

## **Inaccurate Press Report of Sex: Fair Play For Women's written submission to the public consultation on the Editors' Code of Practice.**

### **1.0 INTRODUCTION:**

The Editors' Code of Practice is to be reviewed in a [public consultation](#). Fair Play For Women has identified a problem with the way IPSO is interpreting the Editors' Code of Practice when asked to make rulings about the inaccurate or misleading representation of an individual's sex (Clause 1- Accuracy).

[Fair Play For Women](#) is a campaigning and consultancy group which raises awareness, provides evidence and analysis, and works to protect the sex-based rights of women and girls in the UK. This document is our written submission to the public consultation.

### **2.0 EXECUTIVE SUMMARY:**

IPSO is wrongly conflating the meaning of sex and self-declared gender identity and is permitting gender identity to be presented *as if it were* an individual's sex.

This approach means the public is being misled on the occasions when an individual's sex is relevant and important to the story.

Our evidence suggests that IPSO is giving undue weight to minority and contested definitions promoted by special interest groups, rather than mainstream definitions understood by the majority of the public.

As a result, there is a failure to acknowledge clear breaches of Clause 1 during the complaints procedure. For example, phrases such as "female sperm donor" are *not* being judged as misleading by IPSO executives.

IPSO must take special care with any rulings regarding the language of sex and gender identity because of the potential for political and societal ramifications.

We recommend strengthening the Editors' Code of Practice to align with the principles set out in UK Equality law.

### **3.0 DEFINITIONS:**

There are two different concepts in law and public discourse: sex and self-declared gender identity. They are often conflated. Press reporting must take special care to be clear which descriptor is being used to avoid inaccurate reporting and misleading the public.

**Sex** = The scientifically accurate term to describe someone's biology and body-type based on their reproductive class. In humans sex is binary: male or female. Man (or boy) is commonly understood to mean adult (or young) human male. Woman (or girl) is commonly understood to mean adult (or young) human female. In the vast majority of cases sex is accurately observed at birth. Sex is a protected characteristic in the Equality Act and no one must be treated unfairly because of their sex. Everyone has a legal sex classification of either male or female and this is stated on their birth certificate.

**Self-declared gender identity** = This is a relatively new concept used to describe someone's internal sense of self. Some people feel that their internal sense of self does not match their sex and so they may identify as transgender. No medical intervention or diagnosis is required to self-identify. Unlike sex, there are an unlimited number of possible gender identities. Under UK law, anyone is free to self-identify as the opposite sex, and they must not be unfairly treated for doing so, but their legal sex status remains the same. Legal sex status can currently only be changed in very restricted circumstances (as defined in the Gender Recognition Act 2004). In the UK less than 5000 people have changed their legal sex status (estimated to be less than 1% of people who identify as transgender and less than 0.01% of the UK population as a whole).

UK Equality law prohibits unfair discrimination on the grounds of both sex and self-declared gender identity. However, sometimes these two rights conflict so the law sets out circumstances where a person's sex is considered uniquely relevant and important.

It is reasonable to expect IPSO to apply the same principles when making judgements about the accuracy of press reporting regarding sex or self-declared gender identity.

(See 8.0 Appendix 1 for a summary of UK Equality law).

### **4.0 WHEN DOES THE DIFFERENCE BETWEEN SEX AND GENDER IDENTITY MATTER IN PRESS REPORTING?**

The Editors' Code states its purpose is to "*balance both the rights of the individual and the public's right to know.*"

With reference to sex and gender identity, this means the Editors' Code should balance the right of an individual to keep their sex, gender identity and/or transgender status private (Clause 2 and 12) against the right of others to accurate information regarding someone's sex (Clause 1).

