

MINUTES of the COMPLAINTS COMMITTEE MEETING
Tuesday 2 March at 10.30am
Via Video Conference Call

Present

- Lord Edward Faulks (Chairman)
- Nazir Afzal
- Andrew Brennan
- David Hutton
- Janette Harkess
- Helyn Mensah
- Asmita Naik
- Miranda Winram
- Mark Payton
- Andrew Pettie
- Peter Wright

In attendance:

- Charlotte Dewar, Chief Executive
- Michelle Kuhler, PA and minute taker
- Lauren Sloan, Head of Complaints

Also present: Members of the Executive:

- Elizabeth Cobbe
- Jane Debois
- Rosemary Douce
- Alice Gould
- Sebastian Harwood
- Emily Houlston-Jones
- Natalie Johnson
- Martha Rowe
- Sean Sutherland

Observers: Jonathan Grun, Editors' Code of Practice Committee

1. Apologies for Absence and Welcomes

Apologies were received from Alastair Machray. The Chairman welcomed, Jonathan Grun, to the meeting.

2. Declarations of Interest

There were no declarations of interest received.

3. Minutes of the Previous Meeting

The Committee approved the minutes of the meeting held on 26 January.

4. Matters arising

There were no matters arising.

5. Update by the Chairman – oral

The Chairman mentioned that we seem to be gradually emerging from lockdown. Currently pencilled in mid-May for a gradual return to the office with limited numbers of people, but this would be subject to review.

He updated the Committee on the recruitment currently underway for the Chair and a lay member for the Appointment panel, a receptionist, and members of the readers' advisory panel.

6. Complaints update by Head of Complaints

The Head of Complaints informed the Committee that IPSO has seen a slower start to the year, with no large multiples but some small ones with volumes up to 30 complaints about one issue. The complaints update from the recent Board meeting had been distributed.

She gave a brief update on complaints that the Executive expected to come to the Committee.

7. Complaint 29252-20 Coulson v blackpoolgazette.co.uk

The Committee discussed the complaint and decided to request further information from the publication.

8. Complaint 10506-20 Russian Direct Investment Fund v The Times

The Committee discussed the complaint and decided to request further information from the publication.

9. Complaint 01741-20 A man v thesun.co.uk

The Committee discussed the complaint and ruled that the complaint should be upheld as a breach of Clause 11 (Victims of sexual assault). **A copy of the ruling appears in Appendix A.**

10. Complaint 28987-20 Lipsey v express.co.uk

The Committee discussed the complaint and ruled that the complaint should not be upheld as a breach of Clause 1 (Accuracy). **A copy of the ruling appears in Appendix B.**

11. Complaints not adjudicated at a Complaints Committee meeting

The Committee confirmed its formal approval of the papers listed in **Appendix C.**

12. Any other business

There was no other business.

13. Date of next meeting

The date of the next meeting was confirmed as 20th April 2021.

The meeting ended 1.20pm

Appendix A

Decision of the Complaints Committee 01741-20 A man v thesun.co.uk

Summary of complaint

1. A man complained to the Independent Press Standards Organisation that thesun.co.uk breached Clause 11 (Victims of sexual assault) in an article published in 2020.

2. The article reported on the life of a person convicted some years ago of a number of serious criminal offences. It reported on the man's background, his crimes and life in prison. The article went on to report that "[a]ccording to a close friend [the complainant] was sexually assaulted when he was 11".

3. The complainant said this reference identified him as a victim of sexual assault. He said that he had never spoken to any media outlet about the incident nor ever waived his legal right to lifelong anonymity; which he said was originally granted to him at the time he gave his testimony against the alleged perpetrator and, subsequently, by the Sexual Offences (Amendment) Act 1992. Therefore, he said that the publication was not legally free to identify him as a victim of sexual assault and had breached Clause 11.

