

# Guidance on reporting sexual offences

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IPSO is regularly contacted by editors and journalists seeking advice on how the Editors' Code of Practice (the Code) applies to the reporting of sexual offences. The Code extends significant protections to the victims of sexual offences to protect their identities.

This guidance provides editors and journalists with a framework for thinking through important questions and some examples of relevant decisions by IPSO's Complaints Committee.

## Key points

- There are legal protections for victims of sexual offences.
- The Code also puts restrictions on reporting of sexual offences to protect the identity of victims.
- Carefully consider the information you want to publish to ensure that a victim is not identified, or likely to be identified.
- Consider the context of the offences and whether the combination of information you are reporting could likely identify any victim.
- Additional protections apply in cases involving children, especially when there is a familial relationship between defendant and victim.
- A number of clauses in the Code are relevant to the issue of reporting sexual offences. The most relevant clauses are Clause 7 (Children in sex cases) and Clause 11 (Victims of sexual assault) but other clauses to consider include Clause 1 (Accuracy), Clause 2 (Privacy) and Clause 6 (Children).

# Legal protections and Code provisions

It is a fundamental principle of open justice that court proceedings are reported on by the media in an open and transparent way. Usually, this would mean reporting on the details of a case as well as identifying the defendant and, often, any victim(s) of a crime.

Sexual offences are a major exception to this rule.

All victims of sexual offences, including children, are automatically guaranteed anonymity for life from the moment they make an allegation that they are the victim of a sexual offence. A victim is guaranteed anonymity even when someone else accuses the defendant of the offence. In Scotland, the law is different but the practice of respecting anonymity is the same.

A large number of offences are considered sexual offences in law. These include rape, sexual assault, exposure and taking an indecent photograph of a child. Anonymity is also extended to victims/alleged victims of female genital mutilation and, in some circumstances, of 'human trafficking' and modern slavery.

Anonymity remains in force for the lifetime of the victim, even where the allegation is withdrawn, the police decide to take no action, or the accused is acquitted. The exceptions to this legal protection are very limited and specific:

- the anonymity only relates to the relevant proceedings. A victim may be identifiable in the context of unrelated proceedings
- in certain circumstances, magistrates or the trial judge may lift the automatic rule of anonymity
- victims can choose to waive their right to anonymity, without the consent of the court, so long as they are over 16. The consent must be in writing. Victims under 16 cannot waive their right to anonymity.

## The Editors' Code

- Clause 11 of the Code makes clear that you must not publish material that is likely to identify a victim of sexual assault unless there is adequate justification and you are legally free to do so.
- Clause 7 of the Code specifies that you must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences. You must also not publish anything which implies the relationship between the accused and the victim. There is a public interest exemption to this Clause, but publishers would have to demonstrate an exceptional public interest to over-ride the normally paramount interests of a child.

# Code compliance

You will find it helpful to adopt the following process to ensure that you comply with the Code.

1. Identify the potentially identifying information within the article which needs to be assessed against the Code.

2. Analyse whether the information might in fact identify or be likely to lead to the identification of the victim.

3. Consider how the information will be published (particularly if publishing online).

## 1. Identifying information

Ensure that you have identified all the information within the article that might possibly contribute to the identification of a victim. This could include the following:

- information about the victim
- information about the defendant
- details of the offence, which could include where or when the offence took place
- references to the nature of the relationship (if any) between the victim and the defendant.

## 2. Analysing information

Sometimes, it will be obvious that a piece of information would be likely to contribute to a victim's identification; the inclusion of an address (full or sometimes even partial) or specific reference to the relationship between the victim and the accused for instance.

On other occasions, information will seem insignificant and yet, to people who know something about the parties involved, it may be sufficient to lead to the victim's identification.

You must carefully consider this point: what at first seems unimportant, could in fact lead to a breach of the Code if it is published. For instance, even such apparently incidental details as the precise dates on which offences were alleged to have taken place could contribute to identification, if the accused was known to have contact with the victim on those dates.

