

IMPRESS

**IMPRESS
STANDARDS CODE:
CONSULTATION
RESPONSE PAPER**

April 2017

Background

IMPRESS: The Independent Monitor for the Press CIC launched a new Standards Code for the press on 24 April 2017. This Code was developed through a rigorous public consultation process from March 2016 to February 2016. The IMPRESS Code Committee drafted and finalised the Code, taking into account submissions that had been made to IMPRESS. The Code was adopted by the IMPRESS Board on 14 March 2017.

IMPRESS is the only press regulator to have been recognised by the Press Recognition Panel (PRP) under the Royal Charter for the Self-Regulation of the Press (the Royal Charter). IMPRESS exists to promote the freedom of the press and to encourage high standards in news reporting. As part of this commitment, and in line with recommendations made by Lord Justice Leveson in his Inquiry into the Culture, Practices and Ethics of the Press, IMPRESS has developed this new Code.

Implementation of Code

The IMPRESS Standards Code comes into effect from 24 July 2017. From that date,

IMPRESS expects its publishers to adhere to the requirements of this Code. Until 24 July 2017, IMPRESS will continue to put forward the Editors' Code of Practice as the Standards Code that we use to regulate publishers. This provides publishers with a three-month implementation period to familiarise themselves with the IMPRESS Standards Code.

Purpose of this Consultation Response Paper

This paper explains the decision-making process that led to the development of this new Code. The aim of this document is:

- to describe the process of the consultation for the development of a new code;
- to explain the reasoning, research and stakeholder feedback that contributed to the development of the Code; and
- to explain the process taken by the IMPRESS Code Committee in drafting each clause in the Code, including where the Committee incorporated proposals from stakeholders that were raised in the public consultation process.

CONSULTATION RESPONSE PAPER

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Leveson Inquiry and a new Standards Code

The development of this Code is in part a response to recommendations of the independent Inquiry into the Culture, Practices and Ethics of the Press chaired by Lord Justice Leveson (the Leveson Inquiry).¹ The recommendations of the Leveson Inquiry led to a cross-party agreement on a Royal Charter. Integral to this new system of press regulation is the effective enforcement of a code that sets standards and rules for the way journalists and editors should conduct their work.

Royal Charter and the IMPRESS Standards Code

IMPRESS is the only recognised regulator in the UK, having been found by the Press Recognition Panel (PRP) to meet the 23 criteria in Schedule 3 of the Royal Charter on Self-Regulation of the Press. Criterion 8 provides that:

The code must take into account the importance of freedom of speech, the interests of the public (including but not limited to the public interest in detecting or exposing crime or serious impropriety, protecting public health and safety and preventing the public from being seriously misled), the need for journalists to protect confidential sources of information, and the rights of individuals. Specifically, it must cover standards of:

- a) conduct, especially in relation to the treatment of other people in the process of obtaining material;*
- b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and*
- c) accuracy, and the need to avoid misrepresentation.*

IMPRESS was recognised on the basis of the Editors' Code of Practice under which it was then operating. The new Standards Code promotes and protects the values and aims expressed in criterion 8.

Many of the clauses in the Code interact with one another, and for this reason, any assessment of the Code's compatibility with the Royal Charter should be conducted with a mind to the Code in its entirety: it should be read as a whole and in conjunction with the Guidance. The following section explains how specific clauses in the IMPRESS Standards Code meet criterion 8.

i) The importance of freedom of speech

One of the central themes of the Code is the protection and promotion of freedom of speech. The Code protects freedom of speech and investigative journalism in several ways.

First, the preamble to the Code provides an overview of the value of journalism in democratic societies, underscoring the critical importance of journalists' roles in exposing corruption, holding power to account and reporting on matters of public significance.

Second, the public interest justification is a critical component of the Code, promoting and protecting the work of publishers and journalists to investigate and publish news stories that expose matters of general importance to society. The importance of the public interest, and its applicability to many clauses in the Code, explain its prominence at the start of the Code.

ii) Interests of the public

As explained above, several clauses attract a public interest justification. The public interest may be used to justify publications or activities that would otherwise constitute a breach of the Code when the benefits to society outweigh the harm caused by the publisher. It includes a non-exhaustive list of factors that is intended to guide journalists and the public when determining if a matter is in the public interest. These include those mentioned in criterion 8: detecting or exposing crime; protecting public health and safety; and preventing the public from being misled.

Detecting or exposing serious impropriety

The term 'serious impropriety' extends to incompetent, dishonest and misleading behaviour.

¹ Leveson Inquiry, An Inquiry into the Culture, Practices and Ethics of the Press 2011.

Such conduct is regulated by the Code in terms of:

- a) The revelation or discussion of matters such as serious incompetence or unethical behaviour that affects the public;
- b) Putting the record straight where an individual or organisation has misled the public on a matter of public importance; and,
- c) Revealing that a person or organisation may be failing to comply with any legal obligation they have.

Rights of individuals and confidentiality of sources

The Code protects the rights of individuals including privacy rights (CI 7); provides protection from harassment (CI 5), protects the rights of children (CI 3); provides anonymity for confidential sources (CI 8); and provides anonymity for children and the victims of sexual offences involved in criminal proceedings (CI 6).

Criterion 8 of the Royal Charter also requires that a Standards Code 'specifically must cover standards of:

a) Conduct, especially in relation to the treatment of other people in the process of obtaining material

Several clauses require publishers not to pursue news-gathering practices that would adversely affect others, for instance through harassment or

covert methods of obtaining information. Clause 5.1 on harassment requires publishers to ensure that 'journalists do not engage in intimidation' and Clause 5.2 prohibits deception including the use of covert equipment or means to obtain information. Additionally, Clause 7.2.a provides that, where not qualified by a public interest justification, publishers must not 'use covert means to gain or record information'. The Code must also;

b) Provide appropriate respect for privacy where there is no sufficient public interest justification for breach

Clause 7 protects a person's right to privacy in circumstances where they have a reasonable expectation of privacy. Such an expectation may be determined by factors which include, but are not limited to, the criteria listed in Clause 7.1. This is subject to a public interest exception. Clause 5 also offers protection from harassment and other invasions of a person's privacy. The Code must also promote;

c) Accuracy, and the need to avoid misrepresentation

Clause 1 regulates news publications for accuracy, requiring publishers to 'take all reasonable steps to ensure accuracy' (CI 1.1) and 'correct significant inaccuracies with due prominence at the earliest opportunity' (CI 1.2). Clause 1.3 requires publishers to 'always distinguish clearly between statements of fact, conjecture and opinion'. Lastly, Clause 1.4 provides that, 'whilst free to be partisan, publishers must not misrepresent or distort the facts'.

Role of the Code Committee

The task of developing and consulting on a new Code has been the work of the IMPRESS Code Committee (the Committee). While the Code is the ultimate responsibility of the IMPRESS Board, the Committee advises the Board on the Code and Code Guidance.

The role of a Code Committee was envisaged by Lord Justice Leveson. In his report, Lord Justice Leveson wrote that,

'My role is to make recommendations for an effective and independent structure for setting and enforcing standards, not to set those standards. That is properly a role for the independent regulatory body, in consultation with the industry and the wider public...'² 'It is essential that it should be the regulator who approves a code of standards to which members must adhere. The Board could well be advised by a Code Committee including serving editors and journalists, but with independent members as well'.³

Code Committee members are Máire Messenger-Davies (Chair of the Committee), Iain Christie, Mary Fitzgerald, Jonathan Heawood (CEO of IMPRESS), Martin Hickman, Emma Jones, Walter Merricks (Chair of IMPRESS), Gavin Phillipson, Lorna Woods, and Paul Wragg.⁴

Code consultation process

The Code was developed through a rigorous and transparent consultation process. This is the first time in the history of press regulation in the UK that the public has had the opportunity to contribute meaningfully to the development of a Standards Code. It was important to IMPRESS that the Code should undergo a thorough public consultation. It was also a recommendation of the Leveson Inquiry. In his report, Lord Justice Leveson recommended that 'a regulatory body should consider engaging in an early thorough review of the Code (on which the public should be engaged and consulted) with the aim of developing a clearer statement of the standards

expected of editors and journalists'.⁵ Lord Justice Leveson considered that this would 'command the confidence of both the public and the industry'.⁶ The Committee was mindful of this recommendation and adopted a wide-ranging consultation process. This has involved several stages, described below.

Stage one: comparative press code research

The Committee undertook comparative research of fifty-six press codes from around the world. Some of these are sourced from the Accountable Journalism website, while others are codes from UK publications and organisations including the National Union of Journalists' Code of Conduct, the Guardian's Editorial Guidelines, the Financial Times' Editorial Code and the Editors' Code of Practice.⁷ While many of the press codes identified come from countries with different legal and political traditions, common themes arise. These themes are privacy, accuracy, the rights of children and the distinction between fact and comment.

Stage two: engaging the public

The Committee engaged the independent research agency Britain Thinks to conduct workshops and an online survey with members of the public. Britain Thinks worked with IMPRESS to develop a series of public workshops in London and Glasgow. Participants were chosen who had a range of readership interests including readers of broadsheets and tabloids, readers who exclusively consumed news online, as well as those who indicated that they rarely, or never, consumed news content.

Workshop participants were asked to spontaneously identify the ethical principles that they believed should appear in a press code. These were the need to respect people's privacy, the importance of non-discrimination, accuracy, balance, and the protection of children. When prompted to discuss the tone of a standards code, members of the public workshops felt that the code should be rules-based, rather than principles-

² Leveson Inquiry, vol IV, pt K, ch 7, [4.18], p. 1762.

³ Ibid, vol IV, pt K, ch 7, [4.21], p. 1763.

⁴ For profiles of the Code Committee members, please see the IMPRESS website: <http://impress.press/about-us/code-committee.html>

⁵ Ibid, Recommendation 36.

⁶ Ibid, vol IV, pt K, ch 7, [4.22], p. 1763.

⁷ See appendix 3 for a full list of the 56 codes. For a full list of international press codes, see the Accountable Journalism website: <https://accountablejournalism.org/press-councils>

based. For instance, they preferred the use of the word 'must' to the more permissive 'should'.

Britain Thinks also conducted an online survey of 2,104 members of the public. The survey results confirmed the importance of the same ethical standards that the workshops had identified. The survey data revealed that the issues of most concern to the public were accuracy, privacy, the rights of children and the distinction between fact and comment. The survey results will be described throughout this paper, where they relate to the individual clauses in the Code.

In response to this phase of the consultation, the Code Committee refined the terminology and approach of the draft Code.

Stage three: expert roundtables

IMPRESS staff conducted a series of expert roundtables with the following groups and organisations to discuss the results of the public findings and their implications for a new Code. These included the following;

- IMPRESS publishers;
- Academics from universities across the UK, including media studies and legal academics;
- Investigative journalists;
- Regulators, including Ofcom and the Advertising Standards Authority;
- Civil society organisations including British Red Cross, Changing Faces, Children's Rights Alliance England, Church Action on Poverty, English PEN, the Traveller Movement, Samaritans, MIND, Hacked Off, Médecins San Frontières UK;
- Independent statutory bodies including the Equalities and Human Rights Commission and the Office of the Children's Commissioner;
- Media students from City University London; and
- The Irish Press Ombudsman, Peter Feeney.

Stage four: public submissions to draft Standards Code

IMPRESS published a draft Standards Code on 19th August 2016, inviting submissions. This consultation

period ran for a period of 6 weeks, ending on 29th September 2016. IMPRESS published a consultation paper explaining the impetus for the consultation and the rationale for the draft Code. The consultation paper directed stakeholders⁸ to answer key questions that would assist the committee in fine-tuning the draft Code. This consultation process was advertised on the IMPRESS website and communicated to stakeholders via emails and on social media. Stakeholders were invited to submit responses to this consultation through a variety of media including an online survey, responding to the consultation paper via email, or by phoning IMPRESS.

IMPRESS received 42 submissions, eight of which were from stakeholders who requested that their submissions be confidential.⁹ The non-confidential submissions have been published on the IMPRESS website.

IMPRESS received information relevant to the Code from NotBuyingIt! in January 2017. Other stakeholders made written comments about the draft IMPRESS Standards Code, though not in direct response to IMPRESS's consultation. For instance, the News Media Association (NMA) made a detailed submission to the Press Recognition Panel (PRP)'s Third Call for Information about IMPRESS's Application for Recognition.¹⁰ IMPRESS wrote to the NMA asking whether it would like its submission to the PRP treated as a submission to IMPRESS's consultation, but it declined.

Stage five: IMPRESS-regulated publisher consultation

IMPRESS consulted with IMPRESS-regulated publishers, testing the practical use and accessibility of the Code and Guidance with journalists and editors.

Stage six: final drafting stage

Following the receipt of submissions, the IMPRESS Code Committee reflected on stakeholder comments and proposals as part of this final stage of refining the draft Code.

⁸ This paper will refer to 'stakeholders' throughout to refer to individuals and groups who made submissions to IMPRESS or met IMPRESS representatives to consult on the draft Code.

⁹ See appendix 1 for the list of individuals and organisations who made submissions to IMPRESS's draft Standards Code. See appendix 2 for a copy of the draft IMPRESS Standards Code published on 19 August 2016 for public consultation.

¹⁰ NMA Submission to the Press Recognition Panel (PRP)'s Third Call for Information about IMPRESS's Application for Recognition, 20 September 2016. Accessed 9 March 2017 at: <http://pressrecognitionpanel.org.uk/wp-content/uploads/2016/07/M1-NMA.pdf>

IMPRESS Standards Code

There are two good reasons for a set of ethical guidelines for journalists: the moral case and the practical case. The former turns on the fact that the best, most enduring journalism emerges when journalists fulfill their function of probing and testing authority in the way they report.

To be effective, journalists need to be trusted by their readers. In practical terms, one way of achieving this is for a public declaration by journalists that they work to a set of rules that are fair and transparent.

The Code contains a preamble, a public interest exception, and ten substantive clauses. The ten clauses appear in alphabetical order and are of equal value. The public interest provision may be used to justify publications or activities which would otherwise constitute a breach of the Standards Code when the benefits to society in publication outweigh the harm caused by the publisher.

The Code is a rules-based document. This means that the Code outlines requirements

that publishers must uphold. The language of the Code reflects this, directing publishers that they 'must' or 'must not' conduct certain activities or publish certain content, rather than recommending they 'should' or 'should not' conduct certain activities or publish certain content. Some stakeholders disagreed with this approach. For instance, in their submission to the Code consultation, the National Union of Journalists (NUJ) argued that a code of standards in journalism 'should be seeking to encourage professional journalists producing publications'. IMPRESS agrees with the NUJ to the extent that one of the aims of our Code is to encourage higher ethical standards. However, in developing this new Code, IMPRESS aimed to produce an enforceable Code that, when tested by complaints brought by members of the public, will produce consistent, certain and fair adjudications. This position also reflects the feedback from the public workshops, explained earlier in this paper.