4. The publication did not accept it had breached the Code. It emphasised that the complainant's identity as a victim of sexual assault was in the public domain before the article under complaint had been published. It was first mentioned in a newspaper article of 1986 prior to the enactment of the Sexual Offences (Amendment) Act 1992, which grants anonymity to victims of sexual assault. The 1986 article referred to the complainant being "sexually molested by older boys"; information the publication alleged had come from a then-close personal advisor to the complainant. This information had also been published on the complainant's Wikipedia page; in two books authored by third parties in 1994 and 2015 respectively; and in a 2015 article published by a different newspaper. The publication argued it had not been unlawful to identify the complainant as a victim of sexual assault prior to the enactment of the 1992 Act; that it could be inferred that the information had first been disclosed on the complainant's behalf given that he had given the information to somebody who had been identified at the time as his advisor; and that the information had subsequently been placed into the public domain seemingly with the complainant's acquiescence. In these circumstances, the publication argued that it was legally free to identify the complainant as a victim of sexual assault in the article under complaint. It submitted that the complaint also raised a novel point of law, namely whether the 1992 Act prevented the identification of victims of sexual assault where this information was already in the public domain prior to the Act coming into force and prior to the newspaper's own disclosure. The publication submitted that IPSO's Complaints Committee could not authoritatively determine such points of law.

5. On the question of whether there was an adequate justification to identify the complainant as a victim of sexual assault, the publication said that identifying him as a victim was unlikely to be intrusive given that this information was already in the public domain. The newspaper argued that the complainant had been convicted of serious crimes of significant public concern and interest. As such, it said that the discussion of the

circumstances that might explain or contextualise this offending, such as his status as a victim of sexual assault, was therefore also a matter of legitimate public interest.

6. In response, the complainant said that he had neither consented to nor acquiesced to being identified as a victim of sexual assault. He said that his cooperation in the writing of the 2015 book was limited to answering some questions from its author and that the person who had been named as the original source of the information - a former friend - had never acted as his advisor as alleged by the newspaper. He disputed that the publication was legally free to identify him as a victim of sexual assault because it had been reported prior to the enactment of the 1992 Act; he said there was no basis for asserting that the 1992 Act did not cover republication. He also confirmed that he had never placed the information before a court as, say, part of his mitigation; and it had never formed any part of the legal proceedings relating to the serious crimes for which he was convicted. Further, he said that it would be wrong to rely on previous breaches of his right to anonymity to establish an adequate justification in this case.

7. The publication said it had removed the reference to the complainant being a victim of sexual assault when his concerns were first brought to its attention. During the referral period, the publication also offered to publish a footnote to the article, stating:

A previous version of this article included some additional information which [the complainant] considers to be private. It has now been removed.

8. The complainant did not accept this offer as a resolution to his complaint.

Relevant Code provisions

9. Clause 11 (Victims of sexual assault)

The press must not identify or publish material likely to lead to the identification of a victim of sexual assault unless there is adequate justification and they are legally free to do so. Journalists are entitled to make enquiries but must take care and exercise discretion to avoid the unjustified disclosure of the identity of a victim of sexual assault.

Findings of the Committee

10. It was not in dispute that the complainant had been identified as a victim of sexual assault in the article under complaint. The issue for the Committee was whether the publication was legally free to identify him as such and whether it had an adequate justification to do so. The publication needed to establish it had met both of these two tests in order to avoid a breach of Clause 11.

11. The Committee first considered whether the publication had demonstrated that it had an adequate justification for identifying the complainant as a victim of sexual assault. It noted that cases where a publication is able to establish an adequate justification are likely to be rare; anonymity for victims of sexual assault is of great importance both to victims and to society generally. The Committee noted the publication's argument that the complainant's status as a victim of sexual assault was already in the public domain. However, further disclosures of this information were likely to be intrusive and distressing

to the complainant. Moreover, these previous disclosures were without the complainant's consent. The Committee also noted that the reference to the complainant being a victim of sexual assault had been made in passing in the article; there was no analysis of why this information was relevant or important to understanding the complainant's crimes. Finally, whilst the publication had argued that the complainant's status as a victim of sexual assault might explain or contextualise his offending, the Committee noted that this information had never formed part of the prosecution or defence's case at trial nor in subsequent appeals. For these reasons, the Committee concluded that the publication did not have an adequate justification to identify the complainant as a victim of sexual assault. On this basis, there was a breach of Clause 11.

