

**Submission by Jonathan Coad**

**(in support of the Hacked Off submission – see below)**

**IMPRESS Code Analysis with Editors’ Code Comparison**

IMPRESS	Editors’ Code	Comparison
<p><u>Draft Standards Code</u> All publishers regulated by IMPRESS agree to abide by the following rules, which together constitute the IMPRESS Standards Code.</p> <p><u>The Code is the responsibility of the Board of IMPRESS advised by an expert Code Committee.(1)</u></p> <p>This Code is intended to <del>be</del>:</p> <ul style="list-style-type: none"> <li><u>A-Be a practical working tool which enables journalists, editors and publishers to understand their ethical obligations and to do their jobs, (5)</u></li> <li><u>Strike the right balance between publishers’ freedom of expression and protection of the rights of individuals and the public (2);</u></li> </ul>	<p><u>About the Editors’ Code</u> The Editors’ Code of Practice sets out the rules that newspapers and magazines regulated by IPSO have agreed to follow.</p> <p>The Code is written and administered by the Editors’ Code Committee and enforced by IPSO. The latest version of the Editors’ Code of Practice came into effect on 1 January 2016.</p> <p><u>The Code</u> The Code – including this preamble and the public interest exceptions below – sets the framework for the highest professional standards that members of the press subscribing to the Independent Press Standards Organisation have undertaken to</p>	<p align="center"><b><u>Improvements needed</u></b></p> <ol style="list-style-type: none"> <li>The IMPRESS Code is under the control of the regulator. The Editors’ Code is not. The difference should be set out.</li> <li>The Editors’ Code includes reference to balancing “both the rights of the individual and the public’s right to know”. The IMPRESS Code does not have this. There ought to be reference to the protection of the public and the rights of individuals.</li> <li>It should also make clear the key rules on the face of the Code, not bury them in guidance as they plan to for several issues if the Code is to be “easily understandable” by the public.</li> <li>Even the Editors’ Code includes “A publication subject to an adverse adjudication must publish it in full and with due prominence, as required by IPSO”. For IMPRESS to be Leveson-compliant, it must have power</li> </ol>

<ul style="list-style-type: none"> <li>• <u>Be Easily</u> understood by the public <u>and working journalists (5)</u>; and</li> <li>• <u>Be Enforceable</u> through regulation.</li> </ul> <p>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.</p> <p>All references here to publishers apply equally to anyone acting under a publisher’s authority, <u>including editors and journalists (5)</u>. All references here to journalists apply equally to anyone acting in a journalistic capacity.</p> <p>This Code is distinct from the law and publishers are separately responsible for ensuring that they comply with the law.</p> <p><u>A publication subject to an adverse ruling must publish a correction, apology and/or the text of the ruling as required by IMPRESS including where this specifies a timescale and prominence (3)(4).</u></p>	<p>maintain. It is the cornerstone of the system of voluntary self-regulation to which they have made a binding contractual commitment. It balances both the rights of the individual and the public's right to know.</p> <p>To achieve that balance, it is essential that an agreed Code be honoured not only to the letter, but in the full spirit. It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest.</p> <p>It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of their publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.</p> <p>Editors must maintain in-house procedures to resolve complaints swiftly and, where required to do so, co- operate with IPSO. A publication subject to an adverse adjudication must publish it in full and with due prominence, as required by IPSO.</p>	<p>to direct apologies as well as corrections and adjudications. It should make that clear.</p> <ol style="list-style-type: none"> <li>5. There are some drafting changes which makes the preamble more balanced between ethics and practical matters and between the public and the profession.</li> </ol> <p style="text-align: center;"><b><u>Neutral or questions</u></b></p> <ol style="list-style-type: none"> <li>6. The Editors’ Code, but not the IMPRESS Code, requires compliance with the “spirit” of the code and not only the “letter”. It is not clear if this is needed, if the Code is clear enough in its detail, but the absence is notable.</li> <li>7. We support the call for there to be a “conscience clause” in all journalists’ contracts. Including this in the code (rather than just in the IMPRESS contract or rules) has the merit of notifying journalists of their rights and normalising the practice.</li> <li>8. It may be necessary to make clear that the Code covers third party content (eg comments) that is pre-moderated, in relation to clauses other than clause 1 (accuracy). For example, clause 4 (discrimination), clause 6 (justice) and clause 7 (privacy) could be breached by moderated comments with just as bad an impact as the original online article itself.</li> </ol>
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PUBLIC INTEREST	The Public Interest	Good points
<p>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.</p> <p>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:</p> <ol style="list-style-type: none"> <li>a) The revelation or discussion of matters such as serious impropriety, incompetence or unethical behaviour that affects the public <u>or public policy (9)</u>;</li> <li>b) Putting the record straight where an individual or organisation has misled the public on a matter of public importance;</li> <li>c) Revealing that a person or organisation may be failing to comply with any legal obligation they have;</li> <li>d) The proper administration of government;</li> <li>e) Open, fair and effective justice;</li> <li>f) Public health and safety;</li> <li>g) National security;</li> <li>h) The prevention and detection of crime and fraud; and</li> <li>i) The discussion or analysis of artistic or cultural works.</li> </ol>	<p>There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.</p> <p>The public interest includes, but is not confined to:</p> <ul style="list-style-type: none"> <li>• Detecting or exposing crime, or the threat of crime, or serious impropriety.</li> <li>• Protecting public health or safety.</li> <li>• Protecting the public from being misled by an action or statement of an individual or organisation.</li> <li>• Disclosing a person or organisation’s failure or likely failure to comply with any obligation to which they are subject.</li> <li>• Disclosing a miscarriage of justice.</li> <li>• Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.</li> <li>• Disclosing concealment, or likely concealment, of any of the above.</li> <li>• There is a public interest in freedom of expression itself.</li> </ul> <p>The regulator will consider the extent to which material is already in the public domain or will or will become so.</p>	<p style="text-align: center;"><b>Good points</b></p> <ol style="list-style-type: none"> <li>1. The IMPRESS Code allows a defence for putting the record straight where the public has been misled on a <i>matter of importance</i>. The Editors’ Code allows a defence for putting the record straight over misleading comments regardless of the public importance of the matter.</li> <li>2. THE IMPRESS Code gives a PI exemption for the exposing of failures to comply with a <i>legal</i> obligation. The Editors’ Code has the same defence, but does not specify that the obligation needs to be “legal”.</li> <li>3. The Editors’ Code also includes “raising or contributing to a matter of public debate”, as well as the remark that “there is a public interest in freedom of expression itself”. Both of these are dubious. The IMPRESS Code has “the public has a legitimate stake in a story because of the contribution it makes to a matter of importance to society”, which is better.</li> <li>4. The IMPRESS Code requires journalists to make a contemporaneous note justifying their actions in the PI.</li> <li>5. The Editors’ Code allows publishers to take into account whether material is already in the public domain. This is not relevant to all occasions where the PI is being considered - only to privacy. The IMPRESS Code rightly deal with it only under privacy.</li> </ol> <p style="text-align: center;"><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>6. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use</li> </ol>

