



A New Standards Code for the Press

Code consultation

Deadline for responses: 5pm on Thursday 29
September 2016

IMPRESS: The Independent Monitor for the Press CIC is the first truly independent regulator of the press in the United Kingdom. We exist to promote the freedom of the press and to encourage high standards in news reporting. As part of this commitment, IMPRESS is developing a new standards code for the press.

A standards code should embody the ethical standards expected of publishers, while not unduly infringing their capacity to investigate and report on important stories in the public interest. The code should be responsive to the challenges facing the media, as well as to calls from the public for hard-hitting, investigative journalism that upholds ethical standards.

The IMPRESS Standards Code is currently in draft form. The draft code sets out the standards we expect IMPRESS publishers to follow in newsgathering and in publishing information whether in the form of text, audio, photographic or other visual content. We expect our publishers to ensure that anyone contributing to their publications follows the same standards.

After the publication of a new standards code, IMPRESS will also issue accompanying guidance. The code will be regularly reviewed.

Code consultation process

The task of developing and consulting on a new IMPRESS Standards Code is the responsibility of the IMPRESS Code Committee (the Committee). While the code is the ultimate responsibility of the IMPRESS Board, the Committee is responsible for advising the Board on the code, and for drafting guidance on the code.

Committee members are Maire 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.

In his report into the 'Culture, Ethics and Practices of the Press', 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' (Leveson Report, Recommendation 36). Leveson considered that this would 'command the confidence of both the public and the industry' (Leveson Report, Part K, Chapter 7, [4.22]).

With this in mind, the Committee has undertaken a wide-ranging consultation process to develop this draft code. This has involved several stages and is ongoing.

First, the Committee oversaw comparative research of over fifty press codes from around the world. This research identified several common principles, including accuracy, protecting the right to privacy, protecting the rights of children and the distinction between fact and comment.

Second, the Committee engaged the independent research agency Britain Thinks to conduct workshops and an online survey with members of the public. Britain Thinks facilitated public workshops in London and Glasgow where participants were asked to spontaneously identify the ethical standards they believed should guide the development of a new standards code. The most common principles they identified were privacy, non-discrimination, accuracy, balance, and the protection of children.

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 earlier workshops had identified.

Third, the Committee and IMPRESS staff conducted a series of expert roundtables with IMPRESS publishers and members of civil society including special interest groups. Additionally, the Committee are consulting with academics, journalists, other regulators, civil society organisations, journalism students, other countries' press councils, and other stakeholders on specific areas in the draft code.

These phases of the consultation have informed the draft standards code which we invite you to respond to by **5pm on Thursday 29th September**.

The Code Committee will review the submissions we receive and update the draft standards code where appropriate.

IMPRESS draft standards code

The IMPRESS draft Standards Code contains a preamble, a public interest exception and ten clauses. The clauses have been arranged alphabetically. All clauses are of equal value.

Preamble

This section explains the purpose of the code and the obligations of publishers to uphold and enforce the code as set out in the IMPRESS Regulatory Scheme.

Question 5: What, if any, changes would you recommend IMPRESS make to this clause?

Public interest

This exception aims to recognise that there may be circumstances where a particular method of news gathering or item of content, which would otherwise breach one or more clauses of the code, is justified. This exception is intended to protect hard-hitting, investigative journalism where a publisher can demonstrate a clear and important reason for undertaking specific conduct or publishing a news story. Our public consultations and polling show that the public recognise a public interest justification in stories that, for example, expose corruption or wrongdoing, and which hold the government to account. The exception relates to specific clauses in the code. These are identified where relevant.

The Code Committee is particularly interested in hearing your views on the non-exhaustive list of public interest factors and the procedural steps a publisher must engage in to justify a public interest exception.

Question 6: What, if any, changes would you recommend IMPRESS make to this clause?

I would argue that it is not always practical to make a “contemporaneous note”, especially when there would be no intention to breach a clause and a potential breach was reported by a complainant.

For example, a complainant may take issue with a published article and claim a breach under clause 7 (Privacy). Unless I knew I was committing an intentional breach, I would not make a note and I would not expect other journalists to make a note.

A far better solution would be simply for a journalist or publisher to back up their editorial practice and decision making with reason and argument, rather than be censured for not making a note at the time.

Question 7: What recommendations would you make for guidance to this clause?

Clause 1: Accuracy

This clause aims to ensure a commitment to accuracy and truthfulness in news reporting. The public ranked accuracy as the most important ethical standard that should guide publishers. The public also ranked the principle of balance highly. In broadcasting, balance generally refers to a requirement of impartiality. By balance in relation to the print media, the public were in favour of a standard that ensures a publisher does not mislead through distorting or misrepresenting facts. This was reflected in public workshops where members of the public articulated a desire for honesty in the way news stories are published. Clause 1.4 aims to strike a balance between protecting the media's right to be partisan, while requiring that a publisher not misrepresent or distort facts.

The reference to correcting any 'significant inaccuracy' with 'due prominence' in clause 1.2 means that only serious inaccuracies must be corrected. This threshold bars trivial claims of inaccuracy. 'Due prominence' requires that the placement and size of a correction be proportionate to the placement and size of the original news article and the potential harm caused by the inaccuracy.