12. Given the Committee's finding that the publication had breached Clause 11 on the basis that it did not have an adequate justification to identify the complainant as a victim of sexual assault, it was not necessary for the Committee to decide whether the publication was legally free to identify the complainant as such. The Committee nevertheless observed that the 1992 Act granted lifelong anonymity to victims of sexual assault and did not include an express exception in circumstances where an individual had been identified as a victim before the enactment of the 1992 Act or where the information had already been placed in the public domain other than with the victim's consent.

Conclusion

14. The complaint was upheld.

Remedial Action required

14. Having upheld the complaint, the Committee considered what remedial action should be required. In circumstances where the newspaper had breached Clause 11, the publication of an adjudication was appropriate.

15. The complaint related to material published in one online article. Therefore, the adjudication should be published on the publication's website, with a link to the full adjudication (including the headline) appearing in the top 50% of stories on the publication's website for 24 hours; it should then be archived in the usual way. The headline to the adjudication should make clear that IPSO has upheld the complaint, give the title of the publication and refer to the complainant's subject matter. The headline must be agreed with IPSO in advance. The terms of the adjudication for publication are as follows:

A man complained to the Independent Press Standards Organisation that thesun.co.uk breached Clause 11 (Accuracy) in an article published in 2020. The article reported on the life of a person convicted some years ago of a number of serious criminal offences. It reported that "[a]ccording to a close friend [the complainant] was sexually assaulted when he was 11".

The complainant said this reference identified him as a victim of sexual assault. He said that he had never spoken to any media outlet about the incident nor ever waived his legal right to lifelong anonymity; which he said was granted by the Sexual Offences (Amendment) Act 1992. Therefore, he said that the publication was not legally free to identify him as a victim of sexual assault and had breached Clause 11.

The publication mentioned that the complainant had been identified as a victim of sexual assault in an article prior to the enactment of the 1992 Act; that it could be inferred that the information had first been disclosed on the complainant's behalf; and that the information had subsequently been placed into the public domain seemingly with the complainant's acquiescence. In these circumstances, the publication argued that it was legally free to identify the complainant as a victim of sexual assault. It also said it had an adequate justification to do so, given that the fact might explain or contextualise the complainant's offending and given that disclosure of this fact was unlikely to be intrusive given it was already in the public domain. In response, the complainant said that he had neither consented to nor acquiesced to being identified as a victim of sexual assault.

IPSO found that the publication did not have an adequate justification to identify the complainant as a victim of sexual assault and as such had breached Clause 11. Further disclosure of the complainant's status as a victim of sexual assault was still likely to be intrusive regardless of whether this fact had previously been published. Additionally, previous disclosures of this fact were without the complainant's consent.

Finally, the article did not attempt to explain why this information was relevant or important to understanding the complainant's crimes, it was simply mentioned in passing. Given the Committee's finding that the publication had breached Clause 11 on the basis that it did not have an adequate justification to identify the complainant as a victim of sexual assault, it was not necessary for the Committee to decide whether the publication was legally free to identify the complainant as such.

Date complaint received: 10/3/2020

Date decision issued: 11/3/2021

Appendix B

Decision of the Complaints Committee 28987-20 Lipsey v Express.co.uk

Summary of complaint

1. Lord Lipsey complained to the Independent Press Standards Organisation that express.co.uk breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined "'Get rid of it!' Boris told to ABOLISH House of Lords after latest Brexit-blocking vote" published on 11 November 2020.

2. The headline of the online article was followed by a sub-heading that reported the Prime Minister Boris Johnson had been told to abolish the House of Lords, "according to an express.co.uk poll", after peers voted down parts of the Internal Market Bill put forward by the Government. The article gave details of the Bill and explained that the poll, which ran from 8am until 10.30pm on Tuesday 10 November asked express.co.uk readers: "Should the House of Lords be disbanded?". It reported that 97% of the 10,908 readers who cast a vote said that the House of Lords should be abolished. It said 3% said that the House of Lords should remain, while less than 1% were undecided. The article went on to detail the statements made by readers in the comments section, such as "The British taxpayers' money must be put to good use and the House of Lords is an expenditure which is not needed. Get rid."