<p>Where <del>a publisher identifies</del> (6) a public interest justification for a particular method of newsgathering or item of content <u>is identified (6), they should then</u>, when undertaking an action that may otherwise breach the Code, <del>make</del> a contemporaneous note <u>should be made</u>, which:</p> <ul style="list-style-type: none"> <li>i. Establishes <del>the</del> reason for believing that the action is in the public interest;</li> <li>ii. Demonstrates that relevant code-compliant measures have been considered <u>and judged unsatisfactory (7)</u> before authorising the action;</li> <li>iii. Explains <del>their view that</del> <u>why (9)</u> the action is likely to achieve the desired outcome; and</li> <li><u>iv.</u> Explains <del>their view that</del> <u>why (9)</u> any likely harm caused by the act does not outweigh the public interest in the action.</li> <li><u>iv.v.</u> <u>Is preserved and retained when dealing with a complaint made under the Code; with a rebuttable presumption arising that the public interest justification is not made out if no such note is disclosed (8)</u></li> </ul> <p>Where a public interest exception may apply, this is identified in the relevant clause.</p>	<p>Editors invoking the public interest will need to demonstrate that they reasonably believed publication - or journalistic activity taken with a view to publication – would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time.</p> <p>An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16.</p>	<p>the passive voice which solves the problem. This applies throughout the Code.</p> <ul style="list-style-type: none"> <li>7. The requirement to only rely on actions which are prime facie a breach of the code when code-compliant alternatives are reasonably deemed unsuitable has not been set out. Even IPSO says this should be the case for example in its Brookes Newmark whitewash.</li> <li>8. The purpose of the contemporaneous note is not set out and needs to be in order to be effective.</li> <li>9. There are some drafting improvements</li> </ul> <p style="text-align: center;"><b>Neutral or questions</b></p> <ul style="list-style-type: none"> <li>10. The IMPRESS Code gives a PI defence for “proper administration of Government”, which is not present in the Editors’ Code.</li> <li>11. “National Security” is in the IMPRESS Code and not the Editors’ Code.</li> <li>12. The IMPRESS Code, but not the Editors’ Code, includes “The discussion or analysis of artistic or cultural works”. It is not clear why/whether this is needed or appropriate.</li> <li>13. The Editors’ Code, but not the IMPRESS Code, contains special reference to protecting children under 16 in the PI section. It is not clear why/whether this is needed or appropriate.</li> </ul>
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1. ACCURACY	1. Accuracy	Improvements needed
<p>1.1. <del>Publishers must take all</del><u>All</u> reasonable steps <del>must be taken</del> (1) to ensure accuracy, <u>including allowing any person or company subject to detriment the opportunity to comment pre-publication where appropriate, and include any denial or mitigation where it would be unfair not to do so.</u> (2) (11)</p> <p>1.2. <del>Publishers must correct any</del><u>Any</u> significant <del>inaccuracy with</del><u>breach of this clause</u> (3) <del>must be corrected with due equivalent</del> (4) prominence <u>to the errant portion of the publication</u> at the earliest opportunity <u>or a fair opportunity to reply with equivalent prominence must be provided</u> (5).</p> <p>1.3. Publishers must always distinguish clearly between statements of fact, conjecture and opinion.</p> <p><u>1.4.</u> Whilst free to be partisan, publishers must not misrepresent or distort the facts <u>or the meaning of any person or document cited</u> (6).</p> <p><u>1.4.1.5.</u> <u>Whilst headlines can be light-hearted, and need not encapsulate the whole content of the article, they must not be misleading in themselves and</u></p>	<p>i. The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.</p> <p>ii. A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.</p> <p>iii. A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.</p> <p>iv. The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.</p> <p>v. A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.</p>	<p>1. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</p> <p>2. The guidance behind the Editors’ Code (the Codebook) makes clear that the clause on taking care to be accurate implies a need to go to the subject of a critical story for comment and include the comment where appropriate. This should be set out explicitly in this clause of Code to assist complainants and remind journalists. This could meet some of the concerns of the Watson family (ref defamation of the dead) where there would be requirement to provide for the opportunity to “prior reply” (as per the Codebook) to close relatives of the recently deceased and to provide for a fair opportunity to reply.</p> <p>3. The IMPRESS Code fails to specify the need for prompt and prominent corrections in respect of breaches of clause 1 other than accuracy. 1.2 as corrected needs to be moved down to follow 1.3, 1.4. 1.5 and 1.6.</p> <p>4. The Code needs to be explicit – at least in clause 1 – that corrections must be given equivalent prominence to the breach – for all the reasons we know about. The consultation document says <i>“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.”</i> It is unclear where this will be made clear (presumably in guidance) and why such complexities are required when it is clearer to say that significant errors</p>