In the following pages, each clause is reproduced in a box and followed by an explanation of the decisions we have taken in drafting the Code.

PREAMBLE TO THE IMPRESS STANDARDS CODE

Journalism plays a crucial role in society. Every day, journalists report significant events, policies and controversies, expose wrongdoing, challenge unfairness and satirise, amuse and entertain. Such power comes with responsibility. IMPRESS aims to ensure that journalists behave responsibly, while protecting their role to investigate and report freely.

All publishers regulated by IMPRESS agree to abide by the following rules, which together constitute the IMPRESS Standards Code. This Code seeks to balance the rights of the public, journalists and publishers. The Code should be read alongside

the guidance, which provides information about what these rules mean in practice.

This Code is intended to be:

- (a) A practical working tool that enables journalists, editors and publishers to do their jobs;
- (b) Easily understood by the public; and,
- (c) Effectively enforceable through IMPRESS's powers and remedies as a regulator.

Publishers will be held directly responsible for compliance with

this Code, which applies to all content and newsgathering activities for which publishers are responsible under the terms of their Regulatory Scheme Agreement with IMPRESS, regardless of the medium or platform of publication. All references here to publishers apply equally to anyone acting under a publisher's authority. All references here to journalists apply equally to anyone acting in a journalistic capacity.

This Code is distinct from the law and publishers are separately responsible for ensuring that they comply with the law.

Aim

The preamble explains the purpose of the Code and the obligations that arise for publishers.

Engagement and decision

General ethical statement

Some stakeholders submitted that the preamble should include a statement that highlights the value of journalism to society and explains the duties and protections afforded to journalists by an enforceable code of ethical standards.¹¹ IMPRESS considered this a sensible proposal, serving as an opportunity to articulate the balance that lies at the heart of the Code between freedom of speech on the one hand, and the rights and interests of individuals and society on the other. In some cases, these interests will be in conflict but in other cases, they are mutually reinforcing.

The statement in the preamble promotes the role of the print media¹² as a vehicle for freedom of expression, including its role as a platform for debate on matters central to a functioning democracy. This view is consistent with case law on freedom of expression as the European Court of Human Rights has on several occasions found that freedom of expression 'constitutes one of the essential foundations of a democratic society'.¹³ English courts have asserted that the scope of this freedom extends to ideas or information that 'offend, shock or disturb'.¹⁴

Relationship between the Code and the Regulatory Scheme¹⁵

The Code is an enforceable set of rules. The Code articulates the standards against which members of the public can bring complaints about news publications to IMPRESS, while the Regulatory Scheme explains how the complaints system works.

¹¹ Article 19.

¹² We understand the term 'print media' to include digital media.

¹³ *Observer and Guardian v United Kingdom* A 216 (1991), [59]. For more on the jurisprudence of the European Court of Human Rights on freedom of expression and its balancing with other rights and interests, see: H Fenwick & G Phillipson (2006) *Media Freedom under the Human Rights Act*, Oxford University Press: Oxford: passim.

¹⁴ *Thorgeirson v Iceland* (1992) 14 EHHR 843, [63].

¹⁵ The IMPRESS Regulatory Scheme is available online: <http://impress.press/regulation/>

Some stakeholders recommended that we provide detail in the preamble about the scope of its complaints system. We took the view that the level of detail required to provide an adequate explanation of the remit of the complaints system would be too lengthy for inclusion in a Code that is designed to be a workable tool for journalists and an accessible document for the public. As explained in the preamble, the IMPRESS Regulatory Scheme and Standards Code are designed to interact, but however they have separate functions.

Both Hacked Off and Professor Eric Barendt advocated for the inclusion of a principle in the preamble that publishers should comply with 'the spirit of the Code, not just the letter'. We agree that this is an important principle. This point is included in the Code Guidance.

Conscience clause

The NUJ suggested including a conscience clause that would enshrine a right for journalists to refuse an assignment where the journalist had a reasonable belief that the assignment would breach the Code. Such a clause appears in the NUJ's Code of Conduct.¹⁶ This important principle is protected in the IMPRESS whistleblowing scheme.¹⁷ The scheme is a mechanism for journalists to raise concerns, and receive legal protection, about possible unethical or unlawful conduct occurring in their news rooms. This

extends to concerns about pressure from editors to pursue activities or news articles that may breach the Code. We did not think it necessary to include reference to the Whistleblowing Scheme in the Code.

Publishing the outcome of libel claims

Some stakeholders argued that publishers should be required to publish the outcome of any libel proceedings initiated against them.¹⁸ However, legal action is different from adjudications under a Code. While a successful libel claim may result in a breach of Clause 1 on accuracy, the two matters are not identical. IMPRESS has not included a requirement in the Code to publish the outcome of any libel proceedings in order to maintain the distinction between the Code and the law.

Responsibility for upholding the Code

The Code is addressed to publishers. In practice, it also covers the work of journalists, editors, photographers and others who work under the editorial control of a publisher. Some stakeholders challenged this approach, favouring instead a reference to editors.¹⁹ These stakeholders argued that editors are the main actors who will be involved in making editorial decisions.²⁰ However, IMPRESS regulates publishers, not editors or journalists; it is the publisher who is party to a contract with IMPRESS and any adjudication directed at a news publication on the resolution of a complaint or investigation will be addressed to a publisher.

¹⁶ National Union of Journalists' Code of Conduct. Accessed 17 December 2016 at: <https://www.nuj.org.uk/about/nuj-code/>

¹⁷ The IMPRESS Whistleblowing scheme is available online: <http://impress.press/regulation/whistleblowers.html>

¹⁸ National Union of Journalists; Anonymous 4.

¹⁹ Society of Editors; Hacked Off; Raymond Starkey

²⁰ Hacked Off; Society of Editors; Media Wise.

PUBLIC INTEREST

In certain circumstances, there may be a public interest justification for a particular method of newsgathering or publication of an item of content that might otherwise breach the Code. Where a public interest exception may apply, this is identified in the relevant clause. A public interest means that the public has a legitimate stake in a story because of the contribution it makes to a matter of importance to society. Such interests include, but are not limited to, the following:

- (a) The revelation or discussion of matters such as serious incompetence or unethical behaviour that affects the public;
- (b) Putting the record straight where an individual or organisation has misled the public on a matter of public importance;

- (c) Revealing that a person or organisation may be failing to comply with any legal obligation they have;
- (d) The proper administration of government;
- (e) Open, fair and effective justice;
- (f) Public health and safety;
- (g) National security;
- (h) The prevention and detection of crime; and
- (i) The discussion or analysis of artistic or cultural works.

The following provisions apply where a publisher is about to undertake an action that they think would

otherwise breach the Code, but for which they believe they have a public interest justification. The action might be a particular method of newsgathering or publication of an item of content. Before undertaking the action, the publisher should, where practicable, make a contemporaneous note, which establishes why they believe that:

- (a) The action is in the public interest;
- (b) They could not have achieved the same result using measures that are compliant with the Code;
- (c) The action is likely to achieve the desired outcome; and
- (d) Any likely harm caused by the action does not outweigh the public interest in the action.

Aim

The public interest may be used to justify publications or activities that would otherwise constitute a breach of the Code when the benefits to society of publication or of some conduct carried out in the course of journalism, outweigh the harm caused. This exception is intended to protect investigative journalism where a publisher can demonstrate a clear and important reason for undertaking specific conduct or publishing a news story. The clauses that attract a public interest justification are identified throughout the Code.

Background

In a democracy, one of the roles of the media as the 'fourth estate' is to challenge powerful

institutions and individuals and to hold them to account on behalf of the public. A public interest justification fosters this role, enabling journalists to pursue stories that may otherwise amount to a breach of the Code. For an item of news content or some news-gathering activity to be in the public interest, the public or society at large would need to benefit from the disclosure of the issue.

The important role of the media in publishing public interest stories was highlighted in Lord Justice Leveson's report when he stated that 'the press, when operating properly and in the public interest, is one of the true safeguards of our democracy ... There are truly countless examples of great journalism, great investigations and great campaigns. The press describes world and local events, illuminates political issues

21 Leveson, Executive Summary, [8].

and politics generally, holds power to account, challenges authority, investigates and provides a forum for debate'.²¹

It is important to make a distinction between what the public is 'interested' in, and what is a legitimate matter of public interest. In privacy cases litigated in English courts and in the European Court of Human Rights (ECtHR), the concept of 'public interest' does not extend to 'prurient curiosity' or titillation. For example, in the ECtHR case of *Von Hannover*, the court explained that 'where the sole purpose of the expression is to satisfy the curiosity of a particular readership regarding the details of the applicant's private life, the expression cannot be deemed to contribute to any debate of general interest to society despite the applicant being known to the public...in such conditions, freedom of expression calls for a narrower interpretation'.²²

Engagement and decision

Meaning of public interest

The Code provides that a public interest justification may apply where 'the public has a legitimate stake in a story because of the contribution it makes to a matter of importance to society'. The Code then provides a non-exhaustive list of public interest matters, rather than a closed definition of what is meant by the public interest. This approach reflects the fact that community expectations of what forms the public interest change over time. The phrase will allow the meaning of public interest to develop in line with changing community attitudes and developments in technology.

The decision to provide a non-exhaustive list of public interest factors is similar to the approach taken by other bodies when considering how to define the public interest. For instance, the Australian Law Reform Commission in its 2014 report into Serious Invasions of Privacy in the Digital Era recommended a non-exhaustive list of public interest factors to the Australian Government in its design of a new statutory tort for serious invasions of privacy.²³ The Editors' Code of Practice also includes a non-exhaustive list of public interest factors in its public interest exception.

Public interest factors

The public interest justification includes a non-exhaustive list of public interest factors. We have not included 'freedom of expression' in this list of factors. We considered that all public interest factors can be said to be in the pursuit of freedom of expression. Therefore, the inclusion of this factor would provide scant guidance to journalists and the public about the scope of this justification.

The following section discusses two factors in the public interest justification that attracted particular interest from stakeholders.

The prevention and detection of crime and fraud

The draft Code referred to the 'prevention and detection of crime and fraud'. When finalising the Code, the IMPRESS Code Committee felt the inclusion of crime and fraud was repetitive as fraud is a form of criminal activity. For this reason, the final iteration of the Code only refers to 'crime'.²⁴

The analysis of artistic or cultural works

The Trust Project and Hacked Off questioned the purpose of this clause. It aims to provide protection for criticism or commentary that may fail to observe a clause in the Code, but where that failure discloses some matter that is critical to the proper analysis of a work of art. For instance, where a book reviewer publishes a review of a biography of a public person and in the course of the review, discloses private information about the author of the biography that may impact on the quality or veracity of the biography such as their personal (and previously undisclosed) connection to the subject of the biography. While this may amount to a failure to observe Clause 7 on privacy, it may be a necessary and proportionate disclosure to rigorously review the merits of the biography. In such a case, this may attract a public interest qualification.

A practical example may possibly be the publication of what a journalist contends is the real identity of the Italian writer Elena Ferrante (a pseudonym), by *The New York Review of Books*. The author who published her identity in the *Review* may, for argument's sake, claim that this potential invasion of her privacy was in the public interest as the author's identity is important in understanding her inspiration for her popular and impactful quartet of novels about two women

²³ Australian Law Reform Commission (2014) *Serious Invasions of Privacy in the Digital Era*, Final Report 123, Australian Government: Canberra, Rec 9-2. Accessed 7 February 2017 at: <http://www.alrc.gov.au/publications/serious-invasions-privacy-digital-era-alrc-report-123/recommendations>

²⁴ This was raised by Simon Carne.

growing up in post-war Naples. In the event that the actions of the *Review of Books* or the journalist were to be considered in a privacy complaint, a public interest justification may arise.

Contemporaneous note

Generally, journalists will as a matter of course keep some form of a paper trail of their progress researching and writing a news story. The recommendation that journalists make a contemporaneous note formalises existing practices, recommending journalists maintain a record.

Some stakeholders argued that it will not 'always be practical' for a journalist to make contemporaneous note that explains the public interest justification for journalistic activity or publication of a news story.²⁵ Additionally, some argued that it may not in every circumstance be the intention of a journalist to breach the Code, nor may they envisage their conduct or publication of a news item to lead to a breach of the Code.²⁶ Others suggested that it may be 'too prescriptive and burdensome' for a journalist.²⁷

IMPRESS recognises that there may be instances where it may not be apparent to a journalist that they may be in breach of the Code. This clause is clear, therefore, that maintaining a contemporaneous note is not a strict requirement – not a 'must' but a 'should'. It is intended to help publishers maintain an audit trail in the event that a particular course of action leads to a complaint or investigation. This process is designed to help IMPRESS understand the rationale of the publisher or journalist in the event of a complaint. It is also a way to prevent publishers from justifying actions in hindsight, rather than considering a legitimate public interest justification at the time of the news-gathering activity or publication. In an anonymous submission, one stakeholder proposed an alternative system whereby a journalist or publisher supports their editorial practices and decision-making with reason and argument in the event of a complaint. IMPRESS considers this to be a practical suggestion and one that is not mutually exclusive to the suggestion of a contemporaneous note.

²⁵ Anonymous 5, Anonymous 6.

²⁶ Anonymous 5.

²⁷ Anonymous 6; Article 19.

1. ACCURACY

- 1.1.** Publishers must take all reasonable steps to ensure accuracy.
- 1.2.** Publishers must correct any significant inaccuracy with due prominence, which should normally be equal prominence, at the earliest opportunity.
- 1.3.** Publishers must always distinguish clearly between statements of fact, conjecture and opinion.
- 1.4.** Whilst free to be partisan, publishers must not misrepresent or distort the facts.

Aim

This clause promotes journalism that is truth-seeking and that strives to present news content in a careful and precise manner. The use of verifiable information and sources is an important part of this aim. The wording of this clause acknowledges that in some cases, mistakes and inaccuracies may occur. However, IMPRESS expects its publishers to correct significant inaccuracies.

Background

IMPRESS's survey results show that the public values 'honesty' as the most important principle for ethical journalism: 93% of the public rate accuracy highly. In terms of what this means in practice, participants at the public workshops named five factors. They are:

- Publishing corrections to inaccurate stories

that are proportionate in size and prominence to the original story;

- Ensuring that headlines match the text of a story;
- Differentiating between confirmed stories and allegations;
- Being specific in news reporting; and
- Not taking quotes out of context.

Accuracy in news reporting is, clearly, vital to achieving and maintaining public trust in news sources. The BBC's Journalism Academy says that, as a journalist, 'you have an implied contract with your audiences. You're asking them to trust you to check that what you're saying is true and that your overall account isn't misleading'.²⁸

The public also ranked the principle of balance highly. In broadcasting, balance generally refers to a requirement of impartiality. This is not a standard that has historically been used in respect of the

²⁸ BBC's Journalism Academy (2013), 'Truth and Accuracy'. Accessed 2 February 2017 at: <http://www.bbc.co.uk/academy/journalism/article/art20130702112133794>

print media. When asked to define ‘balance’, the public referred to news stories that distorted or misrepresented facts. Clause 1.4 aims to protect the media’s right to be partisan while requiring that a publisher does not misrepresent or distort facts. The Guidance on this clause explains that the requirement includes misleading through the *omission* of a crucial fact or facts as well as through the *inclusion* of inaccuracies.