In the vast majority of cases the sex or gender identity of an individual is not relevant to the story being reported. For example: "*Woman wins lottery*". Here the rights of the individual to choose whether to be referred to according to their self-declared gender identity or their sex should take priority. Most people will understand the word 'woman' to mean that the sex of the lottery winner was female. However, if the word 'woman' had been used to describe someone's self-declared gender identity, any misunderstandings regarding the sex of the lottery winner would be inconsequential to the overall meaning of the story. In this case it would be reasonable to expect the right of the individual to keep their sex and transgender status private would override the public's right to accurate information.

However, there are some circumstances where an individual's sex *is* relevant and will be important to the public's understanding of a press report. For example "*Woman kills man*". In these cases, care must be taken not to conflate sex and gender identity and to be clear which concept is being used. This is because, without additional qualification, the words 'male', 'female', 'man', 'woman', 'girl' and 'boy', and the pronouns 'he', 'she', 'him' and 'her' will be understood by the vast majority of the public to refer to someone's sex by default. If any of these words are being used to describe someone's self-declared gender identity instead of sex, it is reasonable to expect most people will misunderstand unless the distinction is made clear. When the individual's sex is relevant and important to the story this would have a significant impact on the public's understanding and should be considered a breach of the Editors' Code for accuracy (Clause 1).

UK law is clear that someone's sex is considered relevant and important in matters regarding privacy and dignity, safety and fairness (Appendix 1). It is reasonable to expect IPSO to apply the same principles when making judgements concerning the accurate reporting of sex. The exceptions listed in the Equality Act 2010, where single-sex provision is permitted, provide a useful reference for those instances where accurate reporting of sex matters.

Accurate reporting of sex should therefore be considered particularly important when reporting on female sporting competitions, sexual and violent crime, sexual reproduction and associated medical matters.

For example, an individual's sex would be relevant and important to the public's accurate understanding of the following headlines:

*“Woman smashes female world-record in weight-lifting.” “Man gives birth to baby.”  
“Female convicted of rape.” “Woman arrested for exposing her penis in public.” “Highest earner in the UK is a woman.”*

In the absence of additional qualifiers ANY gendered terms will be automatically considered to refer to someone's sex, and this renders some headlines misleading and inaccurate. The accuracy of each of these example headlines can be easily improved by using the descriptors transman or transwoman or transgender person, or by making it clear that the individual 'identifies' as a woman or a man.

To be clear, no one should have their self-declared gender identity, sex or transgender status revealed unless genuinely necessary to the story. However, in press reporting where sex is relevant and important, care must be taken that the use of any gendered references do not mislead the public regarding the sex of the individual.

## **5.0 IPSO IS CURRENTLY PERMITTING SEX TO BE MISREPRESENTED:**

Over the past 12 months, Fair Play For Women and others have reported breaches of the Editors’ Code to IPSO regarding the inaccurate reporting of sex.

It has now become clear that the decision-making process within IPSO is conflating the meaning of sex and self-declared gender identity. This means all judgements are prioritising an individual's right to assert their self-declared gender identity *as if it were their sex* over the public's right to accurate information about sex.

No exceptions to this principle have been made in any of the complaints we are aware of. This current approach does not reflect the careful balancing of rights set out both within the Editors’ Code and allowed for within UK Equality law.

**There are two areas of particular concern relating to the misreporting of sex: the reporting of sexual and violent crime and the reporting of sexual reproduction and associated medical matters.**

### **5.1 Reporting of sexual and violent crime.**

It is an established and well-documented fact that the vast majority of sexual and violent crime is committed by the [male sex](#). For example, in England and Wales there are currently over 80,000 males in prison compared to only about 4000 females. Over 14,000 males are in prison for sexual offences compared to fewer than 150 females. This means that in press reporting of sexual and violent crime it is common-place for the story to involve a male perpetrator. In contrast, stories involving a female perpetrator will be unusual, high-impact

and considered more newsworthy. For this reason accurate reporting of the sex of the perpetrator of sexual or violent crime, whether male or female, is both important and relevant.