You should also be aware that a combination of information within an article could lead to a victim being identified, by piecing together different facts about the circumstance of the offences and details of the victim. For example, in combination details such as the age of the victim, the specific

location in which the offences took place and information on how the defendant met the victim could lead to the victim being identified.

You should also consider whether there is anything in the circumstances of the offence which might make it more likely to identify the victim. Details of when the victim and offender met for example, might make it possible for readers to identify the victim.

Journalists reporting on sexual offences for a local newspaper should be particularly vigilant about information which would be widely known within the local community.

### *Jigsaw identification*

Jigsaw identification occurs when different pieces of information appear in different publications, which allows readers who have seen the reports to work out who the victim is. The approach set

out in Clause 7 of the Code is designed to reduce the risk of a jigsaw identification occurring by ensuring that all publications adopt the same format for reporting a case.

You should take all steps to make sure you and your colleagues on the newsdesk are aware of what information has already been put in the public domain by other media outlets and by your own publication in any previous reports on the case, before producing additional reporting. You may want to liaise with other media outlets to agree an approach to prevent a jigsaw identification.

Identification could happen through the combination of several seemingly minor details about the offences and/or the victim. You should carefully consider whether it is necessary to report on new details of the offences or the victim, in order to prevent an accidental identification.

## Key questions

1. What information are you including about the offence that needs to be assessed for its compliance with Clause 11? This could include, for example:
  - a. The timing (dates/frequency) of the offences
  - b. The location of the offences
  - c. How the victim and accused met
  - d. Demographic information about the victim (age, sex).
2. Is there anything distinctive in the information which is likely, on its own, to contribute to the identification of the victim?
3. Is there anything in the circumstances of the offence, for example the location in which the offence took place, which might make it more likely the victim could be identified?
4. Have you included any information which describes how the victim and defendant came into contact? If so, could that information identify the victim?

5. Could a combination of pieces of information included in the article identify the victim?

6. Could a combination of information in the article and information already established in the public domain (for example, through other press coverage) identify the victim?

## Publishing online

Publishing online allows journalists to engage with new audiences and raise awareness of issues. However, publishing articles about sexual offences online raises particular challenges for editors in ensuring that the victim remains unidentified.

You should carefully consider how the material you have gathered is going to be presented online to prevent the victim from being identified. This is particularly relevant to articles which may be published on social media platforms, or which may be open to reader comments.

In both situations, this may create a space in which the case is discussed, with an increased likelihood of the victim being identified. Members of the public may not be aware that they must not identify victims of sexual offences or may regard this legal requirement as unfair or trivial.

IPSO recognises that editors cannot prevent the circulation of links to stories and commentary on them hosted on third party websites. However, editors are responsible for material published on websites under their control and should think carefully before publishing these stories on social media sites or with reader comments enabled.

If you are concerned about potential identification, there are a range of options:

1. Publish online and actively moderate any reader comments.
2. Publish a story online with reader comments disabled.
3. Publish a story with or without links to social media platforms.

You should also review any of the supporting information you publish online to illustrate the article, such as text messages or video, to check whether that supporting information provides any details as to the identity of the victim.

### *Contempt of court*

If you post a link on a social media platform to a report on active/ongoing criminal proceedings you have a legal duty to take reasonable care when doing so under the Contempt of Court Act 1980.

When posting links related to ongoing criminal proceedings to social media sites, you should therefore consider how best to warn social media users that they must not post related comments that may prejudice the investigation or a fair trial.

A failure to provide a warning could be cited as evidence of a lack of reasonable care should prejudicial comments by readers subsequently be posted on your story.



## Key questions

1. Have you considered how the material will be presented online to prevent the identification of the victim?
2. What steps will you take to prevent the identification of the victim?
3. Have you communicated how material will be presented online to staff?
4. What steps have you taken to warn social media users about prejudicing and investigation or fair trial?

