

MINUTES of the COMPLAINTS COMMITTEE MEETING
Tuesday 10th November at 10.30am
Via Video Conference Call

Present Lord Edward Faulks (Chairman)
Richard Best
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:

Katrina Bell
Elizabeth Cobbe
Rosemary Douce
Hanno Fenech
Alice Gould
Sebastian Harwood
Emily Houlston-Jones
Vikki Julian
Todd Stammers

Observers: Jonathan Grun, Editors' Code of Practice Committee
Charles Garside, IPSO Board Member

1. Apologies for Absence and Welcomes

There were no apologies received. The Chairman welcomed, Asmita Naik the new lay committee member, and Jonathan Grun and Charles Garside to the meeting.

2. Declarations of Interest

Peter Wright declared an interest in item 7, and left the meeting for the item.

3. Minutes of the Previous Meeting

The Committee approved the minutes of the meeting held on 6 October.

4. Matters arising

There were no matters arising.

5. Update by the Chairman – oral

The Chairman informed the Committee that the employees are continuing to work.

IPSO will be publishing its guidance on the reporting of Muslim and Islam, this week.

6. Complaints update by Head of Complaints - oral

The Head of Complaints updated the Complaints Committee on the recent work of the complaints team. IPSO are still receiving a high volume of complaints, and have not had any further large multiples, as with the Stonehaven one. There are a large number of investigative complaints received mainly from one complainant.

The Head of Complaints gave the committee an overview of complaints coming their way, one regarding a user comment and an interesting privacy complaint.

7. Complaint 04849-20 A woman v Yorkshire Evening Post

The Committee discussed the complaint and ruled that the complaint should be upheld. **A copy of the ruling appears in Appendix A.**

8. Complaint 12247-20 Criminal Cases Review Commission v The Times

The Committee discussed the complaint and ruled that the complaint should be upheld. **A copy of the ruling appears in Appendix B.**

9. Complaint 08086-19 ESE group v mirror.co.uk

The Committee discussed the complaint. The ruling was to be finalised in correspondence.

10. Complaint 08822-20 Jung v thesun.co.uk

The Committee discussed the complaint and ruled that the complaint should be taken forward by IPSO.

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 were no other business.

13. Date of next meeting

The date of the next meeting was confirmed as 15th December 2020.

Appendix A

Decision of the Complaints Committee 04849-20 A Woman v Yorkshire Evening Post

Summary of complaint

1. A woman complained to the Independent Press Standards Organisation that the Yorkshire Evening Post breached Clause 1 (Accuracy), Clause 2 (Privacy), and Clause 3 (Harassment) of the Editors' Code of Practice in an article headlined "Beautician who sued Mail for libel wins case" published on 29 February 2020.
2. The article was an interview with a person who owned a beauty business who had recently taken legal action against another newspaper. It reported that, initially, a customer had complained about the beauty treatment she had received at the business and tried to take the business owner to trading standards "which dismissed [the customer]" and the customer then "threatened to go to the papers". The article then explained that following this, a newspaper carried out an undercover investigation into the business and published a critical article. The business owner then took legal action against the newspaper and it had now paid her damages.
3. The article also appeared online in much the same form with the headline "'One article nearly killed me' – Leeds mum wins Mail on Sunday libel case" published on 27 February 2020. In addition to the points made in the print article, this article also reported that the person said she was unable to take any action against the customer who approached the newspaper with her complaint because the customer had been diagnosed with schizophrenia.
4. The complainant was the customer referred to in the article as having complained about her beauty treatment. She said that the article contained a number of inaccuracies and breached Clause 1. She denied that trading standards "dismissed" her case when she contacted them for advice because she never submitted a formal complaint which was assessed. Similarly, she said that she never "threatened to go to the papers" with her complaint – instead she was contacted by a reporter after she posted about her concerns online. Finally, she said that in relation to the online article, she had never been diagnosed with schizophrenia, nor had made that claim to anyone.
5. The complainant said that the online article also intruded into her privacy in breach of Clause 2 by reporting the highly sensitive claim that she had been diagnosed with schizophrenia (which she also denied). The complainant said that although she was not named in the article, she had been identified as the subject of the claim by readers who had contacted her and her family, causing great distress and exacerbating the intrusion into her privacy.
6. The complainant explained how she had been identified despite not being named. She said that the business owner's story was well known in her local community and she was well known to be the person who had complained about her treatment. She said that this was because when she originally complained about her treatment, she did so on social media under her own name and also said that the business owner had posted pictures of her on social media which had been widely shared. She provided a screenshot of a social media post made by the business owner in which she was named in reference to the treatment she complained about and was the basis of the critical article.