When a newspaper presents misleading information regarding the sex of a perpetrator it distorts public perception of the societal reality that most sexual and violent crime is committed by the male sex. This understanding is necessary and important to women and girls so they can effectively evaluate risk in vulnerable situations, and indeed it is the reason the law makes provision for female-only services and spaces. Accurate reporting of the perpetrator's sex will also matter to the victim who experienced the crime. Misleading click-bait headlines and articles that normalise the idea of female violence are quite clearly not in the public interest.

The following complaints illustrate the problems with the decision-making process within IPSO.

**Complaint 1: "Woman who once shoved policeman onto Tube tracks jailed for spitting at officer", published by mirror.co.uk on 17 February 2020.**

The person described as a 'woman' in this story is known to be a male-born transgender woman. This knowledge is in the public domain and has been [reported previously](#). Use of the word 'woman' is misleading because the majority of readers will interpret this to mean someone who was born female. The sex of the individual is relevant and important because the story refers to them committing a physical assault.

Complaints of inaccuracy regarding sex were rejected by IPSO because it would require findings on the perpetrator's gender identity and that this would require the perpetrator's input and consent:

*"In this case, we decided that the alleged inaccuracy related directly to X. In order to make a decision on whether the Code was breached, it appears **IPSO may need to make findings on X's gender identity**. To do this, we would require the involvement of an individual with first-hand knowledge of X; you did not appear to be in a position to know X's gender identity. In addition, any ruling by IPSO on this matter would result in the publication of information about X's gender identity, **which might not be appropriate without their consent**. In these circumstances, we considered that it would not be possible or appropriate to investigate and publicly rule on your complaint without the **input and consent of X**. Because of this, we declined to consider your complaint further."*

This demonstrates a fundamental misunderstanding of the complaint being made. The gender identity of the perpetrator is not in dispute nor is it relevant to the press report or the complaint. The issue is that the gender identity of the individual is being presented as

*if it were the same as the individual's sex.* By doing so the press report gives a false impression of the sex of the perpetrator and is therefore inaccurate and misleading.

This judgement does not require IPSO to make any findings on the individual's gender identity. Instead, findings need to be made regarding the perpetrator's sex. Self-declared gender identity is an internal sense of self known only to the individual. Sex is not. It is external and observable and perceived by both the individual *and* others. Someone's sex is a matter of public record on a birth certificate. It cannot be considered a private and personal matter in the same way that gender identity is.

Here IPSO is required to make a judgement on whether the rights of the individual to keep their sex private outweighs the right of the public to accurate information about their sex. In this instance we argue that the sex of the individual is relevant and important to the public's understanding of the story. Here the use of the word 'woman' misleads the public regarding the sex of the perpetrator, resulting in a breach of Clause 1 (Accuracy).

**Complaint 2: “Sheffield woman found with over 1,000 indecent images of children hauled before the court”, published by thestar.co.uk on 19 July 2019.**

This article reported from the trial of a person who had been found to be in possession of multiple child sexual abuse images. The headline described the perpetrator as a 'woman'. Aside from a single reference to a transgender status buried within the text of the article, there was very little to inform readers that this sex offender was not female.

We argued that, under the accuracy clause, the headline using the word 'woman' was inaccurate and misleading, and not supported by the text. 'Transwoman' would have been a more accurate and informative term to use in the headline to avoid the misunderstanding that this individual was female.

Our complaint was declined for three reasons:

Firstly, that the publication had accurately reported court proceedings and was not responsible for the accuracy of information heard.

*“We noted that the article was a court report. In reporting on court proceedings, publications are responsible for reporting proceedings accurately, rather than for the accuracy of the information heard. ....it was apparent from the article's report of the prosecution case that the **subject of the article had been referred to as “Ms X, and using female pronouns, during the course of proceedings”***

While it is true that the defendant will have been referred to as a woman in court the publication has failed to consider Clause 1 part iv which states “*whilst free to editorialise*

*and campaign, publications must distinguish clearly between comment, conjecture and fact".* The headline fails to make the distinction and has presented the information heard in court *as if it were fact*.