Engagement and Decision

The importance of a provision on accuracy was affirmed by numerous stakeholders.²⁹

Muslim Engagement and Development (MEND) argued that the threshold of ‘significantly inaccurate’ is too high a bar to lodge complaints on the grounds of accuracy. They argued that ‘there is no consideration to content that while technically accurate is nonetheless misrepresentative or misleading’.³⁰ MEND favoured an explicit reference to correcting ‘any significant inaccuracy, misleading statement or distortion with due prominence at the earliest opportunity’.

Headlines supported by text

Several stakeholders argued for a new clause that explicitly requires headlines to be consistent with the accompanying news story or other text.³¹ One stakeholder acknowledged that this could be included in Guidance.³² We decided to adopt a concise and accessible code. This means that general requirements like taking reasonable steps to ensure accuracy are interpreted in a way that includes the accuracy of headlines. The Guidance explains that the requirement of ‘accuracy’ extends to headlines, images and texts so that publishers are required to ensure all such content has gone through editorial checking processes to ensure accuracy.

Right of reply

Several stakeholders were in favour of the inclusion of a right of reply in instances where a newspaper

has published a significant inaccuracy.³³ A right of reply may take various forms including providing individuals with an opportunity to write an opinion piece or letter in response to an article that makes allegations about that person. Rights of reply are common across international press codes.³⁴ Additionally, statutory rights of reply operate in many European countries including Austria, France, Germany, Hungary, Italy, Netherlands, Norway, Spain and Switzerland.

We decided not to include a right of reply as it was felt that such mechanisms are best left to the discretion of publishers. Rights of reply come in many forms including letters to the editor and regular response columns. Regulating rights of reply risks creating uncertainty, especially in cases where identifying the appropriate respondent to a news story is difficult. For instance, where a news publication publishes a story about women’s rights that attracts controversy from women’s rights groups with a range of perspectives, a regulator could not – and, in our view, should not – tell a publisher which group to favour. Our decision here does not prevent publishers from adopting policies that provide for rights of reply where appropriate.

A right of reply usually relates to differences of opinion. It is not our role to instruct publishers to include alternative opinions in their publications. However, the IMPRESS Code does require publishers to issue corrections where there is a significant inaccuracy.

Due and equal prominence for corrections

Several stakeholders raised the issue of the meaning of due or equal prominence of corrections.³⁵ Some stakeholders offered models for news publishers to adopt in streamlining corrections policies. For instance, Raymond Starkey proposed a regular corrections column to ensure consistency and ease of use for readers.³⁶ We leave it to individual publishers to make these editorial decisions.

29 Zero Tolerance; Muslim Council of Britain; Hacked Off; Jonathan Coad; NotBuyingIt!

30 MEND.

31 Muslim Council of Britain; Jonathan Coad; Hacked Off.

32 Muslim Council of Britain.

33 Article 19; Dr Faith Gordon; Hacked Off; Media Wise; National Union of Journalists; Professor Eric Barendt.

34 Australia Press Council’s Statement of Principles, cl 4; Namibia Ombudsman: Code of Ethics for the Namibian Media, cl 3.1; Albanian Media Institute: Albania Code of Ethics, cl 2; Macedonia Code of Journalists, cl 2; The Editors Guild of Sri Lanka: Code of Professional Practice; Rwandan High Media Council’s Code of Ethics, cl 5; Nigeria Code of Ethics for Journalism; Norwegian Press Association Norway Code of Ethics, cl 4.14; Danish Press Council: the Press’ Ethical Rules, cl 3; Finland Council for Mass Media: Guidelines for Journalists, cl 20; Code of Ethics for Press, Radio and Television in Sweden, cl 5; Cyprus Journalists’ Code of Ethics, cl 2; Iraq’s Rules of Professional Ethics, cl 4; Code of Professional Principles adopted by the Press Council of Turkey, cl 16; Hong Kong Journalists’ Association Code of Ethics; Indonesian Press Council’s Code of Ethics, art 11; and the Code of Ethics for the Estonian Press, Estonian Press Council, cl 5.1.

35 Hacked Off.

36 Raymond Starkey.

Given the significance of this issue for stakeholders and the public, we clarified the meaning of Clause 1.2 when reflecting on the draft Standards Code. Clause 1.2 now explains that due prominence will normally be understood as equal prominence. This will ensure that publishers adequately consider the significance of an error or potential breach of the Code when publishing corrections. The Guidance provides a detailed explanation of the meaning of due and equal prominence.

Furthermore, IMPRESS has the power to 'direct the nature, extent and placement of corrections and apologies' and in doing so will have regard to this principle in the Code.³⁷

Balance

IMPRESS's public polling and public focus groups showed unprompted support for a clause requiring balanced news reporting. Question 3 of the Britain Thinks survey of 2,104 respondents, asked 'what are the kinds of things that news publications might do that are wrong or unfair?' Respondents were able to answer this question with their own contribution and the highest response (28% of respondents) was 'biased or partial coverage'. The second highest response (16% of respondents) was 'dishonest and inaccurate reporting'.

The requirement for balanced reporting appears in the press codes of comparable press regulators such as in Clause 3 of the Australia Press Council's Statement of General Principles.

The IMPRESS Standards Code does not regulate for balance. IMPRESS considers that the media has a right to publish partisan commentary (see Clause 1.4). The public survey results confirmed the importance of the distinction between fact and comment: 83% agreeing with IMPRESS that this is important. Additionally, Clause 1.4 provides that publishers must not 'misrepresent or distort the facts'. The Guidance explains that 'Members are in a fundamentally different position from broadcasters, such as the BBC: publishers are free to present their own opinions on the issues of the day and they are not required to engage in 'balanced' or 'impartial' reporting. Even so, the Code requires members to ensure the information underpinning the expression of their opinions and their take on a given story is accurate.'

Furthermore, the Guidance explains that, 'While journalists may publish their opinions ... they must not present false information as facts in opinion pieces. A story may contain allegations but these must be clearly identified as such'.

³⁷ IMPRESS Regulatory Scheme, [5.6].

2. ATTRIBUTION & PLAGIARISM

- 2.1.** Publishers must take all reasonable steps to identify and credit the originator of any third party content.
- 2.2.** Publishers must correct any failure to credit the originator of any third party content with due prominence at the earliest opportunity.

Aim

This clause aims to protect people's intellectual property and prevent reader's from being misled. A violation of this clause could occur where a publisher fails to credit the creator of material. This is particularly important given the ease with which content can be taken, and shared, from social media.

Attributing the creator of content taken from social media is an increasing challenge for news publications and is of increasing concern for many members of the public. For creators of content, copyright and image right laws are often too limited to provide them with adequate protection. For the general public, understanding the source of news items is important for determining their credibility and the veracity of news reports.

Background

Several press codes around the world include clauses requiring publishers not to plagiarise content, although these tend not to be countries with comparable legal systems to England's legal system.³⁸ Those codes that do include attribution provisions are similar in substance to Clause 2 of the IMPRESS Standards Code. For instance, the

Guardian's Editorial Code provides that, 'Staff must not reproduce other people's material without attribution, other than in exceptional circumstances – for example where the source cannot be identified – and only with permission of the most senior editor on duty. The source of published material obtained from another organisation should be acknowledged, including quotes taken from other newspaper articles'.³⁹

Engagement and discussion

Several stakeholders advocated a general prohibition against plagiarism.⁴⁰ In the interests of accessibility of language, we decided to adopt the terms 'identify and credit the originator of any third party content' rather than use the term plagiarism. In the qualitative research component of IMPRESS's code consultation, members of the public suggested that the term plagiarism is not widely understood.

On the issue of the appropriation of material taken from social media, Dr Faith Gordon submitted that 'the use of social media images of children is a grey area under the law'. She went on to advocate a standards code that redresses these deficiencies and provides protection for children and young people whose material is regularly accessed,

³⁸ National Union of Journalists; Croatian Journalist Association; Journalists Code of Honor; Macedonia Code of Journalists; United Arab Emirates Code of Ethics; Serbian Journalists Code of Ethics; Bahrain Code of Ethics; Press Council of Nepal; Code of Journalistic Ethics; Israel's Rules of Professional Ethics of Journalism; Nepal Code of Journalistic Ethics; Common Code of Ethics of Cambodian Journalists; Code of Ethics of the Journalists Circle of Bogota; Journalists' Code of Ethics, Syndicate of Journalists of the Czech Republic.

³⁹ Guardian's Editorial Code, cl 1.

⁴⁰ Article 19, National Union of Journalists, Hacked Off.

appropriated and distributed without their consent from social media. We agreed with Dr Gordon, and were keen to ensure that any clause on attribution was forward-looking and would extend to material gathered from social media. To this end, the Guidance provides that this clause 'extends to content taken or submitted from social media'.

We decided to define content as 'any third party content' to ensure the clause covers all forms

of news-related material including images, drawings, and text, even if taken from social media. Further, we consider it important to require publishers to correct any failure to credit the original creator of any third party content. This is an accountability mechanism in the Code, requiring rectification of such an error to protect the intellectual property of content creators and increase the public's awareness of the sources of their news content.

3. CHILDREN

- 3.1.** Except where there is an exceptional public interest, publishers must only interview, photograph, or otherwise record or publish the words, actions or images of a child under the age of 16 years with the consent of the child or a responsible adult and where this is not detrimental to the safety and wellbeing of the child. While a child should have every opportunity to express his or her wishes, journalists have a responsibility to consider carefully the age and capacity of the child to consent. Unless there is a detriment to the safety and wellbeing of a child, this provision does not apply to images of general scenes.
- 3.2.** Except where there is an exceptional public interest, publishers must not identify a child under the age of 16 years without the consent of the child or a responsible adult unless this is relevant to the story and not detrimental to the safety and wellbeing of the child.
- 3.3.** Publishers must give reasonable consideration to the request of a person who, when under the age of 16 years, was identified in their publication and now wishes the online version of the relevant article(s) to be anonymised.

Aim

This clause aims to protect the rights and interests of children who engage with journalists. Recognition of the vulnerability of some children and young people demands a clause that insulates children from press intrusion and exploitation. This requires journalists to consider the safety and wellbeing of children. At the same time, the clause does not stifle all opportunities for children and young people to engage with the media. This recognises the fact that the media has a unique platform for encouraging and facilitating youth empowerment and civic and political engagement.

Background

Clause 3 is informed by a rights-based approach, recognising the rights of the child under the United Nation's Convention on the Rights of the Child 1989 (CRC) a treaty ratified by the UK Government. Article 12 of the CRC provides

protection for the empowerment of children, where they are judged to have the maturity and understanding to take decisions as to their welfare. That article provides that 'a child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'. At the same time, Article 5 ensures the protection of children's welfare and interests by underscoring the importance of a guardian's legal responsibility for the care and wellbeing of a child. This extends to parental consent.

Additionally, Article 13 protects children's freedom of expression: 'this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice'. General Comment No. 12 (2009) on the 'Right of the Child to be heard' explains these articles and the conditions necessary to give effect to a

child's rights to free expression under Article 12. They include measures that appreciate the fluid, evolving nature of capacity. Such measures should ensure that as children mature and their capacity to make informed decisions increases, they should be provided with opportunities for self-expression.

Our qualitative and quantitative data shows that the public strongly support a principle that protects children from intrusive press behaviour. 84% of survey respondents believed that the press should protect children's identities.

Engagement and decision

Consent

In the draft Code, we used the term 'assent' in Clauses 3.1 and 3.2 to explain the quality of permission required of a child to interview, photograph or otherwise record them, or in any other way identify them in a news story. Assent provides for a slightly lower level of permission than consent, referring to a person's acquiescence or compliance with some behavior or action.

We consulted with Ofcom, the broadcasting regulator, on its use of the term 'assent' to explain the permission required of children under the age of 16 to be involved in broadcasting. The Office of the Children's Commissioner was similarly broadly supportive of the use of the term 'assent' in meetings with us. Ofcom's guidance on Section One of its Broadcasting Code provides that: 'On the basis of expert advice, Ofcom understands that from an early age, children are capable of indicating their willingness ('assent') to participate or be involved in a programme'.⁴¹ However, several stakeholders expressed reservations about the use of the word assent, favouring consent instead.⁴² In light of this significant opposition to the use of the term 'assent', we decided to amend Clause 3.3 to adopt the more widely understood term 'consent'.

In the final Code, a child under the age of 16 may provide consent in the absence of the consent of a responsible adult. This recognises the autonomy and media literacy of many children and young people by providing them with an opportunity to consent to engaging with the media. Conversely, where a journalist gains the

consent of a responsible adult, the Code does not also require the consent of the child, although this is preferable. In both circumstances, a decision to interview, photograph or otherwise record a child, or identify them in some other way, is qualified by the requirement that the conduct or publication is not 'detrimental to the safety and wellbeing of the child'. The Guidance explains that ideally, journalists should obtain the consent of both parties, however this will not always be practicable. Additionally, some older children may have the capacity to provide consent without the additional consent of a responsible adult.

Definition of a child

Clause 3 defines a child as a person under the age of 16, though Clause 6.2 extends anonymity to 17 year olds involved in criminal proceedings, acknowledging the acute sensitivity of such proceedings.

The law of England and Wales sets different standards for the definition of a child, depending on the context of the law or regulation. For instance, the age of criminal responsibility is 10, the age of consent for sexual intercourse is 16, and the age when a person can refuse life-saving treatment is 18. As autonomous agents, children obviously have different levels of maturity and self-awareness. This is considered by courts and other bodies when assessing the capacity of a child to consent to an act, or be held responsible for an act.

Several stakeholders argued that the Code should define a child as a person under the age of 18.⁴³ This would bring the Code in line with the definition of a child in the United Nations Convention on the Rights of the Child where children are defined in article 1 as persons under the age of 18. Article 1 provides an exception this where 'under the law applicable to the child, majority is attained earlier'.

There is precedent in other areas of law and regulation for lower ages of consent, particularly in areas concerned with children's interaction with the media. By way of example, under US federal law, the Children's Online Privacy Protection Act (COPPA) applies to children under the age of 13. COPPA regulates the conduct of commercial websites and other online services

⁴¹ Ofcom's Guidance Notes on Section 1 of its Broadcasting Code p. 15. Accessed 7 February 2017 at: https://www.ofcom.org.uk/_data/assets/pdf_file/0017/24704/section1.pdf

⁴² National Union of Journalists; Article 19; Children's Rights Alliance for England; Transparency Project; Simon Carne; Raymond Starkey; Trans Media Watch; Media Wise.

