

Editors' Code of Practice Committee

The Editors' Codebook

THE HANDBOOK TO THE EDITORS' CODE OF PRACTICE

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The Editors' Codebook

THE EDITORS' CODE OF PRACTICE is the cornerstone of self-regulation of the Press. It was first published in 1991 and has evolved to respond to changes in society and developments in the Press. The Independent Press Standards Organisation has responsibility for dealing with complaints under the Code.

The Editors' Codebook explains how IPSO has interpreted the Code and highlights the best practice that journalists can follow to ensure they comply with its requirements. IPSO is not bound by decisions of its predecessor, the Press Complaints Commission (PCC), but PCC cases are included where they are still relevant. Although the Codebook is intended to be a useful guide, IPSO examines each case on its own merits and remains the final arbiter of how the Code should be interpreted.

The Editors' Code of Practice Committee

The committee is chaired by Neil Benson (Trinity Mirror). Other members of the committee are: National newspapers: Chris Evans (Daily Telegraph); Martin Ivens (Sunday Times); Hugh Whittow (Daily Express); Ted Young (Metro). Regional newspapers: Ian Carter (The KM Group); Mike Sassi (Nottingham Post); Gary Shipton (Johnston Press). Scottish Press: Donald Martin (Newsquest Scotland). Magazines: Harriet Wilson (Condé Nast Publications). Lay members (ex officio): Sir Alan Moses (Chairman, IPSO); Matt Tee (CEO, IPSO). Independent lay members appointed by IPSO's appointments panel: Christine Elliott; David Jessel; Kate Stone.

This edition of the Editors' Codebook

This revised and re-designed edition of the Codebook is by Jonathan Grun, secretary of the Code Committee. Special thanks for help in the preparation of this edition must go to former Code Committee secretary Ian Beales; Charlotte Dewar, Bianca Strohmann and Charlotte Urwin of IPSO; Peter Wright, Emeritus Editor of Associated Newspapers; Neil Benson of Trinity Mirror; Nick Jenkins, former production editor of the Press Association; Mike Dodd, co-author of Essential Law For Journalists; and designer George Gray.

Foreword

By **Neil Benson**

Chairman of the Editors' Code of Practice Committee
and Group Executive Editor of Trinity Mirror

A GREAT DEAL of water has passed under the bridge since the previous edition of the Editors' Codebook was published in 2016. But while some of the issues confronting the industry today are different from those we faced in the immediate aftermath of Leveson, the waters we have to navigate are no less turbulent.

The fierce economic headwinds that have been buffeting the industry for more than a decade have become our "new normal". Publishing models remain under extreme pressure, most editorial budgets have shrunk and title closures have, sadly, become more frequent. As if these commercial challenges were not enough, the standing of journalism and those who practise it has, arguably, hit an all-time low. It has become fashionable to denigrate the work of the media, with knee-jerk – and frequently unjustified – cries of "fake news". For those of us who believe a vibrant, independent Press is a force for good in society, it is depressing to hear the phrase "mainstream media" being contorted into a term of abuse.

Despite these tribulations, there are many good reasons for journalists to hold their heads high. The quality of work being done, day in, day out, in newsrooms across the UK remains tremendously strong, with numerous examples of titles large and small championing the powerless and holding the powerful to account.

While the digital revolution has made life significantly harder from the commercial perspective, it has also opened up opportunities for journalists to acquire a wider range of skills and to see their work published across multiple media channels, reaching a growing audience who appreciate accurate reporting from sources they trust.

Despite the challenges we face and despite what our detractors may say, journalists do care about getting things right and strive hard to uphold the standards spelled out in the Editors' Code. Inevitably, there will be transgressions, but they represent a minuscule fraction of the whole picture. When transgressions do occur, IPSO has shown itself to be a strong and independent policeman.

Shortly before the previous Code review, the membership of the Editors' Code of Practice Committee was extended to include three independent "lay" members. Their addition has brought a new range of experience and expertise to the committee, along with new perspectives on the content of the Code itself. The committee is all the better for their involvement. On a personal level, I felt honoured to be elected by my fellow editorial members as the new chair of the committee, taking over from Paul Dacre, who stepped down after steering the committee with great skill and sureness of touch for nine years.

Other long-serving members of the committee – Damian Bates of the Aberdeen Press & Journal, Ian Murray of the Southern Daily Echo, Hannah Walker of the South London Press and John Witherow of The Times – have also stood down recently. We are grateful to them for their wise contributions over many years. We have welcomed as new members Ian Carter of the KM Group, Martin Ivens of The Sunday Times, Donald Martin of Newsquest

Scotland, Gary Shipton of Johnston Press, and Ted Young of Metro. They bring a wealth of experience to the committee.

In launching the latest review, the committee was determined that the Code should remain up-to-date and reflect the changing environment – not just within the media industry but in society as a whole. The review included a public consultation during which more than 4,000 submissions were received. After careful consideration, a number of amendments have been made, to the Code itself and also to the Codebook.

Clause 2 (Privacy) has been amended and now requires the regulator to take into account the extent to which the material complained about is already in the public domain or will become so. This amendment is based on the existing wording of Clause 3 of the Public Interest section of the Code and it is intended to address the twin challenges of regulating global digital publications which are owned and domiciled in the UK and adjudicating on cases involving information published on social media.

Clause 9 (Reporting Crime) has been strengthened to restrict the naming of children before they appear in court, while taking into account the exceptional circumstances in which naming may still be possible. The revision also spells out that the clause applies to juveniles under the age of 18, not 16.

Clause 11 (Victims of Sexual Assault) has been amended to bring the language within the Code concerning anonymity in line with the law. This will remove uncertainty for editors when considering how to report court cases involving crimes of a sexual nature. It is important to note that the Code remains more stringent than the law by requiring that all sexual assault victims must remain anonymous from the time of an allegation being made.

Changes to the Codebook, made in response to public submissions, include new guidance regarding accuracy, privacy, discrimination, suicide and the use of social media.

While the Editors' Code of Practice is the "rulebook" of press standards, the Codebook is its essential companion, using real-life examples to illustrate how the Code is applied. It is an invaluable tool for working journalists and, we sincerely hope, a useful guide for the public at large – particularly those who may be considering bringing a complaint. Throughout the Code review process, committee secretary Jonathan Grun worked tirelessly to update the Codebook with the latest and most relevant case studies, with the invaluable help of the staff at IPSO. In addition, technical enhancements have been made to the Editors' Code of Practice website, including the building of links from each clause to the relevant chapter in the Codebook and to IPSO guidance notes, making the entire package easier to navigate.

Since 1990, when the Editors Committee wrote the original Code, it has evolved constantly. Major rewrites took place in 1997, following the death of Princess Diana, and in 2004, since when there have been regular reviews, which have been crucial in keeping the Code relevant and responsive. In all, more than 30 substantive amendments have been introduced, which underlines the committee's belief that the Code must be a living document, guided by real-world experience.

The latest amendments to the Code and the Codebook will help journalists to have greater clarity about what is required of them and should give the public confidence that those of us whose role is to seek out information on their behalf are doing so in the right way.

The Preamble

COMPLAINTS cannot be made under the terms of the Preamble, but it sets the tone for the entire Code. It emphasises the demanding requirements made of subscribers to IPSO – and also the wider spirit that underpins self-regulation.

Publications regulated by IPSO have made a contractual commitment to follow the Code’s framework for high standards and the tough conditions of membership set by the industry’s regulator. Those conditions mean establishing internal procedures that deal swiftly with complaints and guaranteeing full cooperation with IPSO.

Publications accept that if IPSO delivers an adverse adjudication, or requires a correction, it must be published in full and with “due prominence”, as required by the regulator. Where an error has been made in a story that has appeared on the front page of a newspaper, that can mean an adjudication or correction appearing on the front page, or being signposted there.

For example, when The Sun was found to have breached the Code with a story featuring the headline “Queen Backs Brexit”, IPSO laid down exactly how the newspaper should make amends. It directed that the adjudication should be published in full on page two under the headline “IPSO rules against Sun’s Queen headline”. It also said that headline should also be published on the newspaper’s front page – directing readers to the adjudication on page two – and

WHAT THE CODE SAYS

The Code – including this preamble and the public interest exceptions below – sets the framework for the highest professional standards that members of the press subscribing to the Independent Press Standards Organisation have undertaken to maintain. It is the cornerstone of the system of voluntary self-regulation to which they have made a binding contractual commitment. It balances both the rights of the individual and the public’s right to know.

To achieve that balance, it is essential that an agreed Code be honoured not only to the letter, but in the full spirit. It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest.

It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of their publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.

Editors must maintain in-house procedures to resolve complaints swiftly and, where required to do so, co-operate with IPSO. A publication subject to an adverse adjudication must publish it in full and with due prominence, as required by IPSO.

The Code goes beyond a narrow, legal interpretation of the rules, which could provide loopholes, and instead talks about the Code being honoured “not only to the letter but in the full spirit”.

should appear in the same position, and same size, as the original story’s sub-headline which appeared on the front page, within a border distinguishing it from other editorial content on the page.

Likewise, when the Daily Telegraph was censured for a front-page story with the headline “Sturgeon’s secret backing for Cameron”, IPSO said the adjudication should be published on page two of the print edition of the newspaper and a reference to the adjudication must be published on the front page, directing readers to page two.

IPSO instructed that the headline should make clear that IPSO had upheld the complaint, and it must be agreed in advance.

However, “due prominence” does not automatically mean that a correction or adjudication must appear where the offending article was originally published.

Most newspapers and websites now carry well-established

and signposted corrections and clarifications columns. If IPSO is satisfied that a corrections and clarifications column is prominently labelled, appears regularly, and gives details of how to complain to IPSO, it may well determine it is the appropriate place for a correction or adjudication, although in the case of adjudications it will normally require them to be placed, or signposted, on or before the page where the original article appeared.

Subscribers to IPSO have agreed that the regulator can launch a standards investigation when there might have been serious and systemic breaches of the Editors’ Code, which can result in a fine of up to £1 million.

Publications must ensure the Code is observed rigorously by all contributors, whether they are on the staff or not. For example, Mirror.co.uk, Metro.co.uk and the Daily Mail received complaints after reporting that a court had been told a woman funded cosmetic surgery by selling fake hair straighteners. The allegation had not been made in court. The story was filed by an agency but that did not clear the newspapers of responsibility.

In one of the adverse adjudications, IPSO said the agency had provided inaccurate copy but added: “However, this did not absolve the newspaper of its obligations under the Code. The newspaper failed to take care not to publish inaccurate information, resulting in the publication of a significant inaccuracy.”

Hawk v Metro.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01568-14

Hawk v Mirror.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01319-14

Hawk v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01571-14

The fact that publishers are contractually bound to ensure the Code is observed is a protection for their journalists. And any journalist who feels under pressure to act in a way that is not in line with the Editors' Code can confidentially register their concerns or seek advice by calling a whistleblowing hotline on 0800 032 0243, 24 hours a day, 365 days a year, or can complete an online form.

IPSO scrutinises how publications maintain standards and requires them to submit annual reports giving details of their complaints procedures and training. They have to own up to the mistakes they have made and say what they have changed as a result.

They have agreed to all of that in a binding contract. But there is more, as the Preamble explains. The Code goes beyond a narrow, legal interpretation of the rules, which could provide loopholes, and instead talks about the Code being honoured "not only to the letter but in the full spirit". That means that instead of legalistic quibbling, the Code should be honoured in what we might perhaps all recognise as the spirit of "fair play" and "doing the right thing".

That flexibility helps to balance the rights of the individual and the public's right to know. If the Code is interpreted too narrowly, it might compromise the commitment to respect the rights of the individual. If it is interpreted too broadly, it might infringe the fundamental right to freedom of expression, or prevent publication in the public interest.

Vigorous journalism can be a force for good in society and,

as the Preamble points out, freedom of expression can mean a wide range of things, including informing, entertaining, challenging, shocking, being satirical and being partisan. The Press can and should have the right to be all those things and more but the Code clauses that follow – and against which complaints can be submitted – show how that right is balanced by responsibilities.

CLAUSE 1

Accuracy

CLAUSE 1 goes to the heart of good practice. It is about getting the story right in the first place, putting it right if mistakes are made and – where appropriate – saying sorry.

More than 55 per cent of the complaints considered by IPSO involve Clause 1. That is not surprising: when you are writing the “first draft of history” it can be difficult to see clearly through the fog of breaking news. But that is no excuse for reckless or sloppy journalism.

The Code takes a realistic view, setting high – but not impossibly high – standards. The Code does not demand infallibility but it does require that care should be taken and, when there is a significant inaccuracy, it expects prompt action to make amends.

There is no Public Interest defence under Clause 1.

Key questions an editor should ask about a story include:

- Can I demonstrate that the story is accurate?
- Can I demonstrate that we have taken care? For example, do we have notes to support the story?
- Have we put the key points of the story to the people mentioned in it? Do we need to?
- Is the headline supported by the text of the story?
- Are the pictures misleading?
- Have we distinguished between claims and facts?

WHAT THE CODE SAYS

- i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
- ii) 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.
- iii) A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.
- iv) The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.
- v) 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.

- If we have made a significant error, how prominently should we run the correction?
- Should we apologise in addition to running a correction?
- Are we acting promptly to resolve the problem?
- Should we offer a complainant an opportunity to reply if there is a significant inaccuracy?

Taking care

Sub Clause 1 (i) says the Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text. The emphasis is on taking care. That means doing a thorough job on a story, particularly when it is complex, involves statistics that could be interpreted in different ways or, in these troubled times, when the story is very sensitive.

It may also mean contacting the people involved for their side of the story. There is wide agreement that prior notification of the subjects of stories ahead of publication, while often desirable, could not – and should not – be obligatory. It would be impractical, often unnecessary, impossible to achieve, and could jeopardise legitimate investigations.

Yet, at the same time, a failure to include relevant sides of the story can lead to inaccuracy and breach the Code. That may be the case if your story has come from a confidential source. In those circumstances you may find that contacting the parties involved will strengthen your case as you prepare the story, or it will help you avoid making a serious error.

If you can demonstrate your story is true, then it is unlikely that you will breach the Code if you do not approach the parties involved for comment. And if individuals have not been approached and dispute the story after publication, it is wise to publish their denial as swiftly as possible – unless you can prove the story is true.

Taking care also means remembering that allegations are just that – not proven facts.

The Daily Telegraph faced a complaint under Clause 1 when it ran a story on a leaked government memorandum, which claimed to report details of a private meeting between Scotland's First Minister, Nicola Sturgeon, and the French Ambassador, Sylvie Bermann.

The memorandum had been written by a senior British civil servant immediately following a conversation with the French Consul-General. It claimed that Ms Sturgeon had said she would rather see David Cameron win the general election than Ed Miliband, because she believed Mr Miliband was not “prime minister material”.

The Office of the First Minister, which brought the complaint, said the claims contained in the memorandum, and repeated by the newspaper, were categorically untrue. The newspaper said it had confirmed the authenticity of the document with two well-placed sources before publication and had no reason to doubt its accuracy. It denied having any obligation to contact Ms Sturgeon for comment before publication: it was entitled to publish an accurate account of the document.

The complaint was upheld. IPSO said the memorandum did not represent a first-hand or contemporaneous account

of the conversation between Ms Sturgeon and Ms Bermann. Rather, it contained – at best – a second-hand account given a week later. The newspaper had confirmed the authenticity of the document, but its sources were not in a position to comment on the accuracy of its contents.

The newspaper was entitled to report on the memorandum, but it was obliged to take care not to mislead readers in doing so, including regarding the status of the allegations it contained. The newspaper had published it as fact, without taking additional steps prior to publication – such as contacting the parties involved for their comment – to verify its accuracy.

Office of the First Minister v The Daily Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02572-15

Similarly, a Times columnist relied on a confidential source for a piece that was critical of the Parliamentary Assembly for the Organisation for Security and Co-Operation in Europe and had the headline “Fifa isn’t the only fiefdom to cast its shadow”.

IPSO said the newspaper was entitled to make use of information provided by a confidential source. However, it had relied on this source without taking additional steps to investigate or corroborate the information on which the article’s characterisation was based, which might include obtaining additional on-the-record information or contacting the complainant to obtain his comment before publication. As the newspaper considered itself prevented by Clause 14 (Confidential sources) from disclosing the information

provided by its source, it was unable to demonstrate that it had taken care not to publish inaccurate information.

Solash v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04036-15

However, when Tony Blair complained to IPSO about a Daily Mail story that said he had tried to wriggle out of an MPs’ probe into IRA “comfort letters”, the newspaper was able to show that, despite relying on a confidential source, it had “taken care” in compliance with Clause 1.

The article claimed that Mr Blair had been told by the Speaker that he was required to appear and characterised the call as an attempt by the complainant to “wriggle out” of giving evidence.

Mr Blair’s complaint was not upheld.

IPSO said the newspaper had relied on accounts of the conversation provided by a number of confidential sources, viewed in the context of the complainant’s previous, documented, reluctance to give oral evidence to the committee. It had contacted the parties to the call – and three members of the committee – prior to publication to allow them an opportunity to comment on the claims and, in the complainant’s case, had published his denial. It also made clear that the complainant disputed the account the newspaper had been given.

The account was appropriately presented as a claim, or the newspaper’s understanding of what had passed between the parties. IPSO was therefore satisfied that care had been taken to avoid misleading readers by suggesting that the newspaper had been in a position to establish that the claims published

were true. While it was appropriate for the newspaper to have published the complainant's denial, the fact of his denial did not mean it was not entitled to publish the allegations. There was no failure to take care not to publish inaccurate, misleading or distorted information.

Blair v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03549-15

In some circumstances it may not be necessary to approach the subject of a story before publication.

An animal welfare campaigner complained that the Argus (Brighton) had not contacted her for comment on an article that claimed a charity had cancelled a fundraising event to be held at a greyhound stadium following a campaign by animal rights activists.

The newspaper said it had made repeated attempts to contact the complainant for comment – by phone, Facebook and by asking the campaign group for her number – but she did not respond.

Rejecting the complaint, IPSO said there is no specific requirement under the Code for publications to contact the subjects of coverage prior to publication, although it might be necessary in some instances to ensure that care is taken to comply with Clause 1 (i).

In this instance, the claims in the article about the complainant related to comments she had left on social media. The complainant did not dispute having made these comments, and they were available in the public domain. The fact that the newspaper had not successfully contacted the complainant prior to publication in relation to these

claims did not amount to a failure to take care not to publish inaccurate, misleading or distorted information.

Slade v The Argus (Brighton) www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=06088-15

In contrast, the Daily Record was censured for not independently corroborating a story that alleged that “mob rule” by Glasgow Rangers fans prevented police entering the football stadium.

The newspaper published a number of allegations of serious wrongdoing by Rangers supporters on the basis of an account provided by an individual who approached the newspaper, by email, claiming to be a police officer. The newspaper said it had attempted to verify the account provided in the email with three further police contacts.

IPSO said the newspaper had not contacted anyone able to provide a first-hand account of what occurred after the match. Further, it had been unable to demonstrate that any of the sources it had relied on could reasonably be described as “independent”, as the article had claimed.

In circumstances where Rangers supporters were accused of violence towards police, and other anti-social behaviour, the newspaper's attempts to support the account of an unidentified source it had been unable to verify were not sufficient to demonstrate that care had been taken over the accuracy of the article. The complaint was upheld as a breach of Clause 1(i).

A man v Daily Record www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03188-16

IPSO may insist on seeing evidence that a publication has taken care, particularly when the subject of the story is also the source and it is told in his or her own words.

Lianne Owens complained to IPSO over a first person account in the magazine *That's Life* of the serious illness she had experienced while pregnant with her fourth child. It reported that she had risked her own life to give birth to a baby girl, and by extension had risked leaving her other children without a mother. The complainant said that she had not risked her life by continuing with her pregnancy: she had been told that, with treatment and monitoring, she would survive, but her baby might not.

That's Life said the article had been read back to the complainant but the magazine did not have a recording of the read-back, and while it said that it had a text version of it, the journalist had not signed or dated it, and no changes had been recorded.

IPSO said a read-back is a way of complying with the requirements of Clause 1 (i) for first-person stories, but only if there is a proper record of it having been completed satisfactorily. In this instance, the complainant disputed the magazine's position that she had agreed the accuracy of the material. In the absence of any record that she was content with the copy, which was being attributed to her, the Complaints Committee was not able to place any reliance on the read-back. The Committee did not find that the magazine had taken appropriate care over the accuracy of the article and it upheld the complaint under Clause 1 (i).

Owens v That's Life: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00580-15

Science stories can be complex and difficult to report. The Science Media Centre has produced helpful guidelines, which are not binding but give useful pointers to getting stories right: www.sciencemediacentre.org/wp-content/uploads/2012/09/10-best-practice-guidelines-for-science-and-health-reporting.pdf

Helping readers to gain a deeper understanding of stories can also be achieved on some occasions by providing online links to original reports or court judgments.

Pictures

Pictures – and that includes both stills and video – can be misleading, so should be handled with care. If a picture has been significantly digitally altered or has been staged – perhaps a model has been used to illustrate a story – the caption should say so to avoid misleading readers. Sometimes pictures obtained from sources may not tell the whole story.

The Herne Bay Gazette received a complaint when it published a picture obtained from social media of a teenager holding up a wine glass in advance of being sentenced to prison for causing death by dangerous driving and drink-driving. The headline read: “Boozy trip just days before teen locked up.” The teenager's mother, who made the complaint, said that in the photograph in question, her daughter had been drinking Coca-Cola from a plastic wine glass.

IPSO upheld the complaint, saying the photograph did not show whether or not the teenager had drunk alcohol on the trip to London. Nevertheless, the juxtaposition of this photograph – from which that inference could easily be

Eye-catching headlines won't necessarily summarise everything in the story below, but Clause 1 (i) requires any claim made in the headline to be supported by the text of the article.

drawn – with the headline, clearly suggested that she had drunk alcohol.

The newspaper had not sought the comments of the teenager or her family before publishing the photograph, and the decision to accompany the front page headline with the photograph demonstrated a failure to take care not to publish misleading information in breach of Clause 1 (i) of the Code. *Hogbin v Herne Bay Gazette*: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03139-14

A picture taken from Facebook of a man celebrating a night out gave a misleading impression when he went missing in Morocco – because a date in the story was wrong. Express.co.uk said the teenager had last written on social media “on Saturday” when he posted a photograph of himself in Marrakech with a young woman, with the words “multiple

Jagerbombs into the Bank Holiday weekend...” In fact, the picture had been taken in Bristol on an earlier bank holiday weekend.

The newspaper said the reporter had assumed that the reference to the “bank holiday” related to the recent weekend when the teenager disappeared. The newspaper amended the article and appended a correction and apology.

IPSO said the newspaper had failed to check the dates of the Facebook post and this represented a breach of Clause 1 (i). It considered that the newspaper’s prompt action to address the complaint was sufficient to meet the requirement of Clause 1 (ii).