their meaning must be supported by the text of the article (7).

1-5-1.6. While quotation marks can be used in headlines accurately to paraphrase elements of the article, they must not be used, in the headline or the body of an article, where this would wrongly imply that those actual words were spoken or written. (8)

1-6-1.7. A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, and with a prominence equivalent to the offending publication; unless an agreed settlement states otherwise, or an agreed statement is published. (9)

must be corrected with equivalent (not proportionate) prominence.

5. There is no commitment to fair opportunity to reply to significant breaches of this clause under the IMPRESS Code. This is something that successful complainants or the newspaper may prefer.
6. The IMPRESS Code should make clear that the rule on distortion does not just apply to bare facts but also to the words spoken or written, or the meaning of a document (such as a report or scientific paper).
7. The IMPRESS Code doesn't refer to headlines supported by the text or misleading images. This is a real problem. They can take the opportunity to set out the latitude allowed on headlines found in the Codebook.
8. The IMPRESS Code needs to make clear that while quote marks can be used (especially in headlines) to accurately paraphrase or summarise an issue, they should not be used where doing so wrongly suggests that the words were actual quotes.
9. No requirement to print outcome of libel cases under the IMPRESS Code. A major omission.

**Neutral or questions**

10. The wording on distinguishing between fact and opinion is different between the Codes.

<p><b>2. ATTRIBUTION AND PLAGIARISM (2)</b></p> <p>2.1. <del>Publishers must take</del> All reasonable steps <u>must be taken (4)</u> to identify and credit the originator of any third party content.</p> <p>2.2. <u>Plagiarism - the use of someone else's content or material (including photoghgraphs and the product of investigations) without consent where that is required – is a breach of ethics. (2)</u></p> <p>2.3. <del>Publishers must correct any</del> Any failure to credit the originator of any third party content <u>must be corrected (4)</u> with <del>due equivalent (3)</del> prominence at the earliest opportunity.</p> <p>2.4. <u>An attribution of authorship should not be made to an external contributor unless the contributor has agreed to the copy which was published.(5)</u></p>		<p style="text-align: center;"><b>Good points</b></p> <ol style="list-style-type: none"> <li>Nothing in the Editors' Code on this.</li> </ol> <p style="text-align: center;"><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>The heading should cover what the mischief is – which includes plagiarism not merely “non-attribution”, and plagiarism should be defined (including the need for consent to publish where that is required by the orginator) and outlawed.</li> <li>The Code needs to be explicit that corrections must be given equivalent prominence to the breach – for all the reasons we know about. The consultation document says <i>“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...”</i> It is unclear where this will be made clear (presumably in guidance) and why such complexities are required when it is clearer to say that significant errors must be corrected with equivalent (not proportionate) prominence.</li> <li>Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</li> <li>It would be valuable to provide for a sub-clause on the obverse of failure to attribute, which is putting someone's name on an article which that person did not author or where s/he did not agree.</li> </ol>
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3. CHILDREN	6. *Children	Improvements needed
<p>3.1. <del>Publishers must only interview, photograph or otherwise record</del> <del>T</del>the words or actions of a child under the age of 16 years <u>must only be photographed or otherwise recorded (1) with the informed consent assent (8) of the child or a responsible adult and where this is not detrimental to the safety and wellbeing of the child. is in the best interests of the child.(6)</u></p> <p>3.2. <del>Publishers must not identify a</del> child under the age of 16 years <u>must not be identified (1) , or be caused to be identified (2),</u> without the <del>assent informed consent (8)</del> of the child or a responsible adult, unless this is relevant to the story and <u>is in the best interests of the child not detrimental to the safety and wellbeing of the child. (6) Particular care should be taken where a child is an alleged victim or alleged perpetrator of crime. (2) This does not apply to pictures of children who are incidental to the story where there is no reasonably foreseeable detriment. (7)</u></p> <p>3.3. <del>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</del></p>	<p>i) All pupils should be free to complete their time at school without unnecessary intrusion.</p> <p>ii) They must not be approached or photographed at school without permission of the school authorities.</p> <p>iii) Children under 16 must not be interviewed or photographed on issues involving their own or another child’s welfare unless a custodial parent or similarly responsible adult consents.</p> <p>iv) Children under 16 must not be paid for material involving their welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.</p> <p>v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.</p>	<p>1. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</p> <p>2. The injunction on identifying children under 16 without permission and unless it is in their best interests should clarify that “jigsaw identification” is included and that this pertains most importantly to children in the criminal justice system.</p> <p>3. 3.3 is inappropriate and unnecessary. It is a real restriction on Freedom of Expression to require amendment of electronic archive material which was lawfully and ethically published in the first place. The better solution to this problem is the less censorious, so called “Right to be forgotten” which removes the link from search results. The consultation document says <i>“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.”</i> But children do not always lack capacity to give informed consent (hence the concept of Gillick or Fraser competence).</p> <p>4. The provision about payment in 6(iv) of the Editors’ Code is missing from the IMPRESS Code.</p>



