

IPSO Editors' Code Consultation

Response of the Transparency Project

According to IPSO's website,

The Editors' Code of Practice Committee, which writes and revises the code of standards policed by the Independent Press Standards Organisation, is inviting suggestions from the public, editors, journalists and others working in the media, and anyone else with an interest in journalistic standards, on how the Code might be revised. (<https://www.ipso.co.uk/news-press-releases/press-releases/editors-code-committee-announces-consultation/>)

This is the response of The Transparency Project, a charity whose objects include the promotion of the fair and accurate reporting of legal issues, particularly family law cases, as well as transparency and open justice in general. The Transparency Project operates a website (<http://www.transparencyproject.org.uk/>) on which it publishes, among other things, a blog discussing cases from the Family Court and, on occasion, the Court of Protection and the way they have been reported (or mis-reported) in the media.

The Transparency Project has received funding from the Legal Education Foundation, including funding for a specific project (the Family Court Reporting Watch project) to correct, clarify and comment on media reports of family court cases.

In the course of monitoring the reporting of family law and family cases in the press, the Transparency Project has had occasion to complain of significant inaccuracies and other breaches of the Editors' Code to the newspapers responsible for the inaccurate reporting. In some cases, corrections have been made. In others, we have had to complain direct to IPSO. The response of IPSO's complaints handling team has not been satisfactory, and this has prompted us to respond to this consultation in the hope that IPSO will revise its approach and take a more responsible attitude to our concerns.

It has also been our experience of complaining to newspapers about inaccuracies in their legal coverage, that those newspapers (such as The Independent) which are NOT regulated by IPSO have responded more positively to our complaint than those (such as the Daily Mail and the Daily Telegraph) which are. However, we have so far made a limited number of correction requests / complaints and draw no definite conclusions from this other than to wonder whether membership of IPSO might operate more as a form of immunity or safety net than as a source of regulatory vigilance and enforcement. However, that is purely a matter of initial perception.

Examples of correction requests we have made can be found here : <http://www.transparencyproject.org.uk/tag/correctionrequests/>.

Additionally, some of our project members have experience of making a complaint to IPSO, which IPSO declined to consider on grounds that the subject of the inaccuracy (The President of the Family Division) had not himself complained : <http://www.transparencyproject.org.uk/response-from-ipso-to-our-complaint-about-the-daily-mail/>.

We are also attempting to work constructively with the media to promote better and more accurate reporting of family court cases and matters of family law, see for example details of the event we are holding on 5 April 2017 : <http://www.transparencyproject.org.uk/events/>.

General comments

The responses below refer to the January 2016 version of the Editors' Code of Practice and to IPSO's Rules and Regulations dated 2013 (downloaded as PDFs from IPSO's website on 25 February 2017), and to the complaints procedure generally.

The Rules and Regulations are not easy to find, particularly by using the search on IPSO's website. Given that they govern and are relied on in responding to complaints, they should be more clearly accessible, eg by link from the Editors' Code page and/or the Make a Complaint page. Better still, they should be listed as a main menu item.

It is not clear what in particular the consultation is aimed at achieving, since there is no consultation document to refer to.

The Code of Practice

Preamble

"A publication subject an adverse adjudication must publish it in full and with due prominence, as required by IPSO."

Replace "due prominence" with "equivalent prominence".

1 Accuracy

The word "significant" in sub-clauses (ii) and (iii) is not defined and it would be helpful to give some indication of how it should be interpreted. We note that it is defined to some extent in the Editor's Code Guidance, but consider that some attempt should be made in the code itself.

Add or insert the following:

"Where a publisher repeats on a subsequent occasion an inaccurate statement which has already been the subject of a complaint to that publisher and the publisher has already corrected it once, that will be treated as a more serious breach of this rule on the occasion of any subsequent complaint."

"Publishers must ensure that any report of legal proceedings is fair and accurate, and that any headline is not misleading."

We consider that it is good practice, where a publisher reports legal proceedings and a judgment is publicly available that sufficient identifying information (if not the citation of the judgment) should be provided, along with a link to enable readers to view that judgment if they wish. We consider that the code should be amended to specify this. Alternatively that the Editor's Guide should be amended to specify this.