She also provided a screenshot of a member of the public commenting on her Facebook post with a reference to her complaint about her treatment. Although the original article did not name the complainant, it did include photographs of her face and therefore people who had seen the original article, in a national newspaper, may be able to identify her. Furthermore, she said that the business owner had posted often about her complaint about her treatment, and then the subsequent article and legal process against the newspaper. She provided examples of people contacting her on social media in relation to her complaint about her treatment and said that the police had previously warned the beautician about her social media posts about the complainant. She said that it was her complaint alone which led to the undercover investigation and critical article – as such, she said that it was not the case that the business owner could have been referring to a different person in the article. For all of these reasons, the complainant said that she could be identified as the subject of the business owner's claims. She also said that the business owner's claims about her continued a pattern of harassment against her and so constituted a breach of Clause 3.

7. The newspaper did not accept that the article represented a breach of the Code. It said that it was an accurate report of the interview with the woman and was published in good faith, and that the woman was a reliable source of information. It said that it did not carry out any fact checking of the woman's claims, or contact the complainant for comment because it considered that this would have been inappropriate given the claim made by the woman regarding the complainant's mental health. It did not accept that the points she raised represented significant inaccuracies. As such, it did not offer to publish any correction. However, it did offer to amend the online article to say that the woman was "led to believe" that the complainant had approached trading standards "before realising the disgruntled woman's story was about to be published by the national papers". It also offered to amend the reference to the complainant being diagnosed with schizophrenia to state that this is what the newspaper had been told by the woman, and that this was what the woman had been led to believe. It said that these were the woman's honestly held views, which it was entitled to report and it was necessary to do so in order to convey the circumstances in which the woman had been successful in her legal action against the newspaper.

8. The newspaper did not accept the article represented an intrusion into the complainant's privacy because it did not accept that she was identifiable. It said that the reporter was unaware of the identity of the person referred to by the woman during the interview. It said that it was impossible for any member of the public to have identified the complainant from the information in the article as the information about her was limited. It said that the only information included in the article which could identify the complainant was that she was a customer of the woman, and that she had been diagnosed with schizophrenia. It said that as it was in fact not the case that the woman had been diagnosed with schizophrenia, the pool of possible persons that the woman was referring to would include any of her former customers, which was a large pool. It did not accept that there was a breach of Clause 3, and said that the reporter specifically took steps not to contact the complainant. Nevertheless, as a gesture of goodwill, the newspaper offered to provide the complainant with a confidential letter expressing regret that the article caused her distress. It said that it was also happy for the complainant to put her version of events forward in writing for the newspaper's reference, should it ever need to return to the subject. Later during IPSO's investigation, it offered to delete the online article.

Relevant Code Provisions

9. 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.

Clause 2* (Privacy)

- i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.

Clause 3* (Harassment)

- i) Journalists must not engage in intimidation, harassment or persistent pursuit.
- ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.
- iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

Findings of the Committee

10. The online article reported a claim by the woman interviewed that the customer with whom she had been in a dispute had been diagnosed with schizophrenia. The article did not name the complainant as the customer, but the publication did not dispute that she was the person referenced. Under Clause 2, editors are expected to justify intrusions into an individual's private life without consent.

11. The question for the Committee was whether the publication of the interviewee's claim in this context represented an unjustified intrusion in breach of Clause 2. In making this assessment, the Committee considered the nature of the claim and the context in which it was presented, which included the extent of the complainant's identifiability as the subject of the claim.