Jarvis v Express.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05719-16

Social media can be a useful source of information for journalists but it can also be the cause of complaints on a range of subjects, including accuracy. IPSO has issued helpful guidelines on social media, which can be found here: www.ipso.co.uk/press-standards/guidance-for-journalists-and-editors/social-media-guidance/

Headlines

Eye-catching headlines won't necessarily summarise everything in the story below, but Clause 1 (i) requires any claim made in the headline to be supported by the text of the article.

Buckingham Palace complained to IPSO over a Sun front page headline which declared: “Queen Backs Brexit.”

The headline appeared beneath the strapline “Exclusive: bombshell claim over Europe vote”, and above the sub-headline “EU going in wrong direction, she says”. Accompanying the headline was an official photograph of the Queen in ceremonial dress. The article continued on page two, beneath the strapline “Monarch backs Brexit”. It was accompanied by a comment piece by the newspaper’s political editor, which argued that if the Queen has a view on “Brexit”, voters should have the right to know what it is.

The article reported that two unnamed sources claimed the Queen made critical comments about the EU at two private functions: a lunch for Privy Counsellors at Windsor Castle in 2011, and a reception for Members of Parliament at Buckingham Palace said to have taken place “a few years ago”.

The complainant said the headline meant the Queen was a supporter of the Leave campaign in the forthcoming referendum, and wanted to see Britain leave the EU. This was supported by the use of an official photograph. The headline was misleading, distorted, and unsupported by the text.

The complainant noted that, on January 1 2016, IPSO adopted a revision to Clause 1 of the Editors’ Code of Practice, which makes specific reference to “headlines not supported by the text” as an example of inaccurate, misleading or distorted information, which the Press must take care not to publish.

The complainant argued that this required the text of the article to both clearly identify the factual basis for the headline, and provide clear evidence of its accuracy. Allegations about

comments made at a lunch taking place long before the decision to hold a referendum on EU membership could not be relied upon as evidence of the Queen’s views in relation to that referendum. The article therefore breached Clause 1.

The newspaper said that readers would have seen the prominent strapline and sub-headline which accompanied the headline, and would have known from these that the headline referred only to a claim that the Queen backs Brexit. The text of the article set out the basis for that claim: the accounts of apparently Eurosceptic views said to have been expressed by the Queen on two previous occasions.

IPSO said the newspaper had highlighted its history of publishing playful, hyperbolic headlines, which were not intended to be read literally. Such headlines are a powerful tool, used to convey the heart of a story, or as part of campaigning journalism in the public interest.

IPSO recognised their importance as a feature of tabloid journalism, and emphasised that the revision to the Code did not prohibit editorialising or the celebrated headlines sometimes used by the Sun.

However, the print headline went much further than referring to a claim about what the Queen might think. It was a factual assertion that the Queen had expressed a position in the referendum debate. This was supported by the sub-headline, which gave the misleading impression that she had made a contemporaneous statement that the EU was “going in the wrong direction”. The same assertion was made by the online headline, which was not capable of being construed as a claim.

In contrast to the examples the newspaper had given,

there was nothing in the headline, or the manner in which it was presented on the newspaper's front page, to suggest that this was the newspaper's conjecture, hyperbole, or not to be read literally.

The headline – both in print and online – was not supported by the text and was significantly misleading. The headline contained a serious and unsupported allegation that the Queen had fundamentally breached her constitutional obligations in the context of a vitally important national debate.

Furthermore, it did not follow from the comments the article reported that the Queen wanted the UK to leave the EU as a result of the referendum: that suggestion was conjecture and the Committee noted that none of those quoted in the story were reported as making such a claim. Publication of the headline represented a failure to take care not to publish inaccurate, misleading or distorted information in breach of Clause 1 (i). The complaint under Clause 1 was upheld.

Buckingham Palace v The Sun: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=01584-16

The Sunday Express received a complaint over a story that some prisoners had keys to “privacy locks” on their cells and a sub-headline stated that “Ian Huntley and Rose West [are] ‘virtually roaming at will’”.

The complainant said the headlines implied that prisoners had been provided with keys that enabled them to enter or leave their cells at any time. This was misleading and inaccurate, given that prison officers’ keys overrode the privacy locks.

IPSO said the sub-headline wrongly suggested that the privacy keys gave prisoners greater freedom of movement, a claim that was not supported by the information in the article and was a breach of the Code.

Black v Sunday Express: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=00498-15

It is a common practice to use single quotes in a headline to encapsulate the facts of a story, but care must be taken to ensure that the text of the article supports any claim made.

IPSO found against the Daily Telegraph for a headline that read “Gipsy camp stress ‘drove couple to suicide pact’”.

IPSO said: “The Committee noted the newspaper’s position that the use of single quotation marks was a journalistic convention, to denote the paraphrasing of an allegation, and accepted that the meaning of quotation marks can vary according to context, and is therefore open to interpretation. However, the headline was not supported by evidence heard at the inquest, in whole or by any individual.”

Doherty v Daily Telegraph: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=04968-15

Court reports

Claims and counter claims are made in court but accurate reporting of court cases will not normally be a breach of the code and is covered by legal privilege. It is, of course, essential that allegations are not reported as facts, that the defence is fairly reported as well as the prosecution, and that headlines

likewise accurately reflect what the court has been told. Comments made outside court may breach the Code if they are found to be inaccurate.

The Eastwood & Kimberley Advertiser received a complaint from a defendant who disputed a story's headline, some aspects of the evidence reported in the newspaper and the fact that his mother's address, where he was living, was given in the report.

IPSO rejected the complaint, saying that newspapers are not responsible for the accuracy of information given in court. They have an obligation to accurately report proceedings. All of the points disputed by the complainant were corroborated by the reporter's notes and the newspaper was entitled to publish the address given in court.

Tomlin v Eastwood and Kimberley Advertiser: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00546-15

If court reports contain material that was not stated in court and which proves to be inaccurate, you are in danger of breaching the Code. Mirror.co.uk, Metro.co.uk and the Daily Mail received complaints after reporting that a court had been told a woman funded cosmetic surgery by selling fake hair straighteners. The allegation had not been made in court. The story was filed by an agency but that did not absolve the newspapers of responsibility.

In the Metro.co.uk adjudication, IPSO said of the hair straighteners allegation: "After publication, the newspaper accepted that it was unable to substantiate this aspect of the article. It had purchased the story from an agency, which had provided inaccurate copy. However, this did not absolve the

newspaper of its obligations under the Code. The newspaper failed to take care not to publish inaccurate information, resulting in the publication of a significant inaccuracy."

Hawk v Metro.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01568-14

Hawk v Mirror.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01319-14

Hawk v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01571-14

Significant inaccuracy

It is impossible to be perfect, and some mistakes may be annoying but not alter the overall accuracy of a story.

The Code recognises this in sub-clause 1 (ii) when it sets the test of whether an inaccuracy is significant. If the inaccuracy is not significant, there is no breach of the Code but if it is significant it must be corrected. If a correction is offered promptly, then the significant inaccuracy will not be a breach of the Code. It is a question of judgment – getting a name wrong may not alter the thrust of a story. On the other hand, it might make the story very damaging. How this works in practice can be seen in two IPSO adjudications on stories involving guns.

The Daily Express ran a story revealing that 670 young people under the age of 14 had been given shotgun certificates – but the story was illustrated online by a picture of a child reaching for a handgun. IPSO said the image showing a child reaching for a handgun and the accompanying caption gave

It is a question of judgment – getting a name wrong may not alter the thrust of a story. On the other hand, it might make the story very damaging.

the misleading impression that the police were granting gun licences to children for handguns.

The selection of an image of a handgun, rather than a shotgun with which the article was concerned, represented a failure to take care not to publish inaccurate information in breach of Clause 1 (i). The suggestion that children were being granted handgun licences represented a significant inaccuracy requiring correction under the terms of Clause 1 (ii).

Boyd v Daily Express: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01509-15

In contrast, an Express.co.uk story warning about the possibility of gun massacres because of fears over firearms laws was wrongly illustrated with a picture of illegal machine guns.

On this occasion IPSO did not find the error significant. Any

misleading impression the image gave was not significant: it did not support any claim subsequently made in the article, and served simply to illustrate that the article was about guns. There was therefore no breach of Clause 1.

Boyd v Express.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05726-15

Corrections and due prominence

When a mistake has been made, Clause 1 (ii) of the Code requires it to be corrected with due prominence and in cases involving IPSO it will be as required by the regulator. Due prominence does not mean equal prominence when it comes to the placement of corrections. It is a question of judgment on the part of editors, who must take into account the seriousness of the inaccuracy and the spirit of the Code. If a complaint is pursued, IPSO may endorse their judgment, or disagree if it is felt that a correction has not been published with sufficient prominence.

Readers now access stories through a variety of channels, so it is best practice for corrections to be carried on all the media platforms that carried the story originally.

Many newspapers and websites have established corrections columns, which appear in the same position every day, and IPSO supports this approach. IPSO has said of the columns: “It signifies a commitment to accuracy; it provides information to readers about how to make complaints; and if it appears consistently, it contributes to the prominence

of corrections by ensuring that readers know where to find them.”

IPSO has issued guidance on due prominence, which can be found here: www.ipsa.co.uk/press-standards/guidance-for-journalists-and-editors/due-prominence-guidance/

IPSO says that it makes decisions on prominence in two contexts. First, it determines if a remedy offered or taken by a publication has met the obligation under Clause 1 (ii) to correct a significant inaccuracy, misleading statement or distortion with ‘due prominence’. Second, it must decide how to exercise its powers to determine the nature, extent and placement of a remedy to a breach of the Code that it has established.

IPSO may consider the following factors when deciding on the prominence of a correction or adjudication:

- the seriousness and the consequences of the breach of the Code
- the position, the prominence and the extent of the breach of the Code
- the public interest in remedying the breach of the Code
- any action taken by the publisher to address the breach of the Code.

The Sunday Express promptly corrected the story about prisoners’ cell keys on the letters page on Page 30, which it had newly designated as its corrections column, but IPSO was not satisfied.

The newspaper said that when it became a member of IPSO, it designated its letters page as the appropriate location for the publication of corrections and clarifications, and that

details of the newspaper’s membership of IPSO were also published in this position.

IPSO said there was no information published on the page which might indicate to readers that this was the place where corrections would appear. Neither would readers have become aware of the policy as a consequence of the frequent publication of corrections there, as this was the first correction published under the policy. As such, the newspaper’s approach did not amount to an established corrections column. The correction was not published in an established column, and page 30 was not otherwise a sufficiently prominent location in which to correct the accepted inaccuracy. The newspaper had failed to meet its obligations under Clause 1 (ii). In order to remedy the breach of the Code, the newspaper should now publish the adjudication on page 2.

The Press & Journal offered to correct a story about a Highland clan on page 5 or 6 of its print edition – a note on its letters page, which appeared daily, made clear that its corrections and apologies were published on those pages.

IPSO said the newspaper had recognised its error promptly, and offered the complainant a letter for publication, and then a clarification, prior to IPSO’s involvement in the complaint. The wording of the correction offered was sufficient to address and correct the initial error.

The Committee was concerned, however, about the newspaper’s proposal to publish the correction on page 5 or 6, when the original article had appeared on page 3. IPSO said an established corrections column should, except in exceptional circumstances, appear in the same place in every

There are circumstances in which a front-page correction may be required, regardless of the existence of an established Corrections and Clarifications column.

edition of the publication and include information about the publication's complaints policy.

The regular placement of corrections on page 5 or 6 as standalone items did not amount to an established corrections column. In the absence of an established column, the publication of a correction two or three pages further back in the publication than the original error did not constitute due prominence.

Following the case the newspaper established page 2 as the home of the corrections column.

Wilson v Press & Journal: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00120-14

IPSO can require a very prominent position for publication of an adjudication, or a cross-reference to it.

In the case of the Daily Telegraph's story about Nicola Sturgeon, IPSO ruled that the adjudication should be

published on page 2 of the print edition of the newspaper and a reference to the adjudication should be published on the front page, directing readers to page 2. It should also be published on the newspaper's website, with a link to the full adjudication appearing on the homepage for 48 hours.

When errors were identified in an article in The Times about the alleged tax burden that Labour would place on families, it published a correction in its Corrections & Clarifications column on the Letters page, which was page 24 in the relevant edition. The complainant was satisfied with the text of the correction, but not with its prominence. He said that the appropriate placement was the same as the original, inaccurate article.

The newspaper said it had established its Corrections and Clarifications column in 2013 on one of the most important and most-read pages of the newspaper, the Letters page.

It listed a number of benefits of the column: it demonstrates the newspaper's firm commitment to correcting errors; makes corrections easy to find in a place which readers will go to; allows readers to see what has been corrected from day to day; makes it easy for staff to check daily for published corrections and so avoid repeating errors; helps to ensure that corrections, once agreed, will appear in the newspaper in the approved form; and is accompanied daily by the newspaper's complaints policy and procedures. For these reasons, this position gave corrections more prominence than they might otherwise have on a page further forward in the newspaper, the exact position of which could be variable depending on each day's layout.

IPSO said there are circumstances in which a front-page

correction may be required by the Editors' Code, regardless of the existence of an established Corrections and Clarifications column. In deciding whether to require such a correction, the Committee must act proportionately: front-page corrections are generally reserved for the most serious cases.

The Committee acknowledged that the newspaper had acted in good faith, attempting to remedy the inaccuracy in a way which it believed complied with the terms of the Code, and ensuring publication prior to the imminent general election. However, the Committee determined that this correction was not duly prominent. The correction should now be republished in the Corrections and Clarifications column, with a reference to the correction on the front page.

Portes v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03125-15

Another approach, which may enable an editor to correct an inaccuracy promptly, is to amend the online version of an article. Where the inaccuracy was significant it will be necessary also to add a correction to the article, normally as a footnote, making clear that it had originally contained an inaccuracy and detailing how it had been corrected.

In other cases, particularly if privacy issues are also involved, an editor may offer to remove an article or picture from online publication altogether. This is not something IPSO has powers to require as a sanction, but it may help secure resolution of a complaint. Editors will, of course, be concerned to ensure that they do not continue to publish material in a form found by IPSO to be in breach of the Code.

Apologies

If an inaccuracy is serious, it might merit an apology as well as a correction. Deciding whether an apology is required and what form it should take is again a matter for the editor's judgment, taking into account the spirit of the Code. If a story has caused significant personal hurt or embarrassment, or it has been the basis of criticism, then an apology may well be the appropriate response.

Sometimes a published apology might be the last thing that a complainant wants because it could highlight the error and cause renewed embarrassment. In such cases a personal letter or phone call may be more suitable. An apologetic note from a genuinely regretful editor, accompanied by a bouquet of flowers, is by no means uncommon and the complainant may consider the matter closed. It could be seen as an example of the spirit of the Code in action.

Sometimes such gestures are neither appropriate nor enough, and the demand for a published apology becomes an issue. IPSO does not have the power to order publication of apologies, but a failure to offer one when appropriate can lead to an upheld adjudication. IPSO made its views clear when it handled two complaints about the same story.

The Courier published an inaccurate story about a libel action between a dentist and a patient. The newspaper published a correction and an apology.

IPSO said: "On this occasion, where the error had been very personal to the complainant, an apology was required. The correction clearly identified the original inaccuracy and the correct position, and was published promptly in a duly

prominent position in the newspaper. There was no breach of Clause 1 (ii) of the Code.”

McIntosh v The Courier (Dundee): www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00993-15

The Herald published the same story and ran a correction citing freelance copy as the source – but did not include an apology. IPSO said: “The newspaper had not included an apology in the correction. Clause 1 (ii) of the Code makes clear that there are circumstances in which an apology may be called for. On this occasion, where the error had been personal to the complainant and had the potential to be seriously damaging to him, an apology was required.

The Committee was further concerned that the newspaper had sought to use the correction to distance itself from the error. The newspaper had not properly complied with its obligations to correct the inaccuracy; this represented a further breach of the Code.”

McIntosh v The Herald (Glasgow): www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00991-15

Repeating previous inaccuracies is never a good idea – particularly as simply repeating an earlier correction may not be judged by IPSO as a sufficient remedy in the new circumstances.

In December 2016 the Daily Telegraph ran an archive image of a front page featuring Gordon Brown in connection with a story that referred to the MPs’ expenses scandal – but the newspaper had published a clarification about Mr Brown in 2009.

IPSO said that as it had been accepted in 2009 that the complainant had not been guilty of any wrongdoing in relation to the payment to his brother for cleaning expenses, the repeated use of his image in this context represented a serious failure to take care over the accuracy of the article in breach of Clause 1 (i). A correction was required to avoid a breach of Clause 1 (ii).

IPSO said that two days after the complainant contacted the newspaper to express his concerns, it had offered to publish a correction in print, 16 pages further forward than the original article had appeared, and the online article had been amended. While the newspaper had acted promptly, the wording merely repeated the clarification published in 2009 and failed to acknowledge that it had effectively made a fresh allegation of “abuse” against the complainant. This was a serious, unjustified, allegation, and an apology was required under the terms of Clause 1 (ii). The newspaper’s refusal to apologise constituted a further breach of the Code.

Brown v The Daily Telegraph www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00294-17

Acting promptly

The Code requires prompt action by the Press to correct a significant inaccuracy, misleading statement or distorted information. Not doing so is a breach of the Code.

The Daily Star acted promptly to make amends when its coverage of the Manchester Arena bomb in May 2017 included a picture of a child who had not been involved with a caption

suggesting that she was “missing”. The newspaper had relied on information provided by an agency, which sourced the claim from what turned out to be a hoax Twitter account.

While IPSO acknowledged that there was no reason to doubt that the newspaper had acted in good faith, it was ultimately responsible for the inaccuracy.

IPSO noted favourably that, in the following day’s edition, the newspaper published a front-page reference to an apology on page 2. This had identified the inaccuracy and been illustrated with the photograph of the complainant’s daughter to make readers aware of the correct position. It was satisfied that the publication met the requirements of Clause 1 (ii) by publishing a prompt and prominent apology.

Gorman v Daily Star: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=12629-17

The Sun was judged by IPSO not to have acted promptly in correcting a story about Jeremy Corbyn’s membership of the Privy Council.

A front page story in The Sun reported that Mr Corbyn had agreed to join the Privy Council following his election as Labour leader. It stated this was “so he can get his hands on £6.2 million of state cash”, in the form of “Short money”, which is funding allocated to opposition parties for parliamentary duties. It also reported that Mr Corbyn was a “hypocrite” because he would “kiss Queen’s hand to grab £6.2m”.

After an investigation, IPSO said the coverage was significantly misleading and the newspaper’s offer to publish a correction was appropriate. However, it had made the offer of a correction only at a late stage in the complaints process,

The opportunity to reply need only be extended when a story contains a significant inaccuracy.

more than a month after being notified of the complaint, and only after IPSO had notified both parties that the matter would be passed to the complaints committee for a ruling. Given the nature of the misleading statements, the newspaper had failed to make the offer sufficiently promptly, and this represented a breach of Clause 1 (ii).

IPSO required that a reference to the adjudication be published on the front page, directing readers to the full adjudication, which should appear on page four or further forward.

Brocklehurst v The Sun: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05814-15

Opportunity to reply

Clause 1 (iii) requires the Press to provide a fair opportunity to reply to significant inaccuracies when reasonably called for. It means that where it is reasonable – as in cases of significant inaccuracy – an opportunity to reply may offer a remedy beyond a simple correction. How the opportunity to reply is

put into practice and the prominence it is given is a matter for editorial judgment.

The Times gave an opportunity to reply to Migration Watch after publishing a leader about immigration figures. It published a letter from the organisation. Full Fact complained to IPSO, maintaining that a letter was an inadequate response and a correction should have been made to the story.

The Times said it was long accepted that a reader's letter was an appropriate way of remedying an inaccuracy, and provided a number of examples of cases in which letters had been published in The Times correcting factual inaccuracies.

IPSO said this was an occasion on which an opportunity to reply was reasonably called for and promptly supplied. The newspaper had met its obligations, the letter appropriately addressed the inaccuracy and it was appropriate for it to have appended the letter to the online article to ensure that any future readers would be aware of the position. The complaint was not upheld.

Full Fact v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01755-14

The opportunity to reply need only be extended when a story contains a significant inaccuracy. The Sunday Telegraph faced a complaint over two reports on Islamic extremism and anti-Semitism. The complaint was not upheld. As there were no inaccuracies in the stories, there was no requirement for an opportunity to reply.

Hussain v The Sunday Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00870-15

Comment, conjecture and fact

Clause 1 (iv) protects the Press's freedom to editorialise and campaign, but it also demands that the Press must distinguish between comment, conjecture and fact. That may lead to opinionated columnists being asked to justify the factual basis for cases they are arguing. In the news columns it might result in a complaint because a claim has been presented as a fact.

The Rutherglen Reformer reported that residents were concerned about leaflets that had been circulated locally, which claimed to reveal the "frightening truth about Jehovah's Witnesses". The author of the leaflet complained and said it was a breach of the Code for the newspaper to state as a fact that the leaflet made "several false and offensive claims about the religion". The newspaper told IPSO it accepted that the report's description of the leaflets should have been more clearly attributed to local people.

IPSO said the newspaper was obliged to distinguish the claims of the leaflet's critics clearly as their own opinions. As the newspaper accepted, it had not established that the leaflet contained false claims – this was merely the position of critics of the leaflet. This statement failed to distinguish between comment, conjecture and fact in a manner that would mislead readers.

James v Rutherglen Reformer: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01595-14

The Kentish Gazette ran an article that reported concerns in the Kent area that unaccompanied male asylum seekers

were “lying” about their ages and were “being placed in schools” with 11-year-old children.

The complainant said there was no proof that asylum seekers had been lying about their age. IPSO said the newspaper did not subsequently provide any material to corroborate the story’s prominent assertion and that aspect of the complaint was upheld.

Perkins v Kentish Gazette: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01457-14

However, when the Sunday Telegraph received a complaint about an article on the controversial topic of climate change, IPSO ruled that a columnist was entitled to set out his position, even if his interpretation of data was disputed by others.

The article, headlined “How we are being tricked with flawed data on global warming”, presented the columnist’s criticism of the use of techniques to adjust raw data from weather stations by scientists studying long-term climate patterns, which he described as “wholesale corruption”.

The complainant acknowledged that the columnist was entitled to his opinion, but said that on this occasion he had supported his argument with inaccuracies.

The newspaper said climate change was a controversial subject in which all claims were contestable by reference to opposing studies and opinions.

IPSO said the article was an opinion piece in which the columnist sought to challenge established scientific views on global warming. There was still dispute about the interpretation of historical temperature data, and the

columnist was entitled to select evidence to support his position.

The complainant raised a number of objections to the newspaper’s commentary on the processing techniques commonly used by climate scientists. This, however, was a comment piece and the columnist was entitled to set out his position on the topic and the complaint was not upheld.

Sloan v The Sunday Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00766-15

Reporting the outcome of defamation actions

Clause 1 (v) requires a publication to report fairly and accurately on the outcome of an action for defamation unless an agreed settlement states otherwise or an agreed statement is published. This is intended to ensure that newspapers set the record straight in their own pages.