⁴³ Standing Committee on Youth Justice; Children's Rights Alliance for England.

that process the data of children. Further, article 8 of the EU's General Data Protection Regulation (GDPR) (due to come into effect in 2017), imposes an obligation on providers of online goods and services offered to children to seek to obtain consent of a child's parent or legal guardian where the child is under the age of 16. The GDPR provides Member States with the discretion to adopt a lower age for this requirement, albeit not one that falls below 13 years.

We decided to define a child as a person under the age of 16 to provide 17 year olds with a greater sense of empowerment and autonomy. However, this is qualified by the requirement in Clauses 3.1 and 3.2 that publishers consider whether their action is 'detrimental to the safety and wellbeing of the child'. Additionally, Clause 3.1 explains that a person's capacity to consent to being interviewed, photographed or otherwise have their actions recorded, is a fluid concept. Capacity is a sliding scale; some 15 year olds may be able to provide a clearer sense of capacity than some 17 year olds. The qualification that 'journalists have a responsibility to consider carefully the age and capacity of the child to consent' reflects this consideration.

In a meeting with the Office of the Children's Commissioner, Gillick competency was raised as a useful test for determining when a child has given consent. The test comes from a medical case heard by the High Court of England and Wales, *Gillick v West Norfolk* 1984.⁴⁴ *Gillick* competency means that 'whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent'. While a useful threshold for considering a minor's capacity, IMPRESS considered it may be confusing to apply a test reserved for medical decision-making to journalistic decisions.

Responsible adult

A responsible adult includes a parent, other legal guardian or adult with sufficient legal

authority over a child's welfare at a particular time, for instance, a child's school teacher or school principal while the child is in the welfare of a teacher or principal. A responsible adult will also be taken to be a person holding some law enforcement authority such as a police officer. For instance, during a police missing person's investigation, journalists may wish to identify a child without the consent of a parent or guardian. In this case, a police officer who circulates a report about a missing child or missing family, may be taken to be a 'responsible adult' for the purpose of Clause 3.1. We decided to use the term 'responsible adult' rather than guardian as it provides greater scope to consider the judgement of these other adults who may have responsibility for a child, or an interest in their wellbeing, at a particular time.

Images

Some stakeholders were concerned that the scope of Clause 3.1 in the draft Code would prevent publication of general crowd shoots, for instance at protests or other public gatherings, where a child appears in the background of an image and where it is impracticable for a journalist to obtain the child's consent to publish the image.⁴⁵ This was never our intention. The draft clause stated that 'Publishers must only interview, photograph or otherwise record the words or actions of a child under the age of 16 years with the informed consent of the child and a responsible adult'. For clarification, we have included the following line in the final code: 'Unless there is a detriment to the safety and wellbeing of a child, this provision does not apply to images of general scenes'.

This clause is complemented by Clause 7.1 which requires publishers to respect a person's reasonable expectation of privacy. There may, arguably, be instances where a child has a reasonable expectation of privacy in a public place that would mitigate against the publication of a photograph of a general street scene where that child was incidentally included in the background.

Further, some stakeholders proposed that Clause 3 should include a requirement that news publications not publish graphic images that may shock or distress children.⁴⁶ In response to our survey, 86% of respondents agreed that this should

⁴⁴ The National Society for the Prevention of Cruelty to Children (NSPCC) references the *Gillick* test as a way to guide 'professionals working with children who need to consider how to balance children's rights and wishes with their own responsibility to keep children safe from harm': <https://www.nspcc.org.uk/preventing-abuse/child-protection-system/legal-definition-child-rights-law/gillick-competency-fraser-guidelines/>

⁴⁵ Anonymous 1; Anonymous 3; Anonymous 8; Saddleworth News; National Union of Journalists; Hacked Off.

⁴⁶ Article 19; NotBuyingIt!

be a requirement for publishers, citing distressing images such as the body of Alan Kurdi as examples where children may be traumatised by such images. Alan Kurdi was the three-year old boy who tragically drowned in the Mediterranean in 2015. Publication of an image of his body on a Turkish beach were circulated around the world.

NotBuyingIt also raised the issue of children's exposure to images that objectify women, including pornographic images in some publications that carry news content and are sold in news agents. Unlike broadcasting regulation, there is no 'watershed' (the BBC's Code stipulates that outside the hours of 5:30am to 9:00pm, all television content must be suitable for a general audience). The IMPRESS Code does not require publishers to refrain from publishing violent, provocative or offensive images, although laws on inciting violence and pornography legislation apply. Depending on the precise subject matter of the images, clauses on discrimination, harassment and privacy may also apply.

Jigsaw identification of children

Some stakeholders highlighted the importance of requiring publishers not to identify children under the age of 16 through 'jigsaw identification'.⁴⁷ We always intended to capture such methods of identification under Clause 3 and to this end, the Guidance on Clause 3.2 explains that publishers must 'take care not to indirectly identify children'.

Duty to consider the welfare of the child

The Code sets an important qualification to the requirements in Clauses 3.1 and 3.2. In addition to gaining the consent of a child or responsible adult, a publisher must ensure that their actions are not 'detrimental to the safety and wellbeing of the child'. This caveat is a further way of protecting children from exploitation or other harms.

The Guidance explains the concept of 'safety and wellbeing' as considering a child's physical, emotional and social wellbeing. This consideration should focus on the immediate lives of children but also consider their future lives. When considering the wellbeing of a child who is involved in a news story, publishers should note the context and nature of a news story; the

level of emotional involvement required from the child; and the vulnerability of the child to being exploited or misrepresented in the news publication. For instance, when reporting on a tragic or traumatic incident such as a violent crime, emergency event or natural disaster, journalists should be aware of the vulnerability of children. The qualification that 'journalists have a responsibility to consider carefully the age and capacity of the child to consent' reflects this consideration. Even where a young person is over the age of 16, publishers should remain mindful of a person's vulnerability. A person's vulnerability may be intrinsic, for instance where English is their second language, or may relate to situational vulnerability, for instance where the person is discussing a distressing experience.

Some stakeholders advocated a 'best interests' test instead of 'safety and wellbeing'.⁴⁸ 'Best interests' is used in the Convention on the Rights of the Child 1991 (CRC). General comment No. 14 (2013) on 'The right of the child to have his or her best interests taken as a primary consideration' provides that 'the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognised in the concept of 'safety and wellbeing' which may relate more specifically to the physical safety of a child and the emotional and psychological consequences of being involved in a news story or named in a news story'.⁴⁹

However, we decided that a best interests test may impose too high a burden on journalists to determine what is 'good' or 'beneficial' for a child. This is a standard applied by courts in cases concerning children where their "best interests" are paramount. We felt it would be too onerous to apply such a standard to journalists.

Requests for anonymity in Clause 3.3

This clause addresses the potential risks posed by online news content naming specific children where that content may negatively affect their wellbeing. This is a relatively new phenomenon as people's understanding of the longevity of comments and images uploaded to the internet has developed in recent years. At the same time, in drafting this clause, we were conscious of the risk of imposing a restrictive requirement for

⁴⁷ Children's Rights Alliance for England; Hacked Off; ECPAT UK.

⁴⁸ Faith Gordon; Children's Rights Alliance for England.

⁴⁹ General comment No. 14 on the Convention on the Rights of the Child (2013) on 'The right of the child to have his or her best interests taken as a primary consideration' (art. 3, para. 1).

publishers to anonymise or remove content on request. That is why the clause is discretionary in nature, directing publishers to reasonably consider a request to take down or anonymise news content. The discretionary nature of the clause also recognises the practical difficulty of amending archived stories.

This clause was challenged by other stakeholders who felt it may be impracticable and a burden on freedom of speech.⁵⁰

There are comparable clauses in the press codes of other countries. For instance, the Netherlands Press Council's Code provides that 'when journalists are requested to anonymise archived articles or to remove these, then in exceptional cases only will they set aside the public interest of archives having the highest level of completeness and reliability for the private interests of the one who makes the request'. Clause 3.3 is similar in nature as it only applies in exceptional circumstances where a

person's request for anonymity conveys a genuine sense that their reputation has suffered, or could suffer, from the continued accessibility of the article.

Media Wise questioned whether the requirement to reasonably consider requests would include content that refers to mere 'youthful indiscretions'. The Guidance explains that the clause relates to more serious information about a person. The Guidance includes a non-exhaustive list of factors to be considered by a publisher when assessing a request.

Some felt that the clause should attract a public interest justification.⁵¹ However, the clause provides publishers with significant discretion to consider matters including any difficulty in amending an archived story, the public interest value of the story, the degree to which anonymising the news story would detract from the meaning of the story, and the harm posed to the individual concerned by their continued identification.

⁵⁰ Hacked Off, National Union of Journalists.

⁵¹ Article 19.

4. DISCRIMINATION

- 4.1.** Publishers must not make prejudicial or pejorative reference to a person on the basis of that person's age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion, sex or sexual orientation or another characteristic that makes that person vulnerable to discrimination.
- 4.2.** Publishers must not refer to a person's disability, mental health, gender reassignment or identity, pregnancy, race, religion or sexual orientation unless this characteristic is relevant to the story.
- 4.3.** Publishers must not incite hatred against any group on the basis of that group's age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion, sex or sexual orientation or another characteristic that makes that group vulnerable to discrimination.

Aim

This clause aims to protect individuals and groups attacked in the media on the basis of their personal characteristics. In relation to groups, the clause aims to prevent incitement to hatred of a group based on the group's characteristics. In so doing, Clause 4 recognises the capacity of discriminatory language in news stories to contribute to negative public discourse.

Background

In his Report into the Culture, Practices and Ethics of the Press, Lord Justice Leveson grappled with the challenge of what he called 'discriminatory reporting', where women and minority groups are singled out for hostile treatment by some news publishers. Leveson noted that the standards code

upheld by the Press Complaints Commission (PCC) prohibited reporting that includes 'prejudicial or pejorative' references to an individual, but did not regulate discriminatory reporting of groups. He asked whether this distinction was appropriate.⁵²

Leveson heard a substantial amount of evidence from individuals and rights-based groups relating to the 'allegedly discriminatory treatment of women and minorities in the press'.⁵³

Leveson discussed the correlation between 'unacceptable press practices' that amount to discriminatory news reporting and the wider effects of such reporting in contributing to harmful public discourses. For Leveson, the issue was 'whether an unethical culture, and concomitant practices, have existed within the press in relation to the discrimination and the

⁵² For more on this, see J Heawood and B Morris (2016) 'Press Codes and the Spirit of Equalities Legislation: Implementing Leveson', *Journal of Communications Law*.

⁵³ Leveson Inquiry, vol II, pt F, ch 3, [2.26], p. 478.

⁵⁴ Leveson, vol IV, pt K, ch 9, [2.5], p. 1797.

⁵⁵ New Zealand Press Council's Statement of Principles, cl 7; Irish Press Council's Code of Practice, principle 8; South Africa Press Council, cl 5.1; National Union of Journalists (NUJ) Code of Conduct, cl 9; Norwegian Press Association Norway Code of Ethics, cl 4.3; Danish Press Council: the Press' Ethical Rules; Code of Ethics of the Austrian Press, cl 5.4 and 5.5; German Press Council, cl 12.

⁵⁶ South Africa Press Council, cl 5.2.

treatment of women and minorities, in particular by demonstrating and fostering prejudice, unfairness and lack of respect and dignity, and failing to avoid prejudicial or pejorative reference to individuals' race, colour, religion, transgender, gender, sexual orientation or disability'.⁵⁴

Press codes in comparable jurisdictions include discrimination clauses,⁵⁵ and some, including the press code of South Africa, regulate hate speech.⁵⁶

Engagement and decision

A range of stakeholders supported a discrimination provision aimed at curbing the publication of pejorative and prejudicial references to persons on the basis of their personal characteristics.⁵⁷ Many stakeholders supported the wider aims of this clause in curbing the spread of damaging public discourse. For instance, the Equalities and Human Rights Commission wrote in its submission that discriminatory reporting can 'legitimate divisive negative stereotypes and stoke enmity' towards certain groups.

Pejorative and prejudicial reference to an individual

The initial draft of the Standards Code only referred to 'pejorative' discrimination. Several stakeholders favoured the addition of 'prejudicial reference' in Clause 4.1.⁵⁸ On reflection, we agreed that it was important to include 'prejudicial' as there is a distinction between pejorative and prejudicial. 'Prejudicial' language includes linking a person's protected characteristics to their capacity to achieve particular outcomes or access a particular opportunity like a job. 'Pejorative' language is adverse or derogatory language based on a person's protected characteristics.

Article 19 opposed the inclusion of Clause 4.1 on the grounds that the term 'pejorative' may be 'too vague and open to subjective interpretation'.⁵⁹ However, we will only accept complaints where the comments are genuinely pejorative, not merely broadly offensive.

The Equalities and Human Rights Commission and Article 19 underscored the importance of safeguarding the right to freedom of expression, enshrined in article 10 of the European Convention on Human Rights (ECHR), cautioning against any clause that may conflict with the right to freedom of speech in article 10. Clause 4.3 does not restrict the right to offend, shock or disturb; rights that have been interpreted as receiving protection under article 10.⁶⁰

Article 19 also suggested that the discrimination provision should include an explicit obligation on news publications to promote equality and non-discrimination. We consider that the clause adequately promotes non-discrimination. On the former requirement - the promotion of equality in news content - we do not consider it appropriate to impose positive content obligations on news publications.

We agree with the views of some stakeholders, like Raymond Starkey, who noted that context and background will be central to determining whether a new story is prejudicial or pejorative.

Protected characteristics

Submissions considered the range of protected characteristics identified in Clause 4. In Clause 4.1, we adopted the list of protected characteristics used in the Equalities Act 2010 as a useful starting point to identify attributes that may make a person vulnerable to discrimination.⁶¹

Several stakeholders drew our attention to a range of characteristics that are not identified in Clause 4. Some stakeholders raised a person's legal status including their immigration status.⁶² Others raised a person's socio-economic status, including whether a person is a welfare recipient.⁶³ Some stakeholders advocated for the inclusion of mental health in the list of protected characteristics in Clauses 4.1 and 4.2.⁶⁴ This characteristic did not appear in the draft Code. However, we considered that mental health is increasingly raised in the print media.

57 Zero Tolerance; MEND; Muslim Council of Britain; Terrence Higgins Trust; Equalities and Human Rights Commission; Hacked Off; Trans Media Watch

58 MEND; Muslim Council of Britain; Terrence Higgins Trust; Equalities and Human Rights Commission; Hacked Off; Trans Media Watch.

59 Article 19.

60 *Handyside v United Kingdom* (1976), 49.

