘abrupt’. But in the context of a relatively senior role (Mr Wessendorff was in charge of media relations, and his successor is titled Head of Communications), a notice period of 3 to 6 months might not be unusual, and less than a month’s notice might well be thought to be ‘abrupt’.

⁸

Bukovsky v Crown Prosecution Service [2016] EWHC 1926 (QB) at [11], upheld on appeal

21. There might be different circumstances where that word might carry the imputation of a person being dismissed for gross misconduct, but I do not consider that such a meaning is made out in these Articles. Although I can see that there is room for disagreement, in my view it is not objectively ‘inaccurate’ to describe the departure of a person who leaves a company at two-weeks’ notice with the subjective term “abruptly”, where that word only means “suddenly” or “without much notice”. There might be circumstances where the use of the word “abruptly” would be ‘misleading’ or even a ‘distortion’, but again I do not think that such complaints apply to these Articles.
22. My conclusion is that the word ‘abruptly’ in the July Article and the August Article meant no more than that Mr Wessendorff’s departure from Apax Partners was (comparatively) ‘sudden’ or ‘unexpected’, and that this is borne out by his having served only 2 weeks’ notice (albeit explicably so). Therefore there has been no breach of Clause 1.1 or 1.2. However, this Adjudication will be published on FT.com, and I hope that its public nature will do something to assist Mr Wessendorff in making clear to anyone who read that word as he did that there is no imputation of dismissal or misconduct implied or alleged in the two articles by the *Financial Times*.

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Financial Times
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