Question 8: What, if any, changes would you recommend IMPRESS make to this clause?

Question 9: What recommendations would you make for guidance to this clause?

Clause 2: Attribution

This clause aims to protect people's intellectual property by ensuring that publishers do not plagiarise material. This 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. A requirement not to plagiarise news content is common in press codes around the world.

Question 10: What, if any, changes would you recommend IMPRESS make to this clause?

Question 11: What recommendations would you make for guidance to this clause?

Clause 3: Children

This clause aims to protect children from exploitation or distress caused by their interaction with the media. The Code Committee aimed to achieve this by requiring either parental consent or the assent of the child to interview or photograph a child under the age of 16. This is qualified by the paramount consideration of a child's safety and wellbeing. The public survey showed that the public ranked the protection of children highly amongst ethical journalistic standards.

At the same time, the clause aims to respect children's capacity to assent to interviews or photographs where they are not harmful to a child's interests.

The clause defines a child as someone under the age of 16. This is consistent with the laws in the United Kingdom which, for many matters, recognise consent at 16 years of age. Clause 3.3 obliges publishers to seriously consider requests for archived stories to be anonymised where the person making the request was a child at the time of the story and now regrets their identification in that story. This gives individuals some form of protection from embarrassing or distressing stories that were published when they lacked capacity to give informed consent.

Question 12: What, if any, changes would you recommend IMPRESS make to this clause?

I have a big problem with the way the clause stands at the moment.

If I read this correctly then I would be able to approach, interview and identify a child as long as they agree to it and without the assent of a parent or appropriate adult.

Instead of “without the assent of the child or a responsible adult” the clause should read “without the assent of the child and a responsible adult”.

I also have reservations on people asking news outlets to effectively change the record by asking for anonymity in past stories when they were under 16.

More guidance is needed to help editors make a decision on when this is appropriate.

For example a two-year Antisocial Behavior Order may have been handed to a 15-year-old and when they turn 16 could in theory contact a publication and ask for their image and details of the ASBO to be taken down. This would be against the principle of open justice (in my opinion) and also highlights the inconsistency between this clause and clause 6.2.

Also, how does this work with printed newspapers available to view in a physical library?

Question 13: What recommendations would you make for guidance to this clause?

Clause 4: Discrimination

This clause aims to protect individuals whose personal characteristics may make them vulnerable to discrimination. The clause also aims to prevent publications that incite hatred against a group based on the group's characteristics. There was comprehensive support in our public consultations for a discrimination clause to protect minorities and others from discriminatory reporting.

Clause 4.1 aims to protect individuals from being referred to in a negative way on the basis of their personal characteristics like race or gender. Clause 4.2 aims to prevent publishers from including irrelevant references to a person's characteristics in a news story. Clause 4.3 aims to prevent the publication of news stories that incite hatred on the basis of certain characteristics. Each of the three clauses refers to protected characteristics listed in the *Equalities Act 2010*.

Question 14: What, if any, changes would you recommend IMPRESS make to this clause?

Question 15: What recommendations would you make for guidance to this clause?

Clause 5: Harassment

This clause aims to protect individuals from harassment and intimidation by journalists. The public are strongly in favour of a clause that prohibits forms of harassment by journalists.

The clause provides a general prohibition against intimidation as the Code Committee considers that there can be no circumstances where it will be justified to intimidate another person in the interests of newsgathering. The clause also requires publishers to ensure journalists do not engage in persistent and repeated attempts to contact and pursue a person. This sub-clause is subject to a public interest exception.

Question 16: What, if any, changes would you recommend IMPRESS make to this clause?

5.2.C states that a journalist should comply immediately with any reasonable request to desist from contacting, following or photographing a person.

I would argue that this weakens the effectiveness of the 'doorstepping' techniques employed by journalists. Matt Allwright on BBC Watchdog's Rogue Traders uses the technique to great effect and always ignores the first request of the con-artist – would he be in breach of the clause? What is a reasonable request?

We've already had instances where people involved in unethical or illegal activities contact the police to get a journalist off their case. This is unacceptable and I would not agree to a code which would dilute this highly-effective means of getting hold of someone when all other avenues have failed.

<http://www.pressgazette.co.uk/after-two-year-legal-battle-met-drops-harassment-notice-issued-against-reporter-for-questioning-criminal-2/>

Question 17: What recommendations would you make for guidance to this clause?

Define a reasonable request.

Clause 6: Justice

This clause aims to protect the principle of a fair trial. The public were concerned by examples of news stories that implied a person's criminal guilt prior to conviction. The public were also concerned about the need to protect the identity of children involved in criminal proceedings.

This clause aims to reflect these principles and concerns, while not burdening the principle of open justice. This means that journalists should be able to report on court proceedings except where not permitted by law. This clause does not attempt to recast the law of contempt of court. It is the responsibility of publishers to be aware of their legal responsibilities in this area. The clause protects particular classes of persons such as children in criminal proceedings and victims in sexual assault cases. The clause also prohibits the payment of witnesses and defendants in criminal trials and prohibits bribing public officials for information, except where permitted by law.