12. While the complainant had not been named, she said that she was identifiable to a circle of people who were aware of the dispute, who had contacted her and her family to enquire about the claims made by the woman. The complainant provided examples of social media posts relating to the dispute. The newspaper did not dispute that this identification had occurred. A photograph of a part of the complainant's face had also been published in a national newspaper alongside separate coverage of the dispute, albeit she had not been named in that coverage. Having considered the material, the Committee concluded that the complainant would be identifiable as the subject of the claim to an audience who was aware of the dispute. The Committee next considered the nature of the information. A person's diagnosis with a serious mental health condition is unquestionably information relating to their health, and the complainant had a reasonable expectation that any such information would remain private, notwithstanding that she denied the accuracy of the claim in this instance. The complainant had not consented to publication of this information, and the Committee did not consider that presenting the interviewee's position on a dispute relating to the provision of a beauty treatment constituted adequate justification for including allegations – which were disputed – about the complainant's mental ill-health without consent. Nor had the publication argued that there was a public interest justification which overrode the terms of Clause 2. The Committee concluded that publishing this sensitive and serious claim about the complainant's health, without consent and without justification, constituted an intrusion into the complainant's private life. The online article breached Clause 2.

13. The online article had reported as fact the woman's claim that the complainant had been diagnosed with schizophrenia. The Committee noted that the claim was presented in a quote attributed to the woman. However, it was clear that in reporting such a serious and sensitive claim about a person's health – where it was possible for the subject of the complaint to be identified – the newspaper should have taken steps to verify this claim. Instead, the newspaper reported this quote without taking any steps to establish its veracity. In the absence of these steps, there was a failure to take care over the accuracy of the online article in reporting this claim and a breach of Clause 1(i). The newspaper was not able to provide any basis to show that the woman's claim was true and did not dispute the complainant's position that she had not been diagnosed with schizophrenia. In assessing the significance of the inaccuracy, the Committee had regard to the nature of the woman's claim. It referred to a specific person, who the Committee had found was identifiable to those familiar with the case. In addition, the allegation made a very serious and sensitive claim about her health. The fact that she had been identified as the subject of this claim had caused her much distress. As such, a correction was required under the terms of Clause 1(ii).

14. The newspaper had offered to amend the online article to make clear that the diagnosis of schizophrenia was what the woman had been "led to believe" and that this was what she had told the newspaper. However, this did not constitute a correction under the terms of Clause 1(ii). It did not set out that the original article had contained an inaccuracy, and it did not signal that any amendment had been made to the article. Furthermore, it did not put on record the correct position – that the newspaper did not have any basis to dispute the complainant's position that she had not been diagnosed with schizophrenia and that she denied it. As such, there was also a breach of Clause 1(ii).

15. The complainant also raised two further points of alleged inaccuracy relating to the position of Trading Standards on the case and the complainant's contacts with another publication. The Committee did not consider that these amounted to significant inaccuracies requiring correction. It was not in dispute that the complainant had contacted Trading Standards and that it had not taken any further action. In this context of a passing claim made by the interviewed woman, which it was clear represented one side in a long-running dispute, the distinction between Trading Standards dismissing the complaint and the complainant's deciding not to pursue a complaint after consulting Trading Standards was not significant. Similarly, it was not in dispute that the original article which was critical of the woman's business had been written following the complainant's original complaint about her treatment, and that she had spoken to the publication in advance of publication – whether she had "threatened" to go to a newspaper about her treatment did not significantly affect this fact. Presenting the interviewed woman's claims on these points did not constitute a failure to take care over the article, and there was no breach of Clause 1 on these points. However, where the newspaper appeared to accept the complainant's position and did not provide any basis to challenge her complaint, the Committee welcomed its offer to amend the online article as it suggested.

16. The Committee acknowledged that the article had caused the complainant distress. However, the terms of Clause 3 are generally interpreted to refer to the conduct of reporters in preparation of an article. The publication of a single article which was largely focussed on relating the interviewed woman's experiences of the dispute, the press coverage and her legal claim did not constitute harassment of the complainant. The complainant had not alleged that a reporter acting on behalf of the newspaper had acted in a way which would breach Clause 3. Any concern relating to the conduct of the woman did not fall within the remit of the Committee. For these reasons, there was no breach of Clause 3.

