

BEST PRACTICE NOTE

OPPORTUNITY TO RESPOND

IMPRESS

February 2020

This IMPRESS Best Practice Note is intended to help IMPRESS regulated publishers make difficult editorial judgements about whether to offer people an opportunity to respond before a story about them is published, when that story has the potential to negatively impact on their reputation and/or some aspect of their personal or professional lives.

It is not obligatory to offer someone an opportunity to respond, and there may be occasions when to do so is not appropriate and/or it is not in the interests of investigative journalism.

This Best Practice Note is based on real cases and lessons learned from the experience of our Regulatory Committee in adjudicating complaints against the IMPRESS Standards Code.

THIS BEST PRACTICE NOTE RELATES TO THE ACCURACY CODE CLAUSE

- > 1.1. Publishers must take all reasonable steps to ensure accuracy.

It also relates to the following Guidance on Code Clause 1.1:

- > “The Code does not create an absolute duty to publish only incontrovertibly true facts. Instead, it means that publishers must take such steps as are reasonable in the circumstances to verify the truth of the information presented.”

CONSIDERATION SHOULD BE GIVEN TO

The significance of possible inaccuracies and their likely consequences.



The likely reliability of the source(s) being used.



The attempts made to corroborate a story.



The urgency of publishing the story.



Whether reasonable attempts were made, prior to publication, to contact people for whom publication could potentially have a significant adverse impact in relation to privacy, confidentiality, family and children or professional and/or personal reputations, and consider whether to publish their responses to those criticism(s).



KEY POINTS ABOUT OFFERING AN OPPORTUNITY TO RESPOND

- It can help journalists verify the accuracy of information or allegations they have gathered about individuals or organisations.
- It can help publishers balance the public interest in freedom of expression with the legitimate expectation of privacy by individuals and consider whether it is appropriate to publish the material.
- It can be a useful way of fact checking.
- It can help to show that publishers have taken reasonable steps to achieve accuracy in their content.
- There is no standard way of offering an opportunity to respond.
- There is no prescribed time that should be allowed for a response, this depends on the context and circumstances specific to the story.
- The subject should be given details relevant to the information or allegations and the published response would only need to include details relevant to the information or allegations.
- The published response should normally appear at the same time as the allegations or information are placed in the public domain.
- It may be advisable to seek legal advice before approaching an individual, group or organisation for a response to serious allegations of wrongdoing or to other information, which if published could have a significant adverse impact on them.
- It is not a specific obligation under the **IMPRESS Standards Code** for publishers to provide opportunities for affected parties to comment prior to publication. However, if a publisher does not give an opportunity to respond it may be difficult for them to successfully defend an Accuracy complaint and it could undermine any defence to a legal challenge.

NOTES ON BEST PRACTICE

Publishers should consider offering an opportunity to respond before publishing significant allegations or revealing sensitive or private information about an identifiable individual or individuals. This would include, but is not restricted to, an individual, a group of people, institution, charity, trade union, or business. It would be offered even if they were not to be specifically named, if the published material could reasonably be understood to refer to them.

Publishers should take particular care about information that potentially **breaches existing injunctions, raises safety concerns, or refers to spent convictions, personal medical matters, children and young people.**

An opportunity to respond would also be offered if allegations or private information **previously published by others** – for example on Twitter, Facebook or a newspaper story – is planned to be **republished in your own story or blog.** This is good journalistic practice and could set IMPRESS regulated publishers apart from individuals who post controversial or challenging views on social media and engage in its many conversations.

Examples of circumstances in which the IMPRESS Regulatory Committee consider it good journalistic practice to offer an opportunity to respond:

- Serious allegation of financial misconduct against a former Cabinet Minister.
- An argument in Westminster between two MPs when the factual accuracy of the published statements was disputed.

