CLAUSE 3

Harassment

THE harassment clause was formulated following the death of Diana, Princess of Wales. It is one of the toughest and most explicit in the Code and yet relatively few cases go to adjudication. This is largely due to the success of the guidance offered by IPSO and the action that it takes when approached by people who are the subject of media attention.

Complaints, when they come – often via IPSO's helpline for the public – are usually from people who want the physical removal of journalists, perhaps from their doorstep. They may also be concerned that journalists are telephoning them about a story they are involved in, or that there will be unwanted press attendance at a sensitive forthcoming event, perhaps a family funeral following a tragedy.

Advice and desist requests

IPSO staff will either advise complainants what they should say to journalists who they believe are harassing them, or alert editors directly to the fact that a complaint has been received. In some cases IPSO will contact individual publications or groups of publications to make them aware of people's concerns that the Code of Practice is being breached or may be breached, via a "private advisory" notice.

IPSO's website gives detailed advice to people who are the subject of unwanted press attention (www.ipso.co.uk/harassment/) and staff are available to offer advice 24 hours a day (for contact details: www.ipso.co.uk/contact-us/).

The informal alerts issued by IPSO are advisory only and

WHAT THE CODE SAYS

i) Journalists must not engage in intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.

iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

A public interest exemption may be available. See The Public Interest.

are not binding. The press makes its own judgments according to the circumstances. But an editor who ignored a desist request would – in the event of a complaint – need to be able to demonstrate to IPSO a sound public interest reason for doing so.

Desist notices have proved effective in dealing with media scrums caused by particularly intense cross-media interest in a major story. The widely distributed advisory notices serve to alert all media organisations – even those not regulated by IPSO – about concerns over a story and are usually heeded by press and broadcasters alike.

A desist request issued by IPSO does not last indefinitely. The passage of time may lessen the risk of harassment and the circumstances surrounding a story may change, sometimes rapidly. In those circumstances, a fresh approach may be legitimate. There is no set formula for deciding this. These are judgment calls for editors and, if a complaint arises, IPSO will judge each case on merit. It would usually require editors to show reasonable grounds, such as a material change in circumstances, for a renewed approach.

IPSO has made clear that the notices do not act as blanket bans on all contact from journalists, or prohibit the printing of future stories about a subject.

In one complaint, IPSO ruled that an approach by email following the issue of a desist advisory notice did not constitute harassment because the request for comment related to new, distinct claims and the publication had identified a public interest in making the approach for comment beforehand.

IPSO said: "The publication had clearly considered the public interest in making the approach, prior to publication, and the justification for the approach was set out in the email seeking comment. The approach took the form of a polite email about the complainant's business, sent to his professional email address. Any intrusion from such an approach was limited, and the approach was justified by the public interest identified by the publication."

Gordon v Sunday Life:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=08062-18

Adjudicating on harassment complaints can be difficult because of a wide discrepancy between the accounts of complainants and the journalists of the contact between them. Sometimes repeated attempts to contact the subject of a story may be well intentioned. However, if it is demonstrable that the journalist persisted, having been asked to desist, then IPSO will usually find a breach of the Code, unless there is a public interest involved.

A case, which involved several attempts to contact the subject of a story, was not considered to be harassment. A man who as a boy had been a football mascot with Wayne Rooney brought a complaint after a newspaper launched an appeal to track him down for a story.

The complainant said he had been aware of the appeal story, but he had chosen to ignore it. He said he then received two telephone calls from a number, which he

identified as being that of the newspaper, on his ex-directory telephone number. He ignored the telephone calls, but after 24 hours, he contacted the newspaper by email to ask it to stop contacting him and to request that no information about him should be released.

His email said: "I am writing to inform you that if you contact me once more and/or release information about me, I will take every legal action that is available to me." Twenty minutes later, the complainant received a reply from the newspaper, explaining that it was going to run a story about him appearing as a mascot with Rooney in 1996. It was contacting him in the hope that he would share his memories of the football match for what would be a "lovely story". If he did not wish to contribute to the story, he should let it know and no one would contact him again.

IPSO said it did not consider that the newspaper's two telephone calls to the complainant, which had not been answered, or its courteous responses to his emails constituted harassment.

Talavera v Liverpool Echo:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=05748-15

As Clause 3 requires journalists – which under the Code covers all editorial staff, including contributors – not to "persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property once asked to leave", they usually comply. In most cases the matter is resolved and no complaint follows.

The Code requires journalists to identify themselves and those they represent if requested. In reality this underwrites standard practice. It would be unusual for journalists not to identify themselves to a person they want to interview or photograph unless there was a legitimate public interest reason for not doing so.

Newsgathering, not stories

The clause covering harassment relates to the conduct of journalists during the newsgathering process. It is not usually the case that publishing a number of articles on one issue constitutes harassment. For example, a so-called "Twitter troll" complained of harassment after a newspaper published a series of articles about his activities. IPSO rejected the complaint and said: "The publication of a number of articles about the same person would not usually amount to harassment under the terms of the Editors' Code. The newspaper had been entitled to report on the on-going controversy regarding the complainant's online activities."