It covers only the outcome of the case – ongoing coverage during the hearing is left to the discretion of editors. And if an agreed statement is published, there is no further requirement for the newspaper to also carry a report of the outcome.

In an adjudication, IPSO clarified when proceedings could be considered to be completed.

The Daily Mail reported losing both a libel action and the appeal but it did not report that it had been refused leave to take the case to the Supreme Court.

The Committee did not accept that refusal of leave to appeal represented the “outcome” of the proceedings.

Rather, the decision meant that the newspaper was denied the opportunity to challenge the outcome of the case which was determined in the complainant's favour in 2014, which had been fairly and accurately reported by the newspaper at that stage. No further obligation under Clause 1 arose from this, particularly in light of the fact that the newspaper had not reported on its application, which might otherwise have suggested to readers that it regarded the proceedings as ongoing.

Miller v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01533-15

KEY QUESTIONS

- Can I demonstrate that the story is accurate?
- Can I demonstrate that we have taken care? For example, do we have notes to support the story?
- Have we put the key points of the story to the people mentioned in it? Do we need to?
- Is the headline supported by the text of the story?
- Are the pictures misleading?
- Have we distinguished between claims and facts?
- If we have made a significant error, how prominently should we run the correction?
- Should we apologise in addition to running a correction?
- Are we acting promptly to resolve the problem?
- Should we offer a complainant an opportunity to reply if there is a significant inaccuracy?

CLAUSE 2

Privacy

PRIVACY is a major issue for our society. There is a genuine debate about the citizen's right to privacy, whether it involves surveillance by the state in the name of national security, the tracking of your internet preferences by companies, or the activities of newspapers in pursuit of stories.

In relation to the Press, there has been conflict over where legitimate public exposure ends and unwarranted intrusion begins. And when dealing with people who trade on their fame, there can be a further dimension: how much of the public's interest has been encouraged by the celebrities themselves?

There can be no definitive answer to the privacy question. It is a matter of balance and judgment according to all the circumstances.

The Code attempts to embrace the issues and manage the conflicts by two means.

First, in setting out the nature of privacy, it echoes the language of the Human Rights Act – the entitlement to respect for private and family life, home, health and correspondence. In June 2004 the Code added digital communications to this, thus underlining Clause 10's rules on the use of clandestine devices and subterfuge.

Second, the Code's ban on intrusive photography

WHAT THE CODE SAYS

- i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.
- iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.

A public interest exemption may be available. See Page 108.

makes clear that consent would be needed to take pictures of individuals in public or private places where there is a reasonable expectation of privacy. This attempts to protect individuals by introducing a test of what is reasonable, with each case judged by its merits – the final arbiter of which is IPSO's Complaints Committee with its lay majority.

The Code's privacy clause has a Public Interest defence.

The wide discretion that the Code gives IPSO makes its decisions vital in setting public expectations of the Press. Among the guiding principles it considers in reaching those decisions are:

- **Privacy is not an absolute right.** It can be compromised by conduct or consent. For example, when considering complaints of alleged intrusions, IPSO will take into account previous activity by the complainant. Clause 2 (ii) states: “...account will be taken of the complainant’s own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so ...”
- **Privacy is not a commodity** which can be sold on one person’s terms – the Code is not designed to protect commercial deals.
- **Privacy does not mean invisibility.** Pictures taken in genuinely public places and information already in the public domain can be legitimate. However, editors should take special care in relation to pictures of children. This is addressed in more detail in the chapter on *Clause 6 (Children)*.
- **Privacy may be outweighed by the public interest** – such as when it is used to keep secret conduct that may reflect adversely on a public figure or role model. Those people should expect consequential media comment but it should be proportionate.

In 2018 Clause 2 was revised and 2 (ii) now requires the regulator to consider the extent to which the material complained about is already in the public domain or will

become so. The revised clause is based on the existing wording of Clause 3 of the Public Interest section of the Code and is intended in part to address the challenge of effectively regulating global digital publications which are owned and domiciled in the UK but also have editorial operations in other jurisdictions producing content which can be viewed in the UK.

The amendment also clarifies the application of Clause 2 in practice. Privacy cases, particularly those involving images from social media, often hinge on the extent to which the content under complaint is in the public domain. The amendment is intended to help the public by making clear that a complaint under Clause 2 may not succeed if the committee believes that information has been (or inevitably will be) so widely disseminated that it can no longer be considered private.

Social media

The issue of privacy has intensified recently in relation to social media. Every day millions of people post details of their lives, including pictures, on social media – and it can sometimes lead to complaints about invasion of privacy when they are re-published to illustrate a story.

IPSO has issued a set of guidelines that help journalists using social media to make key decisions and they also act as a guide for members of the public. They can be found here: www.ipso.co.uk/press-standards/guidance-for-journalists-and-editors/social-media-guidance/

IPSO advises journalists to ask the following questions if they intend to publish material taken from social media:

- To what extent, if at all, is the material in the public domain?
- If the material is in the public domain, who has placed it there?
- What privacy settings are in place for the material?
- Does the individual have a reasonable expectation of privacy in relation to the material?
- What is the nature of the material?
- Does it depict anything private, such as medical information or private activities?
- Might the publication of this information, in context, be intrusive into the subject's privacy?
- If it is intrusive, is there a public interest in publishing it?
- Are there particular reasons for exercising caution – for example, does the information feature or relate to a child; to an individual experiencing grief or shock; or does it also include an individual who is not relevant to the story?
- Are there any legal issues arising from publication of the material?

Social media settings can be changed and material can be deleted, so IPSO recommends that journalists keep a record of their actions at the time a story is reported. Those notes might include:

- Taking a screenshot of the material to be published, showing the date and privacy settings if possible.

- Keeping a contemporaneous note of any public interest discussion, where relevant.
- Pixelating or removing any individuals who might feature in a photo to be published but are not relevant to the story.

When IPSO considers an individual's reasonable expectation of privacy, it will take account of the complainant's "own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so" (Clause 2 (ii)). IPSO suggests asking these questions:

- Who posted the material? Who put the information in the public domain?
- How many people had access to it, and what was their relationship with the subject/person who posted the material?
- Would the poster have had a reasonable expectation that the material would not be circulated further?
- What disclosures of private information, if any, has the individual previously made?
- Does the information feature individuals who are not relevant to the story?

These were among the questions asked when IPSO considered a case involving a picture of a cup of coffee with an unusual frothy topping. A woman thought that the froth on the top of her coffee resembled a penis and she posted what the Daily Mail described as a "saucy" photo of it as a joke on Instagram.

The woman complained to IPSO saying she had been distressed by the publication, which amounted to a failure to

respect her private life. She acknowledged that her Instagram page had not been set to private at the time.

IPSO said the image was posted publicly on the internet by the complainant. It did not disclose any private information about her, nor was the fact that she had posted the image private. Publication of information about her post did not raise a breach of the Code.

Ward v Daily Mail: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=02168-14

The regulator will, of course, examine each case on its merits, and there will be occasions when publicly accessible information should not be published and others when protected information can be.

Publishing material that is already in the public domain may not be a breach of the Code. A man complained of a breach of the privacy clause when Mirror.co.uk used material from Facebook in an article headlined “False widow spider bite leaves man with horrifying blisters and organ failure”.

The complainant said he had written a Facebook post about the spider bite for local friends and family. His post was visible only to his 30 friends, but they could then share

If it can be successfully argued that the public interest is engaged, then an element of intrusion can be justified.

the post more widely. The newspaper said the complainant’s Facebook post had been openly available to the public and it noted that the opening sentences to the post were: “I don’t ask much from people but I ask you to please read this. I am not posting this to scare people simply to bring awareness”.

IPSO said the images of the complainant’s arm were graphic photographs of a medical condition that he was entitled to consider private. However, the complainant disclosed a number of details about the spider bite and the subsequent medical treatment on Facebook, including a similar image, in a manner which resulted in the post being widely shared. Given the manner of the complainant’s public disclosure of the image of a burst blister, the publication of the photograph did not constitute a breach of Clause 2.

Beer v Mirror.co.uk: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=05019-15

In another case involving Facebook, a customer at a drive-through fast food outlet, who claimed to have seen a giant rat, videoed the person serving him. The video was subsequently posted on Facebook and was later used in a story by the Daily Mirror. IPSO said the video showed the worker carrying out a public-facing role at a drive-through window. The nature of her place of work was such that she was visible to those outside. She was in a public place, visible from the car park, and she was not engaged in any private activity. Furthermore, the video was already in the public domain on social media when the newspaper published the article on its website. The newspaper had not disclosed any private information about her.

Rainford v Mirror.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04459-15

Similarly, when a newspaper illustrated a story about a leisure club with a picture obtained from a Facebook page it was not a breach of the Code.

The newspaper said that when its journalist was researching the story, it accessed the complainant's Facebook page to find that "dozens" of her albums were publicly viewable. The newspaper wanted a photograph of her inside the club, and one of its sources (an employee of the club) provided one from her Facebook page. It said that, given the large number of publicly available photographs, it did not think that it would be a problem to use the one it published. It said that, having brought her complaint, the complainant made efforts to increase the security restrictions on her Facebook page.

IPSO said the photograph had been provided by an employee of the club, after the complainant chose to share it online. The subject matter of the photograph was innocuous, and its use did not demonstrate a failure to respect the complainant's private life. There was no breach of the Code.

Kopp v Medway Messenger: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01762-14

However, a story in the Daily Star Sunday headlined "England ace [the complainant] cheated on sweetheart with me" did breach the privacy clause because it included private text messages. The front-page article reported that the complainant told a woman that he was no longer in a

Was the picture taken in a public or private place where there was a reasonable expectation of privacy?

relationship with his long-term girlfriend and engaged in an affair.

The article described how the woman became suspicious that the complainant was still in a relationship and contacted his girlfriend on social media. It was illustrated with images of the text messages the complainant exchanged with the woman, and her messages to his girlfriend.

IPSO emphasised that the woman chose to tell her story to the newspaper, and in doing so had exercised her right to freedom of expression, a right which is enshrined in the Code. However, to comply with the Code, the newspaper was required to demonstrate that any intrusion into the private life of the complainant caused by the publication of her story was justified.

IPSO was concerned that the article reproduced text messages which were said to have been sent by the complainant to the woman, and which contained information about which the complainant had a reasonable expectation of privacy. The complaint was upheld because the newspaper had failed to provide sufficient public interest justification for publishing the text messages.

A man v The Daily Star Sunday: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02299-17

‘Reasonable expectation of privacy’

The privacy Clause states that it is “unacceptable to photograph individuals without their consent, in public or private places where there is a reasonable expectation of privacy”.

The concept of a “reasonable expectation” of privacy is a problem confronted every working day by photographers on the front line of newsgathering and the picture editors who brief them and consider their pictures.

Perhaps the most difficult decision is whether a person in a public place has a reasonable expectation of privacy. This is a particular problem when the pictures involve celebrities, who develop their careers through exposure in the media. A celebrity might well consider that being photographed leaving a nightclub where there are likely to be photographers goes with the territory of being profitably in the public eye.

Equally, they may feel that being photographed when they are “off duty” in a supermarket car park with their family is not part of their celebrity job description. Splashing around on a public beach in full public view is different to sunbathing in your back garden and a head and shoulders picture does not show anything intrinsically private but a far more revealing picture may well do.

Decisions have to be made on an individual basis and must take into consideration the nature of the story that the photograph is illustrating. If it can be successfully argued that

the public interest is engaged, then an element of intrusion can be justified.

The key questions IPSO will ask include:

- Did the picture show anything that was essentially private?
- Was the picture taken in a public or private place where there was a reasonable expectation of privacy?
- Was the photograph in the public interest?

Deciding whether there is a reasonable expectation of privacy will depend on the circumstances of each complaint. For example, IPSO has decided that you can have an expectation of privacy on some occasions when you are in view of the public – but not on others.

Monaco is a popular destination for the rich and famous and they are often photographed while they are there but IPSO ruled that Princess Beatrice of York had a reasonable expectation of privacy when she was pictured wearing a bikini on a yacht moored offshore.

Princess Beatrice said she was on a private boat when the photographs were taken, and was on a private holiday, undertaking private leisure activities. She maintained that those on board the boat were not visible to the naked eye from the shore, and the photographs had been taken with a long lens.

The publication did not accept a breach of the Code. It said that the photographs did not include any private information about the complainant and she had previously been photographed in a bikini on a number of occasions.

IPSO said the Code does not prohibit the use of long-

lens photography. However, the use of a long lens may be a relevant factor when the Committee considers whether there has been an intrusion into an individual's privacy in a particular situation. IPSO said the images showed activities which formed part of her private life and it was satisfied that the complainant had a reasonable expectation of privacy at the time the photographs were taken.

HRH Princess Beatrice of York v Mail Online: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04455-16

But while IPSO ruled that the deck of a boat off the coast of the French Riviera might be a private place, it took a different view of an entrance to Wimbledon.

Sir Andy Murray's baby daughter Sophia was photographed when his wife Kim took her through a Press entrance to Wimbledon where photographers were waiting for arrivals. A number of complaints to IPSO followed.

IPSO did not uphold them. It said baby Sophia was being taken by her mother through a Press entrance to Wimbledon, which was a major sporting event where there would inevitably be a very large number of spectators, and photographers. Her mother had been photographed at the same location during previous tournaments.

Sophia was simply being pushed in a pram, and while IPSO accepted that this showed her engaged in a family activity relating to her care, that activity was relatively unremarkable. Because of the complainant's age, and the fact that her face was only partially visible, IPSO did not consider the complainant was recognisable from the photographs, or

that they disclosed any identifying or private information about her.

IPSO ruled that in those circumstances Sophia did not enjoy a reasonable expectation of privacy.

Representatives of Sophia Murray v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04551-16

Representatives of Sophia Murray v Telegraph.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04533-16

Representatives of Sophia Murray v The Sun: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04532-16

Representatives of Sophia Murray v Mail Online: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04531-16

A busy restaurant may – or may not – offer a reasonable expectation of privacy, as IPSO explained when considering a complaint brought by political commentator Paul Mason.

Mr Mason complained after The Sun published a story headlined “Working class zero: Paul Mason, Jeremy Corbyn's celeb guru, admits he wants to oust hapless leftie as he doesn't appeal to ordinary Brits”.

Mr Mason said a freelance reporter and photographer had deliberately chosen a table next to him in a restaurant where he was having a private conversation with a journalistic source.

The newspaper said the freelance reporter and photographer were in Liverpool to cover fringe events at the Labour Party conference. They had gone to the restaurant for lunch and been seated at a table close to the complainant and were able to clearly hear his conversation when he talked about Jeremy Corbyn in a disparaging fashion.

The newspaper did not accept that the complainant

had a reasonable expectation of privacy in relation to his conversation and said there was a public interest in publication.

IPSO said there may be circumstances in which an individual has a reasonable expectation of privacy in a restaurant. Whether privacy may reasonably be expected in a restaurant will depend on all the factors relevant to a particular case, including the nature of the conversation and the role of the speaker.

Given Mr Mason's professional role and the nature and timing of his conversation at a party conference, IPSO did not consider that he had a reasonable expectation of privacy. IPSO did not uphold the complaint of a breach of privacy, or another complaint under Clause 10 (Clandestine devices and subterfuge).

Mason v thesun.co.uk: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=13165-16

A secluded part of a garden is likely to be regarded as a private place – as the Duke of York successfully argued when the Daily Mail flew a helicopter overhead as preparations were made for a birthday party, which reportedly involved the Duke's daughter appearing as Snow White, accompanied by dwarves. The Duke was not at home at the time of the flight.

The Daily Mail argued that the story was in the public interest. It said the complainant's daughter was eighth in line to the throne and a senior member of the Royal Family. The public had an interest in being informed about a lavish party for her birthday, which she attended dressed as Snow

White accompanied by seven dwarves, and which was always likely to attract attention. It noted that before publication it had contacted the complainant's former wife's press representative, who had raised no objections on privacy grounds to the reporting of the story.

The newspaper said that aerial photography was not intrusive: many news stories – such as storms, road accidents, plane crashes, festivals, sporting events and public gatherings – were routinely and uncontroversially illustrated by aerial photography.

IPSO said the grounds of Royal Lodge were not publicly accessible, nor visible to the public, so the Duke had a reasonable expectation that the grounds would be respected as a private place.

IPSO stressed that aerial photography can be a legitimate reporting tool and using it to photograph an individual's home or garden will not always amount to a breach of the Code. It emphasised that its decision on any particular complaint will be based on the circumstances.

In this instance, the helicopter's flight over the private space of the grounds of the Duke's home, to capture images of the preparations for the event he intended to hold there, was a clear intrusion, regardless of whether the complainant was there.

The effect of such an intrusion was to deprive him of the security of his private space, in which he could engage in activities away from the public gaze. Any public interest served by the information published in the articles was not proportionate to the intrusion caused by the flight.

HRH The Duke of York v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04839-15

So a sheltered part of a person's garden is very likely to be regarded as a private place – but the exterior of a home may not be regarded as such if it is in plain view of the public.

When a gas blast ripped off two walls from a house, an agency photographer went on to land at the back of the property to shoot pictures showing the worst of the damage.

The complainant, who lived in the house, said the photographs were taken on her land at the rear of the house and no one had approached her about taking them. She said her bathroom and stairs were clearly visible in the photograph, and that this aspect of the property had not been visible to members of the public. She said the contents of her home were private and the photograph was intrusive.

Members of the public had joked about her bath, which was shown hanging off the side of the building. Her house had been looted, which the police warned her would happen after the pictures were published. The complainant said she did not object to the publication reporting on the incident, or the use of photographs taken from the nearby public road.

IPSO rejected the complaint and said that because of the extent of the damage, including the destruction of external walls, the visibility of some of the damage from a public road, the presence of emergency services and the fact that the explosion was a significant and legitimate news story, the complainant did not have a reasonable expectation that her property was a private place.

The furniture and other items depicted in the photographs

If people compromise their own privacy – particularly in connection with a commercial arrangement – they may not be successful in a claim under the Code.

were common household items which did not reveal any particular details about the complainant's private life, and the photographs only showed what could be seen by standing at the rear of the property. The photographer did not enter the building.

In addition, there was a public interest in illustrating the extent of the damage caused by the gas explosion, which highlighted the importance of gas safety. Because of the extent of the damage, it would not have been possible to do so without showing some of what had previously been the internal contents of the house. The gas explosion was the legitimate subject of news coverage, and illustrating the extent of the damage was in the public interest.

House v Express.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07063-15

House v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07060-15

House v Mirror.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07064-15

House v Grimsby Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07065-15

House v Dailystar.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07056-15

House v The Daily Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07054-15

House v Daily Mail : www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=06220-15

An airline pilot who was pictured at work – watching as police escorted passengers off his plane – also had his complaint rejected.

The article reported that a group of holidaymakers were escorted from a flight for allegedly abusing cabin crew who had told them that they would be limited to one alcoholic drink each during the flight. The article included a photograph, which showed the complainant, the captain of the aircraft, watching police as they dealt with the incident on board.

The newspaper said the reported incident took place in the main cabin of the aircraft and had been witnessed by many members of the public, some of whom took photographs. It considered that there was a clear public interest in reporting on the story, which had involved the police. It noted that police, ambulance and fire service personnel are often photographed doing their work in response to public incidents.

IPSO said the image had not shown the complainant doing anything private. He was standing in the main cabin of the aircraft, in clear view of passengers and crew, as he carried

out his professional duties as captain. He did not have a reasonable expectation of privacy in such circumstances.

Howell v Metro.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04777-15

Public figures and their addresses

People such as showbiz celebrities or sports stars may need to create a professional image of themselves in the media. That does not undermine their right as individuals to privacy or mean the Press could justify publishing articles on any subject about them. Their “private and family life, home, health and correspondence” are all protected by the Code, unless there is a public interest in publication.

Publishing details of a celebrity’s home without consent, for example, could constitute a breach of the Code, especially because of security problems and the threat from stalkers. The key test in such cases is not whether the precise location has been disclosed but whether the information published would be sufficient to enable people to find the home.

David and Victoria Beckham complained when Mail Online published an article about their new home, identifying the general area where it was located, the name of the town it was close to, and identifying a nearby landmark.

The Beckhams said the article and some of the photographs clearly identified its location to millions of readers.

The publication said the key test is whether the information published would be sufficient to enable people to find the home, and whether the article put new information into the

public domain about the location. In this case, it was clear that the article did not reveal any “new” information about the property

IPSO said that in general, people do not have a reasonable expectation of privacy regarding their address. However, there are special circumstances in which the publication of details of an individual’s home may be intrusive. IPSO did not uphold the complaint and said the details published were insufficient to identify the precise location of the property.

Beckham v Mail Online: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=01729-17

Members of the public can also be sensitive about publication of details of where they live. A woman who consented to being photographed in her street as part of an interview with a newspaper complained to IPSO that she had later experienced attempted break-ins.

She said she had asked for her address not to be included in the story. The newspaper said the complainant had been happy to be interviewed at her home, and to pose for photographs in the street where she lived – and the house number was not included in the story.

IPSO said the complainant consented to being photographed on her street, and the photograph which was published did not identify the door number of her house. It concluded that, in all the circumstances, the inclusion of the complainant’s partial address in the article did not break the Code.

Stanton v News & Star: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=03941-15

Revealing a private telephone number can also breach the Code. A man complained when the Argus (Brighton) inadvertently published his phone number in the caption of a picture.

IPSO accepted that the caption had been published in error but that did not excuse the newspaper from its obligations under the Code.

Hyland-Ward v The Argus (Brighton): www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=05608-15

Pregnancy

There are limits on what can be said about celebrities, even though they are constantly in the public eye. Pregnancy, even for non-public figures, can rarely be kept secret for long but early speculation about whether someone is expecting a baby can be intrusive.

The actress Joanna Riding complained to the PCC that a diary item disclosed that she had withdrawn from a theatre role because she was expecting a baby – before she had even told her family. She subsequently suffered a miscarriage. In an important adjudication protecting all mothers-to-be, whether public figures or not, the PCC said that revealing the pregnancy at such an early stage was an intrusion. The PCC said:

- The Press should not reveal news of an individual’s pregnancy without consent before the 12-week scan unless the information is known to such an extent that it would be perverse not to refer to it.
- This is because of the risk of complications or

miscarriages, and because it should be down to the mother to share the news with her family and friends at an early stage.

Riding v Independent: www.pcc.org.uk/cases/adjudicated.html?article=NDA3OQ

Health

Private health details of individuals, including public figures, are generally protected under the Code unless there is some public interest in revealing them.

MP Sir Nicholas Soames complained when the Sunday Times published an article headlined “Soames’s mystery weight loss has Commons chewing the fat”. The article said that regulars in the House of Commons tearoom had their own theory over Sir Nicholas’s sudden weight loss: he had been fitted with a gastric band.

The complainant acknowledged that, as a public figure, he was subject to Press attention but he had a right to privacy in relation to his health.

