

Editors' Code of Practice Review - 2017

Introduction

This report sets out details of the Review of the Editors' Code of Practice that was conducted during 2017.

The Review was carried out by the Editors' Code of Practice Committee, which draws up the Code of Practice. The Code is policed by the Independent Press Standards Organisation and is regarded as the cornerstone of self-regulation of the press.

The committee is composed of editors and lay members and is chaired by Neil Benson (Trinity Mirror).

Other members are:

National newspapers: Chris Evans (Daily Telegraph); Martin Ivens (Sunday Times); Hugh Whittow (Daily Express); Ted Young (Metro).

Regional newspapers: Ian Carter (The KM Group); Mike Sassi (Nottingham Post); Gary Shipton (Johnston Press).

Scottish Press: Donald Martin (Newsquest Scotland).

Magazines: Harriet Wilson (Condé Nast Publications).

Lay members (ex officio) are: Sir Alan Moses (Chairman, IPSO); Matt Tee (CEO, IPSO).

Independent lay members appointed by IPSO's appointments panel are: Christine Elliott; David Jessel; Kate Stone.

The Committee's secretary is Jonathan Grun.

In line with its constitution, the Editors' Code of Practice carries out a triennial review of the Code of Practice. The Review involves a public consultation, which on this occasion attracted about 4,000 submissions.

The Code Committee considered the submissions and produced recommendations that have been approved by the boards of the Regulatory Funding Company and the Independent Press Standards Organisation.

Following the Review there are:

:: Changes to the Editors' Code of Practice

:: Revisions to the Editors' Codebook, which acts as a guide to the Code

:: A recommendation that the Independent Press Standards Organisation should consider how member publishers report on commercial transparency

:: An improved online version of the Editors' Code of Practice, with links to explanatory information that helps journalists and members of the public

Changes to the Code

There will be three changes to the Code. Deletions to the text are shown in struck-through bold black and additions are in red.

:: A change to Clause 2 (Privacy)

Clause 2 to read:

2. *Privacy

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

*ii) Editors will be expected to justify intrusions into any individual's private life without consent. ~~Account will be taken of the complainant's own public disclosures of information.~~ *In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.**

iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.

This change was proposed by Associated Newspapers and was supported by IPSO.

The amendment echoes the existing wording of Clause 3 of the Public Interest

section of the Code - *'The regulator will consider the extent to which material is already in the public domain or will become so'* - which is often taken into consideration when the Complaints Committee rules on privacy complaints.

It helps understanding of the Code - for both members of the public and journalists - by making it clear that the extent to which material is in the public domain or will become so is a factor which may be considered in Clause 2 complaints, and was also proposed in part to address the challenge of regulating global digital publications that are owned and domiciled in the UK.

It is recognised that there is a problem where content, which might potentially be in breach of Clause 2 of the Code in the UK, is nevertheless widely and legitimately published by American websites with large audiences in the UK. Not only might this leave the British public unable to read on British-owned websites content that was freely available to them in the UK on American-owned websites, the American readers of British-owned websites might also be unable to read content that was published perfectly legitimately elsewhere in the USA. It should be noted, however, that, as ever, the application of the amended Clause to individual cases will be a task for IPSO's Complaints Committee.

The amendment also clarifies the application of Clause 2 in practice. Privacy cases, particularly those involving images from Facebook, often hinge on the extent to which content complained of is in the public domain. The amendment will be helpful for members of the public in understanding issues likely to be considered in ruling on a complaint.

:: A change to Clause 9 (Reporting of crime)

Clause 9 to read:

9. **Reporting of Crime*

i) Relatives or friends of persons convicted or accused of crime should not generally

be identified without their consent, unless they are genuinely relevant to the story.

ii) Particular regard should be paid to the potentially vulnerable position of children under the age of 18 who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

(iii) Editors should generally avoid naming children under the age of 18 after arrest for a criminal offence but before they appear in a youth court unless they can show that the individual's name is already in the public domain, or that the individual (or, if they are under 16, a custodial parent or similarly responsible adult) has given their consent. This does not restrict the right to name juveniles who appear in a crown court, or whose anonymity is lifted.

The law currently allows newspapers to name children arrested for a crime before they appear in court, when anonymity kicks in. Most newspapers choose not to do so but some have in exceptional circumstances.

Youth justice campaigners, including the Standing Committee for Youth Justice, the National Association for Youth Justice and the Children's Rights Alliance for England, have called for a change in the Code to protect these children. The amended clause says that editors should generally avoid naming such children. The clause lists two real world examples where names may already be known.

This is an example of where the Code goes further to protect vulnerable people than the law requires.

The change also makes clear that the Code recognises that children are young people under the age of 18. This is sometimes misunderstood because the Code offers special protection to children under the age of 16.

:: A change to Clause 11 (Victims of sexual assault)

Clause 11 to read:

11. Victims of sexual assault

The press must not identify ~~victims of sexual assault or publish material likely to contribute to such identification~~ *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.

