

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