61 The Equalities and Human Rights Commission provides material on its website about the meaning of the protected characteristics listed in the Equalities Act 2010: <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

62 Anonymous 6, Anonymous 8.

63 Church Action on Poverty. IMPRESS refers stakeholders to the NUJ's Guidelines for reporting on poverty which were developed in conjunction with Church Action on Poverty: <http://www.church-poverty.org.uk/news/pressroom/stigma/nuj>

64 MIND: Time to Change.

65 This change was supported by a range of stakeholders: Eric Barendt; MEND; Equalities and Human Rights Commission.

There are many identifying characteristics that could make a person or group vulnerable to discrimination. It is not possible to list all of these in the Code. For this reason, we adopted a catch-all provision in Clauses 4.1 and 4.3 that extends the requirement of these sections to 'other characteristics that make a person or group vulnerable to discrimination'.⁶⁵ This was an important decision as it provides scope for complainants who have genuinely experienced discrimination, but the characteristic on which their complaint is based is not listed in the Equalities Act. This takes account of societal changes in attitudes towards particular identifying characteristics – both positive and negative changes – as well as legal changes in the way institutions and the courts understand and define a protected characteristic. An example of this is the classification of obesity as a disability. For instance, the Court of European of Justice (CJEU) in *Kaltoft v Municipality of Billund*⁶⁶ considered whether the health conditions that give rise to obesity fall within the scope of disability discrimination under the EU Directive on establishing a General Framework for equal treatment in employment and occupation.

Irrelevant reference to a person's protected characteristic

The Muslim Council of Britain supported Clause 4.2 with the qualification that reference must be 'genuinely relevant' to the 'core argument of the story'. MEND similarly supported the Clause. Additionally, MEND was encouraged by the reference to 'relevant' reference rather than the adoption of a more 'subjective test' like 'genuinely relevant'.⁶⁷

Hate speech clause

Clause 4.3 is a significant departure from existing press regulation in England, extending protection to groups where a group is maligned in a news story to the extent that it constitutes incitement

to hatred. Some press codes from other countries include hate speech provisions.⁶⁸

While hate speech offences exist in criminal law, we consider Clause 4.3 provides access to justice to members of the public, as well as acting to increase awareness of the issue in the print media.

Hate speech refers to all forms of expression that spread, incite, promote or justify hatred of peoples based on intolerance, and includes insulting, abusive or threatening words related to a protected characteristic.⁶⁹ While the law provides no 'right to offend', courts have found that the right to freedom of expression protects speech that offends, disturbs or shocks.⁷⁰

In considering this clause, we noted that the law defines incitement to racial hatred more broadly than incitement to hatred on grounds of religious belief and sexual orientation.⁷¹ This was because of the importance of allowing for free and vigorous debate on all matters concerning religious belief, observance and practice and on matters of sexual morality and of respecting the freedom of traditional religious communities to, for example, voice their convictions that any sex outside heterosexual marriage is sinful.

Some stakeholders were concerned that the threshold for making a claim under Clause 4.3 was too high.⁷² The NUJ favoured a lower threshold of 'denigrating groups based on their protected characteristics'. Trans Media Watch favoured extending the clause to abuse. Hacked Off similarly favoured 'level abuse at' or 'publish unjustified prejudice against'. The Terrence Higgins Trust favoured 'publish unjustified prejudice against a group'. Media Wise argued that given incitement to hatred is a criminal offence under the law of England and Wales, the Code should instead prohibit the 'publication of material that is prejudicial to the safety or personal integrity of an individual or group'.⁷³

⁶⁶ *Kaltoft v Municipality of Billund*, European Court of Justice (Fourth Chamber), 18 December 2014, C 354/13.

⁶⁷ MEND.

⁶⁸ South Africa Press Council, cl 5.2; Macedonia's Code of Journalists.

⁶⁹ For more on hate speech, see, for example, Article 19 (2015), 'Hate Speech explained – a toolkit', policy report. Accessed 10 March 2017 at: <https://www.article19.org/resources.php/resource/38231/en/%E2%80%98hate-speech%E2%80%99-explained:-a-toolkit>

⁷⁰ *Handyside v United Kingdom* (1976), 49.

⁷¹ See, for instance, section 29J Racial and Religious Hatred Act 2006. While some stakeholders were critical of the difference in treatment between race and religion in Clause 4.2 (see, MEND submission), IMPRESS has aimed for consistency with the law to ensure understanding by publishers and to allow for legitimate comment on religion.

⁷² NUJ, Muslim Council of Britain; Trans Media Watch; Hacked Off; MEND.

⁷³ Media Wise.

⁷⁴ Hacked Off; Zero Tolerance; Not Buying It!

⁷⁵ The end Violence against Women Coalition pointed to their submission to Leveson about sexism in the media:

<http://www.endviolenceagainstwomen.org.uk/preventing-violence-against-women-media-152>. They also pointed to media guidance for reporting on news stories on the privacy and dignity of survivors and victims of abuse: http://www.endviolenceagainstwomen.org.uk/data/files/T_Handle_With_Care_Media_Guide.pdf

We thought the latter concern was adequately dealt with in Clauses 4.1 and 4.2 in relation to individuals.

Representation of women and girls

Some stakeholders advocated for a separate clause that would regulate the way women and girls are represented in the media.⁷⁴ Zero Tolerance, part of the End Violence Against Women Coalition, argued that the coverage of violence against women and girls should form a stand-alone clause in this Code.⁷⁵ We appreciate the importance of accurate, fair and sensitive reporting on violence against women. The Guidance to the Code includes specific reference to the need to report on criminal proceedings in a way that does not blame a victim. This aims to prevent so-called 'victim shaming' or 'victim blaming'.

Not Buying It! and Hacked Off argued for the inclusion of a clause prohibiting content that objectifies women, including content that stereotypes women, but does not meet the threshold of incitement to hatred. We are sympathetic to this position but do not think it merits a separate clause. While the Code does not regulate for taste and decency, images that

objectify or degrade women and girls may well breach clauses of the Code for instance the harassment and privacy clauses, depending on the context in which the picture was taken and any accompanying text.

Not Buying It! also raised the issue of revenge pornography. Revenge pornography refers to explicit photographs of a person disseminated without that person's consent, normally by a former intimate partner. Clause 5 on harassment and 7 on privacy clearly extend to news content that amounts to revenge pornography.

Public interest

There is no public interest qualification to Clause 4 as we considered there were no circumstances where it is justified to publish pejorative or prejudicial comments about a person based on their personal characteristic, to reference their characteristic irrelevantly, or to publish hate speech about a group based on a characteristic. This position does not conflict with freedom of expression as we make clear that this does not prevent the publication of content that is 'offensive' or 'shocking', in line with European jurisprudence on the limits of free speech.

5. HARASSMENT

- 5.1** Publishers must ensure that journalists do not engage in intimidation.
- 5.2** Except where justified by the public interest, publishers must ensure that journalists:
- a. Do not engage in deception;
 - b. Always identify themselves as journalists and provide the name of their publication when making contact; and
 - c. Comply immediately with any reasonable request to desist from contacting, following or photographing a person.

Aim

This clause aims to preserve the personal rights and interests of individuals and their safety, while safeguarding journalists' capacity to rigorously and fairly investigate news stories. This includes questioning the sources and subjects of those stories. The clause provides a blanket prohibition against intimidation as we consider that there can be no circumstances where it will be justified to intimidate another person.

The three sub-clauses in Clause 5.2 provide additional protection to individuals, subject to a public interest qualification. This qualification recognises that there will be some situations that require journalists to adopt persuasive and relentless techniques to elicit information that is in the public interest. This may be in cases where the subject of a story is a public figure like a politician who has been accused of embezzling public funds. In such cases, it may be warranted for a journalist to repeatedly contact the politician to obtain a response to the serious allegations.

Background

Intimidation is the coercion of a person – physical or verbal – to pressure them to commit some act or disclose information. This may involve harassment where the conduct forms a pattern of behaviour. Under the Protection from Harassment Act 1997, it is an offence for a person to pursue a course of conduct which amounts to harassment of another and which they know or ought to know amounts to harassment. Harassment will occur if 'a reasonable person in possession of the same information would think the course of conduct amounted to harassment'.⁷⁷ Harassing a person includes alarming them or causing distress.⁷⁸

The harassment clause interacts with the privacy clause (CI 7.1), as invasions of privacy will also amount to harassment if they occur on more than one occasion. Harassment often involves intruding into someone's private space and affairs, and perhaps misusing their personal information.

⁷⁶ Protection from Harassment Act 1997, s 1(2).
⁷⁷ Ibid. s 7(2).

Engagement and decision

Requirement not to engage in intimidation

Our public data shows that the British public are strongly in favour of a clause that prohibits behaviour that amounts to intimidation and harassment by journalists. The public were concerned by the harmful affect that such conduct can have on vulnerable people, particularly those suffering from mental illness or those who have experienced a traumatic event such as the loss of a family member. The public identified practices that journalists should follow to avoid behaviour that amounts to harassment, including ceasing to contact a person on request, not entering private property without permission, and always declaring their identity as a journalist when conducting their work.

At the same time, we consulted with investigative journalists who explained the necessity in many circumstances for journalists to be persistent, even dogged, in their pursuit of a story where the story is of critical importance and there is no other way to investigate the source. Members of the public also acknowledged the legitimacy of such techniques in some circumstances. One participant of a Britain Thinks focus group stated, 'They [journalists] should tell you where they are from. But not if it's a politician and they've done something wrong'. Another participant stated, 'There are stories that wouldn't have come out if people [journalists] didn't keep at the same thing over and over again'.

In drafting Clause 5, the Code Committee aimed to strike a balance between these two principles.

There were few responses to this clause. Hacked Off noted the importance of a general prohibition against intimidation in contrast to the Editors' Code of Practice which provides for a public interest justification to the relevant harassment clauses.⁷⁹ While Hacked Off supported the inclusion of this clause in the draft Code, they argued that it should extend to 'duress'. They explained that this would involve situations where a person is pressured to contribute to a news story by a threat that otherwise, some private detail of their life will be exposed by the journalist. We agree that this behaviour is unacceptable, but considered that such wrongs are clearly addressed by the term intimidation which refers to pressure or coercion (such as through blackmail).

Reasonable request to desist from contacting, following or photographing a person

Some stakeholders felt that Clause 5.2.c may be onerous if it prohibits journalists using 'door knocking' or 'doorstepping' techniques.⁸⁰ This involves a journalist contacting individuals, without prior notice, often by simply knocking on the front door of their homes. We understand that such methods may, in limited circumstances, be necessary and appropriate to obtain a comment on a news story. With this in mind, we have developed guidance on the meaning of 'reasonable steps'.

⁷⁸ See, Editors' Code of Practice, cl 3.

⁷⁹ Anonymous 5. Publishers have a duty under the preamble to this Code to make themselves aware of laws that may affect doorstepping, for instance, where it would be contrary to the Protection from Harassment Act 1997. For more on the legality of 'doorstepping', see: Moreham, Nicole and Warby, Sir Mark (ed) (2016) *Tugendhat & Christie: The Law of Privacy and the Media*, 3rd ed, Oxford University Press [1.80].

6. JUSTICE

- 6.1** Publishers must not significantly impede or obstruct any criminal investigations or prejudice any criminal proceedings.
- 6.2** Publishers must not directly or indirectly identify persons under the age of 18 who are or have been involved in criminal or family proceedings, except as permitted by law.
- 6.3** Publishers must preserve the anonymity of victims of sexual offences, except as permitted by law or with the express consent of the person.
- 6.4** Publishers must not make payments, or offer to make payments, to witnesses or defendants in criminal proceedings, except as permitted by law.

Aim

This clause aims to balance the principle of open justice with the rights and interests of persons involved in criminal proceedings. Maintaining the protection of both interests enhances public confidence in the integrity of the criminal justice system. Our qualitative research showed that the public are concerned by news stories that imply a person's criminal guilt or innocence prior to conviction. Members of the public also feel strongly about the need to protect the identity of children involved in criminal proceedings, as well as victims of sexual offences. We aim to reflect these concerns in Clause 6.

Open justice is an importance aspect of a democratic society. We have enshrined this principle of 'open, fair and effective justice' in the list of factors in the public interest exception.

Background

Given the breadth and complexity of court reporting restrictions and the law of contempt, it is neither possible nor desirable to describe the law in detail. We took the decision to develop a Code that meets legal standards, but, in respect of this clause, goes no higher. This is reflected in the caveats in Clauses 6.2, 6.3 and 6.4 that publishers should not act contrary to the law, or, 'except as permitted by law'.

Engagement and decision

Many stakeholders made contributions to the development of this clause.⁸¹ Several stakeholders proposed the inclusion of a separate clause to promote open justice.⁸² While the public interest is undoubtedly served by wide reporting of court proceedings and matters pertaining to the justice system, the degree of journalists' access to court and restrictions on what they can report are a

⁸⁰ Article 19; Raymond Starkey; Anonymous 5; Anonymous 8; Eric Barendt; Claire de Than; Simon Carne.

⁸¹ Article 19; Society of Editors; Transparency Project.

matter for the courts themselves and not for a regulator to proscribe.

In the draft Code, Clause 6.1 required publishers to 'take the greatest care not to prejudice any criminal investigations or legal proceedings, except as permitted by law'. On consideration of stakeholder comments and research into the scope of contempt law, we made two significant amendments to this clause. First, we concluded that, strictly speaking, it would never be permitted at law to prejudice a trial. This reference was removed from the clause. Second, we concluded that it was not strictly accurate to refer to 'prejudicing criminal investigations', rather it is accurate to refer to 'impeding or obstructing criminal investigations'.

Identifying children in criminal proceedings

Clause 6.2 protects the anonymity of children under the age of 18 who are involved in criminal or family proceedings. The Standing Committee for Youth Justice (SCYJ) 'strongly supported this clause' which is in keeping with the CRC's definition of children as persons under the age of 18 years.

The requirement not to identify a child involved in criminal proceedings begins from the point of charge. The SCYJ argued that Clause 6.2 should extend to the pre-charge identification of children who are named as suspects or interviewed by police. The SCYJ described the situation where a child under investigation can, legally, be named before charge as a 'legal loophole' as later reporting restrictions are made somewhat redundant once a child has been identified. We think it would be confusing for journalists and publishers were we to set a different standard from the law.

The law on court reporting in proceedings involving minors is in flux with law reform developing over the course of the code consultation. For instance, we note the recommendation of the Charlie Taylor Review of the Youth Justice System, published in December 2016, that youth reporting restrictions be amended so that they apply 'automatically in the Crown Court, to children involved in criminal investigations and for the lifetime of young defendants'.⁸³

In addition, we note the non-commencement of section 44 of the Youth Justice and Criminal Evidence Act 1999. That section provides that where a criminal investigation has begun into an alleged criminal offence, the identity of any child under the age of 18 cannot be published where that child is 'involved in the offence'. This provision would extend reporting restrictions to the pre-charge identification of any child named, interviewed, or otherwise associated with a police investigation.

We welcome legal and policy development in this area where it provides certainty for journalists and adequate protection for the principle of open justice, while ensuring appropriate protection to children who are engaged in the criminal justice system. Were the law to change in this area, we would make necessary amendments to our Code and Guidance to ensure these documents are consistent with the law.