This change was made as the result of a submission by Trinity Mirror and was accepted by IPSO.

It is intended to bring the wording in line with the law to clarify the responsibilities that editors have under the Code and to avoid a chilling effect on lawful court reporting.

Revision of the Editors' Codebook

The Code Committee approved a plan to revise the Editors' Codebook to take into account constructive suggestions for best practice received in the Code Review and recent relevant adjudications made by IPSO. Revisions have been made to 12 of the chapters. Examples of revisions include the inclusion of a link to guidelines by Samaritans for reporting suicide and a link to the Science Media Centre's guidelines for reporting science. There are also links to IPSO guidance on the use of social media, reporting grief and shock and the issue of due prominence of corrections.

Transparency

The Code Committee has recommended that IPSO should consider and discuss with members how they might report on transparency policies concerning editorial and commercial relationships.

This issue was the subject of a number of submissions, which referred to allegations – which were denied – that commercial considerations influenced the Daily Telegraph's coverage of HBOS. The committee considered that the best way to address this issue would be for publishers to report on their policies concerning editorial and commercial relationships.

Improved online version of Editors' Code of Practice

The Code Committee recommended that an improved version of the online version of the Editors' Code should be produced to assist journalists and members of the

public who may be considering bringing a complaint. It will feature links to relevant chapters in the Editors' Codebook and IPSO guidance notes as they are produced.

Code Review submissions

There were more than 4,000 submissions to the Code Review. Some were from organisations and individuals on specific subjects and others were submissions generated from the websites of campaign groups, including Hacked Off.

Some of the submissions called for changes to the Code, others to the way that IPSO polices the Code.

The following sections deal with the main subjects of submissions with some explanation of the issues.

Accuracy

Submissions included a call for corrections to be published with equivalent prominence, not due prominence, as the Code requires. There was also a call for the regulator to have the power to require apologies and to direct the size and placement of apologies.

The Code of Practice incorporates the concept of proportionality when it specifies "due prominence" in relation to remedies for breaches of the Code.

Equal prominence rather than due prominence would prevent IPSO from judging each case on its merits and deciding what the appropriate course of action should be. There have been some adjudications and corrections signalled on the front page, while it has been judged appropriate for others to appear inside the publication.

Mandatory equal prominence would also deal a blow to the very successful corrections columns that provide a place for readers to find corrections. IPSO has said of the corrections column: "It signifies a commitment to accuracy; it provides information to readers about how to make complaints; and if it appears consistently, it contributes to the prominence of corrections by ensuring that readers know where to find them."

Forced apologies would be meaningless. At present IPSO cannot order an apology but can find a breach of the Code if one is not offered. And it should be noted that a newspaper might sincerely believe that it has not broken the Code, even after it has

been found to be in breach and has complied with IPSO's directions. An "apology" in those circumstances would ring particularly hollow and run counter to the tenets of freedom of expression.

A call for greater detail on what constitutes a "significant error" was also requested but the Code Committee considered that IPSO would be more effective if that judgment was left to the regulator.

The Code Committee welcomed a suggestion that adding links to the sources used in some stories would be good practice and this has been included in the Editors' Codebook.

Privacy

A submission via the Hacked Off website called for the Code to be amended "so that the public interest guidance, like the courts, gives the same weight to the right to privacy as it gives to freedom of expression."

The Code Committee concluded that under the Code there is a presumption that people's privacy will be observed and a detailed case and compelling evidence will need to be produced before IPSO is persuaded that the Public Interest is being served by what would otherwise be a breach of the Code.

For example, in one case IPSO ruled that it supported publication of the story on the grounds of freedom of expression but concluded that the public interest was not proportionate to the level of intrusion posed by the publication of intimate details.

(*Yates v Mail Online* <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02466-14>)

Discrimination

The Code's Discrimination clause is intended to protect individuals in specific categories from prejudicial or pejorative references, whilst still protecting the right to freedom of expression. The submissions again illustrate that this is the most contentious part of the Code and the debate goes to the heart of freedom of expression in our society.

The Review received a number of amendments intended to strike a balance between freedom of expression and protection of groups from what were perceived to be discriminatory references.

They included:

:: A suggestion that complaints relating to groups might be accepted, subject to a public interest test, which IPSO would determine

:: A prohibition on incitement to hatred

:: A new provision prohibiting levelling of abuse

:: A new provision prohibiting material overwhelmingly comprised of entirely negative stereotypes or stigmatisation of a group

The Code Committee considered that none of these suggestions would produce a workable formula – in particular in points already covered by the law, which the Code seeks to supplement rather than echo or replace.

Clause 12 and its application - and limitations - go to the heart of freedom of expression. In a recent judgment involving Channel 4 presenter Fatima Manji and The Sun, IPSO summarised its approach to discrimination.

