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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? strongly agree

30 Do you agree that the IMPRESS draft Standards Code is easily understood? agree (subject to the comments on the following pages)

31 Do you agree that the IMPRESS draft Standards Code is enforceable through regulation? agree (subject to the comments on the following pages)

Public interest

I think there is a lot that is good in the way in which IMPRESS has approached the very difficult “public interest” question. But I have some concerns that the language used may not achieve quite the result that IMPRESS is aiming for.

I have made some specific comments and suggestions below, but it may help if I first explain that the wording of the current draft suggests that there is a plurality of public interests, some of which are listed in the bullet points (a)-(i). I think the more normal approach – and, I would argue, the better approach here – is to use the phrase, “the public interest”, in the manner in which it is used in the expression “*in the public interest*”, where the phrase denotes a *single* concept (hence the definite article), and the word “interest” is used in the sense of “advantage”.

When used in this way, assessing the public interest is a balancing test, viz: is the benefit to the public of publishers following the Code outweighed, in the particular instance, by the adverse consequences which will flow (or are likely to flow) if the Code is complied with? For a breach of the Code to be *in the public interest*, it is not sufficient merely to demonstrate that one of the criteria in the bullet points has been engaged – see my examples below – the criterion has to be met to a sufficient degree.

With this distinction in mind, I make the following comments on the proposed wording of the draft Code.

1 *Item (c)*: Unlike items (a) and (b), which refer to “serious” or “important” matters, item (c) references

“any” legal obligation. This would include, for example, a parking fine or being late with the rent. For a public interest justification to succeed, it really ought to be stronger than merely demonstrating that any legal obligation might be breached.

2 Items (d)-(g): These four items also lack any notion of degree. In part, that is because the items have been couched in terms of a positive, eg national security. By expressing the public interest justification in terms of a negative, ie “detriment to” the listed item, the notion of degree can be introduced. I think this would best be done by grouping them together, viz:

“d. Revealing a significant potential, or actual, detriment to:

- i. the proper administration of government;
- ii. open, fair and effective justice;
- iii. public health and safety; or
- iv. national security.”

3 Item (h): Very minor point, but it seems odd to list “crime and fraud”, as if the latter wasn’t included within the former.

4 Item (i): I can’t be the only person who won’t understand what this item is trying to embrace. I don’t imagine IMPRESS intends that it would be OK to (for example) bug someone because they happen to be discussing art or culture. Perhaps this item should be clarified.

5 Introductory paragraph: I would like to propose the following amendments as a better way of explaining the public interest justification:

In certain circumstances, there it may be a in the public interest justification for a particular method of newsgathering to be adopted or for an item of content to be published which may otherwise breach the Code. A Being “in the public interest” means that, the public has a legitimate stake in a story because of the contribution it which the story makes to a matter of importance to society, deviation from the Code outweighs the benefits that normally flow from following the Code. Justifications for deviating from the Code on public interest grounds may Such interests include, but are not limited to, the following:

6 Second paragraph: The paragraph calling for publishers to make a contemporaneous note is presumably intended as the articulation of good practice. But it is open to the misunderstanding (most likely by a complainant) that it is a regulation, in the sense that failure to make a note is, of itself, a breach of the Code.

The use of the word “should” not “must” and the fact that this is not a numbered Clause militate

against this being a regulation. Nevertheless, and for the avoidance of doubt, may I suggest a change along the following lines:

“Where a publisher identifies a public interest justification for a particular method of newsgathering or item of content, **they should it is good practice**, when undertaking an action that may otherwise breach the Code, **and will assist in the event of a subsequent complaint against the publisher, to** make a contemporaneous note, which ...”

Clause 3: Children

The preamble to Clause 3 uses the words “consent” and “assent”, but the clause itself uses only “assent”.

This appears to be deliberate, but I am not sure that the result achieves the intended effect, especially when the clause is read without the benefit of the preamble.

The key issue is that, whilst the preamble uses the phrase “informed consent”, the clause omits the word “informed”. There is nothing in the clause to distinguish between the position of (i) a teenager who is capable of comprehending what was being asked for when a journalist requests an interview or photograph etc and (ii) a very young child who understands the words sufficiently to answer “yes”, but is not sufficiently knowledgeable to have given an *informed* answer. If IMPRESS intends to do without the requirement for a responsible adult to give their consent, I think the child’s “assent” has to be “informed”.

Although the phrase “informed assent” is not often encountered in ordinary English in the way that “informed consent” is, I think the term does exist, especially in circles where “consent” and “assent” are used to differentiate between those who are legally able to give permission and those who are not (as opposed to the ordinary English distinction between “assent” = agree and “consent” = give permission).

[An alternative approach would be to use “informed consent”, but to make it clear in some way that “consent” is being used with its ordinary English meaning, rather than implying “legal consent”, but that may be too convoluted to achieve.]

Clause 6.1: Justice

I am intrigued by the wording which requires publishers to take care not to prejudice any criminal investigations or legal proceedings, “except as permitted by law”. I think two issues arise:

1 If the Code permits activity which is legal and prohibits activity which is not legal, what is the purpose of having this rule? Is the purpose to advise/warn publishers of the risk that their investigations could break the law, rather than creating an additional regulation? If so, perhaps a better wording would

be to couch the warning in terms of not doing something “prohibited by law” – see below:

2 I think, that the current formulation implies that there are ways in which a publisher can “prejudice” a trial and yet for that to be legal. Is that really the case? Might it be better – and remove any room for argument – if the word “prejudice” was replaced with something like “impact”, as below?

Taking on board both these points, may I suggest:

“Publishers must take the greatest care not to **prejudice any act in a manner which might impact on criminal investigations or legal proceedings, except as permitted in any way which is prohibited by law.**”

You could add “for example, by prejudicing a trial”, if you wanted to get the word “prejudice” in.

Yours sincerely,

Simon Carne