

CLAUSE 11

Victims of sexual assault

CLAUSE 11 was revised in 2019 to make clear that it applied to newsgathering as well as publication. IPSO had concluded in the case Warwickshire Police v Daily Mail (www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=16830-17) that the clause was ambiguous. Although no story had been published, a journalist inadvertently disclosed the identities of victims of sexual assault during the course of seeking interviews.

The Editors' Code of Practice Committee decided that, while journalists must be free to make enquiries with care and discretion, reporting was covered by Clause 11. It added the wording: "Journalists are entitled to make enquiries but must take care and exercise discretion to avoid the unjustified disclosure of the identity of a victim 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

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. Journalists are entitled to make enquiries but must take care and exercise discretion to avoid the unjustified disclosure of the identity of a victim of sexual assault.

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 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?
- During newsgathering, are we taking care and exercising discretion to avoid the unjustified disclosure of the identity of a victim of sexual assault?

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.

IPSO has published guidance on reporting sexual offences:

<https://www.ipso.co.uk/resources/sexual-offences-guidance/>

The key points include:

- There are legal protections for victims of sexual offences and the Code also puts restrictions on reporting of sexual offences to protect the identity of victims;
- Carefully consider the information you want to publish to ensure that a victim is not identified, or is likely to be identified;
- Consider the context of the offences and whether a combination of the information you are reporting is likely to identify any victim.

It says: "Sometimes it will be obvious that a piece of information would be likely to contribute to a victim's identification; the inclusion of an address (full or sometimes even partial) or specific reference to the relationship between the victim and the accused, for instance.

"On other occasions, information will seem insignificant and yet, to people who know something about the parties involved, it may be sufficient to lead to the victim's identification.

"You must carefully consider this point: what at first seems unimportant could, in fact, lead to a breach of the Code if it is published."

The guidance also says: "The Editors' Code does not set out the language which must be used to describe sexual offences. However, when reporting on sexual offences, journalists are reporting on extremely sensitive and personal matters. Editors and journalists should not lose sight of the fact that victims will often be in a particularly vulnerable position."

Seemingly insignificant details led to a newspaper breaching the Code when it reported that an individual had pleaded guilty to sex offences against a child.

It reported the age of the victim when the offences began, and the time period over which the offences took place, by reference to the month and year. It reported the circumstances in which the defendant had come into contact with the victim, with reference to a specific day of the week.

IPSO said the details in the articles were of the kind that would be known within the victim's community. When reported alongside the time frame of the offences, and the age of the victim, these details represented material that was likely to contribute to the identification of the victim.

A Man v The Gazette (Paisley):

www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=12775-17

Members of the public using social media can reveal the identities of victims of sexual assault, either through ignorance or maliciously, and IPSO's guidance warns editors of the risks in these cases.

IPSO says: "You should carefully consider how the material you have gathered is going to be presented online to

prevent the victim from being identified. This is particularly relevant to articles which may be published on social media platforms, or which may be open to reader comments.”

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

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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

When a woman charged with assault and wasting police time claimed to be a victim of sexual assault, IPSO ruled that it was appropriate to name her. The article reported that the complainant was on trial for assault and wasting police time, offences of which she was subsequently acquitted.

It stated that the court had heard the complainant “assaulted a man after performing a strip dance for him” and “wasted police time when she reported that she was assaulted and sexually assaulted”.

The complainant said she was a victim of sexual assault and this meant that she should not have been named or identified in the article.

The newspaper said the article was an accurate report of court proceedings and said there was no basis in law to prevent identification of the complainant in relation to this trial. The newspaper commented that while the Sexual Offences Act confers automatic anonymity on alleged victims of certain sexual offences, the same law also provides for circumstances where this restriction does not apply, specifically reporting on other criminal legal proceedings separate to sexual offence proceedings.

The newspaper said this exception typically concerns the situation where a person is charged with perverting the

course of justice or wasting police time by allegedly making a false accusation of a sexual offence.

IPSO did not uphold the complaint and said it was satisfied that the publication was legally free to name the complainant as required under the terms of Clause 11.

A Woman v The Argus (Brighton):

www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=20796-17