~~news story and who now wishes their identity to be concealed(3)~~

3.4. Children under 16 must not be paid for material involving their welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's best interests. (4)  
(6)

3.5. The fame, notoriety or position of a parent or guardian must not be used as sole justification for publishing details of a child's private life. (5) The best interests of the child must be paramount. (6)

5. The IMPRESS Code does not include the Editors' Code provision of "not using the fame of parents as a *sole* justification for publishing details of a child's private life".
6. The IMPRESS Code uses the terminology "not detrimental to the safety and wellbeing of the child": rather than the usual English law test of "in the best interests of the child". The latter seems broader than the former and is preferable.
7. The 3.2 rule on non-identification may be difficult for "crowd shots" unless the code is clarified to mean that it is only the subject of the story or any child whose presence is newsworthy to whom this applies.
8. The IMPRESS Code uses the term "assent" for a child. It is not clear what this means. The term "informed consent" is well-known and allows some agency for children (some of whom have the capacity and understanding to give informed consent - as is well known in medical practice and family law).

#### **Neutral or questions**

9. There is no public interest exemption in the IMPRESS Code when there is in the Editors' Code (albeit an unsatisfactory one)
10. The IMPRESS Code additionally includes a test for the wellbeing of the child before any coverage of children. The Editors' Code says only that "they must be free to complete their time at school without unnecessary intrusion".
11. The Editors' Code specifies the need for children at school (ie up to 18) to be left alone. This is not specified in this clause nor under privacy, but could and should be covered under privacy.