- > Publishers have to assess the risks when making an editorial decision to publish significant allegations or reveal sensitive or private information about an individual or individuals, because if those people subsequently claim a published statement affects, caused or is likely to cause serious harm to their reputation, or to affect their **Article 8 rights to respect for private and family life**, then the **law of defamation, breach of confidentiality or breach of privacy**, allows them to **sue for damages.** In defamation when bodies trading for profit are criticised, harm to their reputation is “serious harm” only when it has caused or is likely to cause the body serious financial loss.
- > Any editorial decision about offering an opportunity to respond should consider the **nature of the material** and judge the **potential impact** of its publication not only for those criticised, or otherwise directly affected, but also for impacted third parties, like close family, and also for **sources, whistle-blowers, or activists whose lives or livelihoods might be endangered** when others are alerted to the allegations or information.
- > Published **information or allegations that turn out to be wrong or false** can have a potentially significant impact on readers and users. The debate about vaccine safety, specifically the MMR vaccine, is a well-known example, as is the issue of political content in the run up to an election.

THINGS TO CONSIDER WHEN ASSESSING THE RISKS OF PUBLISHING

- 1. Do any allegations involve wrongdoing or incompetence?
- 2. Can you prove any allegations are true or based on opinion that is genuinely held and based on fact?
- 3. Are you about to reveal confidential, sensitive or private information?
- 4. Are you proposing to publish any allegation or information for the first time?
- 5. Are you proposing to republish any allegation or information?
- 6. Does your story have the potential to cause reputational harm or have some other kind of significant detrimental impact?
- 7. What is the extent and impact of misinformation for your readers and users and what will the harm be to those involved if a published allegation or other information turns out to be wrong?

If a publisher considers that it is not appropriate to seek a response because of legal or other reasons, such as prompting an injunction or endangering sources, then they should normally **record their reasons for that decision in a contemporaneous note.**

It may also be appropriate to consider whether an opportunity to comment should be given once the story has been published.

HOW TO OFFER AN **OPPORTUNITY TO RESPOND**

It is good journalistic practice to **keep a written note** of any request for a response, including method of approach (in person, by phone, text, email, social media, letter), time and date, the name of the person approached and the key elements of the exchange if not already written down in some form, as well as the amount of time being given for receipt of a response.

It is normally appropriate to describe the allegation or proposed publication in sufficient detail to the person to enable them an opportunity to provide an informed response, unless there is a danger of interference with witnesses or other legal reasons.

There is no standard or recommended minimum time for people to respond. The deadline you set is a matter of editorial judgement depending on factors such as:

- > The nature and complexity of the allegations or other information
- > Whether the material is already familiar to the subject
- > Whether you are trying to obtain a response during a working day or out of hours or over the weekend
- > Whether you are making contact through a press office or directly using a work phone number or email address, a personal mobile or email, or through social media
- > Whether the subject has the resources to respond quickly
- > The urgency to publish

RELEVANT **IMPRESS RULINGS**

The IMPRESS Regulatory Committee has ruled that making two unsuccessful attempts by phone to contact an individual accused of serious financial misconduct in public office, on a weekend day, 90 minutes before publication of the allegation did not represent reasonable attempts to contact the individual whose reputation may be at stake and to publish their comments.

The IMPRESS Regulatory Committee has ruled that contacting a party via email, after 9pm without specifying a deadline for response and then publishing less than 4 hours later, did not represent a reasonable attempt to contact the individual whose reputation may be at stake and to publish their comments.

- > The Committee noted it would be good journalistic practice to state the time by which a party should respond to requests for comment and to provide sufficient detail about any allegations to which a response is sought.

WHAT IS THE BEST WAY TO REPRESENT A RESPONSE?

If an individual or organisation provides a response, **there is no obligation on a publisher to include everything they say in that response.** Publishers only need to include comments relevant to the allegation being made and exactly what is included in the final article is a matter of editorial judgement.

It is normally appropriate to use key quotes from any response and try and reproduce them in full.

If that is not possible then it is important that if the Publisher takes the editorial decision to reword the response in order to shorten it, then the published response **must** fairly represent the meaning of the original one received by the Publisher.

WHEN IS AN OPPORTUNITY TO RESPOND NEVER REQUIRED?

Privileged occasions give journalists the right to report whatever is said even if it's defamatory. Certain situations bestow privilege on reporting.

For example, in open court or in formal sessions of Parliament or Parliamentary Committees, journalists have absolute privilege to report whatever is said by anyone there, whether they are witnesses, defendants, a judge or member of the public, or if it is contained in a document deployed in open court. The report has to be accurate, fair and contemporaneous.

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