

Standing Committee for Youth Justice

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. The IMPRESS Board will then review, finalise and adopt the new Code.

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?

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

The Standing Committee for Youth Justice (SCYJ) is a coalition of over 40 not-for-profit organisations campaigning for reform of the youth justice system. We advocate a child-focused youth justice system that respects children's rights, promotes the integration of children in trouble with the law into society, and tackles the underlying causes of offending. Such a system would serve the best interests of the children themselves and the community at large. For the past three years we have been working on issues around the identification of children in trouble with the law.

SCYJ is concerned that subsection E of this clause could be used to disregard clause 6.2, meaning editors feel at liberty to reveal the identities of children involved in criminal proceedings. We would be very concerned if this were the case. We believe it needs to be made clear that the public interest justification in subsection E does not override clause 6.2, and that the latter has priority.

Subsection E of this clause sets out that “open, fair and effective justice” may be a public interest justification for an item of content that would otherwise breach the code. Clause 6.2 sets out that, “Publishers must protect the identity of victims of sexual assault and children under 18 years of age who are or have been involved in criminal proceedings.” The overall impression is that editors could disregard the anonymity afforded to children under clause 6.2 in the interests of “open justice”. We believe this is worrying, would compromise children's rights and would not reflect the legal situation.

The UN Convention on the Rights of the Child (UNCRC) provides children with a general right to privacy (Article 16) and, specifically, to privacy when involved in criminal proceedings (Article 40). The UK has ratified the UNCRC. In addition,

children have a general right to privacy under Article 8 of the European Convention on Human Rights.

Article 3 of the UNCRC provides that the child's best interests shall be a primary consideration in all matters concerning them, and is binding on all administrative authorities. As such, the Code should reflect the protections in Article 3; being identified by the media is clearly not in the child's best interests.

In courts, the principle of open justice is balanced against the child's enhanced right to privacy, and the child's best interests. The child's right to privacy and best interests considerations are of equal importance as the open justice principle. The judge in McKerry (*McKerry v Teesdale and Wear Valley Justices* [2001] E.M.L.R. 5 (Div. Ct.)), ruled that the privacy of the child is of great importance. It is wrong for the Code to give the impression that open justice could necessarily justify identifying children in criminal proceedings.

The Code should be clear that subsection E does not “trump” clause 6.2. In SCYJ's view, the importance of the child's enhanced right to privacy and best interest considerations, mean identifying a child involved in criminal proceedings will rarely be justifiable. We would like to see the Code or guidance amended to reflect this, so that clause 6.2 is given priority over subsection E.

The judge in *Aylesbury (R(Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin)) found that, in relation to imposing discretionary reporting restrictions prior to conviction, the child's welfare takes precedence over the open justice principle. We believe it is important that the Code reflects this and that the Code, or guidance, stipulates that, prior to conviction, subsection E is never a reason to disregard clause 6.2.

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?

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

SCYJ strongly believes that this clause should define a child as a person under the age of 18, not under the age of 16. This is in-keeping with international and domestic law and policy which affords 16 and 17 year olds the same rights and protections as other children; it is legally inaccurate for the Code to define children as those under 16 for the purposes of protecting them, which is the stated intent of this clause.

Article 1 of the UN Convention on the Rights of the Child (UNCRC), which the UK has ratified, states that: 'A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'.

In England and Wales, the age of majority is 18 (Family Law Reform Act 1969). Virtually all legislation protecting and promoting the rights and welfare of children applies to all those under 18. This includes the Children and Young Persons Act 1933, the Children's Act 1989, and the Children's Act 2004, all of which contain provisions to promote and protect the welfare of children.

Article 3 of the UNCRC requires that "in all actions concerning children...the best interests of the child shall be a primary consideration". The Committee on the Rights of the Child's legal analysis of Article 3 is clear that its protections apply to all children under 18. Article 3 is binding on all administrative authorities. As such, the Code should be amended to reflect the protections contained therein.

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?

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

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?

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

SCYJ strongly supports clause 6.2, particularly the fact that it applies to all children in the justice system. This is in-keeping with the UN Convention on the Rights of the Child (UNCRC). The special protections afforded to children under the UNCRC apply to all children, whether they are victims, witnesses or defendants. This includes the Article 3 requirement that the best interests of the child are a primary consideration in all actions concerning them. As set out above, Article 3 is binding on all administrative authorities. As such, it is entirely right that Code should reflect the Convention and not distinguish between children in the justice system.

We would like to see clarification in the Code or guidance that clause 6.2 applies equally before a child has been charged.

Currently, a legal loophole exists which allows children to be named pre-charge perfectly legally, simply because the law only allows reporting restrictions to be applied after a child has been charged. Recently, children have been named pre-charge in a number of high profile cases. For instance, the child later convicted of the murder of school teacher Ann Maguire was named pre-charge, as was the child later convicted of stabbing his teacher, Vincent Uzomah, and the child later convicted of fatally stabbing fellow pupil, Bailey Gwynne. The boy accused of involvement in the TalkTalk hacking was named by the media and has never been charged.

The Government has been clear that it wants the new system of press regulation to tackle this issue. In 2014, the House of Lords discussed identifying children pre-charge. During these debates, Lord Faulks, speaking for the Government said:

"This is not the right time to consider commencing Section 44 [which prohibits identifying a child pre-charge], in the light of the significant changes to press self-regulation recently introduced by the Government...The Government believe that a

royal charter is the best way to ensure that independent self-regulation operates successfully. We should therefore give this new approach a chance to succeed.”
(House of Lords Hansard, 23 July 2014 : Column 1198)

To ensure the Code meets the Government’s expectations, it should be explicit that clause 6.2 applies before a child is charged.

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?

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?

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?

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?

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

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.

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

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

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

strongly disagree