

IMPRESS Code Consultation Call for Evidence Response from the Hacked Off Campaign

Introduction

1. Hacked Off works with the victims of press abuse to campaign for a free and accountable press.
2. The proposed clauses and amendments set out below are in response to examples of unethical reporting across the newspaper industry and are not in response to the conduct of any specific IMPRESS-member publications. Indeed, every example provided is of unethical conduct of the largest national newspapers.

None of these titles are members of IMPRESS. But IMPRESS should be mindful of the possibility that national titles will join in the future, and the Standards Code should ensure such content is covered.

In any case, the Code should seek to cover all unethical conduct that publishers might conceivably commit – not just that which has already been committed by IMPRESS members to date.

3. The Code should be flexible.

The approach advised in the proposed clauses below is that IMPRESS should be capable of considering as broad a range of complaints as reasonably possible, while retaining a strong element of discretion in considering each case. For this reason, terms allowing for some interpretation are used in many proposed clauses to allow the Regulator to determine complaints with as wide discretion as possible.

New clause: Terrorism and Public Safety

After the Christchurch attack in New Zealand several newspapers, despite instructions from the New Zealand police, published extracts of the killer's livestream video on their websites. The Daily Mail published the killer's terrorist manifesto.¹

Britain's most senior counter terrorism officer has said that covering deadly attacks in this way could be exacerbating the problem and increasing the threat of terrorism.²

Sometimes after an event photographs of individuals at the scene of the incident are published. Those individuals are often in a state of distress and may have suffered serious injuries. Any images of them should not identify them without their consent.

Draft clause:

When reporting on violent incidents the press should take care to avoid coverage which glamorises the perpetrator, their actions and motives.

¹ <https://hackinginquiry.org/inflexion-point-report/>

² <https://www.telegraph.co.uk/news/2019/09/09/police-chief-said-media-shouldnt-publish-leaks-claims-terror/>

The press should not publish identifiable photographs of the surviving victims of attacks without first obtaining their consent.

The press should not publish terrorist publicity material, including video recordings of terrorist acts and written terrorist propaganda.

Discrimination

The Standards Code discrimination clause meets the basic and essential requirement of enabling groups to bring complaints against hateful coverage.

The high threshold of incitement of hatred may, however, enable coverage which is abusive of individuals or groups to persist.

For example, ridicule or mockery of people on the grounds of a protected characteristic may sometimes be a form of abuse which does not incite hate, but which is nonetheless abusive and should at least allow complaints to be brought.

We recommend a specific consultation is carried out with advocacy groups, to verify an appropriate level to set this threshold.

One possibility is that “abusive” is adopted as the threshold. This is a far higher threshold than the causing of offence (which would be too low), while permitting a wider range of complaints to be brought than the unreasonably high threshold of inciting hatred.

Further, we recommend the introduction of a public interest defence, to give the Regulator some discretion in considering complaints about analytical coverage.

Proposed amendment:

Except where justified by the public interest, Publishers must not ~~incite hatred~~ ~~against~~ be abusive of any group on the basis of that group’s age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion, sex or sexual orientation or another characteristic that makes that group vulnerable to discrimination.

New clause: domestic violence

The following proposed new clause is based on the Level Up guidelines³ which, although adopted as guidelines by IMPRESS, are unenforceable against any prospective breaches. Adding this clause to the Code would have the effect of making those guidelines enforceable.

The proposed clause simplifies the guidelines and adds a public interest defence to allow some discretion for the consideration of complaints about articles which contribute to meaningful analysis of cases of domestic violence.

³ <https://www.welevelup.org/media-guidelines>

The Code should be amended to add a new clause, which should state the following:

In specific cases where a woman has been killed by a partner, former partner or other family member, except where justified by the public interest:

Language which blames the victim for the woman's death should be avoided.

Groundless speculation over motives for the murder should be avoided.

Avoid trivialising language, and invasive or graphic details that compromise the dignity of the deceased woman.

New clause: portrayal of women

There is no clause in the Code which addresses the problem of how women can be portrayed in an unduly sexualised way in the press. The proposed clause is written to avoid capturing content where there is consent or coverage is not “undue” (for example, modelling pictures).

It would however capture content which sexualises women in public life.⁴

Further, there is a problem of some national newspapers publishing images of women unwittingly exposing underwear or similar.⁵ The Voyeurism Act (2019) created a standalone offence for taking such images, but only when taken for personal gratification or to cause distress (i.e. not when taken for financial gain).