The Standing Committee for Youth Justice was concerned that the reference to open, fair and effective justice in the public interest justification may conflict with the protection of children's privacy rights when a minor is involved in criminal proceedings.⁸⁴ Clause 6.2 does not, however, attract a public interest qualification, meaning that a failure to observe this clause cannot be justified in the public interest.

An anonymous stakeholder questioned whether Clause 6.2 extended to reporting that indirectly identifies minors. The Guidance explains that indirect identification extends to the 'jigsaw identification' of children within a publication, including using the word incest in relation to an adult who is convicted of a sexual offence as this would identify the child victim.

Another anonymous stakeholder was concerned that Clause 6.2 may unfairly prohibit our publications from reporting on criminal matters involving minors that were not subject to reporting restrictions, pointing to Anti-Social Behaviour Orders as an example. Clause 6.2 is qualified by the caveat of 'except as permitted by law', allowing reporting of criminal investigations involving minors where that is acceptable at law.

⁸² Ministry of Justice (2016) Charlie Taylor's Review of the Youth Justice System, December, Rec 24. Accessed 9 February 2017 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/577103/youth-justice-review-final-report.pdf In the Government's response to this recommendation, the Minister stated that the Government is considering these proposals and consulting with relevant stakeholders. IMPRESS is engaged in these consultations. See, Ministry of Justice (2016) Government Response to Charlie Taylor's Review of the Youth Justice System, December, [66]. Accessed 9 February 2017 at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576553/youth-justice-review-government-response.pdf

⁸³ Standing Committee for Youth Justice.

Victims of sexual offences

The draft Code referred to victims of 'sexual assault'. Claire de Than's submission noted that 'offences' would be a more accurate term to define the range of sex offences that someone may fall victim to.⁸⁵ We considered this a meaningful amendment and adopted this term in the final Code. This position reflects the terminology used at law under the Sexual Offences Act 2003. Under that Act, rape is a separate offence from sexual assault. Victims and alleged victims of rape offences are afforded lifelong anonymity under section 4(1)(a) of the Sexual Offences (Amendment) Act 1976. Similarly, we adopted the recommendations of the Equalities and Human Rights Commission and Transparency Project who suggested that Clause 6.2 in the draft code be separated into two distinct clauses to provide clarity. Clause 6.2 and 6.3 are now separate clauses.

An anonymous stakeholder raised the issue of the consent of victims of sexual offences to be interviewed or provide comment to journalists, noting that under the draft wording of Clause 6.2, publishers would be in breach of the provision even where a person consents to such interaction. We amended this clause to include the express consent of the person as an exception.

Zero Tolerance, a charity that aims to tackle violence perpetrated by men against women, proposed recommendations for the way that journalists report on sexual assaults and other offences. Of particular concern to Zero Tolerance is the perpetuation of myths about victims of sexual offences, namely through 'victim-shaming' and 'victim blaming'. The Guidance to the code provides that 'News reporting should not blame the victims of crime for the criminal conduct of a perpetrator, or insinuate blame for that conduct'.

Trans Media Watch proposed the inclusion of a requirement that publishers not 'make reference

to any characteristic which does not have any direct bearing on the case being reported'.⁸⁶ They drew our attention to news stories where 'a minor offence is reported simply because the individual being prosecuted is trans'. We understand these concerns however, we consider that Clause 4.2 which requires publishers not to refer to a person's protected characteristics unless it is relevant to the story, will appropriately cover the harm described by Trans Media Watch.

The code does not make specific provision for reporting on the identity of defendants in criminal trials. However, as stated in the preamble, we expect our publishers to be aware of, and abide by, the law including but not limited to spent conviction legislation including, for example, the Rehabilitation of Offenders Act 1974. Furthermore, the Guidance provides examples of conduct that may 'prejudice a criminal trial' including making direct allegations of the guilt or innocence of a person, or publishing a defendant's previous convictions or other evidence that is, or would typically be, excluded at trial.

Making payments to witnesses or defendants

We amended the draft code to include 'offers of payment' made by journalists to gain information from a witness or defendant in Clause 6.4.⁸⁷ While stakeholders were generally supportive of this clause,⁸⁸ Article 19 advocated for a stricter clause, favouring one that would prohibit payments to all sources, not just those involved in criminal proceedings. It highlighted the New York Times's editorial policy that is consistent with this position. We understand from consultations with investigative journalists that there may be some circumstances where the payment, or offer of payment, for information to some people (not public officials unless permitted by law), is necessary to adequately cover a news story.

⁸⁴ Claire de Than.

⁸⁵ Trans Media Watch.

⁸⁶ This was also suggested by Professor Eric Barendt.

⁸⁷ Mediawise; Hacked Off.

7. PRIVACY

7.1 Except where justified by the public interest, publishers must respect people’s reasonable expectation of privacy. Such an expectation may be determined by factors that include, but are not limited to, the following:

- a. The nature of the information concerned, such as whether it relates to intimate, family, health or medical matters or personal finances;
- b. The nature of the place concerned, such as a home, school or hospital;
- c. How the information concerned was held or communicated, such as in private correspondence or a personal diary;
- d. The relevant attributes of the person, such as their age, occupation or public profile; and
- e. Whether the person had voluntarily courted publicity on a relevant aspect of their private life.

7.2 Except where justified by the public interest, publishers must:

- a. Not use covert means to gain or record information;
- b. Respect privacy settings when reporting on social media content; and
- c. Take all reasonable steps not to exacerbate grief or distress through intrusive newsgathering or reporting.

Aim

This clause aims to protect a person’s privacy in circumstances where the person has a reasonable expectation of privacy about matters involving their private and family life, home and communications. At the same time, the inclusion of a public interest justification recognises that in some circumstances the public interest in exposing a private detail about a person may override a person’s privacy interests.

Background

Privacy is a personal, dignitary right to be ‘let alone’.⁸⁹ As a fundamental human right, privacy includes

consideration of ‘individual dignity and autonomy; the development and maintenance of relationships; the promotion of health and wellbeing; and protection against the judgement of others’.⁹⁰

The law provides significant guidance on the scope of privacy. A person’s right to privacy is protected in international law by article 17 of the International Covenant on Civil and Political Rights (ICCPR). Article 17(1) provides that ‘no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’.⁹¹

Under European and English law, a person’s right to privacy is balanced with the right to freedom

⁸⁸ Samuel Warren and Louis Brandeis (1890), ‘The Right to Privacy’, *Harvard Law Review*, vol. IV, no. 5.

⁸⁹ *Moreham & Warby* (2016), [2.54].

⁹⁰ The UN Human Rights Committee offers guidance to article 17 in General Comment No. 16: General Comment No. 16 Article 17, (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation).

of expression. Under the European Convention on Human Rights (ECHR), this involves a balance between articles 8 and 10 which were incorporated into English law by the Human Rights Act 1998.⁹² Data protection legislation,⁹³ the criminal law and a range of civil actions also provide protection to individuals where their privacy is invaded.⁹⁴

Generally, there are two ways that a person's privacy can be invaded. These two types of invasion are covered by Clause 7. First, it covers the misuse of private information such as the publication of a person's medical record without their consent. Data breaches that disclose a person's private information are covered by the meaning of 'privacy'. The Information Commissioner's Office, an anonymous stakeholder and Sally Broughton Micova suggested that IMPRESS should refer explicitly to a publisher's obligations under the Data Protection Act 1998. We agreed with this suggestion and have specifically referenced data protection in the Guidance on Clause 7.

The second type of invasion covers situations where a person's intimate space is violated through some action, such as a long lens camera being used to take a photograph of a person changing clothes in their bedroom. Further examples of such behaviour are provided in *Tugendhat and Christie's The Law of Privacy and the Media*: 'surreptitiously videoing people in their homes or offices, relentlessly pursuing them for an interview or photograph, hacking their voicemail messages, or using a bugging device to record their conversations'.⁹⁵ Such behaviour, if conducted by a journalist, may also engage the harassment clause in this code.

Privacy is one of the most common clauses in press codes around the world. Of the press codes analysed as part of our comparative research, only 8 do not include stand-alone privacy clauses. The

Australia Press Council's (APC) Code of Conduct, for example, protects a person's 'reasonable expectation of privacy'. Clause 5 of the APC's Code of Conduct asks news providers to 'avoid intruding on a person's reasonable expectations of privacy, unless doing so is sufficiently in the public interest'. Other codes adopt a rights-based approach to the protection of a person's privacy.⁹⁶ For instance, Clause 2 of the New Zealand Press Council's Statement of Principles provides that 'everyone is normally entitled to privacy of person, space and personal information, and these rights should be respected by publications'. It is also common across codes for this right or expectation of privacy to be balanced with a public interest in the publication of an item of news, or an action taken by a journalist.⁹⁷

In our survey, the British public ranked privacy highly as a value that must be protected in an ethical standards code, with 80% saying that privacy should be protected through rules such as requiring journalists to gain consent from a subject before publishing photographs of that person. Participants in our public workshops understood the importance of striking a balance between a person's right to privacy and considerations of whether a story is in the public interest. For instance, one participant stated: 'If someone doesn't want you to take pictures of them or write about them and it doesn't affect the public, then they should have that right to privacy'. This anecdotal evidence demonstrates public awareness of the need to balance these two important, and sometimes conflicting, interests.

Engagement and Decision

Reasonable expectation of privacy

The term 'reasonable expectation of privacy'⁹⁸ is used in English law and comparable jurisdictions

91 Human Rights Act 1998, s1.

92 Data Protection Act 1998.

93 For instance, harassment is a criminal offence and may give rise to a civil claim for compensation under the Protection from Harassment Act 1997.

94 *Moreham & Warby* (2016), [10.01].

95 New Zealand Press Council's Statement of Principles; Irish Press Council's Code of Practice; South Africa Press Council; Cambodian Centre for Independent Media, Code of Ethics; Namibia Ombudsman: Code of Ethics for the Namibian Media; Albanian Media Institute: Albania Code of Ethics; Serbian Journalists Code of Ethics; The Editors Guild of Sri Lanka: Code of Professional Practice; Media Council for Self-Regulation: Codex of Montenegrin Journalists; Bahrain Code of Ethics; Press Council of Nepal: Code of Journalistic Ethics; Finland Council for Mass Media: Guidelines for Journalists; Society of Professional Journalists (USA); Indonesian Press Council's Code of Ethics; Indonesian Press Council's Code of Ethics; Code of Ethics of the Journalists Circle of Bogota; Brazilian National Association of Newspapers Code of Conduct; German Press Council; Code of Deontology, Press Council of Luxembourg.

96 New Zealand Press Council's Statement of Principles, cl 2; Irish Press Council's Code of Practice, cl 5.2; South Africa Press Council, cl 3.2; National Union of Journalists (NUJ) Code of Conduct, cl 6; Cambodian Centre for Independent Media, Code of Ethics, cl 5.2; The Georgian Charter of Journalistic Ethics, cl 10; Albanian Media Institute: Albania Code of Ethics; United Arab Emirates Code of Ethics, cl 8; The Editors Guild of Sri Lanka: Code of Professional Practice, cls 7.1 & 7.2; Rwandan High Media Council: Code of Ethics, art 6; Nigeria Code of Ethics for Journalism, cl 1; Danish Press Council: the Press' Ethical Rules; Press Council of Nepal: Code of Journalistic Ethics, cl 6; Finland Council for Mass Media: Guidelines for Journalists, cl 27; Guardian newspaper's Code of Ethics; Code of Ethics for Press, Radio and Television in Sweden, cl 7; Cyprus Journalists' Code of Ethics; Israel's Rules of Professional Ethics of Journalism; Code of Professional Principles adopted by the Press Council of Turkey; Indonesian Press Council's Code of Ethics, art 9; Nepal Code of Journalistic Ethics, cl 6; The Lima Principles of the Press Council of Peru; Brazilian National Association of Newspapers Code of Conduct; Code of Ethics of the Austrian Press, cl 6; Code of Ethics for the Estonian Press, Estonian Press Council, cl 1.5; German Press Council, s 8; Code of Deontology, Press Council of Luxembourg; Iceland Rules of Ethics in Journalism, cl 7; Code of Ethics of Lithuanian Journalists and Publishers, art 22; Portugal's Journalists' Code of Ethics, art 9.

97 *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457, [21] (Lord Nicholls); [134] (Baroness Hale).

to explain the circumstances that give rise to a person's right to privacy. Whether a person has a reasonable expectation of privacy will be specific to the circumstances of a particular news story.

Professor Eric Barendt challenged the effectiveness of the term, writing that in his opinion, it is a 'problematic concept'.⁹⁹ He wrote that it 'enables tribunals to consider factors at the first stage of a privacy case - whether the claimant's privacy rights are in issue - which should be considered at the second stage - when those rights are balanced against freedom of speech, or the public interest'. We seriously considered this potential risk. Several Code Committee members have written academic articles on the subject.¹⁰⁰

Ultimately, we consider that it is possible to adopt an approach that does not conflate the two stages when assessing whether a person has a reasonable expectation of privacy, and then, if established, whether this expectation is outweighed by the public interest in disclosing the relevant private information. This approach has been adopted by courts in England and Wales and the ECtHR when balancing article 8 (freedom of expression) and article 10 (privacy).¹⁰¹ This is summarised in Lord Steyn's explanation of the two stages in *Re S*:

*'First, neither article [8 or 10] has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test.'*¹⁰²

Factors that may give rise to a reasonable expectation of privacy

In some cases, it will be clear that a person had a reasonable expectation of privacy, such as on publication of an intimate photo of them that was not intended for public distribution. In other cases, it may be less clear. We included a list of non-exhaustive factors in Clause 7.1 to provide practical guidance to publishers and members of the public on what may give rise to a person's 'reasonable expectation of privacy'.

Some stakeholders were critical of the inclusion of some factors, notably 'age' and 'occupation'.¹⁰³ English courts have concluded that when considering whether a person had a reasonable expectation of privacy in misuse of private information cases, the court will consider the 'attributes' of a claimant.¹⁰⁴ Such attributes may include a person's age. For instance, it has been established that a child may have a heightened expectation of privacy in certain circumstances where revelation of private information about them or their parents, such as the fact that one of their parents is conducting an extra-marital affair, may result in a child being ridiculed, leading to significant distress.¹⁰⁵ A person's occupation may be relevant to whether they had a reasonable expectation of privacy in circumstances where they are a 'public figure' such as a sports star. Further, the revelation of specific, private information about a person's occupation, where it involves sensitive or controversial issues such as dealing with classified information or rehabilitating convicted paedophiles, may give rise to a reasonable expectation of privacy.

Some stakeholders questioned the practicality of factor (e) that considers 'whether the person had voluntarily courted publicity on a relevant aspect of their private life'.¹⁰⁶ Considerations of

98 Professor Barendt has written academic articles on this topic. See for instance, E Barendt (2016) 'Problems with the reasonable expectation of privacy test', *Journal of Media Law*, 8.2, 129-137.