<p><b>4. DISCRIMINATION and ABUSE (3)</b></p> <p><b>4.1</b> Publishers must not refer pejoratively <u>or prejudicially (4)</u> to a person on the basis of <u>(i)</u> that person’s age, disability, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion or belief, sex or sexual orientation; <u>or (ii)</u> another characteristic which makes that person <u>particularly</u> vulnerable to <u>unjustified</u> discrimination <u>or</u> stigma. <u>(5) (9)</u></p> <p>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.</p> <p>4.3 Publishers must not <u>incite hatred level abuse at, publish unjustified prejudice (6)</u> against, <u>or promote negative stereotypes of (7)</u> any group on the basis of that group’s <u>(i)</u> age, disability, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion or belief, sex or sexual orientation <u>or (ii) another shared characteristic which makes that group vulnerable to unjustified discrimination or stigma (5), (8), (9).</u></p>	<p><b>12. Discrimination</b></p> <p>i) The press must avoid prejudicial or pejorative reference to an individual's, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.</p> <p>ii) Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.</p>	<p style="text-align: center;"><b>Good things</b></p> <ol style="list-style-type: none"> <li>For the criteria for individual complaints (for pejorative references), the IMPRESS Code includes “or another characteristic which makes that person vulnerable to discrimination”, albeit without including prejudicial references.</li> <li>The IMPRESS Code has included protection for groups (albeit a limited range), albeit for too narrow a range of people and at too high a threshold.</li> </ol> <p style="text-align: center;"><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>The title of the clause in the IMPRESS Code “Discrimination” is even more opaque for most complainants who might wish to complain under the clause than it is in the Editors’ Code. The clause is about abuse and should say so. “Dscrimination” has a different legal meaning.</li> <li>The IMPRESS Code has wrongly dropped the ban on “prejudicial” references to individuals (when such references are not all covered by “pejorative”).</li> <li>The phrasing of 4 (1) is ambiguous without applying the term “which makes that person vulnerable to discrimination” only to “other characteristics” – this requires splitting of 4.1 and 4.3</li> <li>The IMPRESS Code has imported the term “incite hatred” from the Public Order Act for the group provision which is dubious when “level abuse” would work better. Inciting hatred is a very high threshold and the law in this area is controversial (in some cases requiring intention and not in others; in some cases, including insulting language and in others not) and cross-over should be avoided. The terms we propose - “level abuse at” and “publish unjustified prejudice against” - are still a higher threshold (for groups) than the threshold (“pejorative references”) which applies to individuals.</li> </ol>
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		<p>7. There is nothing in the IMPRESS Code which would deal with the sexual objectification of women (going beyond taste and decency) and the detrimental stereotyping of other groups (where this does not reach the threshold of levelling abuse or inciting hatred) and this should arguably be included in 4.3 dealing with prejudice and stereotyping of groups</p> <p>8. The IMPRESS Code does not extend its new protections to groups beyond the list of protected characteristics set out in the Editors' Code for individuals despite the main mischief being directed against groups like refugees and benefit recipients who are not covered by that list. The consultation paper says "There was comprehensive support in our public consultations for a discrimination clause to protect minorities and others from discriminatory reporting." but has left out "others".</p> <p>9. Where the protection is extended beyond legally-recognised protected characteristics, then the protection should extend to individuals and groups who have or share "characteristics which make them particularly vulnerable to unjustified discrimination and stigma".</p> <p style="text-align: center;"><b>Neutral or questions</b></p> <p>10. For the criteria for individual complaints for pejorative reference, the IMPRESS Code excludes "colour" and includes the following which the Editors' Code does not: age, trans status (explicitly), marital/civil partnership status, pregnancy, and belief. "Nationality" is in neither and could be included.</p>
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<p><b>5. HARASSMENT <u>AND DURESS</u> (2)</b></p> <p>5.1. Publishers must ensure that journalists do not engage in intimidation <u>or place subjects under duress to gain their co-operation.</u> (2)</p> <p>5.2. Except where justified by the public interest, publishers must ensure that journalists:</p> <ul style="list-style-type: none"> <li>a. Do not engage in deception or harassment.</li> <li>b. Always identify themselves as journalists and provide the name of their publication when making contact.</li> <li>c. Comply immediately with any reasonable request to desist from contacting, following or photographing a person.</li> </ul>	<p><b>3. *Harassment</b></p> <ul style="list-style-type: none"> <li>i) Journalists must not engage in intimidation, harassment or persistent pursuit.</li> <li>ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.</li> <li>iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.</li> </ul>	<p style="text-align: center;"><b>Good things</b></p> <ol style="list-style-type: none"> <li>1. Under IPSO, all Harassment code breaches may have a public interest defence. Under IMPRESS, a PI defence is available for everything except for “intimidation”.</li> </ol> <p style="text-align: center;"><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>2. The problem of duress must be dealt with. This is where a subject (eg a transgender person is threatened with exposure in a “negative” way (also known as “outing”) and which would breach the privacy clause, but told that it will be done in a positive way if they co-operate. This is common practice</li> </ol> <p style="text-align: center;"><b>Neutral or questions</b></p> <ol style="list-style-type: none"> <li>3. Under the Editors’ Code, journalists are not permitted to engage in “persistent pursuit”. This specific requirement is absent from the IMPRESS Code, but both codes do require journalists to desist when asked (see next point).</li> <li>4. Under the Editors’ Code, a journalist must desist when asked to. Under the IMPRESS Code, such a request must be “reasonable”.</li> <li>5. Under the Editors’ Code, the journalist is only required to reveal their publication if asked; under the IMPRESS Code, they must do so without necessarily being asked.</li> <li>6. Under the IMPRESS code, journalists are banned from using “deception”; no such requirement exists under the Editors’ Code except in relation to covert means of news gathering in clause 10.</li> </ol>
