

Equality and Human Rights Commission response to the IMPRESS draft Standards Code consultation

Consultation details

Title:	IMPRESS Code Consultation
Source of consultation:	IMPRESS
Date:	29 September 2016

For more information please contact

Name:	Naomi Lumsdaine, Jackie Driver
Telephone number:	0161 829 8549
Email address:	Jackie.driver@equalityhumanrights.com

Executive Summary

The Equality and Human Rights Commission ('the Commission') welcomes the opportunity to respond to the consultation on a new Standards Code for the publications that IMPRESS regulates. Given our statutory remit under the Equality Act 2006, and our status as a National Human Rights Institution and national equality body for Great Britain, the proposed Standards Code is relevant to our work to promote equality of opportunity and to protect and promote human rights.

Our response to the draft IMPRESS Standards Code (draft Code) consultation focuses on clause 4, which deals with "discrimination". This reflects the Commission's longstanding concern regarding the lack of redress for groups affected by pejorative or prejudicial reporting about personal characteristics. The Commission has previously raised concerns about the lack of provision for group complaints in its submission to the Leveson Inquiry, and the Ofcom Broadcasting Code consultation in 2004. Copies of those submissions are attached at Appendix A.

We also make some specific points on clauses 3 (Children) and 6 (Justice).

The Commission:

- recommends renaming clause 4 to avoid confusion between the provisions of this clause and unlawful discrimination under the Equality Act 2010;
- welcomes IMPRESS's apparent intent to enable representative groups to bring complaints under clause 4, but recommends that the scope of group complaints and how they will be dealt with should be clarified;
- suggests clarifying in the Code that complaints may be made in relation to comments posted by members of the public on a publication's website;
- suggests extending clause 4.1 to include 'prejudicial' as well as pejorative reporting, to ensure a more comprehensive range of detrimental reporting is prohibited by the Code;

- suggests extending clauses 4.1 and 4.2 to prohibit pejorative or prejudicial reporting about or references to groups', as well as individuals', personal characteristics;
- suggests extending clause 4.3 to include characteristics which make a person or group vulnerable to disadvantage or detriment, such as immigration status, socio-economic status or welfare status;
- recommends the insertion of a high level statement to clarify that the Code will be implemented in such a way as to ensure the right of the press to freedom of expression under Article 10 of the European Convention on Human Rights is respected;
- recommends amending clause 3 (Children) so that it applies to persons under 18 instead of 16 years of age;
- recommends extending clause 6.2 (Justice) to protect the identity of adults in relation to criminal proceedings they were involved in when they were under the age of 18.

Consultation Response

Clause 4 (Discrimination)

Background

Sweeping negative statements about sections of society based on their race, religion or other protected characteristic carry the risk of legitimising divisive negative stereotypes, and stoking enmity towards particular groups in society, such as refugees and asylum seekers, migrants, Jews, Muslims and gypsy and traveler groups.

The Commission has no legal powers to take action against reports that disadvantage or are detrimental to groups that share characteristics protected under the Equality Act 2010, and the IPSO Editors' Code used previously by IMPRESS only permits complaints about pejorative or prejudicial reporting from individuals who have been affected.¹

The lack of redress for groups who are subject to offensive reporting is an issue that has been noted not just by the Commission, but also by the Leveson Inquiry² and 2015 All-Party Parliamentary Inquiry into Anti-Semitism report (APPI).

The APPI recommended, limited to race and religion in the context of that inquiry:

“...that the Editors' Code of Practice be reviewed and that the relevant section be extended to give recourse for groups to complain about discrimination on the grounds of race or religion whilst ensuring a sensible balance for freedom of speech.”³

¹ Clause 12 'Discrimination' of the IPSO Editors' Code of Practice states, '12. Discrimination
i) The press must avoid prejudicial or pejorative reference to an individual's, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.
ii) Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.'
<https://www.ipso.co.uk/editors-code-of-practice/>

² Leveson Inquiry Report, Volume II, Chapter 6, paras. 8.3 - 8.5 and 8.21 - 8.22 available at:
http://webarchive.nationalarchives.gov.uk/20140122145147/http://www.official-documents.gov.uk/document/hc1213/hc07/0780/0780_ii.asp

³ Para 272: <http://antisemitism.org.uk/all-party-parliamentary-inquiry/>

The negative portrayal in the media of ethnic minorities, immigrants, asylum seekers and refugees has also been raised by the UN Committee on the Elimination of Racial Discrimination in its 2016 report on the United Kingdom⁴, and by the UN Human Rights Committee in its Concluding Observations in 2015⁵.

The need to address pejorative and prejudicial press reporting must be balanced with the right to freedom of expression under Article 10 of the European Convention on Human Rights.⁶ The European Court of Human Rights has emphasised that freedom of expression for the press is particularly important given the vital role of a free press in a democracy.⁷

Protection under Article 10 extends to the expression of views that may shock, disturb or offend the deeply-held beliefs of others. However, freedom of expression may be limited in certain circumstances, including in order to protect others from violence, hatred and discrimination.

The boundary between the expression of intolerant or offensive views and hate speech is not always an easy one to draw. However, a number of factors are likely to be relevant, including the intention of the person making the statement, the context in which they are making it, the intended audience, and the particular words used. The Commission has issued guidance on Freedom of Expression which addresses the limits of freedom of expression protection in more detail.⁸

Clause 4

1. The Commission considers this clause should be renamed to avoid confusion between the provisions of this clause and unlawful discrimination under the Equality Act 2010. A suggested alternative

⁴ See paras. 15 & 16, CERD Concluding observations on the twenty-first to twenty-third periodic reports of United Kingdom (August 2016), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fGBR%2fCO%2f21-23&Lang=en

⁵ See para. 10, Human Rights Committee Concluding observations on the seventh periodic report of the United Kingdom of Great Britain and Northern Ireland (August 2015), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GBR/CO/7&Lang=En

⁶ Article 10 European Convention on Fundamental Freedoms and Human Rights, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

⁷ See e.g. *Animal Defenders v the United Kingdom* (2013)

⁸ <https://www.equalityhumanrights.com/en/publication-download/freedom-expression-legal-framework>

is 'Negative Stereotypes'.