New clause:

Publishers must refrain from sexualisation or objectification of women which is both undue and overt, having regard for the context of any coverage, and unless consent has been given to the contrary.

Images of women where intimate parts of their body or underwear are visible without their consent should not be published.

Comment sections (User Generated Content)

Although this matter is not referred to in the consultation guidance, we recommend that IMPRESS amends its policy in this area.

The current approach, as understood by the Campaign, is as follows:

- Complaints about UGC (User Generated Content) are considered against the Standards Code.
- Complaints may only be considered directly by the Regulator if the comment section is under moderation.

⁴ Amal Clooney is an international human rights lawyer. Yet this Express article focuses on her appearance; referring to her as “sexy”, and a “stunner” with “never-ending legs”: <https://www.express.co.uk/celebrity-news/675156/Amal-Clooney-George-Clooney-Pope-legs-Rome>

⁵ Some examples from the Daily Mail: <https://www.dailymail.co.uk/femail/article-4076552/Say-goodbye-scandalous-2016-Chrissy-Teigen-s-high-slit-mishap-Stella-Maxwell-s-nip-slip-revisit-year-s-worst-wardrobe-malfuctions.html>

- If the comment section is not moderated, complainants should pursue complaints with the publisher in the first instance.
- There is no requirement for moderation, rules on what such moderation should consist of, or pro-active systems in place to address dangerous UGC content.
- The publisher has no responsibility for UGC content unless it has itself chosen to moderate.

This approach mirrors the approach IMPRESS applies to editorial content.

In our view, there are major problems with this approach for UGC:

1. Unmoderated (and poorly moderated) comment sections are susceptible to hosting extremely dangerous content. Unmoderated UGC is, by definition, unreviewed for the most serious kinds of abuse and disinformation.

Like UGC, editorial content is also only subject to regulatory action after publication. But unlike UGC, the effect of robust regulation is that there is a deterrent (i.e. the risk of sanction) that publishers must be mindful of. This deterrent does not apply to private individuals leaving comments.

This can lead to particularly dangerous content being posted. The Campaign has identified, for example, racist slurs and death threats in some newspaper comment sections (albeit not at IMPRESS-member publications).

Exposing readers to this sort of content is unacceptable. Yet the current approach not only exposes such content to readers (potentially for months and years; until someone makes a complaint) but leaves the burden of beginning the process of removal with the complainant.

There must be some additional measures in place to protect the public from serious comment section abuse.

2. The Standards Code has been drafted to cover editorial content. It is not designed with UGC in mind. For example, Clause 1 (Accuracy) requires that “Publishers must take all reasonable steps to ensure accuracy”. How would IMPRESS go about evaluating whether a reader commenting under a pseudonym, making some careless inaccuracies in a comment, had taken “reasonable steps”? Should careless inaccuracies, which are unharmed, even be properly the subject of complaints and possible sanction?

In summary, the Standards Code is unworkable for UGC.

To address these problems, we recommend that a clear and openly published policy is adopted for UGC at member publications, which includes the following:

- Requirements for publishers to have their own internal moderation policies and processes of a specific, universally applied standard. This standard should be agreed in consultation with publishers, NGOs and relevant expertise. It should place a minimal burden on publishers, while ensuring the public is adequately protected from the very worst forms of UGC abuse.

It may include, for example, the requirement that specific terms and phrases are flagged for moderation, that the process for complainants raising cases of abuse/serious disinformation is as simple and fast as possible, and that publishers are accountable for these processes.

- A separate Code is formed, which should be briefer and more flexible, to address complaints about member-publisher UGC where the complainant is dissatisfied with the outcome of the internal process.
- A regular review (carried out by IMPRESS) of moderation systems that are in place at all publishers which permit UGC.

About you: please provide the following details in your submission

*Note that if you are applying through the online form, you will be requested the following information. If you are applying via email, please make sure you include the information below.

The Hacked Off Campaign
campaign@hackinginquiry.org

Are you happy for IMPRESS to contact you in the future? (please select one of the following options)

- Yes

Which of the following best describes you? (please select one of the following options)

- A civil society organization, NGO or charity

Would you be happy for IMPRESS to publish your response? (please select one of the following options)

- Yes, I would be happy for you to publish my response and attribute it to me