The newspaper denied that the article intruded into the

There are limits on what can be said about celebrities, even though they are constantly in the public eye.

complainant’s privacy. Sir Nicholas’s physical appearance had always been a central part of his public image, and it was not intrusive for the article to speculate over the reasons for the sudden visible weight loss of a prominent political figure.

Upholding the complaint, IPSO said it was not intrusive to report the mere fact that the complainant had recently lost weight. However, the article went further than this and speculated about possible medical causes for his weight loss.

He had a reasonable expectation of privacy and IPSO was not satisfied that the newspaper had demonstrated a sufficient public interest to justify publication.

Soames v The Sunday Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00671-16

Commercial deals

If people compromise their own privacy – particularly in connection with a commercial arrangement – they may not be successful in a claim under the Code.

The parents of a sole surviving conjoined twin sold picture rights to the story but complained that it was intrusive and damaging to the child’s welfare when another paper published unauthorised photographs of the baby.

The PCC disagreed and one of the grounds was that the parents had put the material into the public domain. The PCC said privacy was “not a commodity which can be sold on one person’s terms”.

Attard v Manchester Evening News: www.pcc.org.uk/cases/adjudicated.html?article=MjA1MA

Court reporting

The Press is generally free to report private details of people's lives if they are said in court and the judge has not made an order restricting coverage.

A newspaper received a complaint after publishing a court report headlined "The 'monster' dad who left his baby son severely disabled". The victim's grandmother complained that the newspaper had breached the child's privacy by detailing the injuries and the struggles he may face in future.

The newspaper said it had no intention to embarrass the child or to subject him to any unwanted or unnecessary attention. It considered that it had reported the court case accurately while abiding by the rules set down by the court. The newspaper said the judge announced before the case started that all the details of the case, including the victim's name, should be reported.

IPSO said there is a strong public interest in open justice. While reports on court cases involving child cruelty may be extremely distressing for family members and others to read, newspapers play an important role in informing the public about the nature of such offences. Courts have the power to impose reporting restrictions, and the judge in this case had clearly given careful consideration to whether such restrictions should be imposed. He decided, however, that all the details of the case could be reported, including the child's identity.

Mooney v Grimsby Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04389-15

The public interest

As we have seen, the public interest is frequently considered by IPSO's Complaints Committee in privacy cases. No judgment is more difficult than when weighing the privacy of the individual against freedom of expression and intrusion in the wider public interest.

The two principal issues to be considered are:

- Is publication of the private information genuinely in the public interest?
- Is the degree of intrusion proportionate to the public interest served?

In an article about internet marriages, Mail Online included details of a woman's sexual preferences.

IPSO supported reporting the story on the grounds of freedom of expression but it drew the line at the level of detail. It said the Complaints Committee "was not, on balance, satisfied that the publication of this sensitive personal information was justified. The public interest was not proportionate to the level of intrusion posed by the publication of intimate details".

Yates v Mail Online: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02466-14

Proportionality was also the key to compliance when two newspapers reported on an affair between an aristocrat's wife – who it later emerged suffered from mental illness – and a former prisoner. One breached the Code and the other did not.

The Daily Mail account was based on information from the

girlfriend of the man involved and deliberately omitted more intimate details of the relationship. The story in the News of the World was based on the revelations of the boyfriend and it included intimate details of sexual activity.

In each case the PCC said the key issue was the balance of one person's freedom of expression versus another person's right to privacy. In the Mail the girlfriend's right to give her side of the story had been maintained without including "humiliating and gratuitously intrusive detail". The complaint was not upheld. However, the News of the World story failed the proportionality test. The PCC ruled that the public interest involved in exposing adultery by someone who had married into an aristocratic family was insufficient to justify the level of intimate detail that was given.

A woman v Daily Mail: www.pcc.org.uk/cases/adjudicated.html?article=NDMzMg

A woman v News of the World: www.pcc.org.uk/cases/adjudicated.html?article=NDMzMQ

CLAUSE 3

Harassment

THE HARASSMENT clause was formulated following the death of Diana, Princess of Wales. It is one of the toughest and most explicit in the Code and yet relatively few cases go to adjudication. This is largely due to the success of the guidance offered by IPSO and the action that it takes when approached by people who are the subject of media attention.

Complaints, when they come – often via IPSO’s helpline for the public – are usually from people who want the physical removal of journalists, perhaps from their doorstep. They may also be concerned that journalists are telephoning them about a story they are involved in, or that there will be unwanted press attendance at a sensitive forthcoming event, perhaps a family funeral following a tragedy.

Advice and desist requests

IPSO staff will either advise complainants what they should say to journalists who they believe are harassing them, or alert editors directly to the fact that a complaint has been received. In some cases IPSO will contact individual publications or groups of publications to make them aware of people’s

WHAT THE CODE SAYS

- i) Journalists must not engage in intimidation, harassment or persistent pursuit.
- ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.
- iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

A public interest exemption may be available. See Page 108.

concerns that the Code of Practice is being breached or may be breached, via a “private advisory” notice.

IPSO’s website gives detailed advice to people who are the subject of unwanted press attention (www.ipso.co.uk/harassment/) and staff are available to offer advice 24 hours a day (for contact details: www.ipso.co.uk/contact-ipso/).

The informal alerts issued by IPSO are advisory only and are not binding. The Press makes its own judgments according to the circumstances. But an editor who ignored a desist request would – in the event of a complaint – need to

be able to demonstrate to IPSO a sound public interest reason for doing so.

Desist notices have proved effective in dealing with media scrums caused by particularly intense cross-media interest in a major story. The widely distributed advisory notices serve to alert all media organisations – even those not regulated by IPSO – about concerns over a story and are usually heeded by Press and broadcasters alike.

As Clause 3 requires journalists – which under the Code covers all editorial staff, including contributors – not to “persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property once asked to leave”, they usually comply. In most cases the matter is resolved and no complaint follows.

The Code requires journalists to identify themselves and those they represent if requested. In reality this underwrites standard practice. It would be unusual for journalists not to identify themselves to a person they want to interview or photograph unless there was a legitimate public interest reason for not doing so.

Newsgathering, not stories

The clause covering harassment relates to the conduct of journalists during the newsgathering process. It is not usually the case that publishing a number of articles on one issue constitutes harassment. For example, a so-called “Twitter troll” complained of harassment after a newspaper published a series of articles about his activities. IPSO

rejected the complaint and said: “The publication of a number of articles about the same person would not usually amount to harassment under the terms of the Editors’ Code. The newspaper had been entitled to report on the on-going controversy regarding the complainant’s online activities.”

Ambridge v Essex Chronicle: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03097-14

Likewise, Gerry Adams failed with a complaint that – in part – said a newspaper was engaged in a concerted campaign to undermine him through what he considered to be wholly disproportionate coverage of his activities.

IPSO said the Code does not include a requirement for balance and makes clear that publications are free to be partisan. The complainant’s contention that coverage of his activity, as an elected representative, was disproportionate or sought to undermine him did not raise a breach of the harassment clause.

Adams v Belfast Telegraph: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01837-14

Persistence after request to desist

Adjudicating on harassment complaints can be difficult because of a wide discrepancy between the accounts of complainants and the journalists of the contact between them. Sometimes repeated attempts to contact the subject of a story may be well intentioned. However, if it is demonstrable that the journalist persisted, having been asked to desist, then

IPSO will usually find a breach of the Code, unless there is a public interest involved.

A BBC weather forecaster complained of harassment over a story that she was involved in a “DIY pregnancy” with her female partner. The reporter admitted making three approaches to the complainant but denied being asked on the first approach to desist. On the second approach, via the BBC, the reporter was assured by an official acting on the woman’s instructions that she did not wish to speak. The newspaper admitted making a direct approach to the complainant the next day.

The PCC said: “As the reporter had been made aware of the complainant’s position at least once prior to her final approach, the Commission considered that a breach of the Code had been established.”

A woman v Scottish News of the World: www.pcc.org.uk/cases/adjudicated.html?article=MjA4OQ

Even without a request to desist, making repeated unwelcome approaches could amount to harassment. A couple whose 16-year-old daughter committed suicide declined a weekly newspaper’s offer to publish a tribute, saying they would be in touch if they changed their minds. The reporter, with a deadline pressing, called four times in a few days.

The PCC said: “In this case, regardless of whether the complainants had explicitly told the journalist that she should leave and not return to their house, the Commission considered that common sense should have indicated that

the repeated approaches over a short period of time were not appropriate.”

Kimble v Bucks Herald: www.pcc.org.uk/cases/adjudicated.html?article=MjAzMQ

Another case, which also involved several attempts to contact the subject of a story, was not considered to be harassment. A man who as a boy had been a football mascot with Wayne Rooney brought a complaint after a newspaper launched an appeal to track him down for a story.

The complainant said he had been aware of the appeal story, but he had chosen to ignore it. He said he then received two telephone calls from a number, which he identified as being that of the newspaper, on his ex-directory telephone number. He ignored the telephone calls, but after 24 hours, he contacted the newspaper by email to ask it to stop contacting him and to request that no information about him should be released.

His email said: “I am writing to inform you that if you contact me once more and/or release information about me, I will take every legal action that is available to me.” Twenty minutes later, the complainant received a reply from the newspaper, explaining that it was going to run a story about him appearing as a mascot with Rooney in 1996. It was contacting him in the hope that he would share his memories of the football match for what would be a “lovely story”. If he did not wish to contribute to the story, he should let it know and no one would contact him again.

IPSO said it did not consider that the newspaper’s two telephone calls to the complainant, which had not

been answered, or its courteous responses to his emails constituted harassment.

Talavera v Liverpool Echo: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=05748-15

Court cases

It is common for defendants in court cases to be photographed outside court and IPSO has said it is in the public interest to identify those convicted of crime.

IPSO rejected a complaint from a doctor convicted of sexual assault, who said a photographer harassed him outside court. The complainant said court staff helped him to avoid the photographer as he left the building. The photographer had, however, “stalked” him for about 150 yards. The fact that he sought help from court staff, and had been running away, clearly demonstrated that he did not wish to be photographed.

IPSO said it was apparent that the complainant had taken steps to avoid having his picture taken, rather than

making clear a request that the photographer desist. Even on the complainant’s account, his concern that he had been followed by a single photographer over what was apparently a relatively short distance did not constitute harassment or persistent pursuit. IPSO said the photographer had not acted in an aggressive or intimidating fashion in seeking to obtain a photograph. It also noted that there is a public interest in identifying those convicted of crime.

Kumar v The Sun: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=02481-14

Kumar v Telegraph & Argus: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=02478-14

A woman complained to IPSO after she was photographed outside a court in Belfast. IPSO concluded that the process of taking the pictures, over an eight-second period, did not amount to harassment.

IPSO said: “In the first four images, the complainant had been unaware that she was being photographed; the last two showed her looking directly at the camera alert to the fact that her photograph was being taken. It was at this point that the complainant had told the photographer that she did not consent to being photographed.

“The roll provided by the newspaper appeared to indicate that no further images were taken. The Committee was satisfied that the newspaper had not failed to respect the complainant’s request to desist; there was therefore no breach of Clause 3 on this point.”

Best v Sunday Life: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=00555-16

The passage of time may lessen the risk of harassment and the circumstances surrounding a story may change, sometimes rapidly.

Time limit

A desist request issued by IPSO does not last indefinitely. The passage of time may lessen the risk of harassment and the circumstances surrounding a story may change, sometimes rapidly. In those circumstances a fresh approach may be legitimate. There is no set formula for deciding this. These are judgment calls for editors and, if a complaint arises, IPSO will judge each case on merit. It would usually require editors to show reasonable grounds, such as a material change in circumstances, for a renewed approach.

Greater Manchester Police complained that the *Daily Telegraph* breached a request not to approach either the family of a 10-year-old boy who drowned in a pond or two police community support officers who arrived at the scene soon after but did not enter the water to rescue him.

The PCC accepted that following the police desist request, the story had moved on as it had been highlighted by then-opposition leader David Cameron. It said the newspaper's approach had been proportionate to that development and the complaint was rejected.

Greater Manchester Police v Daily Telegraph: www.pcc.org.uk/cases/adjudicated.html?article=NTE2MA

Useful checks

It is helpful to check whether desist requests already exist when reporting a story.

The *Mail on Sunday* was found to have breached the

KEY QUESTIONS

- Was there a request to desist? Subsequent pursuit would need to be justified by the public interest or changed circumstances.
- Was there a request for non-identification? If there was, was there a public interest reason for not complying?
- Did non-staff contributors comply with the Code?

harassment clause when it approached a woman about a crime story some months after two desist requests had been made. The newspaper explained that a member of staff had failed to check its internal record of PCC advisory notices.

A woman v The Mail on Sunday: www.pcc.org.uk/cases/adjudicated.html?article=ODY2OA

In such cases it would be useful to contact IPSO to confirm whether a desist notice has been issued and to seek informal advice on its status.

Freelance contributors

Editors must ensure that the rules on harassment are observed not only by their staff but also by contributors such as agencies. Pictures and stories from freelance contributors that are obtained by harassment will not comply with the

Code. The PCC made this clear when it considered a complaint about a confrontation between two freelance journalists and a member of the public that resulted in police being called.

The newspaper explained that it had asked an agency to attend the complainant's house to follow up a potential story. Without its knowledge, the agency sub-contracted the task to a freelance photographer described by the newspaper as "somebody [it] would not use".

The PCC said the principle of editorial responsibility applied to the case and declared: "The newspaper was fully accountable for the actions of the men."

Varey v The People: www.pcc.org.uk/cases/adjudicated.html?article=ODkxMg

CLAUSE 4

Intrusion into grief or shock

JOURNALISM is an occupation conducted on the front line of life and, often, of injury and death. But while tragedy and suffering may go with the journalistic territory, insensitivity for its victims should not.

The Code's strictures on intrusion into grief or shock are designed to protect those victims at their most vulnerable moments.

Newspapers have a job to do at such times and most do it well. It is a myth that approaches by the Press reporting injury and death are inherently intrusive. For example, reporters making inquiries sensitively are often welcomed by the bereaved, who see an obituary or story as an opportunity to speak out on the circumstances surrounding the death of their loved one, or as a final public memorial. They would prefer the facts to be given first-hand.

Also, as deaths are a matter of public record, the information is in the public domain and newspapers have a right to publish. Again, a balance has to be struck. The key, as expressed by the Code, lies in making inquiries with sympathy and discretion and in publishing sensitively.

That does not mean newspapers should not publish

WHAT THE CODE SAYS

In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. These provisions should not restrict the right to report legal proceedings.

sensitive material; it means that they should not do so insensitively. Nor does it amount to a ban on covering tragic stories unless all parties consent, as the then-regulator, the PCC, made clear in an adjudication in 2005 when it gave examples of some of the elements likely to constitute a lack of sensitivity in publication. They were:

- The use of gratuitously gory information in pictures or stories at a time of grief.
- Unnecessarily ridiculing the manner of death.
- Publishing a picture of the subject engaged in obviously private, or embarrassing, activity.

The regulator was adjudicating in a case where a picture of a woman missing in the 2004 tsunami appeared in a national newspaper against her family's wishes. The father's request that no photograph of his daughter be used was not passed on, due to a miscommunication, and an image from a website was published.

While regretting the lapse in communications, the PCC ruled that publication of an innocuous image – obtained from a public resource such as the internet – of someone caught up in such a shocking event was not insensitive.

The family of Alice Claypoole v Daily Mirror: www.pcc.org.uk/cases/adjudicated.html?article=MjE2MA

Reports of violent crime can be upsetting for those involved, but publications will comply with Clause 4 if they handle the content sensitively.

The family of a man who died after being stabbed during a bag snatch in San Francisco complained when CCTV footage of the incident was published online. The family said the CCTV footage was published the day after the victim's death (several weeks after the incident), when family and friends were still in shock, and its publication had made the grieving process "very difficult" for them.

IPSO did not uphold the complaint. It said that news organisations play an important role in reporting crimes and the public have a legitimate right to be informed. It said that reports of serious crimes – even when handled responsibly and with proper sensitivity – will risk causing distress to victims, their family members and friends.

Clause 4 does not prohibit the reporting of distressing events, such as violent crimes, but it requires that publication is handled sensitively.

IPSO understood that watching the video of the attack must have been extremely distressing to those who knew the victim. However, it did not consider that its inclusion in the article represented a failure to handle publication sensitively.

The video was shot from a distance, was grainy, did not include sound and was published as an illustration of the incident described in the article. It was therefore directly relevant to the story.

The article itself was presented as a straight news piece and the video did not humiliate or demean the victim or his death.

Police released the video 18 days after the incident and the victim's family had been warned about it in advance. The footage had been released to a number of media outlets in an attempt to find the attackers and had been widely published, including on police social media accounts.

Family of Paul Tam v Mail Online: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02078-16

Family of Paul Tam v Express.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01999-16

Sensitivity in approaching families experiencing grief or shock is essential in observing the Code.

Reporters at an inquest on a woman who took her own life were told by the coroner that the family did not wish to comment – but they still approached her grandmother.

IPSO said that, in the absence of any specific justification for persisting with inquiries, this represented a failure to make inquiries with sensitivity and discretion, and was an intrusion into the family's grief.

Farrow v Lancashire Evening Post: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07252-15

In contrast, a family complained when a newspaper did not approach them before publishing a story about an inquest into the death of a scientist.

The complainant said the newspaper had not approached the family before proceeding with publication, and the article

represented a failure to act with any sympathy or discretion at a time of grief.

The newspaper said the media is entitled to report proceedings from the Coroner's Court. There was no requirement to contact families before publishing reports of inquests, but in this case it said a reporter approached a member of the family at the inquest to let them know that a story would be published.

IPSO noted that families in circumstances of bereavement vary in their wishes and some families object to being contacted for their comment in such tragic circumstances.

Clause 4 (Intrusion into grief or shock) and Clause 5 (Suicide) are sometimes both engaged in the same tragic incidents and IPSO has made clear that reporting on inquests must be sensitive. In the following chapter we will examine how IPSO also dealt in this case with the question of intrusion into grief and an accusation of excessive detail.

Smyth v Oxford Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=14070-16

IPSO has published guidelines on reporting deaths and inquests, which can be found here: www.ipso.co.uk/press-standards/guidance-for-journalists-and-editors/deaths-and-inquests-guidance/

Key points include:

- The fact of someone's death is not private. Deaths affect communities as well as individuals and are a legitimate subject for reporting.
- Journalists should show sensitivity towards people in a state of grief or shock. Reporting should be

handled sensitively and appropriate consideration should be given to the wishes and needs of the bereaved.

- The press should take care not to break news of the death of an individual to the immediate members of their family.
- Particular care should be taken with the reporting of suicide to avoid the possibility of other people copying the same method.

IPSO has also published advice on the use of social media that refers to intrusion into grief and shock. It can be found here: www.ipso.co.uk/press-standards/guidance-for-journalists-and-editors/social-media-guidance/

Breaking the news

Online publishing has made it even more important for the Press to observe the letter and spirit of the clause covering intrusion into grief or shock. A story can run online while the emergency services are still on their way to an accident. The identities of the injured and dead may be revealed on social media before their families are aware of what has happened.

The regulator has upheld a newspaper's right to publish a story as soon as the death is confirmed to the deceased's immediate family, but not before. It is no part of the journalist's role to inform close relatives or friends of the death.

A newspaper that relied on confidential sources to report the death of a woman in a terrorist attack in Tunisia while her family were still awaiting official confirmation was

found to have breached the Code. Lincolnshire Police, who complained on behalf of the victim's family, said reporting the death as fact had caused "enormous upset at an already highly distressing time".

The newspaper said it waited several hours to publish the information, until it had received confirmation from multiple sources that it considered to be reliable that the victim was dead and the family were aware.

IPSO said the claims by the newspaper's confidential sources that the family had been told of the death were evidently inaccurate. Neither the death nor the family's knowledge of it had been confirmed by any official source.

As the newspaper relied solely on confidential sources, it was unable to show that it had taken appropriate care before taking the decision to publish to ensure that the family

knew the woman had been killed. It had therefore failed to demonstrate that it acted with the level of sensitivity required by the Code.

Lincolnshire Police v Lincolnshire Echo: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04361-15

A mother brought a successful complaint about an article published online that said a teenager was believed to have been knocked down by a car outside a school. A photograph of the scene showed the girl lying on the pavement, with her face pixelated. Next to her were another girl in a school uniform and two passers-by.

The two girls shown in the picture were 11-year-old sisters. Their mother said the photograph depicted a distressing incident for both girls and had been taken at a time when everyone involved was in shock and before the emergency services arrived.

A member of the newspaper's staff, who had been passing the scene of the accident, took the picture. The newspaper had not been able to contact the family of the child involved, as her name had not been released at the time. The injured girl's face was pixelated prior to the publication of the article and the newspaper was unaware that anyone else in the photograph was connected to the injured girl.

IPSO said that although the newspaper pixelated the face of the injured child and contacted the ambulance services to try to ascertain the severity of the injury, publication of the photograph – at a time when the newspaper had not been able to verify the identity of the child or establish whether

The regulator has upheld a newspaper's right to publish a story as soon as the death is confirmed to the deceased's immediate family, but not before. It is no part of the journalist's role to inform close relatives or friends of the death.

her parents had been informed of the incident – represented a failure to handle publication with appropriate sensitivity.

The photograph was distressing for the family, and risked notifying friends and relatives about the accident.

A woman v Derby Telegraph: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=01866-14

Insensitive or unnecessary detail

(See also Clause 5: Reporting Suicide)

A woman claimed a local newspaper’s story about her brother’s death following a collapse at home – headlined “Starving Pet Starts To Devour Pensioner” – was distressing and sensationalist. The regulator agreed, rejecting the editor’s claim that the story was handled sympathetically. It ruled that the story was not sufficiently sensitive, bearing in mind that it was published immediately after the death and neither the funeral nor the inquest had taken place.

Yeoman v Rhondda Leader: www.pcc.org.uk/cases/adjudicated.html?article=MjExOQ

Photography at funerals without consent

This usually involves a balance of sensitivity versus publication in the public interest.

But a Sunday paper’s picture of a boy of 14 at the funeral of his father, an asylum seeker who killed himself in a detention

centre, raised wider issues. The story, headlined “The Ultimate Sacrifice”, included a CCTV image of the father at the detention centre with a sheet tied around his neck, and an extract from a suicide note addressed to, and featuring, the son. The CCTV pictures were shown at the inquest, but the boy had been unaware of them.

His solicitors claimed this was unnecessarily intrusive and amounted to “excessive detail” of the suicide method under Clause 5. Also, the funeral picture was taken without proper consent when the boy had a reasonable expectation of privacy. It affected his welfare as a child and was published only because of his association with his father. The lawyers said the boy should expect a suicide note addressed to him to be private. Any public interest in the story could have been served by omitting his name and the pictures.