2. The explanatory note for clause 4 in the draft Code consultation document refers to the 'comprehensive support' in the public consultation phase for a clause to protect minorities and others from discriminatory reporting. It is not clear, however, whether group complaints are permitted under clauses 4.1 and 4.2, or limited to clause 4.3. For example, the reference to 'an individual' in clause 12.1 in the IPSO Code, which is analogous to the reference to 'a person' in clause 4.1 in the draft Code, has previously been interpreted to exclude group complaints.
3. The Commission considers it important that representative groups should be able to bring complaints about the generic discriminatory aspect of publications under each part of clause 4. Discriminatory reports that refer to an individual can still reinforce negative stereotypes that affect all persons who share their characteristic. To avoid ambiguity caused in part by the previous restrictive interpretation of clause 12.1 of the IPSO Code, the ability for representative groups to make complaints under each part of clause 4 should be made explicit.
4. The Commission acknowledges that representative group complaints about reports that refer to an individual must be handled in a manner that does not breach that individual's rights under the Data Protection Act 1998, and Article 8 of the European Convention on Human Rights (ECHR).⁹ Representative group complaints should be limited to the generic discriminatory aspect of the report and there should be no investigation of personal information in the report in the absence of the individual's consent.
5. There appears to be an increasing problem with discriminatory comments and hate speech posted on news websites by members of the public. The Commission considers the draft Code should clarify that complaints may be made in relation to comments that

⁹ See eg. *Dr DB v. General Medical Council* [2016] EWHC 2331 (QB) for a recent discussion of relevant caselaw.

are posted on a publication's website by members of the public, which are not moderated effectively by publishers.¹⁰

Clause 4.1

6. The Commission considers that clause 4.1 should include *prejudicial* as well as pejorative comments, in line with the Discrimination clause in the IPSO Editors' Code of Practice. Pejorative implies contemptuous or disapproving. In its current form, clause 4.1 may therefore exclude complaints about discriminatory comments that appear benign but are still prejudicial, such as paternalistic, infantilizing or patronizing racial or disability stereotypes.
7. The Commission recommends that clause 4.1 should be extended to prohibit pejorative or prejudicial references to *groups* that share a characteristic. This should not prevent critical debate and comment that can be justified in the public interest or is protected by the right to freedom of expression, but would provide a form of redress for groups who are denigrated on the basis of their race, religion or belief etc.
8. To ensure that freedom of speech is adequately protected in the determination of complaints under the Code, including discrimination complaints, the Commission suggests there should be an explicit statement in the Code that it will be applied in a way that balances the rights of complainants with the right to freedom of expression by the press¹¹. This could be done either by mentioning freedom of expression or Article 10 of the ECHR in the introduction to the Public Interest section, or in the Preamble.
9. The Commission also considers the clause should clarify the type of characteristic that might make a person or group vulnerable in this context, for example by amending the last sentence as follows, '...another characteristic that makes a person or group vulnerable to

¹⁰ With respect to publisher liability for comments posted by members of the public on their websites see eg. Defli v Estonia (Application no. 64569/09), June 2015

¹¹ Article 10 European Convention on Fundamental Freedoms and Human Rights, available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf

disadvantage or detriment, such as immigration status, socio-economic status or welfare status.’

Clause 4.2

10. The Commission suggests extending clause 4.2 to prohibit references to groups’, as well as individuals’, personal characteristics.

Clause 4.3

11. The Commission recommends extending this clause to cover any characteristic that makes a person or group vulnerable to disadvantage or detriment, such as immigration status, socio-economic status or welfare status, in line with Clause 4.1.

Additional Issues

12. The Commission has concerns about other aspects of the draft Code, and in particular those that relate to children. We ask IMPRESS to consider the following issues:
 - a. The UN Convention on the Rights of the Child is clear that people under the age of 18 should be treated as children.¹² This approach is increasingly recognised in legislation, such as that regulating the police.¹³ Accordingly, the Commission recommends that all references to age in clause 3 (Children) should be changed from ‘16’ to ‘18’.
 - b. To avoid undermining children’s right to anonymity in criminal proceedings and their subsequent rehabilitation and reintegration into society, we suggest amending clause 6.1 (Justice) as follows:

¹² Article 1, UN Convention on the Rights of the Child: “For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

¹³ For example, Code of Practice A issued under s.66 Police and Criminal Evidence Act 1984, and s.11 of the Children Act 2004

“Publishers must protect the identity of people who are or have been involved in criminal proceedings when under 18 years of age, and victims of sexual assault.”

By placing ‘victims of sexual assault’ at the end of the clause, this amendment should also help to clarify that the identity of victims of sexual assault should be protected irrespective of whether they have been involved in criminal proceedings.

The Equality and Human Rights Commission
29 September 2016

About the Equality and Human Rights Commission

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. It operates independently to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. It contributes to making and keeping Britain a fair society in which everyone, regardless of background, has an equal opportunity to fulfil their potential. The Commission enforces equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. It encourages compliance with the Human Rights Act 1998 and is accredited by the UN as an ‘A status’ National Human Rights Institution.

Find out more about the Commission’s work at:

www.equalityhumanrights.com