Any editorial decisions about how to present reporting on sexual offences should be shared with all relevant staff, to ensure a uniform approach.

## Cases involving children

You must not identify child victims or witnesses involved in sexual offences cases even if you are legally free to do so. There is a public interest exemption to this.

The Code specifies additional protections for a child who is the victim of an offence. These are particularly relevant given the danger that the offences reported on may be incest, significantly increasing risk of identification.

Clause 7.2 of the Code says that in any report of a case involving a sexual offence against a child:

- i. The child must not be identified.
- ii. The adult may be identified.
- iii. The word “incest” must not be used where a child victim might be identified.
- iv. Care must be taken that nothing in the report implies the relationship between the accused and the child.

This means that all publications follow the same approach

from the first time a case is written about, extending extra protection against identification.

Even so, you must take exceptional care that there is no reference which might identify a victim, particularly in cases of familial connection. The Code sets a very high test – that ‘nothing’ should imply the relationship between the victim and the accused.

Before publishing a report, you should review all information to assess whether or not it implies any relationship. Examples include the location in which the offences took place (e.g. the family home) or dates or times (if they imply regular contact).

### *The public interest*

There is a public interest exception to Clause 7. In order to identify a child as a victim, witness or defendant, editors would need to be legally free to do so and would need to demonstrate an exceptional public interest for naming the child.

IPSO has not yet considered a complaint which tests the public interest on this clause and editors would be strongly encouraged to contact us for pre-publication advice in these circumstances and to take legal advice.

### Key questions

1. What information are you including about the offence that needs to be assessed for its compliance with Clause 7? This could include, for example:

- a. The timing (dates/frequency) of the offences
- b. The location of the offences
- c. How the victim and accused met
- d. Demographic information about the victim (age, sex)

2. Could a combination of pieces of information included in the article identify the victim?

3. Could a combination of information in the article and information already established in the public domain (for example, through other press coverage) identify the victim?

# Waiving the right to anonymity

In certain circumstances, magistrates or the trial judge may lift the automatic rule of anonymity. In addition, victims themselves can choose to waive their right to anonymity if aged 16 years or over, without the consent of the court. Under the law no victim or alleged victim of a sexual offence who is under the age of 16 can waive his or her anonymity, and it also cannot be waived on his or her behalf by a parent or guardian.

If a victim agrees to be identified, you must have the victim's consent to be identified in writing. You should not pressurise a victim to give their consent. It is good practice to check that a victim still consents to be named, if the consent was given some time prior to the publication of the article.

An interviewee may choose to speak about their experience as a survivor of sexual assault, as part of a broader interview. In those cases, journalists should still seek written consent from the interviewee in order to

publish information about their sexual assault.

## Key questions

1. Has the victim (if over 16) waived their right to anonymity?
2. If so, do you have their consent in writing?

# Further considerations

## Language

The Editors' Code does not set out the language which must be used to describe sexual offences. However, when reporting on sexual offences, journalists are reporting on extremely sensitive and personal matters.

Editors and journalists should not lose sight of the fact that victims will often be in a particularly vulnerable position.

Care should be taken not to choose terminology which sensationalises the offences, apports blame or implies that the victims consented to the sexual act.

## Additional support when interviewing victims of sexual offences

If you are interviewing a victim, you should consider the impact of the interview on the victim and what support you will make available to them. This could include letting the victim choose the location for the interview, or signposting the victim to appropriate additional support.

# Relevant complaints

## A man v The Gazette (Paisley) & others

IPSO upheld a complaint against The Gazette (Paisley) after it published information which was likely to contribute to the identification of a victim of sexual offences, in relation to articles reporting on court hearings.

The first article reported that an individual had pleaded guilty to sex offences against a child. It reported the age of the victim when the offences began, and the time period over which the offences took place, by reference to the month and year. It reported the circumstances in which the defendant had come into contact with the victim, with reference to a specific day of the week. The second article reported that the individual had been given a jail sentence for the offences; it reported the period over which the offences occurred, by reference to the month and year, and also made reference to the

circumstances in which the offences took place, although in less detail than the first article. The second article contained an image of the defendant and his spouse, outside of court. Both articles reported the current age of the victim and elements of what the court was told had been the defendant's comments on the offences.