The complaint was rejected on all counts. The regulator said the sensitivity rule did not provide automatic anonymity for those affected by tragedy, especially where they were central to it. The story had legitimate public interest and the CCTV pictures were relevant because of the inquest and raised no issues under the “excessive detail” rules. While the funeral picture was taken without formal consent, the Commission accepted that the newspaper did not know this and relied on the fact that it had been published elsewhere. An offer to delete it from the file was a proportionate response. *A boy v The Sunday Times: www.pcc.org.uk/cases/adjudicated.html?article=NDMzMA*

By contrast, the funeral of TV personality Carol Smillie’s mother was not a public event and a Sunday newspaper’s

The onus of responsibility for appropriate sensitivity, particularly in cases involving intense grief and tragedy, falls squarely on the Press.

prominent coverage of it was an intrusion, the regulator ruled. The paper's photographers had been asked to leave the funeral, but ran a three-page story using a freelance's pictures taken with a long lens at the crematorium.

The PCC said the newspaper knew it was a time of grief and that photographers were unwelcome. The prominence given to the article added to its insensitivity and the result was a breach of the Code.

Smillie v Sunday Mail: www.pcc.org.uk/cases/adjudicated.html?article=MTgyNQ

The onus of responsibility for appropriate sensitivity, particularly in cases involving intense grief and tragedy, falls squarely on the Press.

A newspaper whose photographer was warned away from the funeral of a teenager who had taken his own life went on to publish a picture spread, prompting a complaint. The paper argued that cremations were public events and it was unaware

that the family objected to photographs being published. Upholding the complaint, the regulator said grieving parents should not have to be concerned about journalistic behaviour. This occasion called for great restraint and sensitivity and the paper should have established the family's wishes in advance. *Mrs Hazel Cattermole v Bristol Evening Post: www.pcc.org.uk/cases/adjudicated.html?article=NjA3Ng*

In insensitive or negative comment

A record 25,000 people protested to the PCC after Daily Mail columnist Jan Moir ran a comment piece about the sudden death of Boyzone singer Stephen Gately on the eve of his funeral. There were accusations that it was offensive, distressing, inaccurate, homophobic and, perhaps at the very heart of it, intrusive at a time of grief. The PCC considered these issues following a complaint from Mr Gately's partner, Andrew Cowles.

The Commission said the piece had indisputably caused great distress, the timing – for which the columnist had apologised to the family – was questionable, and the newspaper's editorial judgment on that was open to legitimate criticism. But the central issue was freedom of expression. It was, essentially, an opinion piece and all the complaints had to be considered in that light.

The PCC had long held that it is not unacceptable to publish criticisms of the dead but the sensitivity of the family had to be taken into account. In this case, the comments were not flippant, or gratuitously explicit, or focused on issues that had

otherwise been kept private. To deny the columnist's right to express her opinions would be a slide towards censorship. The complaint was not upheld.

Mr Andrew Cowles v Daily Mail: www.pcc.org.uk/cases/adjudicated.html?article=NjlyOA

Defaming the dead

This is not a crime and has no remedy under the law. But a factually incorrect statement about a dead person can be the subject of a complaint under the Code's accuracy rules. In addition, the Intrusion into Grief clause's requirement for sensitive publication in cases involving personal grief or shock means that inaccurate reporting or unjustifiable criticism of the recently dead could aggravate the hurt.

That does not put fair comment out of bounds. But, as with all such issues that might intrude on grief, it has to be handled with great care. It is one thing to include tart comment in an obituary on a public figure who has died at the end of a long and controversial life, but usually quite another to do so for a young victim of a tragic accident or violent crime.

The sad case of 16-year-old Diane Watson, stabbed to death in a Glasgow playground row in 1991, remains a grim reminder of the risks and potential for significant intrusion into grief. That tragedy was compounded when her brother Alan, aged 15, killed himself 18 months later after reports appeared which he believed besmirched Diane's name.

The loss of Alan led to a sustained and ongoing campaign by parents Margaret and Jim Watson for changes to the law

in Scotland around defamation of the dead. The Code does provide a remedy, but prevention is clearly better than cure. A little foresight by editors fully sensitive to the risks can avoid a great deal of unnecessary suffering.

Humorous accounts

Although the Code does not cover the privacy of the dead, a critical obituary in the *British Medical Journal*, describing a doctor as "the greatest snake-oil salesman of his age", brought a complaint from the man's family. No adjudication was necessary as the editor offered to publish an apology for the distress caused.

Kelliher v British Medical Journal: www.pcc.org.uk/cases/adjudicated.html?article=MjEwMg

A magazine which ran a jokey student guide to suicide fell foul of the Code when it referred flippantly to two unconnected student deaths, one of which happened only months earlier. The PCC ruled that for the two tragedies to be treated with gratuitous humour was a serious breach of the Code.

Napuk and Gibson v FHM: www.pcc.org.uk/cases/adjudicated.html?article=MTgxMQ

CLAUSE 4
INTRUSION
INTO GRIEF
OR SHOCK

Reporting suicide

THE REPORTING of suicide – which had been covered within the Intrusion into Grief or Shock rules – became a freestanding clause in its own right in 2016.

This was an acknowledgment of the risks of simulative acts, advanced by organisations dedicated to preventing suicide. The new clause stresses the need to take care to avoid excessive detail of the method used, which might prompt or encourage copycat cases. At the same time, it strikes a balance by protecting the media’s right to report legal proceedings, such as inquests.

The “excessive detail rule”, which codified a practice already followed by many editors, was first introduced in 2006. It meant, for example, that while it might be perfectly proper to report that death was caused by an overdose of a type of tablet, it would probably be excessive to state the number of tablets used. Exceptions could be made if editors could demonstrate that publication was in the public interest.

As the aim is to avoid copycat acts, the rule would – under the spirit of the Code – apply to reporting attempted suicide and to any article appearing to romanticise or glamorise suicide, or which suggests a method is quick, easy or painless.

A novel method of suicide that has not been seen before

WHAT THE CODE SAYS

When reporting suicide, to prevent simulative acts care should be taken to avoid excessive detail of the method used, while taking into account the media’s right to report legal proceedings.

A public interest exemption may be available. See Page 108.

and which might inspire simulative acts requires careful reporting, and there is evidence that the Press has willingly cooperated in restricting the level of detail in such cases, while still fulfilling the requirement to report important stories.

The suicide of a celebrity, while newsworthy, also requires vigilance on the part of editors.

Press coverage of suicide clusters in a specific geographic location was highlighted when more than 20 young people took their lives in and around Bridgend. Some parents, politicians and police blamed media coverage for possibly triggering later cases. Faced with such a story, editors must balance the public’s right to know with the need not to exacerbate the situation.

In Bridgend there were also concerns about the cumulative effect of media inquiries on bereaved families. Intrusion into Grief or Shock is now a standalone clause in the Code and must be taken into account when reporting suicide. Taking the two clauses together, editors face a twin test: they must publish with sensitivity and avoid excessive detail.

Some readers may find reports of suicide distressing. Editors might choose to include contact details or links to sources of support, such as Samaritans.

Samaritans has also produced guidance for reporting suicide, which is not binding but can be helpful for journalists. It is found here: www.samaritans.org/media-centre/media-guidelines-reporting-suicide/supplementary-factsheets.

The regulator has accepted complaints from third parties, as well as from close families or friends.

Reporting inquests

While requiring editors to take care to avoid excessive detail, the new clause protects the media's right to report legal proceedings by adding "...while taking into account the media's right to report legal proceedings".

This applies particularly to inquests, where details are given in evidence and often need to be reported to provide a clear and accurate account of issues that are very much in the public interest. This means editors must strike a fine balance in their coverage. In addition to guarding against excessive detail that might result in a simulative act, editors must also exercise judgment to avoid including gratuitous detail that might intrude on grief.

A reporter's natural instinct is to give a full account of proceedings but Clause 5 requires great care in selecting what to include in a story and in deciding what level of detail is excessive. The PCC made this clear when it stated that newspapers were entitled to report on proceedings such

as inquests but the Code's requirements went further than those demanded by the law. It ruled that newspaper reports of an inquest into the death of a teacher who had electrocuted himself contained too much detail about the method.

"Inquests are held in public and newspapers are free to report their proceedings," said the PCC, "but to abide by the terms of the Code – which sets out standards over and above the legal framework – the papers should on this occasion have been less specific about the method used."

A woman v Wigan Evening Post: www.pcc.org.uk/cases/adjudicated.html?article=NDc1Mw

A family complained that "graphic and excessive detail" in a report of an inquest into the death of a scientist who had taken his life was an intrusion into the family's grief and could encourage simulative acts of suicide.

IPSO said that inquests are public hearings and newspapers play an important role in informing readers about evidence heard during proceedings, which is expressly recognised within the Code. However, IPSO made clear that the publication of gratuitous detail could constitute an intrusion into grief and therefore breach Clause 4.

In this case the details heard at the inquest had been presented in a factual and non-sensational way. In addition, there was a justification for the inclusion of the details in the article, which explained why some evidence appeared to raise a question about whether a third party had been involved in the man's death. There was no breach of Clauses 4 or 5.

Smyth v Oxford Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=14070-16

Sometimes the story requires more detail to fulfil the requirement of effectively reporting inquest proceedings. A newspaper was accused of including excessive detail when it reported the position of a shotgun in a man's death.

IPSO did not uphold the complaint. It said the detail was expressly cited by the coroner as key to her conclusion that it had been an intentional act, despite the family's disagreement.

The inclusion of this information served an important purpose in explaining why the coroner had come to this decision. Indeed, the coroner had stated that because of the placement of the gun, she "[could] not see an alternative explanation". It was not, therefore, excessive.

Hartley v Lancaster Guardian: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01983-14

Even consent from a relative would not necessarily absolve editors from responsibility under the "excessive detail" rule. The PCC accepted a third-party complaint that a magazine article contained too much detail, even though it was by the sister of a man who had taken his own life. The case was resolved without going to adjudication.

Brown v She magazine: www.pcc.org.uk/cases/adjudicated.html?article=NTE1OQ

IPSO has published guidelines on reporting deaths and inquests, which can be found here: www.ipso.co.uk/press-standards/guidance-for-journalists-and-editors/deaths-and-inquests-guidance/

Trivialising or glamorising suicide

When the Daily Sport published a list of Britain's most popular suicide "hotspots", headlined "The Top Yourself 10", the PCC ruled that it had breached the rules on excessive detail. A Scottish NHS official complained that vulnerable people might be encouraged to visit the places shown and take their own lives.

The newspaper claimed the article was fair, balanced and based on information already in the public domain. But the PCC said that, while articles investigating the pattern of suicides are usually acceptable, this "entirely gratuitous" guide stated explicitly a number of options about how and where to attempt suicide. It was clearly excessive in the context.

Also, the light-hearted presentation of the piece could have glamorised suicide for some people, thus further breaching the Code, which is designed to minimise the risk of imitative acts.

Choose Life v Daily Sport: www.pcc.org.uk/cases/adjudicated.html?article=NTIOMA

CLAUSE 6

Children

THE CODE goes to exceptional lengths to safeguard children by defining tightly the circumstances in which press coverage would be legitimate. For the most part, this applies up to the age of 16 – but the requirement that pupils should be free to complete their time at school without unnecessary intrusion provides a measure of protection into the sixth form.

In the absence of a public interest justification, pupils cannot be approached at school, photographed or interviewed about their own or another child’s welfare, or offered payment, unless consent is given by the parent or guardian.

The welfare of the child includes the effect publication might have.

A complaint from an asylum seeker was upheld after a newspaper interviewed and identified some of his children. The PCC said the article was likely to provoke a strong reaction in readers, which might affect the children’s welfare.

Keneua v Sunday Mercury: www.pcc.org.uk/cases/adjudicated.html?article=MTgyMg

There is a public interest defence available to editors, but here again the bar is raised in favour of protecting children and the Code states that “an exceptional public interest” would need to be demonstrated.

WHAT THE CODE SAYS

- i) All pupils should be free to complete their time at school without unnecessary intrusion.
- ii) They must not be approached or photographed at school without permission of the school authorities.
- iii) 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.
- iv) 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.
- v) 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.

A public interest exemption may be available. See Page 108.

Consent

The press has to establish which is the competent authority to grant consent in each case. IPSO ruled that publication of a photograph of an injured schoolgirl and her sister was

a breach of the Code because parental consent had not been obtained. It was also ruled to be a breach of the clause covering intrusion into grief or shock.

A woman v Derby Telegraph: www.ippo.co.uk/rulings-and-resolution-statements/ruling/?id=01866-14

A photograph taken of a boy on school property broke the rules even though his mother had approved it. The school authorities had not been asked.

Brecon High School v Brecon and Radnor Express: www.pcc.org.uk/cases/adjudicated.html?article=MjA2Ng

In contrast, when a mother spoke to a newspaper about how her three-year-old child “escaped” from a nursery, her former partner, who was the child’s father, complained to IPSO. The complaint was rejected as IPSO said the mother was entitled to speak to the Press about her experience and, as a custodial parent, had given consent to the publication of a picture of her child.

IPSO’s decision shows that it does not take sides in a dispute between parents. If an editor can show that permission has been obtained from one parent who has legal responsibility, that will be sufficient authorisation.

Holling v Barnsley Chronicle: www.ippo.co.uk/rulings-and-resolution-statements/ruling/?id=00661-14

When a Scottish weekly newspaper published a schoolgirl’s mobile phone video of unruly classmates, the school complained that no consent had been sought. The newspaper maintained it was in the public interest to

demonstrate poor supervision of the pupils, all of whom were over 16. The PCC agreed it was legitimate to use the video material to spotlight the classroom conditions – but it was not necessary to identify the pupils. It upheld the complaint against the weekly newspaper but rejected complaints against two national newspapers that had used the material without identifying the students.

Gaddis v Hamilton Advertiser: www.pcc.org.uk/cases/adjudicated.html?article=NDY2MA

Gaddis v Scottish Daily Mirror: www.pcc.org.uk/cases/adjudicated.html?article=NDY2MQ

Gaddis v Scottish Sun: www.pcc.org.uk/cases/adjudicated.html?article=NDY2Mg

Another video clip prompted a complaint after it appeared in a story headlined “Heartbroken mum shares distressing footage of bullies attacking her 12-year-old daughter before leaving her lying in a gutter”. The article reported on a physical confrontation involving two young girls and contained a 40-second video of the incident.

The complainant, the mother of the first girl, who had been described as a bully, said she had not given her permission for the video to be published and, by including it in the article alongside its accompanying stills, the newspaper had breached her daughter’s privacy. The complainant did not accept that it was in the public interest to report on, or publish footage of, the incident.

The newspaper did not accept a breach of the Code. It said the video showed an anti-social and potentially criminal act, which was filmed in a public location by another person

allegedly bullying the victim. The newspaper said it had ensured that the footage and pictures were pixelated to protect the identity of those shown. The newspaper said it had considered the Code before publication and decided it was in the public interest to report on the incident.

IPSO did not uphold the complaint and said there was a very strong public interest, justifying publication, in enabling the second girl's mother to discuss the effect that the behaviour featured in the video had on her daughter. The video and stills were part of that story, particularly as the video formed part of the incident to which her daughter was subject.

There was also a public interest in contributing to public debate about anti-social behaviour among young people and the video illustrated vividly, in a way that would not have been possible through words alone, the nature of the behaviour.

A woman v mirror.co.uk: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01690-17

Children post material online and editors must consider the Code before they re-publish it. A key factor is whether the welfare of the child is involved.

An online petition about school uniform prompted a complaint after a newspaper named a 15-year-old pupil and published her comments in an article headlined "Term starts with shoe row". The pupil's stepfather said she had been named and quoted without his consent.

The newspaper did not accept that it had breached the Code. The pupil had posted publicly viewable comments on a public website. She had not been photographed or

interviewed, and it was not under an obligation to seek parental consent before naming the child.

IPSO said the Code provides particularly strong protection for children. As such, honouring the full spirit of the Code – as required by the preamble – means that what will constitute an "interview" for the purposes of Clause 6 (iii) is broader than circumstances where a journalist directly seeks comment or information from a child. It might cover the re-publication of material that a child had posted online.

However, Clause 6 (iii) only requires parental consent where the subject matter concerns the welfare of a child.

In this case, the complainant's stepdaughter's comments were innocuous in nature, were not about her welfare and were not an intrusion into her time at school. There was no breach of Clause 6.

Lightfoot v Leicester Mercury: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=08255-16

IPSO has published guidelines about sourcing content from social media, which can be found here: www.ipso.co.uk/press-standards/guidance-for-journalists-and-editors/social-media-guidance/

Children are sometimes named in court hearings and, in the absence of reporting restrictions, newspapers can legitimately report their identity, although they may sometimes choose not to, depending on the circumstances.

A newspaper received a complaint when it reported that a jailed businessman and his father had funded a lavish

IPSO's decision shows that it does not take sides in a dispute between parents.

lifestyle, including a large house that the businessman shared with his wife and two children, who were named.

The newspaper said the names were mentioned in open court by the businessman's barrister as part of his mitigation. It said that as there were no reporting restrictions in place, it was entitled to report this information.

IPSO said that publications are, in the absence of reporting restrictions, entitled to include information revealed in open court in their reports of cases. In this case, the names were disclosed in open court as part of the businessman's mitigation and, as a consequence, they were genuinely relevant to the reporting of these particular proceedings. Publishing their names did not represent an unnecessary intrusion into the children's time at school, nor was the sole reason for the publication of their names the notoriety of their father. There was no breach of Clause 6.

IPSO pointed out that editors are able to exercise their discretion to omit details from articles in circumstances such as these and welcomed the fact that, on receiving the complaint, the newspaper deleted the children's names from the article.

A man v Wales Online: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=09529-16

A lads' magazine broke the Code when it failed to check the age of a young woman in a topless picture that was submitted to it. She was just 14. The PCC said the magazine had not taken adequate care to establish the provenance of the photograph or whether it was appropriate to publish it.

A couple v FHM magazine: www.pcc.org.uk/cases/adjudicated.html?article=NDcxNA

Payment to children

The Code offers protection to children when payment is involved in a story. It puts an obligation on the Press not to make payments to minors – or their parents – unless it is “clearly in the child's interest”. IPSO has powers to launch an inquiry without a complaint under this part of the Code because it is unlikely that a complaint would be brought by a person being paid. Payments to parents for interviews involving their children are not uncommon, especially when highlighting intense or dramatic family experiences.

The issue was thrust into the public spotlight when a boy aged 13 was believed to have fathered a child with his 15-year-old girlfriend. A court order prevented the PCC from holding a full inquiry but the Commission issued new guidance stressing that, despite the parents' right to freedom of expression, editors in such situations should form an

independent judgment on whether publishing information, and the payment involved, was in the child's interest.

It posed three key questions that editors should ask:

- Is the payment alone responsible for tempting parents to discuss a matter about their child that it would be against the child's interests to publicise? If so, only an exceptional public interest reason could justify proceeding with the arrangement.
- Is there any danger that the offer of payment has tempted parents to exaggerate or even fabricate information?
- Is the payment clearly in the child's interest?

If there is doubt about any of these questions, it would be wise to take advice from IPSO.

Children of the famous

The Code offers protection to all children and stresses that the fame, notoriety or position of a parent or guardian cannot be the sole justification for publishing details of a child's private life.

Some celebrity parents take a relaxed view of their children being pictured, while others take action to keep their children away from the glare of publicity. Some will speak about their children and be photographed with them, while others will use IPSO's advisory service to ask that any pictures of them with their children should be pixelated. The responsibility for determining the position in any particular case rests with the editor.

Generally, the Code takes a commonsense view and if pictures of children do not involve their welfare they will not require consent. The PCC made this clear when it said that if the Code was interpreted in a highly restrictive manner, it would mean that no pictures of children, no matter how innocuous, could be published without consent.

The PCC said: "That is clearly not what the Code is intended to do. Instead, the Code requires editors to seek such consent before interviewing or photographing children under the age of 16 'on subjects involving the welfare of the child'.

"The mere publication of a child's image, unaccompanied by details of its private life, when he or she is in a public place could not be held by the Commission to breach the Code."

Donald v Hello! Magazine: www.pcc.org.uk/cases/adjudicated.html?article=MjAyMA

Celebrity parents who post information about their family on social media can create a public profile for their children – and IPSO will take this into account when considering a complaint.

Wayne Rooney complained after his son was named in an article headlined "Rooney's lad, 7, trains with City!".

The footballer said it was an unwarranted intrusion into his son's privacy to report that he had attended training with the Manchester City Football Academy, having previously attended Manchester United's development team.

The newspaper denied that the article revealed any details of the child's private life, it did not involve his welfare and football training was not part of his schooling.

It also said account should be taken of the extensive public

disclosures that Rooney and his wife had made about their son.

IPSO said that regardless of the decision by the complainant and his wife to disclose certain information about their son to the public, they retained their rights, as his parents, to choose not to disclose certain other pieces of information about him. However, the large amount of information about Kai in the public domain formed part of the context in which it assessed the effect of the newspaper's report.

IPSO noted the limited detail that was published: the article reported simply that Kai had attended Manchester City Academy and the minimal further comment was complimentary and focused on his ability as a young player rather than any aspect of his personal development.

The article did not contain further details or speculation about other aspects of Kai's life and it did not seek to criticise his father or embarrass the child or the family.

In the circumstances, IPSO did not consider that the child had a reasonable expectation of privacy in relation to the bare fact of his attendance at the academy, and it did not find that it was an intrusion into his time at school. The complaint was not upheld.

Rooney v Daily Mail: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=14261-16

Public interest

The Code makes provision for a public interest exception in cases involving children under 16 but the bar is raised very

high. It declares: "An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16."

A school bus crash involving 50 young pupils just failed the public interest test set by the PCC.

A mother complained after two regional newspapers published a picture showing her clearly distressed daughter being comforted by a policeman at the scene of the accident.

The PCC agreed that the crash raised important public safety issues and the newspapers had generally reported it with sensitivity. But it said: "It was clear that the complainant had not given her consent for the newspaper to either take or publish the photograph which showed her daughter in a state of distress. The subject matter of the close-up photograph certainly related to her welfare."

The PCC added: "There may be occasions where the scale and gravity of the circumstances can mean that pictures of children can be published in the public interest without consent. In the specific circumstances of this case, the Commission did not consider that there was a sufficient public interest to justify the publication of the image.

"It accepted that the newspaper had thought carefully about whether to use the photograph, but the Commission considered that it was just the wrong side of the line on this occasion."

A woman v Nottingham Post: www.pcc.org.uk/cases/adjudicated.html?article=NjMwNQ

A woman v Leicester Mercury: www.pcc.org.uk/cases/adjudicated.html?article=NjMwNg

CLAUSE 7

Children in sex cases

ALL CHILDREN in sex cases, including defendants, are protected from identification under the Code. In this instance the Code goes further than the law: the Press must not identify children in cases involving sexual offences “even if legally free to do so”.

An essential element is a formula to prevent “jigsaw identification” – which could occur if media organisations observe in different ways the law intended to protect the anonymity of incest victims.

The law prohibits identification of any alleged victim of a sex offence but it does not specify the method of doing so. So, in incest cases, publications face a choice. They can describe the offence as incest, but not name the defendant, or they can name the defendant but omit the exact nature of the offence.