99 See, for instance, Wragg P, 'Protecting Private Information of Public Interest: Campbell's Great Promise, Unfulfilled', *Journal of Media Law*, 7.2 (2015), 225-250; Phillipson, G (2016) 'Press Freedom, the Public Interest and Privacy' in *Comparative Defamation and Privacy Law*. Kenyon, A Cambridge University Press, 136-63.

100 Kirsty Hughes and Neil Richards in Andrew Kenyon (ed) *Comparative Defamation and Privacy Law*, Cambridge University Press, [9.3.2].

101 *Re S* ([2005] 1 AC 593 [17].

102 Hacked Off.

103 *Murray v Express Newspapers plc* [2011] UKSC 4, [35].

104 In *Murray v Express Newspapers*, the Court of Appeal noted that while children do not have a 'guarantee' of privacy, the 'attributes of a claimant' including their vulnerability on account of age, should be considered by a court: [58].

105 Hacked Off.

106 Anonymous 5; Article 19.

the conduct of a person prior to publication are considered in such tests, as a person can generally not expect privacy if they have freely consented to the disclosure of private information. This is slightly different from considering whether the information is in the public domain; it is concerned with how that information came to be in the public domain rather than the mere fact it is public.

Respect privacy settings on social media

Some stakeholders raised questions about how, practically, journalists should 'respect' a person's privacy settings.¹⁰⁷ An anonymous stakeholder argued that this requirement was impractical as a 'private post or status could be a screenshot by an associated individual and then reposted and shared. If it is newsworthy, should a publication signed up by IMPRESS avoid publication? If it is out there, it is out there'. We considered that in circumstances where a person has restricted their privacy settings, then even if a post enters the public domain, for instance through dissemination of a screen shot, publishers should consider whether publication of the post would be an invasion of the person's privacy. It should not be taken for granted that once something is in the public domain, it can be treated as public property.

Article 19 suggested that, 'given the changing and uncertain nature of privacy settings on social

media', IMPRESS should not propose Clause 7.2.b but rather extend the meaning of 'reasonable expectation of privacy' to cover social media. We considered that Clause 7 was already inclusive of social media content where for instance, a person uses private messaging functions within Twitter or Facebook. Were a publisher to access such messages and publish their contents without the consent of the affected party, this would be likely to constitute a breach of someone's reasonable expectation of privacy. However, we thought there was merit in a stand-alone clause that addresses the privacy risks of disclosing content taken from social media, particularly where there is some intention by the creator to maintain privacy settings. Clause 7.2.b draws publishers' awareness specifically to social media, highlighting the fact that third parties are increasingly re-posting or sharing material from social media without the consent of the original creator. In some circumstances, this may lead to adverse consequences for the creator, such as where they post material without an intention for it to be viewed publicly. One anonymous stakeholder submitted that where a person posts content to social media, they should automatically lose their expectation of privacy. However, another anonymous stakeholder acknowledged that the effect of social media is that such platforms 'take the information far further than an ordinary member of the public may ever have imagined'.

8. SOURCES

- 8.1** Publishers must protect the anonymity of sources where confidentiality has been agreed and not waived by the source, except where the source has been manifestly dishonest.
- 8.2** Publishers must take reasonable steps to ensure that journalists do not fabricate sources.
- 8.3** Except where justified by an exceptional public interest, publishers must not pay public officials for information.

Aim

This clause focuses on the reliability and credibility of sources. As the responsibility is on a publisher to protect sources, this clause protects journalists from pressure exerted by publishers or others to name sources. The clause also prohibits the fabrication of sources. This is an important principle to ensure trust and accuracy in reporting, and as such, Clause 8 complements Clause 1.1. In the age of 'fake news', the reliability, and even very existence, of sources is being increasingly questioned. Press standards that promote transparency while protecting legitimate sources are an important mechanism to curb the rise of hoax news and misleading reporting.

Background

Many newspapers have adopted strict positions on the use of anonymous sources including the New York Times whose editorial policy requires a managing editor to be informed of the identity of all confidential sources. The paper's policy is that anonymity should be 'a last resort, for situations in which The Times could not otherwise publish information it considers newsworthy and reliable'.¹⁰⁸ Similarly, the Guardian's Editorial Code provides a detailed explanation of the use

of anonymous and confidential sources, including outlining the risks that can arise from the over-reliance on anonymous sources including the risk that journalists fabricate sources: 'We recognise that people will often speak more honestly if they are allowed to speak anonymously. The use of non-attributed quotes can therefore often assist the reader towards a truer understanding of a subject than if a journalist confined him/herself to quoting bland on-the-record quotes. But if used lazily or indiscriminately anonymous quotes become a menace. We should be honest about our sources, even if we can't name them.... Articles commissioned by GNM should be published anonymously or pseudonymously only in exceptional circumstances, for example where the author's safety, privacy or livelihood may be compromised, and only with the permission of the relevant editor or managing editor'.¹⁰⁹

The issue of the authenticity of sources pre-dates the recent phenomena of fake news. Gossip columns in news publications have for years relied on opaque references to 'sources close to the celebrity' to substantiate gossip and innuendo. In his report, Lord Justice Leveson referred to the anonymity of confidential sources in the context of inaccurate news articles, concluding that the 'use of anonymous sources can lead

¹⁰⁷ Margaret Sullivan 2016. 'Tightening the Screws on Anonymous Sources', New York Times, 15 March. Accessed 27 October 2016 at: <http://publiceditor.blogs.nytimes.com/2016/03/15/new-york-times-anonymous-sources-policy-public-editor/>

¹⁰⁸ Guardian Editorial Code 2011, cl 1.

to an inability to assess whether the source is reliable, or even exists'.¹¹⁰ Professor Eric Barendt in his book, *Anonymous Speech*, considered how publishers might responsibly evaluate information from anonymous sources. He concluded that verification of the accuracy and reliability of a source is central to this process.¹¹¹ This conclusion highlights the interaction between Clause 1.1 on Accuracy and Clauses 8.1 and 8.2.

Clause 8.3 is informed by the development of the Bribery Act 2010 and Operation Elveden, the police investigation into the payment of corrupt public officials by journalists for information. Sections 1 and 2 of the Act criminalise the offering, promising or giving of a bribe, and the requesting, agreeing to receive or accepting of a bribe.

Engagement and decision

Authenticity and confidentiality of sources

Stakeholders strongly supported the protection of confidential sources in a new Code.¹¹³ Some argued that the wording of Clause 8 in the draft Code should be enhanced to better protect confidential sources.¹¹⁴ The draft clause required publishers to 'take care to protect confidential sources'. In response to these submissions, we adopted a more definitive wording, requiring publishers to 'protect confidential sources'.

Professor Eric Barendt argued that 'it may sometimes be right to name a source, despite a promise of confidentiality, when it is clear that the source has been dishonest or manipulated the journalist'.¹¹⁵ He wrote that, as 'a matter of principle, reporting should be truthful and fair to anyone charged in an article or broadcast with culpable behaviour; this entails responsibility in the use of anonymous sources'.¹¹⁶ We considered this was an important caveat to Clause 8.1 to distinguish between sources that disclose information they reasonably believe to be accurate, and those that do not act in good faith but mislead journalists and the public for their own ends. In his book *Anonymous Speech*

Professor Barendt offers a useful example to explain his point:

*'A senior Conservative Party back-bencher provides a newspaper with a story to the effect that a Conservative Government minister is engaged in corrupt behaviour. The newspaper publishes the story, but it subsequently becomes clear to its journalists that it is largely false and that the source acted out of spite ... In these circumstances, the newspaper would surely be right to identify its source ... His identity is crucial to a full account of the story.'*¹¹⁷

Clause 8.2 reinforces our belief in the importance of dependable information. Requiring publishers to take reasonable steps to ensure that journalists do not fabricate sources means that concocted or falsified sources like the 'friend of the celebrity' cannot be relied on unless there are reasonable grounds for the publisher to believe the source is legitimate.

Article 19 argued that the clause should be strengthened to protect the identity of whistleblowers who provide information to journalists on a confidential basis. We agree with Article 19 that they 'form an integral part of freedom of expression and indeed the right to freedom of information'.¹¹⁸ We consider that whistleblowers would be protected by Clause 8.1 which provides general protection for sources where confidentiality has been agreed to and not waived by the source.

The Trust Project argued that the Code should require publishers to state the source of 'significant facts'. This is an interesting proposal and in line with the developments in US editorial policies at publications such as the New York Times, explained above. We have decided not to set prescriptive standards for news publications. Such measures, if adopted, are fundamentally an editorial decision for publishers but may go to whether a publisher has taken 'reasonable steps not to fabricate sources' under Clause 8.2.

¹⁰⁹ Leveson, vol II, pt F, ch 6, [9.14].

¹¹⁰ Barendt, 2016: 119.

¹¹¹ National Union of Journalists; Jane Winter; Transparency Project; Article 19; Anonymous 5.

¹¹² Article 19; National Union of Journalists; Transparency Project.

¹¹³ For more on this, see *Anonymous Speech* (Hart, 2016): 118-119.

¹¹⁴ Barendt, 2016: 115.

¹¹⁵ *Anonymous Speech* (Hart, 2016): 119.

¹¹⁶ Article 19.

¹¹⁷ Jane Winter.

Paying public officials for information

Several stakeholders supported a clause requiring publishers not to pay public officials for information.¹¹⁹ The Guidance explains that this clause is not intended to cover legitimate payments to public officials such as payments required for Freedom of Information (FOI) or land title requests. The Bribery Act 2010 does not include a public interest defence, though the Crown Prosecution Service (CPS) will consider the public interest in a person's conduct when deciding whether to pursue a prosecution under the Act. When considering the blanket prohibition on payments to public officials, Lord Justice Leveson in his report acknowledged 'the argument that no journalist should be put in peril of being guilty of crime when he or she is pursuing a story, the publication of which will be in the public interest'. He went on to write that, 'The vital significance of the role of the press in holding power to account (and by publishing

stories that uncover misconduct about which the public is entitled to know) can only be encouraged by complete protection from the risk of criminal prosecution'.¹²⁰

We consider that there may be circumstances where a journalist has no alternative course of action but to pay a public official for information when pursuing a story that is of significant or special public interest. This rationale informed the decision to include an 'exceptional public interest' justification to Clause 8.3 to allow for extraordinary circumstances where paying a public official is a last resort to secure information that is central to a public interest story and which could not have been obtained through some other method. This does not, however, allow for payment to witnesses or defendants in criminal proceedings as this would undermine the rule of law and conflict with Clause 6.4 of this Code.

¹¹⁸ Leveson, vol. IV, part J, ch 2, [6.3], p. 1491.

9. SUICIDE

9.1 When reporting on suicide or self-harm, publishers must not provide excessive details of the method used or speculate on the motives.

Aim

This clause aims to reduce the publication of irresponsible and harmful reporting of suicide and self-harm that may cause individuals, particularly vulnerable people, to imitate that behaviour. Clause 9 is informed by evidence-based recommendations from stakeholders who produce best practice guidance on media reporting of suicide and self-harm. At the same time, this clause does not impose a ban on reporting of suicide, self-harm and other issues associated with mental health. On the contrary, we recognise the important role of the media in raising awareness of such issues, when done with sensitivity and care.

Background

Longitudinal research from the World Health Organisation (WHO) shows that providing excessive or inordinate details about suicides and self-harm can lead to imitative behaviour.¹²¹ At the same time, the WHO emphasises the importance of accurate and proportionate media reporting on these issues to generate positive discussions about mental health. The WHO's 2008 paper, 'Preventing Suicide: a resource for media organisations', highlighted the balance between risk of imitation and promoting positive engagement with mental health issues in the press:

*'On the one hand, vulnerable individuals may be influenced to engage in imitative behaviours by reports of suicide, particularly if the coverage is extensive, prominent, sensationalist and/or explicitly describes the method of suicide. On the other hand, responsible reporting may serve to educate the public about suicide, and may encourage those at risk of suicide to seek help.'*¹²²

The Samaritans' Media Guidelines for Reporting Suicide show that identifying specific public locations where people have committed suicide, such as certain bridges or railway tracks, can result in increases in attempted suicides at such locations.¹²³

Engagement and decision

Given the evidence highlighted in previous paragraphs showing a correlation between irresponsible press reporting of suicides and imitative behaviour, IMPRESS drafted a clause that focuses on not providing 'excessive detail' and 'speculation as to motives', noting these are the two most serious correlative factors in imitative behaviour.

In their submission to us, MIND noted that speculating on a person's motives can be dangerous as it may suggest to others that certain

119 World Health Organisation (WHO) 2008, 'Preventing Suicide: a resource for media professionals'. Accessed 16 February 2017 at: file:///server1/USERS/brigit/Desktop/resource_media.pdf

120 Ibid, p. 5.

121 Samaritans 2013, 'Media Guidelines for Reporting Suicide'. Accessed 16 February 2017 at <http://www.samaritans.org/media-centre/media-guidelines-reporting-suicide>.

feelings or behaviour will result in self-harm or even suicide. MIND and the Samaritans also raised the use of inappropriate and sensational language to describe methods, locations or patterns of suicidal behaviour, including 'social contagion' and 'suicide hotspot'. We recognise the valuable work of groups like the Samaritans and MIND in educating the media and media regulators in good practice on reporting on suicide and self-harm. We met the Samaritans and MIND to discuss this, and other, clauses in the Code.

One anonymous stakeholder noted the importance of balancing responsible journalism with fair and open reporting of legal proceedings such as coronial inquiries.¹²⁴ The Guidance addresses the importance of reporting accurately but sensitively on coronial inquiries involving suicide, with a particular focus on refraining from including gratuitous detail about the way a person died.

In response to calls from groups like the Samaritans in face-to-face stakeholder meetings, we extended the scope of the draft Code to include 'self-harm'. This will extend the clause to self-harm including so-called attempted suicides.

The Guidance incorporates the recommendations of MIND, the Samaritans and the National Suicide Prevention Alliance, that it is good practice for publishers to include helpline phone numbers in news articles concerning suicide and self-harm. The National Suicide Prevention Alliance argued that this should form a separate clause in the Code. However, we considered this would be a challenging clause to regulate as different publications may choose to reference different helplines in different ways. For instance, some local newspapers may choose to refer readers to local organisations or counsellors. In adjudicating complaints, we would not wish to engage in judgements of the quality of different organisations' advice.

The Samaritans raised the issue of how journalists should approach the family and friends of people who have died in tragic circumstances, noting that relatives and close friends are themselves at a higher risk of suicidal behaviour. We agree that this is important and we consider that the provision in Clause 7.2 that requires publishers to 'take reasonable steps not to exacerbate grief or shock' was an appropriate response to this risk.

¹²² Anonymous 5.

10. TRANSPARENCY

- 10.1** Publishers must clearly identify content that appears to be editorial but has been paid for, financially or through a reciprocal arrangement, by a third party.
- 10.2** Publishers must ensure that significant conflicts of interest are disclosed.
- 10.3** Publishers must ensure that information about financial products is objectively presented and that any interests or conflicts of interest are effectively disclosed.
- 10.4** Publishers must correct any failure to disclose significant conflicts of interest with due prominence at the earliest opportunity.