The [Equal Treatment Bench Book](#) advises judges and court staff to address defendants according to the defendant's wishes. Defendants can choose to be referred to according to their self-declared gender identity instead of their legal or biological sex. This means gendered references in court should never be considered a factual assertion about the defendant's sex, but instead the opinion and preference of the defendant. By using the word 'woman' in the headline the publication has given the false impression that the defendant's sex is female *as if it were fact*. This is a breach of Clause 1 (Accuracy).

The second reason the complaint was declined was that we were not present at the court proceedings.

*"In the case of third party complaints – such as your own - we do need to consider the position of the parties most closely involved."* ***"In this instance, you do not appear to have been present at the court proceedings"***

Generally speaking, we agree that there might be instances where it would be inappropriate to take a complaint from someone who has nothing to do with the news story being reported. But in the UK we benefit from court proceedings being held in the open. Criminal proceedings are not a private matter. The biological sex of an alleged sex offender is a reality, a fact, and not an opinion, belief or gender identity. There are very few people who would argue otherwise. To dismiss complaints about significant inaccuracies from court reports because those complaints do not come directly from an individual affected, or from the court room itself, leaves very few people in a position to make a challenge. Indeed, we rely on accurate media reports of court proceedings precisely because they are in the public interest but most people cannot be present.

Finally, as in the previous example, reference was again made to requiring the individual's input and consent.

*"We were concerned about the possibility of making a public ruling in relation to the sex and gender identity of X, **without that individual's input and consent**. Because of this, we declined to consider your complaint further"*

Again this conflates sex and gender identity. No ruling on gender identity is required and sex is a matter of legal record for every person, including those whose birth certificate has been changed under the Gender Recognition Act 2004. To argue that the biological sex of a perpetrator of sexual crime becomes a personal issue of identity during their trial in an

open court seems an absurd contradiction to the democratic principles that underline justice for victims of male sexual violence and the wider public interest.

## 5.2 Sexual reproduction and associated medical matters.

### **Complaint 3: “Transgender man gives birth after getting pregnant with female sperm donor”, published by Metro.co.uk on 29 December 2019.**

This story involved a transgender person who donated sperm to a couple who conceived and later gave birth to a child. Our complaint was focused on the inaccurate, misleading and distorted phrase '*female sperm donor*' in the headline by both the Metro and the Sunday Mirror. Reference was made in the text that the sperm donor was transgender but the inaccuracy that sperm production is part of female reproductive biology was not clarified.

We argued that the word "female" is well established and widely known. It describes the reproductive sex of a living organism, being the sex that produces fertilisable large gametes (ova) from which offspring develop. The word "male" refers to the sex that produces small gametes (sperm) that perform the fertilizing function in reproduction. These words describing sex class are not unique to humans and apply to all plants and animals. It is a biological impossibility, and contrary to any meaningful definition of the word female, for a female organism to produce sperm, and as such this headline breached Clause 1 (Accuracy).

Our complaint was rejected on the basis that 'female' referred to the self-declared gender identity of the sperm donor and not sex.

*“You said that the articles breached Clause 1 (Accuracy) because the phrase “a female sperm donor” was biologically inaccurate. We noted that the articles made clear that the donor was a trans woman; this was the basis for the reference to the individual as a “female sperm donor”. **While we note your position regarding the terminology used, given the explanation in the articles, we did not consider that the articles were inaccurate or misleading. There was no possible breach of Clause 1.**”*

We strongly object to this interpretation by IPSO. The word 'female' has a specific meaning, both scientifically, legally, and in common everyday language in relation to biological sex. It is not IPSO's role to redefine the established meaning of common words. By ruling '*female sperm donor*' is neither inaccurate nor misleading because the use of the word 'female' can be understood to refer to the sperm donor's gender identity, IPSO wildly misrepresents the public understanding of this word.