Until the formula was harmonised by the Code, there was a risk that both approaches might be used by different publications. The result was that, if two accounts were read together, the alleged victim could be identified. The Code effectively removed the choice by adopting a system widely used by the regional press that also won the support of broadcasters.

WHAT THE CODE SAYS

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
2. In any press report of a case involving a sexual offence against a child –
 - i) The child must not be identified.
 - ii) The adult may be identified.
 - iii) The word “incest” must not be used where a child victim might be identified.
 - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

A public interest exemption may be available. See Page 108.

Under the Code, the defendant is named but all references to incest are omitted. When followed by all media organisations, this means alleged victims are not identified.

Even so, reporting child sex cases means taking exceptional care to ensure that no reference might identify an alleged victim. This includes material covered by qualified privilege.

A weekly newspaper breached the Code when IPSO found that paraphrased quotations from the proceedings in an online version of a court report strongly implied a specific connection between the child and the defendant. IPSO said this was “highly concerning” and demonstrated a significant

failure on the newspaper's part. It was a clear breach of Clause 7.

The quotations were also likely to contribute to the identification of an alleged victim of sexual assault and IPSO found the online version of the article breached Clause 11 of the Code, which covers victims of sexual assault.

A man v Wilts & Gloucestershire Standard: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00768-15

The clause is used principally to protect alleged victims but it applies equally to young witnesses.

Social media can provide a forum for discussion of court cases – and that can increase the risk of victims being identified, even though this is beyond the control of the newspaper publishing the original story.

IPSO took the opportunity to issue a warning about social media when it cleared a newspaper of a complaint under Clause 7 because its coverage fully complied with the Code. IPSO's complaints committee said: "The newspaper was not responsible for the comments made identifying the child on social media, which had been posted on an individual's unmoderated page in relation to a different article (albeit one that included substantially similar material).

"Nonetheless, the committee took this opportunity to draw to editors' attention the need for care in such cases to avoid creating a forum for speculation as to the victim's identity. While editors are not in a position to constrain the circulation of links to stories and commentary on them hosted on third-party websites, consideration should be given to whether stories involving victims of sexual assault can safely

be published on publications' social media sites – particularly where they will be open to comments."

A woman v Dunfermline Press: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03503-15

As always in cases involving children, the public interest would need to be exceptional to justify identification. However, there are exceptional and rare instances where the names of children who have been involved in sex cases might be put into the public domain lawfully and the public interest justification is included in the Code to cover these.

If, for example, a court banned the media from naming a child defendant facing a sexual assault charge but decided, when he or she was convicted, that he or she could be identified, then his/her name would be legitimately in the public domain and there could be a public interest in publication.

Under-age mothers – who may in law be victims of a sexual offence even if no prosecution takes place – have also been known to put themselves in the public domain. This has happened in stories concerning teenage pregnancies, abortions and parenthood where examples of cases can assist in developing public policy.

Publication of these stories is never undertaken lightly and, in addition, Clause 6 covering the welfare of children should be taken into consideration. But it is important to remember that under the law no victim or alleged victim of a sexual offence who is under the age of 16 can waive his or her anonymity, and it also cannot be waived on his or her behalf by a parent or guardian.

CLAUSE 8

Hospitals

CLAUSE 8 protects patients in hospitals and similar institutions from intrusion. It requires journalists to identify themselves and to obtain permission from a responsible executive to enter non-public areas. The clause applies to all editorial staff, including photographers.

The clause covers the newsgathering process, so the Code can be breached even if nothing is published.

The clause also requires that, when making inquiries about individuals in hospitals and similar institutions, editors need to be mindful of the general restrictions in Clause 2 of the Code on intruding into privacy.

Identification and permission

Journalists must clearly identify themselves and seek permission from a responsible executive to comply with the Code. The use of the term “executive” implies that permission can be obtained only from a person of sufficient seniority.

A journalist who attended a London hospital after the Canary Wharf terrorist bomb photographed an injured victim in the company of a relative and another person who he thought had obtained permission from hospital staff.

WHAT THE CODE SAYS

- i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.
- ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

A public interest exemption may be available. See Page 108.

When medical staff complained, the PCC found the Code had been breached. It said: “The Commission was not persuaded the reporter in this particular case had followed the provisions of the Code: it was not enough to assume that his identity was known or to rely on the comment of an individual who was clearly not a responsible executive, although the reporter had done so in good faith.”

Hutchison v News of the World: www.pcc.org.uk/cases/adjudicated.html?article=MTkwMA

Non-public areas

In most cases, what constitutes a non-public area will be clear and will certainly include areas where patients are receiving treatment.

A reporter who went into a hospital unit to speak to the victim of an attack – at the request of the victim’s parents – spoke to staff only after he had left the public area of the hospital.

The PCC said: “The reporter could have acted to ensure that there was no uncertainty about his identification, and that the necessary permission had been obtained from a ‘responsible executive’, before entering the unit where the patient was being treated. This could have been achieved, for example, by asking at reception at the beginning of the visit to speak to a relevant executive, or approaching the hospital in advance. As it was, the conversation in which the journalist had allegedly identified himself had been with staff in the unit; he appeared, therefore, to have already entered a non-public area.”

Stamp v Essex Chronicle: www.pcc.org.uk/cases/adjudicated.html?article=NzMyMA

Similar institutions

The PCC held that, in the spirit of the Code, the vulnerability of the patient or individual should be taken into account when deciding what constitutes a “similar institution”.

It was ruled a breach of the Code in 1995 when Countess Spencer was photographed at a clinic where she was receiving treatment. And the PCC ruled that a residential home for the elderly could be a similar institution if a number of the residents need medical supervision.

A man v Daily Mail: www.pcc.org.uk/cases/adjudicated.html?article=MjA3Nw

The public interest

There are cases where otherwise prohibited action can be justified in the public interest.

The parents of a comatose woman, who was brain-damaged as the result of domestic violence, invited a photographer to take a picture of their daughter to highlight what they saw as an inadequate prison sentence imposed on her attacker.

The NHS trust complained that the picture was taken without its permission.

The PCC ruled that the newspaper had acted in the public interest. It said: “The Commission noted the strong feelings of the woman’s own parents. While they may not have legally been responsible for their daughter’s welfare, their own role in the matter was something that the Commission had to take into account.

“They were entitled to express their disgust at what they saw as the leniency of the sentence, and the photograph graphically illustrated the severity of their daughter’s injuries and allowed readers to contrast these injuries with the alleged leniency of the sentence.”

Taunton & Somerset NHS Trust v Daily Mirror: www.pcc.org.uk/cases/adjudicated.html?article=MjA0Mw

CLAUSE 9

Reporting of crime

THIS CLAUSE is designed to protect family members, friends and others from being caught unnecessarily in the publicity spotlight focused on those accused or found guilty of crimes.

Relatives or friends should not normally be named or pictured unless they are genuinely relevant to the story – or publication can be justified in the public interest.

Child witnesses or victims of crime are given special consideration. And in 2018 the clause was strengthened to protect children and young people accused of crime.

Key questions to be asked by editors include:

- Did relatives or friends consent to identification?
This may be implied if they appear publicly with the defendant.
- Are they genuinely relevant to the story?
- Is mentioning relatives or friends in the public interest?
- Is the coverage of the relatives or friends proportionate to their involvement?
- Have we taken sufficient care to protect vulnerable children?

WHAT THE CODE SAYS

- i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.
- ii) Particular regard should be paid to the potentially vulnerable position of children under the age of 18 who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.
- iii) Editors should generally avoid naming children under the age of 18 after arrest for a criminal offence but before they appear in a youth court unless they can show that the individual's name is already in the public domain, or that the individual (or, if they are under 16, a custodial parent or similarly responsible adult) has given their consent. This does not restrict the right to name juveniles who appear in a crown court, or whose anonymity is lifted.

A public interest exemption may be available. See Page 108.

Complaints usually hinge on genuine relevance to the story, or whether there is a public interest in them being mentioned, or whether identification is gratuitous. The

PCC gave editors a lead by taking a commonsense line. If a relationship was well known and established in the public domain, then it would be perverse to expect editors to omit reference to it.

Similarly, if a parent, for example, publicly accompanied the accused person to court or made public statements on the case, that would add genuine relevance.

The regulator would also take account of the tone of the article – how much the story focused on the relationship – and whether that was relevant or in the public interest.

Genuine relevance

The issue of genuine relevance meant that IPSO found in favour of a woman who complained when a newspaper published an old picture of her with a man accused of murder and described her in the caption as a “friend”.

Rurik Jutting was arrested in Hong Kong and charged with murdering two Indonesian women in his apartment.

The newspaper’s article contrasted Jutting’s student days in England with the circumstances of his arrest for murder. It was accompanied by three photographs, the largest of which depicted Mr Jutting standing next to the complainant with his arm around her, captioned as “Rurik Jutting as a Cambridge student at 21, with a friend”.

The complainant, Clémentine Bobin, said the photograph had been taken in 2006, when she was a young colleague of Mr Jutting, after which she had no contact with him. Although it

had not named her, it clearly identified her to friends, family and colleagues, which was intrusive and upsetting.

IPSO said: “The article had made no reference to the complainant, and she was plainly not personally relevant to the story. No public interest could reasonably be regarded as justifying the intrusion into the complainant’s life caused by so prominently and publicly associating her with an alleged criminal.”

Bobin v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01657-14

A man who appeared in a picture with an alleged serial killer that was taken from the TV programme *Masterchef* failed in his complaint under Clause 9. The caption to one of the screenshots identified the alleged serial killer standing “behind [a] chef” in the kitchen.

The complainant said that he was the “chef” referred to in the caption. He said he had worked in the kitchen with the alleged serial killer, but had nothing to do with his alleged crimes. The complainant was concerned therefore that he had been identified in breach of Clause 9, and that the newspaper had published the image without his consent.

The newspaper did not accept that the photograph breached Clause 9. The article did not suggest in any way that the complainant had been involved with the alleged serial killer. He was not specifically identified in the photo, and was not named or otherwise referred to in the article. Further, the newspaper said the complainant would have appeared on the programme of his own free will, and the footage showing the alleged serial killer in the same shot had already been seen

by several million viewers, given the programme's popularity. The footage remained readily accessible on the internet.

IPSO said the complainant, who had only a professional relationship with the alleged serial killer, appeared in the photograph incidentally. The article did not refer to him in any way, and did not specify the nature of his connection to the alleged serial killer beyond referring to him simply as a "chef". In this context the complainant had not been identified as a friend or relative of the accused man, and the terms of Clause 9 were not engaged. Further, the terms of Clause 9 do not require that newspapers seek permission to publish photographs of individuals.

Worthington v The Sun: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07572-15

You may be a prominent member of your community but that does not necessarily justify being mentioned in a report of a court case of a relative.

A man complained on behalf of himself and his parents when a newspaper named them in a report of a court case involving fraud. The Jewish Chronicle identified them as the brother and parents of the defendant but the complainant said they were not relevant to the story of his brother's conviction and should not have been identified. The newspaper said they were well-known within the community and the judge had referred to the family in court.

IPSO said the judge stated that the defendant's family and friends had helped to compensate his victim. However, it did not appear that anybody had referred to an individual friend or family member in court.

IPSO said there may be circumstances where an individual has a relationship with a person convicted or accused of crime which is so well-known and established in the public's mind that Clause 9 would have no useful purpose – but this was not such a case. The complaint was upheld.

A man v The Jewish Chronicle: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01745-17

In contrast, when former First Minister of Scotland Lord McConnell was named in a newspaper report of a court case involving his sister, IPSO ruled that it was relevant to the story. The story, which was headlined "Sister of ex-First Minister stole £9k from 80-year-old", reported that the court heard that "she even claimed to cops her brother would pay back the sum". The article said that one of her brothers was the former First Minister of Scotland.

The complainant said he had not been named during the hearing, and at no point had anyone specified to which of the woman's brothers she had been referring.

The newspaper said the defendant told police that one of her brothers would repay the money, and therefore Lord McConnell – as one of the woman's brothers – was genuinely relevant to the story.

IPSO did not uphold the complaint and said the newspaper was entitled to explain what had been heard in court and, where a reference had been made to one of the defendant's brothers without him being named, to note that one of them was a prominent public figure. The complainant was genuinely relevant to the report of the proceedings.

McConnell v Ardrossan & Saltcoats Herald: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00456-16

Courts

If you arrive at court in the company of someone on trial you might expect to be photographed by the press.

A man complained when a newspaper reported that he had accompanied to court a woman accused of keeping a brothel in Northern Ireland. IPSO rejected the complaint, saying the complainant appeared publicly with the defendant in court.

IPSO said: “Matters heard in court are generally in the public domain and there is a public interest in open justice.

“In the absence of specific reporting restrictions, the press has a right to report from court, and to include information beyond that heard in the course of proceedings. While the complainant may not have been named in the case, he had appeared with the accused in a public forum. In the context of a piece which was primarily a report of court proceedings, the newspaper was entitled to refer to an individual who had been present while the case was being heard.”

McCaffrey v The Impartial Reporter: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01683-14

Children

The special protection given to children under the age of 18 in sub-clause 9 (ii) is a continuation of the spirit of the Clause 6

provisions and amounts to a duty of care aimed at preventing them becoming further damaged, or their welfare affected, by their innocent involvement as witnesses or victims of crime.

The law does allow children who allegedly commit crimes to be named before they appear in court, when they cannot be named. In the past many newspaper editors have refrained from naming these children, although they have done so in exceptional cases.

In 2018, Clause 9 was strengthened with an additional section which says editors should generally avoid naming children under the age of 18 after arrest for a criminal offence but before they appear in a youth court unless they can show that the individual’s name is already in the public domain, or that the individual (or, if they are under 16, a custodial parent or similarly responsible adult) has given consent.

The new section protects young defendants but it does not restrict the right to name juveniles who appear in a Crown Court, or whose anonymity is lifted.

CLAUSE 10

Clandestine devices and subterfuge

IT IS A BASIC principle of journalism that reporters are open and transparent when they make inquiries about a story. This means they must tell people they interview who they are, who they are working for, and the nature of the story they are investigating.

They must not, as detailed in Clause 10, use hidden cameras or listening devices, intercept private messages or phone calls, or misrepresent who they are.

This was brought into dramatic focus when the phone-hacking scandal engulfed the newspaper industry. The victims of phone-hacking sought legal recompense, but accessing an individual's private voicemails is a serious breach of the Code as well.

Yet some of the most important stories revealed by the Press involve the use of clandestine devices and subterfuge. Newspapers acting in the public interest have exposed scandals, unmasked hypocrisy and prevented crimes – and society has benefited as a result.

How is this circle squared? The key factor is that the

WHAT THE CODE SAYS

- i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held information without consent.
- ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

A public interest exemption may be available. See Page 108.

newspaper or magazine engaging in subterfuge must clearly demonstrate that the investigation is in the public interest. A failure to do so means a breach of the Code. So an editor will need to think hard before deciding to engage in any of the activities prohibited by Clause 10.

As soon as a publication has embarked on an investigation using clandestine devices or subterfuge, the Code comes into effect because it covers news-gathering – a breach could occur even if nothing is published.

It is no defence to say the investigation was brought to

you, or carried out, by an agent or intermediary. Once you take ownership of the story you are responsible for ensuring that every aspect of it complies with the Code, even if initial inquiries were carried out by a third party.

Key questions to be asked include:

- Do you have a reasonable belief, based on credible evidence, that your investigation will uncover material that is in the public interest? How will you demonstrate to IPSO the basis of that belief? Fishing expeditions are not allowed.
- Do you have a reasonable belief, based on evidence, that all institutions or individuals subject to your investigation are engaged in the activity you are investigating?
- Can the information be obtained by any other means?
- Is the subterfuge involved proportionate to the public interest in the story you are investigating?
- Is there a public interest in publishing the material you have obtained?
- Have you kept a record of how you reached your decision on each of these questions?

It is no defence under Clause 10 to claim your investigation was justified by what it uncovered, or what happened after it was published. You must be able to show you had reasonable grounds to believe your investigation was in the public interest before you launched it – which is why it is important to keep records.

Within its first days of operation, IPSO chose to launch an investigation into a *Sunday Mirror* story about an MP that

had involved subterfuge. The MP, Brooks Newmark, sent an explicit image to a reporter posing as a female Conservative Party activist and resigned as a minister after the newspaper published the story, which had been supplied by a freelance.

IPSO had not received a complaint but decided that the article and the news-gathering techniques used to obtain it raised issues under the Editors' Code of Practice and were a matter of public concern. It decided to make inquiries of the *Sunday Mirror* to ensure it had complied with its obligations under the Editors' Code. At the time it was not clear whether IPSO could conduct such an investigation of its own volition but following changes to IPSO's rules in 2016 it can now do so.

IPSO concluded that the use of subterfuge in the investigation was justified at each stage, and the investigation and article were in the public interest.

Subterfuge was justified because:

- There was sufficiently credible evidence of a story in the public interest.
- There were no alternative means of pursuing the story.
- It was proportionate to the initial evidence and then to the escalating behaviour of Mr Newmark.
- It was compliant with the obligations placed on editors.

Publication was found to be justified by the public interest in the material obtained. IPSO also made clear that even though the investigation was conducted by a freelance, the newspaper's editor remained responsible for ensuring that it complied with Clause 10.

Issues arising from an article in the Sunday Mirror on September

28 2014: www.ipso.co.uk/news-press-releases/news/brooks-newmark-sunday-mirror-case-ipso-decision/

CLAUSE 10 CLANDESTINE DEVICES AND SUBTERFUGE

IPSO rejected a complaint against *The Sun*, when it went undercover to investigate charity call centres following the suicide of charity campaigner Olive Cooke. Reports connected her death to the volume of charity fundraising requests she had received.

The complainant said the newspaper could not justify its decision to engage in subterfuge as it had no grounds to believe that this would expose unlawful conduct, crime or serious impropriety.

Furthermore, the newspaper's investigation had not uncovered information that could justify it in the public interest: the article stated that there was "no suggestion" the company did anything illegal, and the company was "scrupulous in instructing its employees to stick to acceptable practices".

The newspaper said the article was commissioned by its head of features as a direct result of Mrs Cooke's death, which it believed demonstrated that cold calling vulnerable people, such as the elderly, was becoming "dangerous". This was a matter of considerable public interest.

The company where the reporter went undercover had worked for three of the charities that contacted Mrs Cooke before her death.

The newspaper outlined the process it had undertaken in considering the story. The head of features discussed the idea with the head of content, the managing editor, the head of the legal department and the editor. They considered whether the

It is no defence under Clause 10 to claim your investigation was justified by what it uncovered, or what happened after it was published.

required information could be obtained by means other than subterfuge. It was decided that the only way to establish how the agency operated in its normal environment was to send a reporter to work undercover in its call centre.

The day before the article was published, there was a further meeting of senior editorial staff to consider whether the level of subterfuge employed was proportionate to the public interest in the material obtained. The team considered that the level of subterfuge was relatively limited, in that the reporter attended a training day at a business.

The findings of the investigation were also considered and the newspaper concluded that a minimal level of subterfuge was balanced against a considerable public interest, and the editor decided to publish the article.

IPSO did not uphold the complaint. It said the newspaper's investigation took place in the context of a widespread public debate about the fundraising techniques employed by charities and their possible effects on vulnerable people, and

it focused on a call centre that had a specific and publicly-identified link to the charities that had reportedly been involved in Mrs Cooke's case.

The level of subterfuge employed was minimal, given the relative ease with which the reporter had been able to obtain a place on the training day, and the fact that the investigation had focused on sales techniques rather than confidential or personal information relating to identifiable individuals.

IPSO said that while alternative means for investigating practices in the sector generally were available to the newspaper, it was satisfied that it could not have obtained, and verified, the information it sought by open means.

The reporter uncovered no evidence that the company was acting contrary to any relevant law or regulation, but this did not eliminate the public interest in the story: it was relevant to the issue of whether the current laws and regulations were adequate.

IPSO concluded that, in the context of such significant public concern regarding charity fundraising practices, the low-level subterfuge employed was proportionate to the public interest identified.

Pell & Bales v The Sun: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04088-15

If a freelance journalist employs subterfuge in pursuit of a story and subsequently sells the result to a newspaper, the editor is still required to ask the key questions regarding Clause 10.

IPSO rejected a complaint when a freelance reporter used subterfuge at a meeting addressed by a UKIP candidate. The

story was published by the *Daily Mirror*. IPSO said the use of a hidden camera, and the journalist's failure to disclose his identity, was justified in the public interest to prevent the public potentially being misled by the actions of the complainant.

When the newspaper was presented with the story by the freelance journalist, it appropriately and satisfactorily considered the issues raised under the Code.

Nielsen v Daily Mirror: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00776-15

CLAUSE 11

Victims of sexual assault

RESPECTING the anonymity of victims of sexual assault is paramount under the Code, and this clause is not subject to the defence that publication is in the public interest. There are cases where a victim may waive his or her anonymity or where identification is permitted by the courts, and the Code provides for these. Breaches are uncommon and almost always inadvertent. They fall into two main categories:

- Those caused by poor training, carelessness – or both.
- Those resulting from the inclusion of some seemingly innocuous detail.

The wording of the clause was revised in 2018 to bring it in line with the law and to clarify the responsibilities that editors have under the Code.

The key questions editors should ask include:

- Are the details reported likely to lead to identification?
- Is there adequate justification?
- Is it legal to publish, and is that enough under the Code?

Even when newspapers follow the fundamental rules

WHAT THE CODE SAYS

The press must not identify or publish material likely to lead to the identification of a victim of sexual assault unless there is adequate justification and they are legally free to do so.

about not naming sex assault victims without consent, risks arise if they are identifiable by some detail in the story.

That is why the PCC issued a warning to editors when it found that a newspaper had reported enough information to contribute to the potential identification of a woman rape victim. The report named the town in which the attack took place and contained details about the nature of the assault. It also contained information about the victim, such as her age and recent health problems, and details of “the family home” where the attack happened.

Upholding the complaint, the PCC said it wished to underline the “extreme importance” it attached to the “scrupulous manner” in which reports about sex crimes should be constructed. It added: “Any details beyond the most basic – no matter how small – can identify a victim to someone who does not know of the crime to which that person has been subjected.”

Thames Valley Police v Metro: www.pcc.org.uk/cases/adjudicated.html?article=MjA4Mg

Members of the public using social media can reveal the identities of victims of sexual assault, either through

ignorance or maliciously, and IPSO issued a warning to newspapers about publishing such stories on social media websites, given the difficulty in preventing such comments.

IPSO did not uphold a complaint against a newspaper and ruled that it was not responsible for the comments made identifying a child on social media, which had been posted on an individual's un-moderated page in relation to a different article, albeit one that included substantially similar material.

Nonetheless, IPSO took the opportunity to draw editors' attention to the need for care in such cases to avoid "creating a forum for speculation as to the victim's identity".

