

Rt Hon Yvette Cooper MP
Houses of Commons
London
SW1A 0AA

28 February 2018

Dear Chair,

I, with others from IPSO, recently gave evidence to the Home Affairs Select Committee. Towards the end of our evidence you asserted that there were inconsistencies in our evidence, particularly in respect to the relationship between the Editors' Code and the law, and invited me to write to you on this issue.

Regulating, and indeed policing, freedom of expression presents significant challenges both in principle and practice. While I do not agree that discussion of these various difficulties made our evidence inconsistent or contradictory, I am happy to take up your invitation to write to you and clarify what I said.

I think there is also value in giving some more detail on the number of complaints we received in 2017 citing discrimination and the outcome of those complaints, and clarifying a point of detail in relation to a ruling by IPSO's Complaints Committee that was mentioned in the hearing.

IPSO shares the committee's concerns about divisive language being used in public debate, including in social and print media, and the reinforcing effect this can have on prejudices including islamophobia. IPSO monitors the complaints that it receives, as well as the wider public debate on this topic, as part of its ongoing work overseeing press standards. IPSO also regularly meets individuals concerned about aspects of coverage to understand those concerns in more detail; IPSO's Head of Standards and Head of Complaints met Professor Chris Frost and several of his colleagues at the National Union of Journalists last month to discuss what more IPSO can do to address this issue.

The Editors' Code and the law

The Chair of the Committee correctly noted during the session that there are many activities which are proscribed both by the law (civil and criminal) and the Code. In some areas, the alignment between the law and the Code is very close; in particular,

the terms of Clause 2 (Privacy) were drafted specifically to echo the terms of the Human Rights Act 1998, with the aim of keeping the Code and the law in accord.

In most instances where there is overlap, however, there are notable differences in approach. This may mean the Code is more stringent. For instance:

- **Clause 16 (Payment to criminals)** extends beyond legal provisions intended to protect the integrity of criminal trials and bans payment to criminals, their families or associates for editorial material that seeks to exploits a particular crime or to glorify or glamorise crime in general – however long it has been since the conviction – unless there is a public interest in publication.
- **Clause 10 (Clandestine devices and subterfuge)** goes further than the law in forbidding the use of clandestine recording in all cases. Journalists are in breach of the Code if they adopt a false identity, for example to secure employment with an organisation who are the subject of journalistic investigation – a legal offence only if it extends to fraud or impersonation. In both clauses, demonstrable public interest may provide exceptions to these rules.
- **Clause 7 (Children in sex cases)** goes beyond the law in requiring that the press should not identify a child victim or witness *even if legally free to do so*, absent an overriding and exceptional public interest justifying publication (although there have been no instances so far in which the Committee has established such a public interest).

The Editors' Code and the law in these areas have been constructed in different circumstances for different purposes, albeit with the same overall aims of ensuring that individual rights are upheld by the press. Divergence between the law and the Code does not of itself represent a flaw in either.

Legal offence of incitement to hatred vs legal right to offend, abuse and insult

As the Committee will be aware, the Editors' Code is the subject of continuous review and regular open consultation. The conversation about how best to protect the public, and in particular about the drafting of Clause 12 (Discrimination), remains open. The Code currently protects individuals from discrimination on protected characteristics including race, sexuality and religion. It does not protect groups in the same way. This issue will continue to be debated.

It is my belief, however, that the introduction of a clause prohibiting incitement to hatred would not have a significant effect on most of the numerous concerns raised by the Committee. This is first because only a very small number of the instances discussed at the hearing could fall within the scope of such a provision; and second because the provision would need to include rigorous protections for freedom of expression, corresponding with the legal position.

As Nazir Afzal noted in his testimony, the threshold for a prosecution for incitement to hatred is very high.

Laws seeking to prohibit incitement to hatred are subject to clauses (Public Order Act sections 29J and 29JA) which enshrine rights, rather than outlaw wrongs

Nothing....[in sections outlawing incitement to hatred]...shall be read or given effect in a way which prohibits or restricts discussion, criticism, expressions of antipathy, dislike, ridicule, insult or abuse of particular religions or the beliefs or practices of their adherents

These words were introduced to ensure compliance with the European Convention on Human Rights. The Ministry of Justice guidance (circular 92010/05 para 12) which accompanies these changes to the Act is similarly explicit:

Hatred is a very strong emotion. Conduct or material which only stirs up ridicule or dislike, or which simply causes offence, would not meet that threshold.