This is of particular importance because the word 'female' is becoming a contested term. While the mainstream definition of the word 'female' continues to reference an individual's



sex, there is an emerging minority definition based on an ideological position held by some special interest groups that promote the concept of 'gender identity'. The definition of words like 'female' matters because Sex is the protected characteristic in the Equality Act that underpins women's rights, and accurate sex-based language is required to name, monitor and address sex-based discrimination. This means IPSO must take special care with its rulings about the accurate use of sex-based words because of the political and societal ramifications.

We note that one of IPSO's stated values is independence ["IPSO will carry out its work free from control or interference by the press, parliament, interest groups or individuals"](#). It is therefore reasonable to expect IPSO, as an independent and politically neutral organisation, to be using the mainstream definition of a word when it comes to any rulings on accuracy. IPSO should be led by the public's understanding of a word and must never be seen to drive or promote a minority definition. To do so would risk distorting the public understanding of a word and would give the impression that some interest groups exert undue influence in the IPSO decision-making process.

Once again, the IPSO executive referred to the need for the input and consent of the individual to establish whether the sex of the sperm donor had been misrepresented.

*"In any event, a complaint about accuracy, when relating to something as personal and sensitive as a person's sex or gender would not be something that IPSO would be able to rule on **without the input and consent of the people directly involved.**"*

This makes little sense. By describing the individual as a 'sperm donor' the publication clearly knows and has revealed the individual's biological sex. By definition a sperm donor's sex must and can only be male. It is quite ridiculous to suggest that a ruling on the accuracy of the use of the term 'female' cannot be confirmed without the input or consent of the 'sperm donor' in this instance when it is clearly self-evident. As previously noted, sex is a matter of public record. Only gender identity is subjective and personal.

Please note, some newspapers such as The Sun and The Daily Mail maintained accuracy in this story by choosing headlines that said *"sperm donated by transgender woman"* or *"a sperm donor who was also transgender"*. Likewise, the Sunday Mirror replaced the phrase *'female sperm donor'* in its headline with *"trans woman sperm donor"* immediately upon receiving our complaint. This shows that some newspapers are able and willing to write accurately on these subjects, whereas some are not. Shock headlines like *"female sperm donor"* are likely to drive traffic to their website and what should be informative news becomes 'clickbait'. The story then becomes newsworthy simply because of the inaccuracy and absurdity. That there isn't an effective process to hold these publications to account is equally absurd.

## **6.0 CONCLUSION:**

IPSO's mission includes *“upholding the highest professional standards in the UK media”*. This must include accurate reporting, and avoiding misrepresentation or misleading information. As stated in the Editors' Code, Clause 1 (Accuracy) *“goes to the heart of good practice”*.

We have presented evidence to show that IPSO is conflating sex and self-declared gender identity as if they are synonymous and interchangeable. In contrast, when the majority of the public reads words like 'man', 'woman', 'male', 'female', 'him', or 'her', they will understand them to refer to an individual's sex and not a self-declared gender identity. This mismatch between IPSO and mainstream public opinion is undermining the ability of IPSO to deal effectively with complaints relating to the accurate reporting of an individual's sex.

If gendered terms are used to describe a self-declared gender identity which is different to an individual's sex this can be misleading, unless additional explanation regarding the intended meaning is used. This matters when accurate information regarding an individual's sex is relevant and important to the story and could therefore result in a breach of Clause 1 (Accuracy).

In conclusion, words matter. Clarity on the language used around sex and gender identity matters to everyone, especially women, in the context of our sex-based rights. All readers of newspapers deserve clear wording. We believe that updating the Editors' Code of Practice to provide clarity will go a long way to improve press standards in this area.

## **7.0 SOLUTIONS:**

UK Equality law considers sex and self-declared gender identity to be different (Appendix 1) and sets out the circumstances when someone's sex is considered relevant and important. The law is clear that sex matters and it can take priority over an individual's self-declared gender identity when necessary to uphold dignity, safety and fairness for women and girls.