We consider that where a publication is asked to correct an inaccuracy in an online item and agrees to do so, they should be transparent about those edits by marking the item as edited, by showing the date of edit(s) and by setting out the gist of the edits made. We consider that the code should be amended to specify this. Alternatively that the Editor's Guide should be amended to specify this.

6 Children

Add the following:

“Publishers must give reasonable consideration to the request of a person who was previously identified when a child under the age of 16 years in a news story and who now wishes their identity to be concealed and where necessary to redact or omit their name from any further publication of the story.”

“Publishers must take care not to frustrate the intentions of civil courts (including the Family Court and Court of Protection) to preserve the anonymity of children or of vulnerable or incapacitated adults.”

14 Confidential sources

Response: suggest renaming this clause “Sources” and/or adding the following additional (sub)clauses:

“Attribution.

Publishers have a moral obligation to identify and credit the originator of any third party content.”

“Citation.

Where a publicly available document or publication is referred to as the source or subject of an article, it should be adequately cited so as to enable a reader to access it, and in the case of an online publication a link should also be provided as a matter of good practice.”

We are particularly interested in judgments (often simply referred to in news items as “a ruling”), but there are clearly other source documents to which this might apply.

“Fabrication.

“Publishers must ensure that journalists do not fabricate sources.”

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Add the following additional clauses :

“Publishers must clearly indicate where content has been paid for or provided by a third party exercising editorial control over that content.”

“Publishers must declare any significant conflict of interest affecting their editorial control over the content they publish, and any failure to do so at the time should be corrected with due prominence at the earliest opportunity.”

18 User generated content

Add the following additional clause:

“Publishers who include comments and other user generated content must ensure that reasonable steps are taken to moderate and to remove or redact any comments which are unlawful or would, if written by a journalist, constitute a breach of this Editors’ Code.”

The public interest

“3. The regulator will consider the extent to which material is already in the public domain or will or will become so.”

Response: It is unclear why the word “will” has been repeated towards the end of this clause. A better wording would be “may” or “is likely to”.

Complaints procedure

The comments under this section are directly informed by the unsatisfactory response that members of the Transparency Project and others received when they pursued a complaint to IPSO against the Daily Mail in September 2016 (<http://www.transparencyproject.org.uk/response-from-ipso-to-our-complaint-about-the-daily-mail/>).

Rules and Regulations

“8. The Regulator may, but is not obliged to, consider complaints: (a) from any person who has been personally and directly affected by the alleged breach of the Editors’ Code; or (b) 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; or (c) from a third party seeking to correct a significant inaccuracy of published information. In the case of third party complaints the position of the party most closely involved should be taken into account.”

Response: Where “the party most closely involved” has chosen or is prevented from initiating or supporting a complaint on their own behalf, the regulator should not use this as justification for declining to consider a complaint, particularly one concerned with accuracy.

For example, the party most closely involved may be the holder of a public office, such as a judge or government minister, who for constitutional or other reasons may be inhibited or precluded from filing or supporting a complaint of inaccuracy on their own behalf.

Alternatively, the party most closely involved may be a person involved in or affected by legal proceedings who, for reasons of anonymity or because they are a child or vulnerable party, cannot pursue or support a complaint on their own behalf.

In such circumstances, the regulator should be prepared to entertain and deal with a complaint filed by a representative group or third party with a genuine interest in correcting the alleged inaccuracy or other breach of the Editors’ Code, whether or not the party most closely involved chooses or is able to initiate or support the complaint.

Confidentiality policy: publication of correspondence

We object to the policy (set out in IPSO's initial response to complainants) whereby IPSO may, at its discretion, refuse to consider a complaint where information such as correspondence exchanged in the course of a complaint is published without the consent of the other party. Unless the essence of the complaint is that the original article published by an IPSO member should not have been published at all, the process of pursuing and resolving a complaint of a breach of the Editors' Code should be as transparent as possible. The presumption should therefore be that any exchange of information or correspondence is also publishable by the complainant unless the contrary is specifically indicated. We note that IPSO itself reserves the right to publish what it likes in the course of resolving a complaint, so its current approach seems somewhat one-sided.

As a representative body who sometimes makes correction requests to newspapers / IPSO we think it is important that we should be able to transparently publish information about what we have done and why, and of any responses to our requests.

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