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.ipso.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.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05935-16

IPSO ruled that it was not a breach of Clause 12 to discuss whether someone has received preferential treatment because of their race.

A comment piece by a columnist reported on events relating to Kate Osamor, a Labour MP – and daughter of a peer – who, it was said, had continued to employ her son as a researcher after his conviction for drug offences. The column concluded by asking: "And do you suppose that either [the MP or her mother] would be in the positions they are now were it not for the colour of their skin?"

The complainant said the article breached Clause 12(i), because it prejudicially suggested that she was only in her position as a result of her race. The complainant also argued that the article's reference to the MP's race was irrelevant, in breach of Clause 12 (ii), because it was not the case that she had only achieved her position because of her race, and her race should not therefore have been mentioned.

The publication denied breaching the Code. It said that the article reported the columnist's view that Ms Osamor had achieved her position not on merit, but due to some form of positive discrimination. This had been presented clearly as the columnist's view, in the form of a rhetorical question.

It said this was not a pejorative or prejudicial reference to Ms Osamor's race: the columnist was criticising the MP based on her behaviour, not because of her race, and had only referenced her race to question how she achieved her position in spite of her professional failings.

IPSO did not uphold the complaint. It said publications are entitled to draw attention to the perceived failings of public

figures, and to question how individuals have reached their positions. Clause 12 should not be interpreted in such a way as to prevent debate as to whether possessing a particular characteristic has conferred privilege on an individual. If this were the case, the ability of the press to draw attention to advantages and disadvantages deriving from membership of particular groups would be compromised.

IPSO said the columnist had speculated that the MP's race may have been a factor in her reaching the position she held. The MP's race was, by definition, relevant to this discussion and there was no breach of Clause 12(ii).

The Labour Party v The Sun:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07858-18

IPSO made clear that it relied on the definition of sexual orientation contained in the Equality Act 2010 when it considered a complaint from a woman who said she was in a relationship with a chandelier.

The woman had complained after a columnist awarded her the "Dagenham Award (Two Stops Past Barking)" because of her relationship with a chandelier. The woman said the article was pejorative to her sexual orientation.

IPSO said it took into account the Equality Act 2010, which defines sexual orientation as a person's sexual orientation towards persons of the same sex, persons of the opposite sex or persons of either sex. IPSO said Clause 12 provides protection to individuals in relation to their sexual orientation towards other persons and not to objects. As such, the complainant's attraction to an object did not fall within the definition of sexual orientation as provided by Clause 12 and the terms of Clause 12 were not engaged.

Liberty v The Sun
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09587-19

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 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.

IPSO has published guidance on reporting transgender issues: www.ipso.co.uk/media/1275/guidance_transgender-reporting.pdf

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.

Some breaches of the Code are the result of poor training and inadequate oversight, and this was the case when a trainee reporter wrote a court case that appeared with the headline "Man with one leg had child porn".

When contacted, the newspaper immediately accepted

that the complainant's disability was not relevant to the story, and should not have been referred to.

IPSO said the complainant's conviction was plainly irrelevant to his physical disability, and referring to his condition was discriminatory, even though the reference itself had not been pejorative.

It appeared that a trainee journalist had been unaware that the terms of Clause 12 applied in this situation, and had published an account of a criminal case on serious charges without appropriate oversight. This represented a serious failure in relation to both staff training and editorial oversight.

IPSO also ruled that a photograph included in the article, in which the complainant's disability was visible, was not a breach of the Code. It simply showed the man leaving court after his hearing and it is normal for court reports to include a photograph of the defendant, often taken as they leave court. The complainant's disability could be seen in the photograph but it was not discriminatory and did not represent a breach of the Code.

Evans v The Argus (Brighton):
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=18685-17

IPSO ruled that it was relevant when a man who was a British citizen was described as Zambian in 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.