IPSO said: "While editors are not in a position to constrain the circulation of links to stories and commentary on them hosted on third-party websites, consideration should be given to whether stories involving victims of sexual assault can safely be published on publications' social media sites - particularly where they will be open to comments."

Even when newspapers follow the fundamental rules about not naming sex assault victims without consent, risks arise if they are identifiable by some detail in the story.

A woman v Dunfermline Press: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03503-15

A case in Scotland demonstrated that it is still possible to breach the Code in circumstances in which it is legally permissible to name an alleged victim of sexual assault.

The article reported that a defendant had been found not guilty of an allegation of sexual assault - she had been accused of rubbing her breasts against the complainant at a party. The alleged offence took place in Scotland, and the trial also took place there. The alleged victim was named in the report.

The complainant said he had been assured by the police in advance that he would not be identified by the media. The article had caused him significant upset: it was humiliating to be identified in this way, and his family and friends found out about the incident through reading about it in the newspaper.

The newspaper acknowledged that it is usual practice in Scotland not to name alleged victims of sexual offences. However, unlike in the rest of the UK, there is no specific provision in Scottish law which grants automatic anonymity to victims, or alleged victims, of sexual assault in cases tried under Scottish law. A judge has the power to make such an order, but no order had been made in this case.

In these circumstances, the newspaper was legally free to publish the complainant's name. It was therefore entitled under Clause 11 to identify the complainant if there was "adequate justification" for doing so.

At the conclusion of the case, the sheriff had said that "against the whole background, it's hard to understand the decision-making process by which it was found by the Crown

to be in the public interest to pursue this case. Although I wasn't convinced by the evidence provided by the accused, I'm not going to find beyond reasonable doubt that the accused was guilty of criminal assault, far less a sexual one".

The newspaper said it was clear in this case that the alleged offence should never have been classed as a sexual assault. It had therefore been justified in naming the complainant.

But IPSO upheld the complaint. It said: "Neither the acquittal nor the sheriff's comments affected the complainant's status as a self-identified victim of sexual assault. The sheriff's criticism of the decision to prosecute was insufficient to justify identification of the complainant, and it was not necessary to name the complainant in order to report this criticism."

A man v Daily Record: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05764-15

CLAUSE 12

Discrimination

THE AIM of Clause 12 is to protect individuals from discriminatory coverage, and no public interest defence is available. However, the Code does not cover generalised remarks about groups or categories of people. This would inhibit debate on important matters, would involve subjective views and would be difficult to adjudicate upon without infringing the freedom of expression of others.

As always, the Code is striking a balance between the rights of the public to freedom of speech and the rights of the individual – in this case not to face personal discriminatory abuse. Freedom of expression must embrace the right to hold views that others might find distasteful and sometimes offensive.

The Code Committee's approach has been that, in a free society with a diverse Press, subjective issues of taste and decency should be a matter for editors' discretion. Newspapers and magazines are constantly answerable in the court of public opinion – and access to social media means readers can express their opinions within moments of publication. So there is ample evidence that editors exercise that discretion on a daily basis.

Like all citizens, newspapers must have regard to the law – extreme cases may be scrutinised for evidence of hate speech.

WHAT THE CODE SAYS

- i) The press must avoid prejudicial or pejorative reference to an individual's, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.
- ii) Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

Key questions to be considered by editors include:

- Is the reference to an individual, or a distinct class of individuals? This should be someone who is named or readily identifiable, or a distinct group of individuals who can similarly be identified.
- Is the reference prejudicial or pejorative in a discriminatory way?
- Is the reference to characteristics covered by Clause 12 genuinely relevant?

Restricting complaints to discrimination against individuals rules out the consideration of some controversial stories. But even if an article cannot be considered under the discrimination clause, there may still be a case under other sections of the Code – such as accuracy – if statements are incorrect or comment is passed off as fact.

That was IPSO's approach when Katie Hopkins wrote an

opinion piece that likened migrants to “cockroaches”. As no individual was identified in the article, IPSO did not accept a complaint under Clause 12 but it considered the article under Clause 1 – Accuracy.

IPSO did not uphold the complaint. It said the article was a polemic, which expressed strong and, to many people, abhorrent views of asylum-seekers and migrants generally.

The complainant, and many others, sought to complain to IPSO that the manner in which the columnist expressed herself breached Clause 12 (Discrimination).

The Complaints Committee acknowledged the strength of feeling the column had aroused. It took the opportunity to note publicly that the terms of Clause 12 specifically prohibit prejudicial or pejorative reference to individuals. They do not restrict publications’ commentary on groups or categories of people.

In this instance, the references under complaint were not to any identifiable individuals and, as such, Clause 12 was not engaged.

The Committee made clear that it did not have jurisdiction to deal with potential breaches of the law, but understood that police were investigating the matter. (*Editor’s note: The Metropolitan Police confirmed it had received allegations of incitement of racial hatred.*) The complaint was therefore considered solely under the Code’s provisions on accuracy – and no breach was found under that clause.

Greer v The Sun: www.ipsa.co.uk/rulings-and-resolution-statements/ruling/?id=02741-15

When Channel 4 journalist Fatima Manji complained

about a Sun story, the key consideration for IPSO was whether the critical references in it were aimed at her personally.

The story at the centre of the complaint was a Kelvin MacKenzie column that asked why Channel 4 had a presenter in a hijab presenting coverage of the terror attack in Nice.

The complainant said the article discriminated against her on the basis of her religion: it suggested that her appearance on screen wearing a hijab was as distressing as witnessing a terrorist attack; that her sympathies would lie with the terrorists because she is Muslim; that Muslims in general are terrorist sympathisers; and that she should be prevented from enjoying a career as a television news presenter on the basis of her adoption of a religious item of dress.

The newspaper said the columnist had not criticised the complainant personally: this was not about a journalist having religious faith, but about the propriety of public figures wearing outwardly religious garments in the context of a story with an unavoidable religious angle.

The newspaper said Clause 12 does not prevent criticism of religion, or of religious conduct or choices. If it did, it would represent an “extraordinary limitation upon free speech”.

IPSO said the column questioned whether it was appropriate that Channel 4 permitted news of the Nice atrocity to be read by a newsreader wearing the outward manifestation of the religion which the columnist associated with that attack. It set out the columnist’s opinion on the hijab and Islam in general and this was deeply offensive to the complainant and caused widespread concern and distress to others.

The essential question was whether the references were directed at the complainant.

IPSO said Clause 12 prohibits prejudicial or pejorative references to an individual on the basis of religion. But it does not prohibit prejudicial or pejorative references to a particular religion, even though this may cause distress and offence. Were it otherwise, the freedom of the Press to engage in discussion, criticism and debate about religious ideas and practices, including the wearing of religious symbols while reading the news, would be restricted.

IPSO said the article did refer to the complainant but it did so to explain what triggered the discussion about a subject of legitimate debate: whether newsreaders should be allowed to wear religious symbols. While the columnist's opinions were undoubtedly offensive to the complainant, and to others, these were views he had been entitled to express. The article did not include a prejudicial or pejorative reference to the complainant on the grounds of her religion and it was not a breach of Clause 12.

Manji v The Sun: www.ipsoco.uk/rulings-and-resolution-statements/ruling/?id=05935-16

Clause 12 was engaged when Rod Liddle wrote a column that did identify an individual. His piece read: "Emily Brothers is hoping to become Labour's first blind transgendered MP. She'll be standing at the next election in the constituency of Sutton and Cheam. Thing is though: being blind, how did she know she was the wrong sex?"

The complainant said the comment suggested that there were limitations to the understanding blind people could

While the columnist's opinions were undoubtedly offensive to the complainant, and to others, these were views he had been entitled to express.

have of themselves and called into question Ms Brothers' gender identity. It was therefore a pejorative and prejudicial reference to her disability and gender.

The newspaper accepted that the comment was tasteless, but denied that it was prejudicial or pejorative. It did not accept that the columnist had criticised Ms Brothers or suggested anything negative or stereotypical about her blindness or gender identity. Rather, it had been a clumsy attempt at humour regarding the existence of those conditions.

The newspaper said it had reviewed its editorial processes in response to the complaint and instituted a new policy that all copy relating to transgender matters would be approved by its managing editor before publication. The issues raised by the columnist's remark had been incorporated into training sessions.

IPSO said the crude suggestion that Ms Brothers could have become aware of her gender only by seeing its physical manifestations was plainly wrong. It belittled Ms Brothers,

her gender identity and her disability, mocking her for no reason other than these perceived “differences”.

The comment did not contain any specific pejorative term, but its meaning was pejorative in relation to characteristics specifically protected by Clause 12. Regardless of the columnist’s intentions, this was not a matter of taste. It was discriminatory and therefore unacceptable under the terms of the Code.

Trans Media Watch v The Sun: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15

This was the first complaint that IPSO considered from a representative group. A change in the rules means IPSO may consider such a complaint “where an alleged breach of the Editors’ Code is significant and there is substantial public interest in the regulator considering the complaint from a representative group affected by the alleged breach”.

The Code of Practice continues to evolve and, when it was revised in January 2016, Clause 12 was amended and a specific reference to gender identity was added.

Distinct class of individuals

If a distinct class of individuals can be identified in a story, a complaint can be made under Clause 12.

A story about a secure psychiatric clinic referred to “deranged criminals” and a complaint said it was a prejudicial and pejorative reference to the mental health of its patients.

IPSO said the reference to “deranged criminals” related to

a distinct class of individuals resident at the clinic such that the reference could be taken as relating to them individually. Clause 12 was therefore engaged.

But IPSO was satisfied that the term “deranged”, while pejorative, was used in reference to those individuals’ criminal behaviour and was not discriminatory in relation to their mental health specifically.

Partnerships in Care v Ayrshire Post: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02624-15

Clause 12 (ii) Genuine relevance

In sub-clause 12 (ii) the restriction relates only to details of race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability which are not genuinely relevant to the story. It does not cover the individual’s sex, mention of which is not itself discriminatory.

A man who was a British citizen complained when a newspaper described him as Zambian in its coverage of a court case. The newspaper said the reference to the complainant being “Zambian” was relevant to the story and was not discriminatory. It said that the complainant lived in Zambia until he was seven years old, and played for the country’s youth football team. The newspaper considered that it had been fair to describe him as “Zambian”, even if he did hold a British passport. It believed that his connection to Zambia was newsworthy, and noted that it had reported his

selection for the squad in 2011, in a story headlined “Shock Zambia call for City’s Loveday.”

IPSO noted that the complainant had played international football for Zambia, and had been the subject of previous coverage in relation to this. The article under complaint had made clear that he was resident in the UK and had “had a call-up to the Zambia U20 squad”. Further, the coverage of the trial as a whole had made clear the basis for referring to the complainant as “Zambian”.

IPSO said: “While the committee understood the complainant’s concern about the reference, it concluded that, in this context, the reference to the complainant’s Zambian connection was newsworthy, and did not constitute an irrelevant reference to his race.”

Mumbuluma v Essex Chronicle: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04869-15

Age

Age is not one of the categories covered by Clause 12. This is because reporting a person’s age, like stating their sex, is not discriminatory and it would preclude fair comment on politicians, athletes, actors and others who might be argued to be past their prime.

CLAUSE 13

Financial journalism

INDEPENDENT self-regulation of the Press was given official recognition with the introduction of new laws covering financial market abuse in July 2016.

Journalists were exempted from the Regulatory Technical Standards of the Market Abuse Regulation because the Editors' Code of Practice and IPSO's robust policing of the Code and its rigorous sanctions were judged by the Government to offer equivalent regulation for notification to the European Commission. This was a welcome official endorsement of the effectiveness of IPSO and the Code of Practice.

Clause 13 on financial reporting has remained unchanged since 1991 and has stood the test of time. The clause is complemented by the Financial Journalism Best Practice Note, published by the Editors' Code of Practice Committee in August 2016, which gives more detailed advice on the mandatory requirements of the Regulatory Technical Standards, in particular the necessity for external disclosure of financial interests.

Editors should read this guidance note and the official Market Abuse Regulation and Regulatory Technical

WHAT THE CODE SAYS

- i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.
- ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.
- iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

Standards and ensure their publication's financial journalism meets their requirements.

The spirit of the code ensures there are no legalistic loopholes to be exploited when it comes to Clause 13. And there is also the *Private Eye* test, which poses the question: Would it damage the integrity of the journalist or their newspaper if their actions were reported in *Private Eye*?

Complaints which engage Clause 13 are rare but the highest-profile case in which the provisions were used successfully was the City Slickers scandal, where two *Daily*

Mirror business journalists tipped shares they had previously bought in what the PCC described as “repeated and flagrant breaches of the Code”.

The conduct of *Mirror* editor Piers Morgan was found to have “fallen short of the high professional standards demanded by the Code” and the newspaper had to publish a damning 4,000-word adjudication across pages 6 and 7.

PCC and Mirror City Slickers: www.pcc.org.uk/cases/adjudicated.html?article=MTC4NQ

The Financial Journalism Best Practice Note is on the Editors’ Code website (www.editorcode.org.uk/guidance_notes_9.php) and is printed below.

Financial Journalism Best Practice Note

Issued by the Editors’ Code of Practice Committee, August 2016

Introduction

The newspaper and magazine publishing industry’s Code of Practice contractually binds all the national and local newspapers, magazines and their websites that are regulated by the Independent Press Standards Organisation. Clause 13 of the Code imposes a number of requirements relating to financial journalism, and Clause 1 (Accuracy) also has a particular relevance.

The Code

- prohibits the use of financial information for the profit of journalists or their associates;
- imposes restrictions on journalists writing about shares in which they or their close families have a significant interest without internal disclosure;
- stops journalists dealing in shares about which they have written recently or intend to write in the near future; and
- requires that financial journalists take care not to publish inaccurate material and to distinguish between comment, conjecture and fact. This is particularly important for any journalists making investment recommendations to readers about whether to buy, sell or hold shares.

The Code operates in the spirit as well as the letter. The intention of Clause 13 is clear: no journalist or editor should undertake any form of activity relating to financial journalism which could be open to misinterpretation or which could damage the integrity of his or her publication. The Code was deliberately written in broad terms to ensure such high standards: the danger with precise language is that it creates loopholes. In this area of reporting, there should be none. This guidance note – drawn from the house rules of a number of different publications – is intended to supplement the provisions of the Code by laying down best practice in the industry in this area.

Breaching the Editors’ Code of Practice will result in a requirement to publish prominent corrections and critical

adjudications. Serious and systemic breaches could result in fines of up to £1 million.

This note also takes into consideration the EU Market Abuse Regulation, which came into force in July 2016 and the Regulatory Technical Standards made under Article 20 of that Regulation.

Article 20 contains provisions requiring “persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy” to “take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates”. The Regulatory Technical Standards make more specific provision as to what is required.

These provisions replace the Market Abuse Directive and the Investment Recommendations Directive, implemented in the UK in the Investment Recommendation (Media) Regulations 2005.

Under the new Market Abuse Regulation, journalists can be exempt from the new Regulatory Technical Standards (but not the overarching obligation under Article 20 quoted above) provided that they are subject to equivalent appropriate regulation, including self-regulation such as the Editors' Code, which achieves a similar effect. The Editors' Code has been notified to the EU Commission by the UK Government.

To whom does the Code apply?

The Code applies to all journalists and their editors. The Code requires disclosure of shareholdings about which journalists

Many publications favour a confidential register of holdings by journalists and editors, and this is to be encouraged.

are writing to editors or financial editors, and editors therefore have a duty to ensure that no conflict of interest arises and that systems are in place to achieve that requirement. Best practice on most publications requires editors to report their own interests to managing directors or publishers: this is most practically done by means of an internal register.

What is a “significant financial interest”?

The Code uses this terminology – rather than specifying different types of holdings – because what might be insignificant for one person might be very significant for another. Best practice on many publications will mean the disclosure of “any” financial interest, however small. It will usually mean a direct financial interest – although there may be occasions when journalists will need to declare an indirect financial interest, such as in a unit trust, where they are writing about it in a manner which might affect its performance.

The 2016 Regulatory Technical Standards require that a publication should disclose if its company has a holding

of 5% or more in an organisation whose shares they are recommending. The 2016 Regulatory Technical Standards also specify a net long or short position exceeding the threshold of 0.5% of the total issued share capital of the issuer.

What does the term ‘securities’ in the Code mean?

The vast majority of publications define “securities” not just as stocks and shares, but include all financial instruments, including derivatives, contracts for differences, and financial spread bets as well. IPSO will interpret the term at its widest, to include any transaction where publication of material might have a potential impact on financial performance.

What do the terms ‘recently’ and ‘in the near future’ mean?

It is impossible to define these terms without producing loopholes. To define the term “recently” as one month, for instance, might make dealing in shares about which a journalist has written permissible on day 31. That is clearly not what is intended. Best practice makes clear that journalists should not speculate by buying or selling shares on a short-term basis if they have written about them in the past or are intending to write about them in the future. Avoiding buying or selling shares on a short-term basis will assist in avoiding problems. In considering any possible breaches of the Code, IPSO will therefore take into account the length of time a journalist has held new securities.

Disclosure of interests and conflicts of interest

What should editors or publishers do when internal

disclosure is made to them and they are concerned about a possible breach of the Code? Best practice on the majority of publications would be for the editor or publisher to instruct a journalist to unwind a transaction or, if the need arises, to take more serious disciplinary action.

Most publications would also instruct a journalist not to deal in a specific share or other security. In order to ensure that the internal disclosure regime is as effective as possible, those who maintain a register of shareholdings, or to whom journalists and editors report, should regularly examine those disclosures that have been made for any sign of irregularity.

Should there be an internal register of shareholdings?

Many publications favour a confidential register of holdings by journalists and editors, and this is to be encouraged.

Should there be “external” disclosure of journalists’ financial interests?

Complete external disclosure of shareholdings to readers is not a practical proposition because of the number of people – from reporters and writers to sub-editors to editors – who may be responsible for what ultimately appears in a publication. However, the Regulatory Technical Standards require compulsory external disclosure and although including this in every story would not be practicable, external disclosure from the originating writer of an article should take place, perhaps on the publication’s website. This buttresses the safeguards inherent in internal disclosure and compliance with the terms of the Code of Practice. A general disclosure

that journalists might hold or deal in securities reported on is probably of limited value. A specific disclosure that the originating writer holds or has dealt in the securities reported on will be of value to the reader.

What information should be disclosed by journalists making specific recommendations to readers to buy, sell or hold shares or other securities?

External disclosure of any significant financial interests or conflicts of interest is mandatory under the Regulatory Technical Standards in these circumstances. This could be done by publishing a reference to a place where the information is publicly available, such as the paper's website. The reference to where any disclosures can be found could also be made in a standard box referring to IPSO.

Do any particular rules apply to the publication of recommendations made by other people?

Some publications publish recommendations made by third parties – other newspapers, for example – or summaries of them. If, in doing so, the publication or journalist changes the direction of any recommendation – for instance, from “buy” to “hold” – they should disclose their own interests or conflicts of interest as outlined above, and make clear the original recommendation and the nature of the change in the interests of accuracy.

There may also be occasions where the direction of a recommendation made by a third party is not changed, but where some other significant alteration is made, such as changing the recommended price at which to sell or buy

shares. Clause 1 has a relevance here in ensuring that the alteration is made clear, and that readers are aware of the provenance and substance of the original recommendation. If the original recommendation appeared in another newspaper which carried public disclosures of any conflicts of interest, best practice would be either to reproduce these disclosures, or to refer to where they could be found – normally the newspaper's website.

Recommendations and accuracy

Clause 1 (Accuracy) of the Code is particularly important when journalists make recommendations to buy, sell or hold shares, and when newspapers publish recommendations made by third parties.

Editors and journalists should ensure that information is presented accurately, that facts are distinguished from interpretations, estimates and opinions, and that care is taken to ensure that sources are reliable. When publishing recommendations, publications should be as transparent as possible in the interests of good practice. Editors should ensure the names of individual journalists who make overt recommendations are made available (even if this is just via a website).

Exemption from Regulatory Technical Standards

Journalists can be exempt from the new Regulatory Technical Standards, but not the overarching obligation under Article 20 of the Market Abuse Regulation, provided they are subject to equivalent self-regulation, such as that overseen by the Independent Press Standards Organisation. The Government

will notify the European Commission of Codes that are equivalent and appropriate regulation. IPSO requires all member publications – both in print and online – to carry a prominent notice stating that they are regulated by the organisation and also details of how to bring a complaint.

Other tests

Common sense has always been the key to the application of the Code. In this area, many publications apply what they describe as the Private Eye test, mentioned above: if it would embarrass a journalist to read about his or her actions in Private Eye, and at the same time undermine the integrity of the newspaper, then don't do it.

Links

For further information, here are links to the Market Abuse Regulation and Regulatory Technical Standards, to which the above note refers.

Market Abuse Regulation:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0596&qid=1478896838012&from=EN>

Regulatory Technical Standards:

<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0958&rid=1>

CLAUSE 14

Confidential Sources

JOURNALISTS must protect their confidential sources if the Press is to safeguard the interests of society.

On-the-record sources are best when you write stories – the reader can assess their credibility, motivation and actual existence – but sometimes informants will only speak about secret or confidential matters if their anonymity is preserved. They may be whistle-blowers who are acting in the best interests of society but fear reprisals if their names are made public.

That is why there were protests when it was revealed that the police had used – perhaps abused – their powers under the Regulation of Investigatory Powers Act 2000 to obtain journalists' phone records to reveal their sources.

And the law recognises the importance of confidential sources. Clause 10 of the 1981 Contempt of Court Act says: "No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

WHAT THE CODE SAYS

Journalists have a moral obligation to protect confidential sources of information.

Even so, courts do attempt to force journalists to reveal their sources. In one such case, trainee journalist Bill Goodwin of the *Engineer* magazine took a landmark case to the European Court of Human Rights. It ruled that an attempt to force him to reveal his source for a news story violated his right to freedom of expression and warned that forcing journalists to reveal their sources could seriously undermine the role of the Press as public watchdog because of the chilling effect such disclosure would have on the free flow of information.

So journalists jealously guard their sources although, as we live increasingly in a surveillance society, protecting their identities goes much further than not revealing their names – particularly when mobile phones can be tracked and CCTV can record meetings.

At the same time, the obligation of confidence should not be used by journalists as a shield to defend inaccurate reporting. Wherever possible, efforts should be made to obtain on-the-record corroboration of a story from unnamed sources. If a complaint hinged on material from an unnamed source, IPSO would expect the editor involved either to produce corroborative material to substantiate the allegations or to demonstrate that the complainant had a suitable opportunity to comment on them.

There would be a particular responsibility on editors to

give a reasonable opportunity of reply to complainants who felt they were victims of allegations from an unnamed source.

A columnist in *The Times* relied on a confidential source in an article that criticised the Parliamentary Assembly for the Organisation for Security and Co-Operation in Europe (OSCE PA). The newspaper was found to have breached Clause 1 (Accuracy).

IPSO said the newspaper was entitled to make use of information provided by a confidential source. However, it had relied on this source without taking additional steps to investigate or corroborate the information on which the article's characterisation was based, which might include obtaining additional on-the-record information or contacting the complainant to obtain his comment before publication.