IPSO said: "Clause 12 seeks to protect individuals while respecting the fundamental right to freedom of expression enshrined in the preamble to the Code.

"It prohibits prejudicial or pejorative references to an individual on account of, amongst other things, that individual's religion.

"It does not, on the other hand, prohibit prejudicial or pejorative references to a particular religion, even though such disparaging criticisms may cause distress and offence.

"It should not be interpreted as preventing such criticism merely because, as is inescapable, many individuals subscribe to that particular faith.

"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 added: "While the columnist's opinions were undoubtedly offensive to the complainant, and to others, these were views he had been entitled to express."

Manji v The Sun <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05935-16>

The Code Committee welcomed a suggestion that the Codebook should make clear the circumstances in which a representative group affected by an alleged breach involving an individual can bring a complaint if there is a substantial public interest. The Codebook will now state that 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 Committee also considered submissions calling for Clause 12 to cover age. The committee concluded that age should not be included because it would inhibit legitimate public discussion – for example, about the effectiveness of sports stars, politicians and others.

Suicide

A common theme in the submissions on suicide was Clause 5’s stricture on avoiding excessive detail to prevent simulative acts. There were calls for the word “excessive” to be removed or replaced, which would have the effect of severely limiting publications’ abilities to report the circumstances of such deaths.

Suicide became a stand-alone clause on January 1, 2016 and in reporting cases editors must also take into account Clause 4 (Intrusion into grief or shock) and Clause 2 (Privacy).

The Code Committee concluded that the current wording of Clause 5 has proved to be effective and flexible, and when taken together with other clauses, IPSO has a wide degree of latitude to deal with the circumstances of individual complaints.

Editors have shown a willingness to engage with campaigners and their views have been taken into account in coverage. The Editors’ Codebook has a chapter on reporting suicide, which includes many of the points raised by campaigners and the newly-revised version will include a link to Samaritans’ reporting guidelines, which

provide detail on best-practice reporting in this area.

Children

Submissions regarding children mainly concerned their involvement in the criminal justice system, in particular the occasions when children and young people are named before they appear in court – which is permitted by law.

The Code Committee agreed that the Code should be revised to avoid naming children and young people in these circumstances.

The Code's wording was also amended to make clear that children are young people under the age of 18. There have been misunderstandings on this because the Code offers special protection to children under the age of 16.

Press reporting of children and young people goes beyond the legal system. The Code recognises that below the age of 16 children must be given special consideration in such reporting. Beyond the age of 16 young people have growing responsibility and maturity. They have a wider range of legal abilities, can make decisions and have a right to express themselves.

For example, it would be odd and a denial of a young person's right to freedom of expression if a 17-year-old Premier League footballer or world famous entertainer was wrapped in the same protective blanket as a 12-year-old and the Code attempts to address this.

Transparency

There were submissions regarding the identification of content that has been paid for or influenced by a third party, or has not been published due to third party interests.

The Code Committee considered that the best way to deal with this issue was for the Independent Press Standards organisation to consider and discuss with members how publishers should report on commercial transparency policies.

Portrayal of women

Several campaigners took the opportunity to call for an end to the press's "awful portrayal of women".

While acknowledging the concerns raised, the Code Committee noted that in large part they related to broader, and in some cases subtler, problems with the contexts in which women are portrayed within the media, and popular culture more broadly. As such, they are difficult to incorporate into a regulatory context. The Code prohibits prejudicial and pejorative reference to individuals; broader prohibitions, for example, on the sexualisation of women, would be highly subjective and likely to constitute an unjustifiably broad infringement of freedom of expression - including, perhaps, on some of the women concerned.

Media coverage tends to change in step with changes in society, however, and there are signs that this area is no different: engaging in debate and changing public attitudes is in many instances a very effective alternative to additional regulation.

Conscience clause

There was a call for a "conscience clause" in the Code, which would state that no disciplinary action would be taken against a journalist as a result of declining to do something contrary to the Code.

The Code Committee considered that journalists are already protected from disciplinary action if they refuse to break the Code.

Publishers have a contractual agreement with IPSO, which requires them to ensure that staff rigorously observe the Code, and most journalists have the Code written into their contracts of employment. It is difficult to envisage how a publisher could successfully take disciplinary action against a journalist for refusing to break a Code the publisher is contractually bound to observe.

Plagiarism and obtaining pictures from social media

Two submissions via the Hacked Off website called for newspapers and their websites to "stop plagiarising the work of others" and for the Code to be amended to require newspapers and their websites to stop "stealing" photos from Facebook and other social media without permission and without offering to buy the copyright.

Sourcing pictures from social media has already been the subject of privacy and other complaints to IPSO, so is covered by the Code and is addressed in the Editors' Codebook. IPSO has issued more guidance on this and that will be reflected in the next edition of the Codebook. The copyright aspect of these submissions is already dealt with by the civil law covering copyright and is therefore outside the scope of the Code.