Conclusions

17. The complaint was upheld in relation to the online version of the article.

Remedial Action Required

18. The online article had published a significantly inaccurate claim regarding the complainant's mental health. It had not offered to correct this adequately under the terms of Clause 1(ii), and publishing this claim had also breached Clause 2. Where the online article made a serious and sensitive inaccurate claim about the complainant's mental health, the appropriate remedy was the publication of an adjudication.

19. The Committee considered the placement of the adjudication. It considered that it should be published on the newspaper's website, with a link to the full adjudication (including the headline) appearing on the top half of the newspaper's homepage, on the first screen, for 24 hours; it should then be archived in the usual way. If the newspaper intends to continue to publish the online article without amendment to remove the significantly inaccurate statement identified by the Committee, the full text of the adjudication should also be published on the article, beneath the headline. If amended to remove the inaccurate statement, a link to the adjudication should be published with the article, explaining that it was the subject of an IPSO adjudication, and explaining the amendments that have been made. The publication should contact IPSO to confirm the amendments it now intends to make to the online material, including social media posts, to avoid the continued publication of material in breach of the Editors' Code of Practice.

20. The terms of the adjudication for publication are as follows:

Following an article published on 29 February 2020, a woman complained to the Independent Press Standards Organisation that the Yorkshire Evening Post breached Clause 1 (Accuracy) and Clause 2 (Privacy) of the Editors' Code of Practice in an article headlined "Beautician who sued Mail for libel wins case". IPSO upheld this complaint and has required the Yorkshire Evening Post to publish this decision as a remedy to the breach.

The article was an interview with a person who had recently taken legal action against a newspaper over its coverage of her beauty business. In this article, the woman claimed that she was unable to also take action against a woman who had complained about her beauty treatment, because the woman had been diagnosed with schizophrenia.

The complainant was the woman who the interviewee claimed had been diagnosed with schizophrenia. She said that this was untrue, and that although she was not named in the article, the high-profile nature of the interviewee's case and material on social media meant that she was identifiable and had been contacted by people who recognised her from the article. She said that information about her mental health would be very private to her and so being contacted in relation to this claim was very distressing to her and her family. She also said that it was not the case that she had been diagnosed with schizophrenia. The publication did not accept that she was identifiable from the information given in the article but accepted the woman's position that she had not been diagnosed with schizophrenia. It said that it did not carry out any fact-checking of the interviewee's claim on this point. It offered to amend the article, but not to publish any correction.

IPSO accepted the complainant's position that she was identifiable to those who were aware of her connection to the interviewee. Reporting that the complainant had been diagnosed with schizophrenia was a very serious and sensitive claim about her health – and information over which the complainant had a reasonable expectation of privacy. As such, in reporting the interviewee's claim, the article intruded into the complainant's privacy without justification, and the article breached Clause 2.

IPSO found that where the article was reporting a very serious and sensitive claim about the complainant's health, it should have taken steps to verify this claim, which it did not do. Where the newspaper accepted the complainant's position that she had not been diagnosed with schizophrenia, a correction was required to correct this significant inaccuracy, which the newspaper did not offer. For these reasons, the article also breached Clause 1.

Date complaint received: 05/05/2020

Date decision issued: 23/12/2020

Appendix B

Decision of the Complaints Committee 12247-20 Criminal Cases Review Commission v The Times