In other words, the right to offend is expressly protected as represented graphically in the attachment. A distinction has to be drawn between that which offends or is abusive and incitement to hatred. If incitement to hatred were included in the Editors' Code it would require the same distinction to be drawn as is made in the Public Order Act. If IPSO sought to prohibit offensive or abusive expressions, the European Convention would, in our view, prevent any such prohibition. IPSO could not enforce a regulation which failed to make that distinction.

Statistical analysis of written evidence

The written material, which you requested prior to my oral evidence, summarised the outcomes of 8,148 complaints received during 2017 citing Clause 12 on discrimination. These related to 846 articles. Of those, the three most complained-about articles received 2,201 complaints. None of these (or of the next three most complained about articles) related to incitement to hatred. They concerned a photo-story and caption which complainants considered objectified female MPs legs; a reference to the religious school attended by a schoolgirl who had died in tragic circumstances; and positions allegedly adopted historically by the current Leader of the Opposition towards terrorist groups.

Table 1: Articles for which we received the highest number of complaints citing Clause 12

Headline	Publication	Number of complaints
Never mind Brexit, who won Legs-it!	Daily Mail	1,955
GIRL, 11, KILLED ON WATER RIDE / Pupil suffered cardiac arrest after fall on wild rapids ride	Metro	1,437
BLOOD ON HIS HANDS	The Sun	709

Of the 8,148 complaints there were only 325 complaints citing Clause 12 which raised a potential breach of the Code and which otherwise fell within IPSO's remit. The reasons the others were not considered are summarised in this table:

Outcome	Number of Complaints
On-going as of 13/12/2017	38
Not Pursued	266
Initial copy letter*	1
Outside IPSO remit**	5,209
Rejected as no possible breach of the Code	2,309
Total	7,823

* Complaints directed to the publisher by the complainant into which we were copied but received no formal complaint following that correspondence.

** for instance, IPSO regulations allow complaints either from individuals directly affected by a potential breach of the Editors' Code, or from representative groups, whereas many of these complaints were from individuals, not directly affected.

Of the 325 complaints, 292 were multiple complaints about the same article. When there are several very similar complaints about the same article, one complaint is treated as the 'lead', which meant we had 34 unique complaints.

Of these, 23 (68%) were resolved by negotiation between the publication and the complainant, usually under IPSO oversight (this is considered a good outcome – often leading to a faster resolution than the full IPSO process).

The Complaints Committee adjudicated the remaining complaints under this clause. Three (9%) were upheld (though for breaches of other clauses). Eight (24%) were not upheld.

The 0.0001% figure mentioned during the committee session is not correct and fails to represent IPSO's work.

I hope this clarifies the complaints numbers we sent you.

Prominence and The Sun

During the hearing it was suggested that IPSO had upheld a complaint against The Sun, leading to the publication of a correction "at page 66". There appeared to be some uncertainty as to which complaint this related to; it was suggested that it related to an article written by Trevor Kavanagh, and alternatively that it related to the article published under the front-page headline "1 in 5 Brit Muslims' sympathy for jihadis". I thought it might be helpful for me to summarise the outcome of these two complaints for the Committee's information:

- The column by Trevor Kavanagh, headlined “*We’re kind, Gary, but we hate being conned*” was published on page 10 on 24 October 2016. The Sun ran a print correction correcting information in its corrections column on page 2 on 27 October. A correction to the online article was added on 7 November, and the article was amended on 17 November to remove the inaccurate information. IPSO’s Complaints Committee accepted that the print correction was sufficiently prompt and prominent to meet the Code requirements, but upheld the complaint in relation to the online article, deciding that the online correction was insufficiently prominent. It required the publication of an adjudication linked from the newspaper’s homepage for 24 hours and cross-referenced on the online article. This was published online on 24 February 2017.
- The article headlined “*1 in 5 Brit Muslims’ sympathy for jihadis*” was published in print and online on 23 November 2015. In print, the article was on the front page, with further coverage on pages 4 and 5 of the newspaper. IPSO’s Complaints Committee ruled that the coverage on pages 4 and 5 (but not the front-page headline alone) was in breach of the Code, and required the publication of an adjudication on page 5 or further forward. The Sun published the adjudication on 26 March 2016 on page 2. The Committee also required the publication of a link to the adjudication on The Sun’s homepage for 24 hours.

Conclusion

Notwithstanding any of the above, I remain deeply concerned about content which perpetuates an undesirable cycle of pandering to – and thus reinforcing – the prejudices of audiences. This is not a new problem, but it is one which is more evident as community divisions widen and social media enables more unmoderated or self-moderated consumption. We are committed to examining this issue again and considering what alternative steps IPSO might take within its wider brief of improving press standards.

Yours sincerely



Rt Hon Sir Alan Moses
Chairman

'Hate speech': the Law