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<p><b>6. JUSTICE</b></p> <p>6.1. <del>Publishers must take the</del><u>The greatest care <b>must be taken</b> (3)</u> not to prejudice any criminal investigations or legal proceedings, except as permitted by law.</p> <p>6.2. <del>Publishers must protect the</del><u>The identity of victims of sexual assault and children under 18 years of age who are or have been involved in criminal proceedings <b>must be protected</b>, (3) <b>unless lawfully able to be revealed and there is a public interest in doing so.</b> (4)</u></p> <p><u>6.3. In sex cases involving children where an adult has been named, the word "incest" must not be used where a child victim might be identified, and care must be taken that nothing in the report implies the relationship between the accused and the child.</u> (5)</p> <p><del>6.3-6.4. Publishers must not make payments</del><u>Payments must not be made</u> (3) to witnesses or defendants in criminal proceedings, except as permitted by law.</p>	<p><b>7. *Children in sex cases</b></p> <p>The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.</p> <p>In any press report of a case involving a sexual offence against a child -</p> <ul style="list-style-type: none"> <li>i) The child must not be identified.</li> <li>ii) The adult may be identified.</li> <li>iii) The word "incest" must not be used where a child victim might be identified.</li> <li>iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.</li> </ul> <p><b>9. *Reporting of Crime</b></p> <ul style="list-style-type: none"> <li>i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.</li> <li>ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.</li> </ul> <p><b>11. Victims of sexual assault</b></p> <p>The press must not identify victims of sexual assault or publish material likely to contribute</p>	<p><b>Good things</b></p> <ol style="list-style-type: none"> <li>1. The IMPRESS Code expressly precludes unlawful payments to public officials, although this belongs under sources (clause 8).</li> <li>2. The IMPRESS Code, in clause 6.1, includes a general requirement to “take the greatest care not to prejudice any criminal investigations or legal proceedings”. There is no such explicit requirement under the Editors’ Code. But we recommend specialist advice be taken to explore whether the law on contempt is adequately covered by this wording.</li> </ol> <p><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>3. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</li> <li>4. The rules in clause 6.2 of the IMPRESS Code relating to reporting the identity of children under 18 in court cases appears more restrictive than the law (since a judge may for example permit the naming of a teenage victim or witness) which is especially problematic when court reporting is privileged. The consultation document says <i>“This means that journalists should be able to report on court proceedings except where not permitted by law”</i>, when in fact the drafting of 6.2 makes this a blanket ban. It may not be possible to deal with adult child victims in the same sub-clause.</li> <li>5. The rules relating to identifying children in sex cases are less tight in the IMPRESS Code than the Editors’</li> </ol>
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<p><u>6.4.6.5. Publishers must not pay public officials must not be paid (3) for information that they hold as result of their public function, except as permitted by law. [This belongs under “Sources” - clause 8] (6)</u></p> <p><u>6.6. Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story. (7)</u></p> <p><u>6.5-6.7. Except where there is an over-riding public interest, payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues. (8)</u></p> <p><u>6.8. Payments should not be made to individuals who are likely to appear as witnesses in trials before those trials begin unless there is public interest in doing so and the payment is disclosed to prosecution</u></p>	<p>to such identification unless there is adequate justification and they are legally free to do so.</p> <p><b>15. Witness payments in criminal trials</b></p> <p>i) No payment or offer of payment to a witness – or any person who may reasonably be expected to be called as a witness – should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.</p> <p>ii) *Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.</p> <p>iii) *Any payment or offer of payment made to a person later cited to give evidence in</p>	<p>Code. There is a risk of “jigsaw identification”. We recommend specialist advice is sought in this area, or that existing codes be consulted, including broadcasting codes.</p> <p>6. The bar on paying public officials (except where permitted by law) while welcome</p> <p>a) Belongs under clause 8 (sources)</p> <p>b) Should be restricted in its coverage to information held by them as a result of their public function.</p> <p>7. The Editors’ Code requires that relatives &amp; friends of individuals convicted or accused of crimes should not be identified without consent unless genuinely relevant to the story. The IMPRESS Code does not have this.</p> <p>8. The IMPRESS Code does not specify the rules on payments to criminals and the glorification of crimes.</p> <p>9. The IMPRESS Code does not specify the rules on notification of payments of those who later are charged.</p> <p><b>Neutral or questions</b></p> <p>10. The IMPRESS Code says that all children under 18 involved in court cases must have their identities protected, whereas the Editors’ Code say this only applies to sex cases, but that “particular regard” should be paid to vulnerability of children in legal cases (9.2). It may be that IMPRESS is going beyond the legal position.</p> <p>11. Separately, the IMPRESS Code requires papers to protect the identity of victims of sexual assault on a blanket basis. IPSO allows identification if it is legal to do so AND there is “adequate justification”. It seems that the Editor’s Code approach is correct.</p>
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<p><u>and defence if they are called when the trial begins. (9)</u></p>	<p>proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.</p> <p><b>16. *Payment to criminals</b></p> <p>i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.</p> <p>ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.</p>	<p>12. Payments to defendants are banned under the IMPRESS Code but not the Editors’ Code unless “witnesses” in clause 15 includes defendants.</p> <p>13. The Editors’ Code allows public interest defences for all breaches except payments to witnesses, and an “adequate justification defence” for identifying victims of sexual assault. The IMPRESS Code does not allow any. It may be the Editors’ Code is better.</p> <p>14. The provision that “publishers must not pay public officials for information, except as permitted by law” does not contain a public interest exemption. On the one hand the Bribery Act (unlike Misconduct in a Public Office) does not contain a public interest defence so to provide a PI exemption could be misleading. Nevertheless, there will be circumstances (eg buying MPs expenses disc) when, in the public interest. the CPS will not prosecute. Not to include a PI exemption leaves the IMPRESS Code vulnerable to criticism.</p>