Summary of complaint

1. Criminal Cases Review Commission complained to the Independent Press Standards Organisation that The Times breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined "Watchdog's work was not independent, court rules", published on 23 July 2020.
2. The article reported on a case heard in the High Court in which a claimant challenged the Criminal Cases Review Commission's rejection of his appeal, arguing that the Commission was not sufficiently independent from the Ministry of Justice. The headline of the article reported that the court had ruled the CCRC's work was "not independent" and then went on to report that "the court ruled that the [grounds cited by the claimant] did not undermine the CCRC's independence, but said that there had been "political interference" in the decision not to reappoint a commissioner". It reported that "Correcting a civil servant's assertion that the commission was merely "operationally" independent, the court emphasised the importance for it to be "constitutionally" independent from government." It also stated that of 1,500 applications, less than 1% of cases are referred back to the Court of Appeal and that "an earlier inquiry into the CCRC in 2015 by the Commons Justice Committee recommended that the Law Commission, the body that advises the government on reform, should review the "real possibility" test on which it refers cases to the Court of Appeal, as well as the appellate court's grounds for allowing appeals." The article also contained a statement from a Ministry of Justice spokesperson who stated that the MoJ "welcomes the court's recognition that the CCRC is constitutionally and operationally independent."
3. The article also appeared online under the headline "CCRC's work was not independent, court rules" in substantially the same format.
4. The complainant said that the article was inaccurate in breach of Clause 1 as the court had ruled that its work was both operationally and constitutionally independent of the Ministry of Justice. It provided the publicly available decision. In addition to the headline being inaccurate, the complainant said it was misleading to report that the court had corrected a civil servant and that it had emphasized that the complainant should be "constitutionally" independent and not merely "operationally" independent. In fact, the court had said that, while a civil servant and the counsel for the Ministry of Justice had stated that the complainant was operationally independent, "in our judgment, following a review of the statute and Framework Document and based on our understanding of the role occupied by the CCRC in the wider criminal justice system, the CCRC is much more than merely operationally independent, it is constitutionally independent of Government too". The complainant said that the way that the newspaper had presented the quote had obscured the clear meaning of what was said by the court. It said that the court hadn't just "emphasized" that the complainant should be constitutionally independent, it had said that it was in fact operationally and constitutionally independent. It said that this quote, in conjunction with the inaccurate headline, distorted the actual judgment of the court to give the impression the complainant was not constitutionally independent, when the court had ruled it was.

5. The complainant also said that it was inaccurate to report that only 1% of cases were referred back to the Court of Appeal. It noted that the correct figures were publicly available on its website and the correct figure was that 2.85% of cases had been referred for appeal, rather than just the 1% that had been reported by the publication.

6. Further, the complainant said it was misleading to report that the Justice Select Committee had recommended that there should be a review of the “‘real possibility’ test on which [the complainant] refers cases to the Court of Appeal, as well as the appellate court’s grounds for allowing appeals”. It said that the report had stated the “real possibility” test should only be reviewed if the Court of Appeal changed its own grounds for allowing appeals after a review.

7. The publication did not accept a breach of the Code. It said that the judgment had been a damning picture of the Ministry of Justice, and noted the decision described a “dysfunctional” relationship which “undoubtedly tested the CCRC’s ability to remain independent of MoJ, and to be seen to be so”. The publication said that the judgment was criticising the Ministry of Justice, rather than the complainant, and that the article accurately reflected this. It said that the headline, subheading and introduction of the article aimed to summarise the facts, but accepted it did not succeed in doing this. During IPSO’s investigation, the publication amended the headline to read “CCRC had dysfunctional relationship with MoJ, court rules”. It said that reporting that a civil servant had been corrected for saying that the complainant was “operationally independent” and that the complainant’s role must be “constitutionally independent” was not misleading, and accurately reflected the court’s decision. During IPSO’s investigation, the publication amended this statement to include a longer quote from the decision:

Correcting a civil servant’s assertion that the commission was merely “operationally” independent, the court emphasised that it was “constitutionally independent from government, too, and must be seen to be so, if the public is to have confidence in its decisions.

8. The publication accepted that it had inaccurately recorded the percentage of cases the complainant referred to the Court of Appeal. Prior to IPSO’s investigation it published the following wording in its print Corrections and Clarifications column and as a footnote to the online article:

We said (La, Jul 23) that the Criminal Cases Review Commission referred less than 1 per cent of the 1,500 applications it received per year back to the Court of Appeal. This was the case in 2016-17 and 2018-19 but the commission states that the annual average of referrals since it was created in 1997 is 2.85 per cent, and that this year it referred 1.95 per cent. Thirty-nine of these relate to the Post Office Horizon scandal.