As the newspaper considered itself prevented by Clause 14 from disclosing the information provided by its source, it was unable to demonstrate that it had taken care not to publish inaccurate information.

Solash v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04036-15

There are very few complaints under Clause 14 – and often breaches are the result of carelessness or inexperience.

The PCC laid down useful guidelines for reporting “off the record” information. It said it would generally distinguish between cases involving people who regularly deal with the media and cases involving people with little or no knowledge of how the Press operates.

The PCC said: “When an interviewee has a lot of experience, he or she will probably be well aware that they should make

clear at the beginning of an interview that certain information is to remain private – or, if published, is not to be attributed to them. If their instructions are ignored there may be grounds for making a complaint either under Clause 3 (Privacy) or Clause 14 (Confidential sources) of the Code of Practice.

“For those unused to dealing with the Press, there may be grounds for complaint if a journalist has deliberately enticed (perhaps by false assurances of confidentiality) information from someone who does not understand that the details – which are private in nature – may actually be published.”

And the PCC warned: “People should be aware that if they speak to a journalist and do not categorically state that the conversion is ‘off the record’, it may well be regarded as ‘on the record.’”

A professor of ocean physics complained to IPSO when *The Times* ran a story headlined: “Climate scientist fears murder by hitman.”

The article was based on an interview with the complainant, in which he expressed concern that several scientists researching the impact of global warming on Arctic ice might have been assassinated.

It reported that the complainant said there were only four people in Britain, including himself, who were “really leaders” on ice thickness in the Arctic, and three of these individuals had died in 2013. It quoted the professor as saying: “It seems to me to be too bizarre to be accidental but each individual incident looks accidental, which may mean it’s been made to look accidental.”

The complainant said the article misrepresented comments he had made to the journalist, and his conversation

with the reporter was “off the record” and not intended for publication.

The newspaper did not accept a breach of the Code. It provided a recording of the journalist’s conversation with the complainant, in which the complainant made all the statements attributed to him in the article. The newspaper denied that any confidentiality agreement was in place in relation to the interview. It said the complainant was practised at dealing with the media, spoke freely and at length to the reporter and had introduced to the conversation his concern that fellow scientists might have been assassinated.

It noted that at one point the complainant requested that the conversation go “off the record”, making clear that he was aware the conversation prior to that point was “on the record” and intended for publication.

The newspaper had not published material provided by the complainant during the “off the record” part of the conversation. At the end of this section, the journalist had told the complainant that he was “switching back to ‘on the record’”.

IPSO rejected the complaint. It said Clause 14 imposes a moral obligation on journalists to protect the identity of sources who provide information on a confidential basis. In this instance, the complainant had not requested during the interview that he be treated as a confidential source, nor had he made reference to any such request in the course of his complaint.

Rather, his concern related to the question of whether information he provided in the course of an interview with a journalist was intended for publication. The complainant had

Even if a confidential source is not named, there is a risk that details in the story might reveal their identity.

requested that one section of his interview, from which no details were published, should take place “off the record”. This demonstrated his awareness that the rest of the conversation had taken place “on the record”, and that any comments he had made might be published.

Wadhams v The Times: www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=04762-15

A mistake by a trainee reporter led to a breach of Clause 14. A former employee of the Rural Payments Agency (RPA) contacted the newspaper by email to share some of her experiences of the agency, but asked to remain anonymous. The reporter forwarded the email to the RPA for comment, without removing the complainant’s details from it.

The PCC said: “The newspaper’s acceptance that a mistake had been made limited the extent of the Commission’s criticism, but the protection of confidential sources of information is a basic principle of journalism, and such an obvious and unnecessary breach of the Code could not pass without censure.”

A woman v Evening Chronicle (Newcastle upon Tyne): www.pcc.org.uk/cases/adjudicated.html?article=NDA2MQ

Even if a confidential source is not named, there is a risk that details in the story might reveal their identity.

A man talked to a newspaper about the proposed closure of Burnley's mortuary on condition that he was not identified. However, the article referred to him as "a worker at Burnley's mortuary". Because he was one of only two people who worked at the mortuary – the other was his boss – his employers were able to identify him as the source of the information. He was subsequently dismissed on grounds of gross misconduct for making his remarks to the newspaper.

The PCC said the newspaper had gone some way to protecting the complainant as a source of information, and his identification appeared to have been unintentional. But given that the need for confidentiality had been agreed between the parties, the onus was on the newspaper to establish whether the form of words it proposed to use would have effectively identified the complainant.

A man v Lancashire Telegraph: www.pcc.org.uk/cases/adjudicated.html?article=NDgyNQ

CLAUSE 15

Witness payments in criminal trials

IN 2002 the Lord Chancellor's department announced a plan to introduce laws covering witness payments in criminal trials, which would have exposed the media and journalists to the risk of fines and imprisonment. In response, the Editors' Code Committee persuaded the Government that strengthening the self-regulatory Code would be more effective and the legislative threat was dropped.

The threat of legislation had followed payments to witnesses in a number of high-profile and controversial cases, including those of serial killer Rose West and disgraced pop star Gary Glitter.

In Glitter's case, the judge said: "Here is a witness who first made public her allegations of sex abuse in return for the payment of £10,000 and who stands to make another £25,000 if you convict the defendant on any of the charges. That is a clearly reprehensible state of affairs. It is not illegal, but it is greatly to be deprecated."

So self-regulation responded to that sorry state of affairs by producing much stronger rules regarding payments to

WHAT THE CODE SAYS

- i) No payment or offer of payment to a witness – or any person who may reasonably be expected to be called as a witness – should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.
- *ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.
- *iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

** A public interest exemption to these sub-clauses may be available. See Page 108.*

witnesses. The resulting Code revisions, introduced in 2003, severely limited the circumstances in which payments could be made. And Editors should note that IPSO can launch an investigation into a payment to a witness even if there is no formal complaint.

The Code effectively creates two categories of restriction on payments or offers to witnesses or potential witnesses – one a qualified ban where payments may be defended in the public interest, and the other where there should be no payment in any circumstances: a total ban.

To comply with the Code, editors must answer a series of tough questions and satisfy strict conditions.

The total ban applies once proceedings are active. Proceedings are active when a suspect is arrested, an arrest warrant or summons is issued, or a person is charged – and they remain active until they are over.

If proceedings are active, the Code imposes a total ban on payments to anyone who is or is likely to be a witness. The prohibition lasts until the question of guilt ceases to be a legal issue. That means when the trial is over, when the suspect enters a guilty plea, or when the suspect is freed unconditionally.

The qualified ban applies where proceedings may not yet be active, but are likely and foreseeable. Here no payments or offers can be made – unless there is a public interest in the information being published and an over-riding need to make a payment for this to be done.

These conditions pose several questions for editors.

Active proceedings: The first question is to resolve whether

proceedings are active. If the answer is Yes, then the principal remaining issue under Clause 15i, when considering making offers of payment, is: Could the potential payee reasonably be expected to be called as a witness? If so, payment is prohibited. In some cases it might be obvious that the prospective payee is a likely witness; in others, less so. In the absence of reliable police or other guidance, editors would need to make their own judgment – usually with legal advice – on what might be considered reasonable, before approaches were made.

Proceedings not yet active: If the judgment is that proceedings are not active, then there is the possibility of payment in the public interest. But the situation is not necessarily clear-cut.

Restrictions apply if proceedings are likely and foreseeable – and if the potential payee may reasonably be expected to be a witness. It is again a crucial judgment. If the answer to either question is No, then restrictions do not apply under the Code.

However, if the answer to both questions is Yes, then a new set of conditions involving the public interest kicks in to comply with Clause 15ii:

The public interest: Now the only basis upon which a payment or offer may be made is that the information concerned ought demonstrably to be published in the public interest and that there is an over-riding need to make or promise payment for this to be done.

The editor would need to demonstrate both how the public interest would be served and why the necessity for payment

was over-riding, a particularly high threshold under the Code. But the responsibility does not end there.

Influencing witnesses: Editors have a duty of care not to allow their financial dealings to lead witnesses to change their testimony. The risks include witnesses withholding information in an attempt to preserve exclusivity or for other reasons, or exaggerating evidence to talk up the value of their story. Editors also need to be alive to the danger of journalists – intentionally or not – coaching or rehearsing witnesses or introducing to them extraneous information, which might later colour their evidence.

Conditional payments: Potentially the most dangerous deal, in terms of tainting witnesses, is one in which payment is conditional on a guilty or not guilty verdict. The PCC made clear that any deal linked to the outcome of the trial would be strictly prohibited as it might affect the witness's evidence or credibility.

Finally, if all other hurdles have been cleared, there is one further obligation on editors, regarding disclosure.

Disclosure: Once an editor is satisfied that the Code's requirements can be met, and payment or offer of payment is made, the payee should be told that if they are cited to give evidence the deal must be disclosed to the prosecution and defence. This transparency is a deliberate safeguard against miscarriages of justice. It puts extra onus on potential witnesses to tell the truth since they know they are likely to be cross-examined on the payment.

Editors have a duty of care not to allow their financial dealings to lead witnesses to change their testimony.

The PCC laid down guidelines for compliance. It advised that:

- The payee should be informed in writing that, should he or she be cited to give evidence the Press is bound under the Code to disclose the deal to the relevant authorities.
- The prosecution and defence should be notified promptly, with full details of a payment or contract given in writing. The requirement to inform both sides may be satisfied where appropriate by notification to the prosecution for onward transmission to the defence.

There has been only one adverse adjudication involving payments to witnesses since the Code's provisions were changed and it demonstrated the importance of timing when approaching witnesses.

A prosecution witness in the trial of Kate Knight – who was later jailed for 30 years for attempting to murder her husband by lacing his food with anti-freeze – told the court that during an overnight break in her testimony she had been approached by a magazine offering a fee for an interview, once the trial

was over. Although she had received other requests for an interview this was the only one that mentioned a fee.

The PCC launched its own investigation – as the regulator can do in ‘victimless’ cases – and although there had been no impact on the trial, censured the magazine for its premature approach.

The magazine’s editor said the letter had been sent prematurely by the writer because of a misunderstanding. It had since reviewed its working practices to ensure that this would not be repeated.

The PCC said: “The terms of Clause 15 are absolutely clear: there should be no offer of payment to a witness while proceedings are active. This is to prevent payments having any real or perceived influence on the administration of justice.

“On this occasion, there was fortunately no evidence that the trial had been affected by the offer. But it is never acceptable for witnesses to be approached with offers of payment while they are giving evidence, and the journalist’s actions could have had extremely serious consequences.”

PCC investigation into an offer of payment by Full House magazine: www.pcc.org.uk/cases/adjudicated.html?article=NTExNw

The PCC launched an investigation into the case of Amy Gehring, a former teacher accused of intimate liaisons with pupils in 2002. It found that although payments had been made to former pupils, all complied with the requirements of the Code as it was then and none was conditional on the outcome of the trial.

www.pcc.org.uk/cases/adjudicated.html?article=NjcyNw

However, the PCC indicated that a payment by the *News of the World* to an informant who was a potential witness in the case of an alleged plot to kidnap Victoria Beckham, which had not breached the Code in 2002, would probably have been a breach under the new rules.

PCC investigation into News of the World: www.pcc.org.uk/cases/adjudicated.html?article=MjEwNA

Payment to criminals

THE CODE takes a tough line on payment to criminals. Clause 16 lays down two key principles:

First, payment or the offer of payment must never be made to a criminal – even indirectly via an agent or friends and family – if the story would exploit a particular crime, or would glorify or glamorise crime in general;

Second, an editor claiming the payment was made in the public interest would need to demonstrate there was good reason to believe this was the case – whether or not a story was published. Of course, IPSO would judge whether that belief was well-founded.

So payments to criminals are not absolutely banned by the Code and do not always have to be justified by the public interest. The nature of the story is crucial. If it does not exploit a crime, or glorify or glamorise crime, it would not be a breach of the Code. That takes into account that criminals can reform, their convictions can be spent and a lifetime ban would be unfair and might be a breach of their human rights.

The public interest defence will inevitably loom large in complaints about payment to criminals. The PCC said: “While the Code is not designed to stop criminals being paid for their

WHAT THE CODE SAYS

- i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.
- ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

A public interest exemption may be available. See Page 108.

stories in all circumstances, it is designed to stop newspapers making payments for stories about crimes which do not contain a public interest element. Indeed, the philosophy of the Code is that a payment aggravates the case where there is no public interest, because the glorification of the crime is more of an affront if it is done for gain.

“The principle behind this is, of course, that it is wrong to glorify crime, not necessarily to write about it: there will be occasions on which the public has a right to know about

events relating to a crime or criminals. The key to the Code is, therefore, public interest.”

www.pcc.org.uk/cases/adjudicated.html?article=MTg4NA

IPSO will ask key questions when investigating a complaint about a payment to a criminal:

- Did the article glorify or glamorise crime?
- Did the article allow a criminal or an associate to exploit a particular crime?
- Was there any profit or direct financial benefit for the criminal involved, or their associate?

If so:

- Before agreeing to a payment, why did the editor consider there was good reason to believe this would result in the publication of information in the public interest?
- How was the public interest served by the material published?
- Was any new information made available to the public as a result?
- Was payment necessary? Could the information have been obtained by other means?

In 2003 the PCC set out the types of stories involving payment that are least likely to offend:

- Book serialisations, where the information is already in the public domain or is about to be;
- Cases where no direct payment is made to the criminal or an associate. For example, payment might be made to a charity, creditors or legal costs;
- Payments where publication is in the public interest.

For example, a payment might be necessary to expose a miscarriage of justice and a payment by *The Sun* ensured that escaped Great Train Robber Ronnie Biggs returned to the United Kingdom to serve his sentence (www.pcc.org.uk/cases/adjudicated.html?article=MjAzNg);

- Articles which make new information available to the public;
- Articles in which criminals do not attempt to glorify their crime but instead reveal the horror of their actions.

The stories that are most likely to offend include:

- Articles glorifying crime, which serve no public interest and do not bring a fresh perspective on the offence. In 1992 Hello! was censured for paying convicted fraudster Darius Guppy for pictures and stories about him and his wife which, the regulator said, “effectively glorified his crime”;
- Payment for irrelevant kiss-and-tell stories about romance or sex involving the criminal;
- Stories that are irrelevant gossip and which may intrude on the privacy of others. This was prompted by payment to a fellow prisoner for information about jailed peer Lord Archer. (www.pcc.org.uk/cases/adjudicated.html?article=MjEwMQ).

The magazine *That’s Life* was found to have breached Clause 16 when it paid the sister of a murderer for a story about the killing. The magazine maintained that it viewed the sister as a victim of crime who had not sought to glorify or glamorise his crime.

The PCC did not agree that she was a “victim”. As an immediate member of the murderer’s family, she was clearly an associate as defined by Clause 16.

The PCC said: “This was a clear instance in which a crime has been exploited in breach of Clause 16.”

Ms Treena McIntyre v That’s Life: www.pcc.org.uk/cases/adjudicated.html?article=ODM2MA

The Guardian was the subject of a complaint over a comment piece written by disgraced politician Chris Huhne, who was jailed for perverting the course of justice and who was under contract to write for the paper. The column was about the conviction of Constance Briscoe, a barrister and former recorder, for attempting to pervert the course of justice during the investigation of the politician’s offence.

The PCC said the difficult question was whether the article exploited his crime and, if so, whether it fell foul of Clause 16’s aim, which was to prevent criminals from profiting from their crimes.

The PCC said that while the article discussed Mr Huhne’s experiences, it did not focus on his crime. The PCC said that, on balance, a distinction should be drawn between legitimate comment on issues of broader societal importance, albeit with a connection to an individual’s crime, and material that was limited to details of a crime. It concluded that the article did not constitute exploitation of Mr Huhne’s crime and there was no breach of the Code.

www.pcc.org.uk/cases/adjudicated.html?article=OTA2Mg

The public interest

ROBUST, ethical journalism is a force for good and is very much in the public interest.

Journalists can almost always produce brilliant stories that shine a light into dark corners of society while still observing the strict rules of the Editors' Code of Practice. On rare occasions, if they are to act in the public interest, they may have to do things that might otherwise be contrary to the Code. For example, going undercover and using subterfuge might expose a major scandal, or intruding into a person's private life might reveal hypocrisy and prevent the public being misled. If a complaint was made, the editor would claim to be acting in the public interest – and IPSO would be the final arbiter of the issue.

Decisions to break the Code should never be taken lightly – and citing public interest is not an easy way to dodge censure. It is not a Get Out Of Jail card to be played after flouting the rules or dropping a clanger. Editors must demonstrate that they deliberately took the decision to breach the provisions of the Code after due consideration in justifiable circumstances.

What is the public interest? It is really impossible to define exactly, so the Code does not attempt to do so. Instead, it provides examples of public interest in a non-exhaustive

list that reflects the values of the society that the British Press serves.

In January 2016, the list of examples, and the circumstances in which editors can invoke public interest, was updated and expanded in line with the Defamation Act, Data Protection Act and Crown Prosecution Service guidance.

Although the list is longer, it is still not exhaustive and the spirit of the Code allows flexibility. The Code does not work, for example, on the basis that public interest is essentially whatever the public is interested in. At the same time, it is not the case that every story that is published must be justified by public interest.

Many stories are published simply because they are interesting or entertaining, and if they do not breach the Code there is no need to show a public interest justification for publication. Nor should public interest be interpreted so narrowly that it prevents investigative journalism, or exposure of serious wrongdoing.

The Code states that there is a public interest in freedom of expression itself and IPSO will consider the extent to which information is already in the public domain or will become so.

A public interest defence cannot be put forward for seven clauses of the Code. Put simply, there could be no public interest justification for breaking these clauses of the code:

- Clause 1 – Accuracy
- Clause 4 – Intrusion into grief or shock
- Clause 11 – Victims of sexual assault
- Clause 12 – Discrimination
- Clause 13 – Financial journalism
- Clause 14 – Confidential sources

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 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.

- Clause 15 (i) – Witness payments in criminal trials

And IPSO will need convincing that public interest is an adequate defence in complaints involving the other nine clauses.

There are three key factors involved:

First, editors must demonstrate that they reasonably believed publication – or journalistic activity taken with a view to publication – would serve the public interest. Of course,

IPSO will decide if the editor's belief that the Code should be breached to serve the public interest was reasonable at the time that the decision was taken, based on all the evidence;

Second, editors must demonstrate that the publication or journalistic activity was proportionate to the public interest involved. Disproportionate action – taking a sledgehammer to the proverbial nut – will not impress IPSO. For example, if the story did not merit the level of intrusion, or if the material

could have been obtained by other means, the public interest defence may be rejected by IPSO;

Third, editors must explain in detail how they reached the decision to breach the Code at the time. That means producing a detailed and convincing account of the evidence available and the discussions that took place before the breach of the Code was authorised.

Editors who believe a story involves public interest may find they can effectively demonstrate that to IPSO in the event of a complaint by keeping a simple, contemporaneous, written record, which might take the form of an email or some kind of memo. It would help if it included the decision taken, the evidence being relied on, and an outline of what the public interest in the story is.

If such a record is created in cases where legal advice has been taken, editors may wish to consider in what form it could later be sent to IPSO without compromising legal professional privilege or revealing sources.

And IPSO offers confidential, non-binding advice on public interest.

Throughout the Code the most vulnerable members of society are given special protection and this is the case in complaints involving children in which a public interest defence is put forward. The Code sets the bar very high indeed, declaring that there must be an “exceptional public interest” demonstrated to over-ride the normally paramount interests of children under 16.

The Editors' Code of Practice

The Code incorporates changes taking effect from January 1, 2018.

The Independent Press Standards Organisation (IPSO), as regulator, is charged with enforcing the following Code of Practice, which was framed by the Editors' Code of Practice Committee and is enshrined in the contractual agreement between IPSO and newspaper, magazine and electronic news publishers.

Preamble

The Code – including this preamble and the public interest exceptions below – sets the framework for the highest professional standards that members of the press subscribing to the Independent Press Standards Organisation have undertaken to maintain. It is the cornerstone of the system of voluntary self-regulation to which they have made a binding contractual commitment. It balances both the rights of the individual and the public's right to know.

To achieve that balance, it is essential that an agreed Code be honoured not only to the letter, but in the full spirit. It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental

right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest.

It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of their publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.

Editors must maintain in-house procedures to resolve complaints swiftly and, where required to do so, cooperate with IPSO. A publication subject to an adverse adjudication must publish it in full and with due prominence, as required by IPSO.

1. Accuracy

- i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
- ii) 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.
- iii) A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.
- iv) The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.
- v) 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.

2. *Privacy

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

ii) Editors will be expected to justify intrusions into any individual's private life without consent. In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.

iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.

3. *Harassment

i) Journalists must not engage in intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.

iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

4. Intrusion into grief or shock

In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. These provisions should not restrict the right to report legal proceedings.

5. *Reporting suicide

When reporting suicide, to prevent simulative acts care should be taken to avoid excessive detail of the method used, while taking into account the media's right to report legal proceedings.

6. *Children

i) All pupils should be free to complete their time at school without unnecessary intrusion.

ii) They must not be approached or photographed at school without permission of the school authorities.

iii) 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.

iv) 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.

v) 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.

7. *Children in sex cases

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.
2. In any press report of a case involving a sexual offence against a child –
 - i) The child must not be identified.
 - ii) The adult may be identified.
 - iii) The word “incest” must not be used where a child victim might be identified.
 - iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

8. *Hospitals

- i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.
- ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

9. *Reporting of crime

- i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.
- ii) Particular regard should be paid to the potentially vulnerable position of children under the age of 18 who

witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

iii) Editors should generally avoid naming children under the age of 18 after arrest for a criminal offence but before they appear in a youth court unless they can show that the individual’s name is already in the public domain, or that the individual (or, if they are under 16, a custodial parent or similarly responsible adult) has given their consent. This does not restrict the right to name juveniles who appear in a crown court, or whose anonymity is lifted.

10. *Clandestine devices and subterfuge

- i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held information without consent.
- ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

11. Victims of sexual assault

The press must not identify or publish material likely to lead to the identification of a victim of sexual assault unless there is adequate justification and they are legally free to do so.

12. Discrimination

- i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.
- ii) Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13. Financial journalism

- i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.
- ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.
- iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

14. Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

15. Witness payments in criminal trials

i) No payment or offer of payment to a witness – or any person who may reasonably be expected to be called as a witness – should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

16. *Payment to criminals

i) Payment or offers of payment for stories, pictures or information which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals

or to their associates – who may include family, friends and colleagues.

ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

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:

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

Contact information

Editors' Code of Practice Committee

Website: www.editorscode.org.uk/index.php

Email: editorialcode@gmail.com

Editors' Code: www.editorscode.org.uk/the_code.php

Online version of the Code: www.editorscode.org.uk/mini-code/

A4 printable version of the Code: www.editorscode.org.uk/downloads/the_code/Code-1-page-A4.pdf

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