Ambridge v Essex Chronicle:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=03097-14

Likewise, Gerry Adams failed with a complaint that – in part – said a newspaper was engaged in a concerted campaign to undermine him through what he considered to be wholly disproportionate coverage of his activities.

IPSO said the Code does not include a requirement for balance and makes clear that publications are free to be partisan. The complainant's contention that coverage of his

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activity, as an elected representative, was disproportionate or sought to undermine him did not raise a breach of the harassment clause.

Adams v Belfast Telegraph:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01837-14

IPSO has also made clear that Clause 3 is intended to protect individuals and therefore companies and other organisations fall outside the scope of the clause.

Arcadia Group Limited and Top Shop/Top Man Limited complained to IPSO that the conduct of journalists acting on behalf of The Daily Telegraph breached Clause 3.

The complainants said journalists acting on behalf of the publication had contacted a number of current and former employees, despite requests from the complainant for them to desist. Arcadia Group was not complaining on behalf of any of these individuals, but said that, taken together, these contacts constituted harassment and persistent pursuit of the corporate entities bringing the complaint.

The newspaper said it was necessary to approach individuals to ensure the accuracy of its reporting. In this instance, it said that a number of serious allegations of sexual harassment, racist abuse, and bullying in the workplace had been made against the complainant.

The newspaper said approaches were made to ensure that Arcadia employees who might be in a position to shed light on alleged wrongdoing at the company were given a fair opportunity to do so, away from Arcadia property and staff. It said the complainant had a vested interest in preventing such approaches and that Clause 3 provides protection to individuals, not corporations. It denied that any of the individuals had been harassed and said none of its journalists persisted in contacting any individuals who made a request to desist.

IPSO said there is a legitimate public interest in publications making approaches to third parties it believes may be able to provide further information about a story. The terms of Clause 3 do not prohibit journalists from doing so, but are instead designed to protect individuals from intimidating or continued unwanted approaches from the press.

Clause 3 refers specifically to individuals, and IPSO did not accept that it was possible for a corporate entity to experience the intrusive harm that Clause 3 seeks to prevent.

Arcadia Group v the Daily Telegraph:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=07411-18

Court cases

It is common for defendants in court cases to be photographed outside court and IPSO has said it is in the public interest to identify those convicted of crime.

It rejected a complaint involving an approach by a reporter and a photographer following a court case. IPSO said: "There is a public interest in identifying defendants who appear in court and taking photographs of defendants who may wish not to be photographed is not necessarily a breach of the Code.

"Furthermore, it is common practice for reporters to put allegations to the subjects of a news report, prior to publication, in order to give them an opportunity to comment."

Hale and Sharp v Daily Record:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02935-19

IPSO rejected a complaint from a doctor convicted of sexual assault, who said a photographer harassed him outside court. The complainant said court staff helped him to avoid the photographer as he left the building. The photographer had, however, "stalked" him for about 150 yards. The fact that he sought help from court staff, and had been running away, clearly demonstrated that he did not wish to be photographed.

IPSO said it was apparent that the complainant had taken steps to avoid having his picture taken, rather than making clear a request that the photographer desist. Even on the complainant's account, his concern that he had been followed by a single photographer over what was apparently a relatively short distance did not constitute harassment or persistent pursuit. IPSO said the photographer had not acted in an aggressive or intimidating fashion in seeking to obtain a photograph. It also noted that there is a public interest in identifying those convicted of crime.

Kumar v The Sun:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02481-14

Kumar v Telegraph & Argus:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02478-14

A woman complained to IPSO after she was photographed outside a court in Belfast. IPSO concluded that the process of taking the pictures, over an eight-second period, did not amount to harassment.

IPSO said: "In the first four images, the complainant had been unaware that she was being photographed; the last two showed her looking directly at the camera alert to the fact that her photograph was being taken. It was at this point that the complainant had told the photographer that she did not consent to being photographed.

"The roll provided by the newspaper appeared to indicate that no further images were taken. The Committee was satisfied that the newspaper had not failed to respect the complainant's request to desist; there was therefore no breach of Clause 3 on this point."

Best v Sunday Life:
www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00555-16

Useful checks

It is helpful to check whether desist requests already exist when reporting a story.

The Mail on Sunday was found to have breached the harassment clause when it approached a woman about a crime story some months after two desist requests had been made. The newspaper explained that a member of staff had failed to check its internal record of PCC advisory notices.

A woman v The Mail on Sunday:
www.pcc.org.uk/cases/adjudicated.html?article=ODY2OA

In such cases it would be useful to contact IPSO to confirm whether a desist notice has been issued and to seek informal advice on its status.

Freelance contributors

Editors must ensure that the rules on harassment are observed not only by their staff but also by contributors such as agencies. Pictures and stories from freelance contributors that are obtained by harassment will not comply with the Code. The PCC made this clear when it considered a complaint about a confrontation between two freelance journalists and a member of the public that resulted in police being called.

The newspaper explained that it had asked an agency to attend the complainant's house to follow up a potential story. Without its knowledge, the agency sub-contracted the task to a freelance photographer described by the newspaper as "somebody [it] would not use".

The PCC said the principle of editorial responsibility applied to the case and declared: "The newspaper was fully accountable for the actions of the men."

Varey v The People:
www.pcc.org.uk/cases/adjudicated.html?article=ODkxMg