9. The publication said that its description of the Law Commission’s report that recommended a review of the “real possibility” test was accurate, if not as nuanced as the full report. It said it was not intended as a criticism of the complainant, and during IPSO’s investigation it amended the online article to report the following:

An earlier inquiry into the CCRC in 2015 by the Commons justice committee recommended that the Law Commission, the body that advises the government on reform, should review the Court of Appeal’s grounds for allowing appeals. If it were decided to change these, then the effect on the CCRC and the continuing appropriateness of the ‘real possibility’ test should also be reviewed.

10. During IPSO's investigation, the complainant noted that the correction the newspaper had published was inaccurate, as the Post Office cases were not counted "this year" and did therefore not constitute part of the 1.95% of cases referred in 2019/20, or the 2.85% of cases referred between 1997 and March 2020. The complainant said it had provided this information to the publication prior to the publication of the correction, in addition to it being on their website.

11. The publication said that the error in the correction was due to a misunderstanding by what the complainant had meant by "this year". As soon as the publication was made aware of the error in the correction it published the following wording in its print Corrections and Clarifications column and as a footnote to the online article,:

We said in a headline that a court had found the work of the Criminal Cases Review Commission (CCRC) to be "not independent" (Law, July 23). This was incorrect. The court described a "dysfunctional" relationship between the commission and the Ministry of Justice [MoJ] which "undoubtedly tested the CCRC's ability to remain independent of the MoJ, and to be seen to be so" but dismissed claims that the commission's independence had been impaired. In clarifying figures used in the same article we said that the CCRC had referred 1.95 per cent of applications to the Court of Appeal in 2019-20 but wrongly added that this included 39 cases related to the Post Office Horizon scandal (Corrections & Clarifications, date). While the decision to refer those 39 cases was taken and announced in 2019-20, they will be counted only in the figures for 2020-21, when formal referral was made.

12. The complainant said that the publication of these two corrections was not sufficient as a resolution to its complaint as the piecemeal nature of the corrections, one of which involved an inaccuracy, did not adequately deal with the inaccuracies in the alleged article as a whole.

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

13. The publicly available court judgment had found that the complainant was both constitutionally and operationally independent. In this context the publication of the inaccurate claim in the headline that the court had found it was “not independent” represented a failure to take care over the accuracy of the article under Clause 1(i). Additionally, whilst it was accurate to report that the court had emphasised the importance of the complainant’s being both operationally and constitutionally independent from government, the reference to this finding, in conjunction with the inaccurate headline, misleadingly implied that this was not currently true. This represented a further failure to take care not to publish misleading information under Clause 1(i). Furthermore, the Law Commission had not said in a report that the “real possibility” test should be reviewed, but that it should be reviewed “if” a change was made to the Court of Appeal’s process. The Committee noted again that the correct position was laid out in the judgement. This constituted a failure to take care to publish misleading information under Clause 1(i). Finally, where the statistics referred to in the article, and the following correction, were inaccurate and clearly available on the complainant’s website this represented a further failure to take care under Clause 1(i).

14. The complainant was a public body whose role was to independently review potential miscarriages of justice. The inaccuracies relating to the court’s findings on its independence were serious and significant in the context of its public role. The publication had published two corrections. The first related solely to the statistics in the article. While the Committee acknowledged that this had appeared promptly, it had failed to correct the original inaccuracy, and instead included further inaccurate information regarding statistics. The second correction put the correct position on the record with regard to the statistics, and stated that the court had “dismissed claims that the commission’s independence had been impaired”. In the view of the Committee however, this was insufficient to address the inaccuracies it had identified in the article. The Committee also noted that the correction was offered at a late stage in IPSO’s investigation. Taking these points into account the Committee concluded that there was a further breach of Clause 1(ii).

Conclusions

15. The complaint was upheld under Clause 1.

Remedial Action Required

16. Having upheld the complaint, the Committee considered what remedial action should be required. In circumstances where the Committee establishes a breach of the Editors’ Code, it can require the publication of a correction and/or adjudication. The nature, extent and placement of which is determined by IPSO.