3. The complainant said that the article breached Clause 1. He said that it was inaccurate to report that the newspaper had carried out a "poll" where it had not been carried out in a way which normal opinion polls would be. He said that the information provided in the article did not demonstrate that it had gathered the responses of a representative sample of express.co.uk readers, or the general public. He also said that the question posed by the newspaper was leading and would not generate representative responses. He also referenced a previous IPSO ruling which found the newspaper to be in breach of Clause 1 by misleading as to the terms of its poll. He said that comparable opinion polls of the general public had not replicated anywhere near the level of support for the abolition of the House of Lords as the newspaper had reported.

4. The newspaper did not accept that the article was inaccurate. It said that the article made clear both that the poll had been answered by express.co.uk readers and the methodology of the poll, so it was not comparable to the previous IPSO ruling cited by the complainant. It said that the sub-heading, main body of the article, and photograph caption made clear that the Prime Minister was "told" by express.co.uk readers to abolish the House of Lords, rather than the general public or by any other group of people. It also noted that the article included a screenshot of the poll, showing the question asked and its response and said that the poll was displayed on the "News" section of the website. However, in its first response during IPSO's investigation it offered to amend the word "told to" to "urged" in the headline, as a gesture of goodwill. Approximately two and half weeks into IPSO's investigation, it amended the headline to read "Get rid of it!' Boris told to ABOLISH House of Lords by readers after Brexit-blocking vote'. Although it did not accept that the terms of Clause 1(ii) were engaged, it also added the following footnote clarification:

A previous version of this article was headlined: 'Get rid of it!' Boris told to ABOLISH House of Lords after latest Brexit-blocking vote. The headline has since been amended as a gesture of goodwill to make clear that Boris was told by express.co.uk readers. We are happy to make this clear.

Relevant Code Provisions

Clause 1 (Accuracy)

- i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
- ii) A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.
- iii) A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.
- iv) The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.

Findings of the Committee

5. The complainant contended that it was misleading to refer to a survey conducted through a pop-up box on the publication's website as a "poll", and therefore the article breached Clause 1, because of the nature of the question and the way the data had been collected.

6. The Committee noted that the word "poll" can have different meanings, depending on context. In considering whether it was used in a misleading way in this instance, the Committee examined the full article. In doing so, the Committee noted that the text of the article outlined the methodology and scope of the survey undertaken: the exact question posed to readers, each possible response, and an exact breakdown of the results. It also noted that the article included a screengrab that showed how the pop-box looked and quoted comments made by its readership that helped to put the findings, and the headline, into context.

7. In the view of the Committee, the article had included sufficient information as to how it had collected the data to ensure that it was clear that the "poll" did not constitute a representative sample, but rather a "straw poll" of those readers who had chosen to respond. As such, there was no breach of Clause 1 (i). Nevertheless, the Committee welcomed the newspaper's willingness to further clarify the headline claim, and to publish a footnote recording this.

Conclusion

8. The complaint was not upheld.

Date complaint received: 11/11/2020

Date complaint concluded by IPSO: 18/03/2021

Appendix C

Paper No.	File Number	Name v Publication
2067	11471-20 11472-20 11473-20 11474-20	Hale v dailyrecord.co.uk/mirror.co.uk/dailystar.co.uk/birminghammail.co.uk
2068	11470-20	Hale v thescottishsun.co.uk
2087	11054-20	Buchanan v Telegraph.co.uk
2104	28335-20	Hajiyev v spectator.co.uk
2123		Request for review
2112	28402-20	Jamali v The Daily Telegraph.co.uk
1998	06077-20	Henderson v Sunday Life
2117	027994-20	Odwale/Yadav v Mail Online
2118	28482-20	Chott v Yellow Advertiser
2124		Request for review