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<p><b>7. PRIVACY (2)</b></p> <p>7.1. Except where justified by the public interest, <del>publishers must</del><u>news-gathering, photography, and publishing must (3), (4)</u> respect the reasonable expectation of privacy <u>of an individual, the extent of</u> which may be determined by factors which include but are not limited to the following:</p> <p>a) The nature of the information concerned, such as whether it relates to intimate, family, health or medical matters or personal finances;</p> <p>b) The nature of the place concerned, such as a home, school or hospital <u>(where in each case journalists must identify themselves, and permission must be obtained before entering for journalistic purposes); (5)</u></p> <p>c) How the information concerned was held or communicated, such as in private correspondence or a personal diary;</p> <p><u>d) The relevant attributes of the person, such as the extent that they perform a public function or their age, occupation or public profile; (6)</u></p> <p><u>e) The extent to which the information is already in the public domain (especially by the actions of the person concerned) and</u></p>	<p><b>2. *Privacy</b></p> <p>i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.</p> <p>ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.</p> <p>iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.</p> <p><b>4. Intrusion into grief or shock</b></p> <p>In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. These provisions should not restrict the right to report legal proceedings.</p> <p><b>8. *Hospitals</b></p> <p>i) Journalists must identify themselves and obtain permission from a responsible executive</p>	<p><b>Good things</b></p> <p>1. The IMPRESS Code specifically requires publishers to respect privacy settings on social media content though this wording is too vague.</p> <p><b>Improvements needed</b></p> <p>2. Given the importance of the privacy provisions of any Code under section 12(3) of the Human Right Act 1998 and section 32 of the Data Protection Act, this clause is not adequate in terms of its scope and provisions. We recommend that specialist advice is taken.</p> <p>3. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</p> <p>4. The IMPRESS Code fails to specify photography or news-gathering activities as particularly relevant elements in privacy.</p> <p>5. The Editors’ Code highlights privacy rules for hospitals in clause 8, and states that journalists must identify themselves and obtain permission from relevant authorities before entry. The Editors’ Code has, in Clause 6(i) and 6(ii), a specific reference to pupils being able to complete the schooling without unnecessary intrusion and permission being needed to enter a school. The IMPRESS Code does not do this in either case, but these premises can be dealt with under privacy.</p> <p>6. The privacy criteria in the IMPRESS Code include extraneous and distracting criteria like occupation (beyond its public function) and age. It is hard to think of examples (not already covered under “children”) where age is relevant. It is ageist to substitute “age” for vulnerability on the basis of health (which is covered elsewhere). Similarly, beyond the public function, journalists should not be</p>
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<p>e)f) <u>Whether the person had voluntarily courted publicity on a relevant aspect of their private life. (7)</u></p> <p>7.2. <u>Except where justified by the public interest, Publishers must: (10)</u></p> <p>a) <u>Except where justified by the public interest, and where other means are not satisfactory, Not use covert means (including using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held information without consent) to gain or record information. (8)</u></p> <p>b) <u>Subject to public interest considerations,(10) rRespect privacy settings on social media and have regard to the appropriateness of enhancing the dissemination of private information when reporting on social media content which was not intended for wide dissemination when posted.(9)</u></p> <p>c) Take all reasonable steps not to exacerbate grief or distress through intrusive <u>or insensitive</u> newsgathering or reporting, <u>recognising that attacking the reputation of the dead</u></p>	<p>before entering non-public areas of hospitals or similar institutions to pursue enquiries.</p> <p>ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.</p> <p><b>10. *Clandestine devices and subterfuge</b></p> <p>i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held information without consent.</p> <p>ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.</p>	<p>required to factor in extraneous occupational criteria when considering whether intrusion is justified.</p> <p>7. The IMPRESS Code refers to “whether the person had voluntarily courted publicity on a relevant aspect of their private life” which is vague and broad, and less satisfactory than the Editors’ Code wording (“Account will be taken of the complainant’s own public disclosures of information”) which is at least less vague. The test should be the extent to which the information is already in the public domain (ie how widely disseminated but just whether it is publicly accessible) and the subject’s own responsibility for placing it there.</p> <p>8. Elements included in the Editors’ Code, clause 10 (1) and 10 (ii) are not specified in the “covert means” provision of the IMPRESS Code and should be. As the hacking scandal showed there is merit in ensuring that privacy rules in press codes are not left vague and insufficiently described.</p> <p>9. There is an obvious distinction to be made between posts on Twitter which are intended for (or indifferent to) wide dissemination, and posts on Facebook which are intended for a group of friends. One indicator is whether the default is that permission needs to be granted to view the post or profile (eg the need for Facebook friend requests vs open viewing or following on public twitter accounts).</p> <p>10. The IMPRESS Code version of “intrusion into shock and grief” (which has different but reasonable wording) allows a public interest exemption which the Editors’ Code does not, so the public exemption should be limited to 7.2 (a) (it is not needed in 7.2 (b) because the rule there only requires</p> <p>11. The case of the Watsons (where a murdered child’s reputation was attacked, causing anguish to the parents and the suicide of their other child) led to unsuccessful calls for controversial (and unwieldy) changes in the law of defamation. Instead the code could cover this easily under intrusion into grief.</p>
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(especially of the recently deceased or of children) can do so. (11)