Question 18: What, if any, changes would you recommend IMPRESS make to this clause?

Remove the requirement to not identify children under the age of 18 in proceedings. The courts already have the power to ban identification if they feel it necessary (by making an order under section 45/45A of the Youth Justice and Criminal Evidence Act 1999).

This could throw up the bizarre scenario where an Antisocial Behavior Order is issued, but publications within IMPRESS could not report on it effectively (while other publications not with IMPRESS could).

Also, while there is a ban on identifying victims of a sexual assault, they can waive that right. This should be made explicit in the code with relevant guidance on what is needed within any letter to the publisher signed by the victim.

6.4 states that no payments should not be made to public officials for information except as permitted under law. This should be covered by a public interest exception as well. The Mps expenses scandal would not have come to light if this clause was in effect.

I also think this clause could be strengthened when it comes to children involved in sex cases. IPSO's clause 7 should be looked at, which bans the publication of family relationships etc when reporting child sex abuse cases.

Question 19: What recommendations would you make for guidance to this clause?

Clause 7: Privacy

This clause aims to protect a person's privacy. A person may have a right to privacy about matters involving their private and family life, home and communications. The public were very concerned about intrusive press conduct and news stories. At the same time, the public recognised that in some circumstances, the public interest in a story may override a person's right to privacy. The Code Committee aims to achieve this balance by including a public interest exception.

The term 'reasonable expectation of privacy' is used in privacy law in the United Kingdom 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. For this reason, the Code Committee has developed a non-exhaustive list of indicative factors that may give rise to a reasonable expectation of privacy. The Code Committee is particularly interested in hearing your views on the list of non-exhaustive factors.

Question 20: What, if any, changes would you recommend IMPRESS make to this clause?

This clause is very poorly worded. How can a person have a reasonable expectation of privacy based on their age and occupation?

Clause 7.2.a is far too weak and needs strengthening. The IPSO code (clause 10) makes explicit references to clandestine devices and accessing other people's emails etc.

7.2.b is also unrealistic given how digital information from social media can be stored, shared and accessed.

A private post or status could be 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.

People posting to social media to a wiser group of friends should really have no expectations of privacy unless the postings are made through a messaging service such as Whatsapp, Facebook Messenger, Direct Tweet etc.

Question 21: What recommendations would you make for guidance to this clause?

Clause 8: Sources

This clause aims to encourage the publication of news stories that are based on reliable and credible sources. As one way to achieve this, the clause aims to protect sources where confidentiality has been agreed to and not waived. As the responsibility is on a publisher to protect sources, this clause protects journalists from pressure exerted by publishers to name sources. The clause also prevents the fabrication of sources.

Question 22: What, if any, changes would you recommend IMPRESS make to this clause?

This is far too weak. Publishers must 'take care to protect sources' should be changed to 'Publishers and journalists must protect the identity of sources'.

Question 23: What recommendations would you make for guidance to this clause?

Clause 9: Suicide

This clause aims to prevent the reporting of suicide or self-harm that glamorises those acts and which provides excessive detail to the extent that the act could be imitated.

Question 24: What, if any, changes would you recommend IMPRESS make to this clause?

Question 25: What recommendations would you make for guidance to this clause?

Guidance should be provided as to balance this against the media's right to report legal proceedings such as an inquest.

Clause 10: Transparency

This clause aims to promote accountability and transparency in news reporting. The clause requires publishers to clearly identify where content has been paid for and is controlled by a third party such as an advertiser. The clause also requires publishers to declare ‘significant’ conflicts of interest and relationships with sponsors where a publisher receives an ‘unfair advantage’.

Question 26: What, if any, changes would you recommend IMPRESS make to this clause?

Content, of course, includes adverts. This should be changed to reference content purporting to be or having the appearance of editorial, otherwise every display advert will have advert marked on it. Some adverts are obvious, the less obvious need to be marked up.

Question 27: What recommendations would you make for guidance to this clause?

What is a significant conflict of interest? And what is unfair advantage? And how should such things be declared? Some guidance would be needed on the definitions of these.

Question 28: Are there any other issues that you believe the IMPRESS Code Committee should include in its Standards Code? If so, please explain why these issues are important and how they could best be addressed in a standards code.

IPSO's code has several clauses that I believe should be included in IMPRESS, or clauses similar to.

These include: Intrusion into grief; Children in Sex Cases, Hospitals, Reporting of Crime; and Financial Journalism.

Question 29: Do you agree that the IMPRESS draft Standards Code is a practical working tool which enables journalists, editors and publishers to do their jobs? (please select one of the following options)

strongly agree

agree

disagree Not in its current form, but with a little work yes

strongly disagree

Question 30: Do you agree that the IMPRESS draft Standards Code is easily understood? (please select one of the following options)

strongly agree

agree

disagree Not in its current form, but with a little work yes

strongly disagree

Question 31: Do you agree that the IMPRESS draft Standards Code is enforceable through regulation? (please select one of the following options)

strongly agree

agree

disagree Not in its current form

strongly disagree