

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>