The Committee considered that the details the articles contained about the circumstances in which the defendant committed the offences against the victim were of the kind that would be known within the victim's community. When reported alongside the time frame of the offences, and the age of the victim, these details represented material which was likely to contribute to the identification of the victim. The complaint was therefore upheld as a breach of Clause 11.

## Warwickshire Police v Daily Mail

Victims of sexual offences are granted anonymity both in law and under the Code, in any reports of a criminal trial for sexual offences. However, they will not generally remain anonymous within court proceedings themselves and so journalists who are attending court, as part of their crucial role in ensuring open justice, will have access to victims' identities. In some instances it is appropriate and justified, to seek comment from the victims: they may wish to speak about their experiences and the impact of the crimes. However, contacts must be made with regard for the extreme sensitivity of the circumstances, taking care not to disclose information to third parties without consent.

Warwickshire Police complained about the conduct of a journalist working on behalf of the Daily Mail after allegations that the journalist's enquiries had identified three individuals as victims of sexual assault and intruded into their privacy. The journalist had attended the

home of a friend of two of the victims and told them he was looking for named individuals involved in a high profile case. The journalist had also approached the homes of the victims' parents asking to speak to them.

The reporter had identified a well-known, local criminal case and said that he was looking for named individuals who had been "involved in the case". Existing reports had explained the nature and location of the crimes and the profile of the victims. In this context, to identify the complainants by name as "involved in the case" made clear that they were, or were likely to be, victims, particularly given they fitted the general descriptions of the victims previously reported. They had been identified to their parents, as a result of the enquiries.

Their involvement in the case as potential victims was extremely sensitive and the three individuals involved had a reasonable expectation of privacy. The complaint was upheld as a breach of Clause 2.

## A man v Daily Record

Editors can only identify a victim of sexual offences if they are legally able to do so and have adequate justification (or if the victim has given their consent).

In Scotland, there is no specific provision which grants automatic anonymity to victims, or alleged victims, of sexual assault in cases tried under Scottish law but a judge has the power to make an order granting anonymity.

The article reported that a defendant had been found not guilty of an allegation of sexual assault. The alleged offence took place in Scotland, and the trial also took place there. The alleged victim was named in the report and the judge did not make an order granting anonymity.

In these circumstances, the newspaper was legally free to publish the complainant's name.

However, the Code sets out a more stringent test than the law in that, regardless of the legal

position, publications may not name victims of sexual assault unless there is "adequate justification" to do so.

The newspaper argued that it was clear from remarks made by the sheriff that the alleged offence should never have been classed as a sexual assault.

However, the case had been taken forward to trial by the prosecuting authorities, and there was no finding that the complainant had acted improperly in making the accusation. Criticism of the decision to prosecute was insufficient to justify identification of the victim. The newspaper breached Clause 11.

## A woman v The Argus & others

The Code offers specific protection to victims of sexual assault, and recognises their legal right to anonymity. However, victims can be identified by publications when there is adequate justification and they are legally free to do so. In addition, legal anonymity does not apply to the reporting of other criminal proceedings involving the victim.

The article reported that the complainant was on trial for assault and wasting police time, offences for which the complainant was subsequently acquitted.

It stated that the court had heard that the complainant had “assaulted a man after performing a strip dance for him” and “wasted police time when she reported that she was assaulted and sexually assaulted.”

The complainant said that she was a victim of sexual assault and that this meant that she should not have been named or identified in the article.

The article was a contemporaneous report of a court case in which the complainant was facing charges of assault and wasting police time. The allegation of sexual assault was central to these ongoing proceedings, and the Committee was satisfied that the publication was justified in identifying the complainant as an alleged victim of sexual assault. In these circumstances there was no breach of Clause 11.