<p><b>8. SOURCES</b></p> <p><u>8.1. <del>Publishers must take care</del>Care must be taken (2) to protect sources where confidentiality <u>or anonymity (3)</u> has been agreed to and not waived by the source.</u></p> <p><u>8.1-8.2. No commitments to confidentiality should be given to sources where to do so would run contrary to the public interest (4)</u></p> <p><u>8.3. <del>Publishers must ensure that journalists-Sources, nor quotations attributed to them, must <del>de</del>not be fabricated; (2) sources.</del></u></p> <p><u>8.2-8.4. Public officials must not be paid for information that they hold as result of their public function, except as permitted by law. (5)</u></p>	<p><b>14. Confidential sources</b></p> <p>Journalists have a moral obligation to protect confidential sources of information.</p>	<p><b>Good things</b></p> <ol style="list-style-type: none"><li>1. The IMPRESS Code places a requirement that sources are not fabricated, which is a common occurrence in some parts of the media</li></ol> <p><b>Improvements needed</b></p> <ol style="list-style-type: none"><li>2. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the provision, it is better to use the passive voice solving the problem.</li><li>3. It is useful to make clear that anonymous contributors are deemed to be confidential sources until they waive such confidentiality.</li><li>4. The IMPRESS Code fails to include a provision to prevent the abuse of source protection by extending it to criminals and other cases where the overall public interest suffers. This is a problem, given the current “moral obligation” in the Editors’ Code and the provision in clause 8.1 here, not to betray the confidence of criminals.</li><li>5. The bar on paying public officials (except where permitted by law) found in clause 6 belongs under clause 8 (sources). It should be restricted in its coverage to information held by them as a result of their public function.</li></ol> <p><b>Neutral or questions</b></p> <ol style="list-style-type: none"><li>6. The Editors’ Code highlights a “moral obligation” as opposed to articulate a code/regulatory obligation to protect sources. The IMPRESS Code is clear that journalists have a code requirement to “take care to protect” confidential sources”.</li></ol>
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<p><b>9. SUICIDE</b></p> <p>9.1. When reporting on suicide or self-harm, <del>publishers must not provide</del> (4)</p> <p>a) <u>excessive details of the method used must not be provided, even when reporting legal proceedings</u> (6)</p> <p>a)b) <del>or there should not be speculation</del> on the motives <u>unless this is justified by the public interest.</u>(5)</p> <p>9.2. <u>When reporting on a coroner's inquest and/or report (or those of analogous legal proceedings), care should be taken not to oversimplify or distort the coroner's findings, especially as they relate to motive.</u>(6)</p>	<p><b>5 *Reporting Suicide</b></p> <p>When reporting suicide, to prevent simulative acts care should be taken to avoid excessive detail of the method used, while taking into account the media's right to report legal proceedings.</p>	<p><b>Good things</b></p> <ol style="list-style-type: none"> <li>1. The IMPRESS Code prohibits speculation on the motives for suicide and the Editors' Code does not.</li> <li>2. The Editors' Code also only requires that "care should be taken to avoid excessive detail", whereas the IMPRESS Code says that (emphasis added): "publishers <u>must not</u> provide excessive details".</li> <li>3. Unlike the Editors' Code there is no public interest exemption in the IMPRESS Code for the publication of excessive details.</li> </ol> <p><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>4. Instead of using "publisher" (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</li> <li>5. Speculation on the motives of suicide bombers may be justified, as may be commentary on the treatment of someone who takes their own life when in custody, etc, so a public interest exemption is desirable here, which requires the splitting of 9.1</li> <li>6. It is necessary to confirm that the blanket ban on the reporting of motives, or possible motives, does not apply to the reporting of inquests (etc) but that care still needs to be taken.</li> </ol>
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<p><b>10. TRANSPARENCY</b></p> <p>10.1 Publishers must make absolutely clear where content <u>(or the absence of content)</u> has been paid for financially or through a reciprocal arrangement and is controlled <u>or by influenced by</u> a third party <u>such as an advertiser or sponsor</u>. (4)</p> <p>10.2 <del>Publishers must take all</del> <u>All</u> reasonable steps <u>must be taken</u> (5) to <u>ensure that declare</u> significant conflicts of interest, <u>particularly any pecuniary interests,(4) are declared</u> and <del>must not gain anythat</del> <u>unfair advantage is not obtained</u> from such conflicts.</p> <p>10.3 <del>Publishers must correct any</del> <u>Any</u> failure to declare <u>third party – influenced content</u> or significant conflicts of interest <u>must be corrected</u> with <u>due equivalent</u> prominence at the earliest opportunity. (6)</p>	<p><b>13. Financial journalism</b></p> <p>i) Even where the law does not prohibit it, journalists 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.</p> <p>ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.</p> <p>iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.</p>	<p><b>Good things</b></p> <ol style="list-style-type: none"> <li>1. This clause seeks to cover the Telegraph-HSBC case in the IMPRESS Code.</li> <li>2. Clauses 10.1 and 10.3 are welcome additions (though need changing).</li> <li>3. In the IMPRESS Code, the breadth of 10.2 is welcome.</li> </ol> <p><b>Improvements needed</b></p> <ol style="list-style-type: none"> <li>4. In the IMPRESS Code, 10.1, 10.2 and 10.3 are not adequate as shown in the tracked changes.</li> <li>5. Instead of using “publisher” (which, although stated in the preamble to include editor and journalist, is clunky) when most of the time it will be an editor or journalist who is engaged by the Code provision, it is better to use the passive voice which solves the problem.</li> <li>6. The Code needs to be explicit that corrections must be given equivalent prominence to the breach – for all the reasons we know about. The consultation document says <i>“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...”</i> It is unclear where this will be made clear (presumably in guidance) and why such complexities are required when it is clearer to say that significant errors must be corrected with equivalent (not proportionate) prominence.</li> <li>7. In the IMPRESS Code, it is not clear that 10.2 adequately covers the issues in the Editors’ Code clause 13, especially in 13 (iii) because that covers non-publishing action (ie trading shares and securities).</li> <li>8. IPSO regulated newspapers were recently exempted from needing to take steps to comply with the Market Abuse Regulation Regulatory Technical Standards on the basis of their being regulated under the Editors’ Code Clause 13. Yet it is clear that even the terms of clause 13 are not strictly compliant with the regulation unless backed up with detailed guidance. Much of this belongs in the Code not in a background note.</li> </ol>
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