We recommend a similar approach should be reflected in the Editors' Code of Practice. This updated guidance should clarify when an individual's sex is relevant and important in a press report. This would assist IPSO to fairly balance the right of the individual to keep their sex, gender identity and/or transgender status private with the right of others to accurate information regarding an individual's sex.

Transgender advocacy groups do not wish gender identity, sex or transgender status to be reported where it is not relevant to a story and this is rightly reflected in the Editors' Code of Practice and IPSO's [working principles](#). Likewise, women's sex-based advocacy groups, such as ours, do not wish the male sex to be misreported or misinterpreted *as if it were* the female sex, where sex is relevant to the story. The needs of both stakeholder groups should be considered and fairly balanced in any future update of the Editors' Code of Practice.

We would therefore like to work with IPSO and the Editors' Code Committee, in order to strengthen the Editors' Code of Practice regarding Clause 1, to ensure the rights of women and girls are given due regard in press reporting of sex and gender identity.

We would also like IPSO's on-line [transgender guidance](#) to be updated accordingly. We believe that the Resources section should include the media guide produced by Fair Play for Women, as one of the relevant organisations qualified to provide further information, advice and support to journalists.

## 8.0 APPENDIX

### Appendix 1: HOW UK EQUALITY LAW DISTINGUISHES BETWEEN SEX AND GENDER IDENTITY.

UK Equality law ([Equality Act 2010](#)) prohibits unfair discrimination on the grounds of both sex ([Sex](#)) and self-declared gender identity ([Gender reassignment](#)). Sometimes these two rights conflict, so the law sets out circumstances when a person's sex is relevant and can take precedent over self-declared gender identity. It is reasonable to expect that press reporting should follow the same principles.

UK Equality law makes it clear that sex and gender identity are distinct concepts and should not be treated as synonymous. The Equality And Human Rights Commission guidance confirms that:

*"A comparator for the purposes of showing sex discrimination will be a person of the opposite sex. Sex does not include gender reassignment."*

*"... a trans woman who does not hold a GRC and is therefore legally male [and] would be treated as male for the purposes of the sex discrimination provisions."*

While it is clear that people should normally be treated according to their self-declared gender identity **there are notable exceptions** when an individual's sex is considered relevant and takes priority.

[\*EHRC Statutory Code Guidance 13.57\*](#) *“If a service provider provides single- or separate sex services for women and men, or provides services differently to women and men, they should treat transsexual people according to the gender role in which they present. However, the Act does permit the service provider to provide a **different service or exclude a person** from the service who is proposing to undergo, is undergoing or who has undergone gender reassignment. This will only be lawful where the exclusion is a proportionate means of achieving a legitimate aim.*

This means it is permissible to treat someone differently because of their sex or because they share the protected characteristic of Gender Reassignment, for reasons of public policy or to protect the rights of others.

So for example, when objectively justified, a transgender woman (who was born male) can be treated differently to a woman (who was born female). This applies even if the transgender woman has changed their legal sex to female.

The lawful exceptions where a transgender woman can be treated differently to a woman include the provision of:

[Schedule 3 Part 7 Paragraph 26-28](#): Single-sex services and spaces (e.g. female-only changing rooms, domestic violence refuges, prisons).

[Schedule 23 \(3\)](#): Communal accommodation and associated washing facilities (e.g. where people are asleep and/or not fully dressed).

[Schedule 9 Part 1](#): Occupational requirements based on sex (e.g. female nurse to provide a cervical smear).

[Section 195](#): Gender [Sex]-affected sports (e.g. due to the difference in stamina and strength between the sexes).

These exceptions are necessary to uphold privacy and dignity for both sexes, and safety and fairness for the female sex. They form an integral part of women's sex-based rights.

It is reasonable to expect that press reporting should follow the same principles when balancing the rights of an individual to present their gender identity *as if it were their sex* with the rights of the public to accurate information and to not be misled regarding an individual's sex.