Aim

This clause promotes accountability and transparency in financial reporting in particular and where conflicts of interest arise in general. Such standards contribute to readers' levels of trust and engagement with news publications.

Background

Reporting of financial matters may result in journalists gaining access to sensitive financial information. Sensitive, undisclosed information may provide journalists with special privileges or benefits that do not accrue to ordinary members of the public. Such benefits, particularly if undisclosed, may influence (or be perceived to influence), the editorial tone taken in an article. Additionally, this can influence market behaviour if a journalist misuses sensitive, insider information to manipulate the market. Care must be taken to ensure that these benefits or advantages are not misused.

Preventing these wrongs is reflected in existing regulatory frameworks and editorial codes of practice that prohibit insider trading and market manipulation by journalists. The press codes of press councils in comparable jurisdictions such as New Zealand, South Africa and Australia include clauses that require publishers to take measures to avoid conflicts of interest.¹²⁵

Editorial codes used by UK newspapers also include specific provisions to address financial journalism. For instance, Clause 4.1 of the Financial Times' Editorial Code of Practice gives the following provisions for editors and journalists:

- a) 'Even where the law does not prohibit it, they must not use for their own profit, financial information they receive in advance of its general publication, nor should they pass such information to others; and
- b) Must not write about, or make editorial decisions about, shares or other financial

¹²⁵ Australia Press Council's Statement of Principles, cl 8; New Zealand Press Council's Statement of Principles, cl 10; South Africa Press Council's Code of Ethics and Conduct for South African print and online media, cl 2.

instruments (including for example units in funds, bonds and derivatives (including commodity derivatives)) in whose performance they know that they or certain relatives have a financial interest, without disclosing the interest to their Editor or Managing Editor.’

Clause 10.3 on financial reporting aims to set an equivalent standard to the relevant provisions in the European Union’s Market Abuse Regulation 2016 on financial journalism. The European Union’s Market Abuse Regulation (MAR) 2016 regulates forms of market manipulation. Clause 2 of the MAR is of particular interest to the regulation of financial reporting in the print media. It states that ‘All persons who produce or disseminate recommendations should have in place arrangements to ensure that information is objectively presented and interests or conflicts of interest are effectively disclosed. Moreover, additional arrangements should be made for those categories of persons who, by virtue of their nature and their activities, generally pose greater risks to market integrity and investor protection’.

Engagement and decision

Participants in the Britain Thinks focus groups were strident in their views that publishers should declare all conflicts of interest and must make clear if they benefit in any way from the publication of a story. When asked how this should be expressed in a rules-based Code, participants felt that at a minimum, a news publication should clearly identify where an article has been paid for by an advertiser.

In the draft Code, Clause 10.1 provided that ‘publishers should make clear where content has been paid for financially or through a reciprocal arrangement and is controlled by a third party’. In response to concerns from some stakeholders about the scope of the term ‘content’¹²⁶ which some felt may capture clearly identifiable advertisements, we added the qualification that the clause relates only to ‘editorial content’.

Article 19 advocated for a ‘higher commitment’ to the separation of advertising content and editorial content. They recommended similar provisions in comparable European press codes such as the Spanish Press Code which provides that ‘it is considered ethically incompatible simultaneously to practice journalism and the advertising business’.

In the draft Code, we did not include an explicit clause on financial journalism. At the time, we considered that Clause 10 on transparency was sufficiently broad as to engage unethical financial reporting. For instance, Clause 10.2 required publishers to declare any ‘significant conflicts of interest’. This may capture circumstances where a journalist, or a close family member, fails to declare that they hold shares in a company that is the subject of a news report.

However, some stakeholders¹²⁷ argued that the importance of this provision required a distinct provision on financial journalism. Acknowledging this perspective, and given the significance of any harm that may be caused by unethical financial reporting, we adopted a stand-alone clause (CI 10.3) on financial journalism in the final Code.

¹²⁴ Committees of Advertising Practice (CAP), Advertising Standards Authority.
¹²⁵ National Union of Journalists; Hacked Off; Jonathan Coad; Eric Barendt.

Appendix 1

Here is a list of the 42 submissions IMPRESS received to its public consultation on a draft Standards Code that ran from 19 August 2016 to 29 September 2016.

- | | |
|--|---|
| <ol style="list-style-type: none"> 1. Anonymous 1 2. Anonymous 2 3. Anonymous 3 4. Anonymous 4 5. Anonymous 5 6. Anonymous 6 7. Anonymous 7 8. Anonymous 8 9. Christopher Whitmey 10. Aidan White, Ethical Journalism Network 11. Article 19 12. Claire de Than, City University 13. The Trust Project 14. Professor Eric Barendt 15. Simon Carne 16. Raymond Starkey 17. MIND 18. Saddleworth News 19. Marcus Keppel-Palmer, University of the West of England | <ol style="list-style-type: none"> 20. Transparency Project 21. Trans Media Watch 22. Society of Editors 23. Standing Committee for Youth Justice 24. Media Wise 25. Samaritans 26. National Suicide Prevention Alliance 27. Dr Sally Broughton Micova, University of East Anglia 28. Dr Faith Gordon, Westminster University 29. Time to Change (MIND and Rethink Mental Illness) 30. Muslim Engagement and Development 31. Terrence Higgins Trust 32. John Coombs 33. Equalities and Human Rights Commission 34. Hacked Off 35. National Union of Journalists (NUJ) 36. Jane Winter 37. Jim Gibb 38. Muslim Council of Britain 39. Information Commissioner's Office 40. ECPAT UK 41. Zero Tolerance 42. Jonathan Coad |
|--|---|

Appendix 2

This is a reproduction of the draft Code that was released for public consultation in 2016. This draft Code is referred throughout this Consultation Response Paper. It is distinct from the final Code that appears in the boxes at the start of each section of this paper.

Draft Standards Code

All publishers regulated by IMPRESS agree to abide by the following rules, which together constitute the IMPRESS Standards Code.

This Code is intended to be:

- A practical working tool which enables journalists, editors and publishers to do their jobs;
- Easily understood by the public; and
- Enforceable through regulation.

Publishers will be held directly responsible for compliance with this Code, which applies to all content and newsgathering activities for which publishers are responsible under the terms of their Regulatory Scheme Agreement with IMPRESS, regardless of the medium or platform of publication. All references here to publishers apply equally to anyone acting under a publisher's authority. All references here to journalists apply equally to anyone acting in a journalistic capacity.

This Code is distinct from the law and publishers are separately responsible for ensuring that they comply with the law.

PUBLIC INTEREST

In certain circumstances, there may be a public interest justification for a particular method of newsgathering or item of content which may otherwise breach the Code. A public interest means that the public has a legitimate stake in a story because of the contribution it makes to a matter of importance to society. Such interests include, but are not limited to, the following:

- a. The revelation or discussion of matters such as serious impropriety, incompetence or unethical behaviour that affects the public;

- b. Putting the record straight where an individual or organisation has misled the public on a matter of public importance;
- c. Revealing that a person or organisation may be failing to comply with any legal obligation they have;
- d. The proper administration of government;
- e. Open, fair and effective justice;
- f. Public health and safety;
- g. National security;
- h. The prevention and detection of crime and fraud; and
- i. The discussion or analysis of artistic or cultural works.

Where a publisher identifies a public interest justification for a particular method of newsgathering or item of content, they should, when undertaking an action that may otherwise breach the Code, make a contemporaneous note, which:

- i) Establishes their reason for believing that the action is in the public interest;
- ii) Demonstrates that relevant code-compliant measures have been considered before authorising the action;
- iii) Explains their view that the action is likely to achieve the desired outcome; and
- iv) Explains their view that any likely harm caused by the act does not outweigh the public interest in the action.

Where a public interest exception may apply, this is identified in the relevant clause.

1. ACCURACY

- 1.1. Publishers must take all reasonable steps to ensure accuracy.
- 1.2. Publishers must correct any significant inaccuracy with due prominence at the earliest opportunity.

- 1.3. Publishers must always distinguish clearly between statements of fact, conjecture and opinion.
- 1.4. Whilst free to be partisan, publishers must not misrepresent or distort the facts.

2. ATTRIBUTION

- 2.1. Publishers must take all reasonable steps to identify and credit the originator of any third party content.
- 2.2. Publishers must correct any failure to credit the originator of any third party content with due prominence at the earliest opportunity.

3. CHILDREN

- 3.1. Publishers must only interview, photograph or otherwise record the words or actions of a child under the age of 16 years with the assent of the child or a responsible adult and where this is not detrimental to the safety and wellbeing of the child.
- 3.2. Publishers must not identify a child under the age of 16 years without the assent of the child or a responsible adult, unless this is relevant to the story and not detrimental to the safety and wellbeing of the child.
- 3.3. Publishers must give reasonable consideration to the request of a person who was previously identified as a child under the age of 16 years in a news story and who now wishes their identity to be concealed.

4. DISCRIMINATION

- 4.1. Publishers must not refer pejoratively to a person on the basis of that person's age, disability, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion or belief, sex or sexual orientation or another characteristic which makes that person vulnerable to discrimination.

- 4.2. Publishers must not refer to a person's disability, gender reassignment or identity, pregnancy, race, religion or belief or sexual orientation unless this characteristic is relevant to the story.
- 4.3. Publishers must not incite hatred against any group on the basis of that group's age, disability, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion or belief, sex or sexual orientation.

5. HARASSMENT

- 5.1. Publishers must ensure that journalists do not engage in intimidation.
- 5.2. Except where justified by the public interest, publishers must ensure that journalists:
 - a. Do not engage in deception or harassment.
 - b. Always identify themselves as journalists and provide the name of their publication when making contact.
 - c. Comply immediately with any reasonable request to desist from contacting, following or photographing a person.

6. JUSTICE

- 6.1. Publishers must take the greatest care not to prejudice any criminal investigations or legal proceedings, except as permitted by law.
- 6.2. Publishers must protect the identity of victims of sexual assault and children under 18 years of age who are or have been involved in criminal proceedings.
- 6.3. Publishers must not make payments to witnesses or defendants in criminal proceedings, except as permitted by law.
- 6.4. Publishers must not pay public officials for information, except as permitted by law.

7. PRIVACY

- 7.1.** Except where justified by the public interest, publishers must respect people's reasonable expectation of privacy, which may be determined by factors which include but are not limited to the following:
- a. The nature of the information concerned, such as whether it relates to intimate, family, health or medical matters or personal finances;
 - b. The nature of the place concerned, such as a home, school or hospital;
 - c. How the information concerned was held or communicated, such as in private correspondence or a personal diary;
 - d. The relevant attributes of the person, such as their age, occupation or public profile; and
 - e. Whether the person had voluntarily courted publicity on a relevant aspect of their private life.
- 7.2.** Except where justified by the public interest, publishers must:
- a. Not use covert means to gain or record information.
 - b. Respect privacy settings when reporting on social media content.
 - c. Take all reasonable steps not to exacerbate grief or distress through intrusive newsgathering or reporting.

8. SOURCES

- 8.1.** Publishers must take care to protect sources where confidentiality has been agreed to and not waived by the source.
- 8.2.** Publishers must ensure that journalists do not fabricate sources.

9. SUICIDE

- 9.1.** When reporting on suicide or self-harm, publishers must not provide excessive details of the method used or speculate on the motives.

10. TRANSPARENCY

- 10.1.** Publishers must make absolutely clear where content has been paid for financially or through a reciprocal arrangement and is controlled by a third party.
- 10.2.** Publishers must take all reasonable steps to declare significant conflicts of interest and must not gain any unfair advantage from such conflicts.
- 10.3.** Publishers must correct any failure to declare significant conflicts of interest with due prominence at the earliest opportunity.

Appendix 3

Below are the 56 press codes used in IMPRESS's comparative code research, described as stage one of the code development process.

1. Albanian Media Institute's Albania Code of Ethics,
2. Australia Press Council's Statement of Principles
3. Bahrain Code of Ethics
4. Bhutan Media Authority: Code of Ethics for Journalists
5. Brazilian National Association of Newspapers Code of Conduct
6. Canadian Association of Journalists
Cambodian Centre for Independent Media, Code of Ethics
7. Croatian Journalist Association: Journalists Code of Honor
8. German Press Council
9. Guardian's Editorial Guidelines
10. Danish Press Council's Press' Ethical Rules,
11. Finland Council for Mass Media: Guidelines for Journalists
12. Code of Ethics for Press, Radio and Television in Sweden
13. Cyprus Journalists' Code of Ethics
14. Code of Ethics of the Association of Journalists of Guatemala
15. Code of Ethics of the Journalists Circle of Bogota
16. Financial Times's Editorial Codes
17. Editors' Code of Practice
18. Namibia Ombudsman's Code of Ethics for the Namibian Media
19. National Union of Journalists (NUJ) Code of Conduct
20. New Zealand Press Council
21. Irish Press Council's Code of Practice
22. Indonesian Press Council's Code of Ethics
23. Israel's Rules of Professional Ethics of Journalism
24. Georgian Charter of Journalistic Ethics
25. South Africa Press Council
26. Macedonia Code of Journalists,
27. Malta Code of Ethics
28. Code of Ethics of the Chilean Order of Journalists
29. Guidelines from the Netherlands Press Council
30. Code of Ethics of the Austrian Press
31. Code of Ethics for the Estonian Press, Estonian Press Council
32. The Editors Guild of Sri Lanka: Code of Professional Practice
33. Nigeria Code of Ethics for Journalism;
34. Norwegian Press Association Norway Code of Ethics
35. Iraq's Rules of Professional Ethics
36. Code of Professional Principles adopted by the Press Council of Turkey
37. Hong Kong Journalists' Association Code of Ethics
38. Press Council of Nepal: Code of Journalistic Ethics
39. Turkey's Code of Professional Principles, adopted by the Press Council of Turkey
40. Journalists' Code of Ethics, Syndicate of Journalists of the Czech Republic

41. The Code of Ethics of the Slovak Syndicate of Journalists
42. Code of Deontology, Press Council of Luxembourg
43. Declaration of the Duties and Rights of Journalists in Switzerland
44. Iceland Rules of Ethics in Journalism
45. Code of Ethics of Lithuanian Journalists and Publishers
46. Code of Ethics of Latvia
47. Media Council for Self-Regulation: Codex of Montenegrin Journalists
48. Lima Principles of the Press Council of Peru
49. Code of Ethics for the Estonian Press, Estonian Press Council
50. Rwandan High Media Council's Code of Ethics
51. Portugal's Journalists' Code of Ethics
52. Venezuela Media Code of Ethics
53. Serbian Journalists Code of Ethics
54. The Editors Guild of Sri Lanka: Code of Professional Practice
55. United Arab Emirates Code of Ethics
56. USA's Society of Professional Journalists



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