17. The Committee considered that there was a serious breach of Clause 1(i). The article had published inaccuracies on matters of significance, in circumstances where the true position was recorded in a publicly available judgement. It had not taken adequate steps to correct these inaccuracies when they had been brought to its attention by the complainant. In light of the newspaper’s failure to take care over the article’s accuracy, and its failure to correct the inaccuracies in line with its obligations under Clause 1(ii), the Committee concluded that an adjudication was the appropriate remedy.

18. The Committee considered the placement of this adjudication. The print article had featured on page 56. The Committee therefore required that the adjudication should be published on page 56 or further forward in the newspaper. The headline to the adjudication should make clear that IPso has upheld the complaint, reference the title of the newspaper and refer to the complaint's subject matter. The headline must be agreed with IPso in advance.

19. The adjudication should also be published online, with a link to this adjudication (including the headline) being published on the top 50% of the publication's homepage 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 complaint's subject matter. The headline must be agreed with IPso in advance.

20. The terms of the adjudication for publication are as follows:

Following an article published on 23 July 2020 headlined " Watchdog's work was not independent, court rules", the Criminal Cases Review Commission complained to the Independent Press Standards Organisation that the newspaper had breached Clause 1 (Accuracy) of the Editors' Code of Practice. IPso upheld this complaint and has required The Times to publish this decision as a remedy to the breach.

The article reported on a case heard in the High Court in which a claimant challenged the Criminal Cases Review Commission's rejection of his appeal, arguing that the Commission was not sufficiently independent from the Ministry of Justice. The headline of the article reported that the court had ruled the CCRC's work was "not independent". It reported that "Correcting a civil servant's assertion that the commission was merely "operationally" independent, the court emphasised the importance for it to be "constitutionally" independent from government." It also stated that of 1,500 applications, less than 1% of cases are referred back to the Court of Appeal and that "an earlier inquiry into the CCRC in 2015 by the Commons Justice Committee recommended that the Law Commission, the body that advises the government on reform, should review the "real possibility" test on which it refers cases to the Court of Appeal, as well as the appellate court's grounds for allowing appeals."

The complainant said that the article was inaccurate in breach of Clause 1 as the court had ruled that its work was both operationally and constitutionally independent of the Ministry of Justice. The complainant also said it was misleading to report that the court had corrected a civil servant and that it had emphasized that the complainant should be "constitutionally" independent and not merely "operationally" independent as the court had found the complainant to be both operationally and constitutionally independent. The complainant also said that it was inaccurate to report that only 1% of cases were referred back to the Court of Appeal. It noted that the correct figures were publicly available on its website and the correct figure was that 2.85% of cases had been referred for appeal, rather than just the 1% that had been reported by the publication. Finally, the complainant said it was misleading to report that the Justice Select Committee had recommended that there should be a review of the "'real possibility' test on which [the complainant] refers cases to the Court of Appeal, as well as the appellate court's grounds for allowing appeals". It said that the report had stated the "real possibility" test should only be reviewed if the Court of Appeal changed its own grounds for allowing appeals after a review.

IPSO noted that the publicly available court judgment had found that the complainant was both constitutionally and operationally independent. In this context the publication of the inaccurate claim in the headline that the court had found it was “not independent” represented a failure to take care over the accuracy of the article. Additionally, whilst it was accurate to report that the court had emphasised the importance of the complainant’s being both operationally and constitutionally independent from government, the reference to this finding, in conjunction with the inaccurate headline, misleadingly implied that this was not currently true. Furthermore, the Law Commission had not said in a report that the “real possibility” test should be reviewed, but that it should be reviewed “if” a change was made to the Court of Appeal’s process. The Committee noted again that the correct position was laid out in the judgement. Finally, where the statistics referred to in the article, and the following correction, were inaccurate and clearly available on the complainant’s website this represented a further failure to take care.

IPSO found that the publication had failed to take care when reporting publicly available details of a court case and report in breach of Clause 1.

Date complaint received: 06/08/2020

Date complaint concluded by IPSO: 11/12/2020

Appendix C

Paper No.	File Number	Name v Publication
1897	08138-19/08755-19	Allison/North Ayrshire Council v irvinetimes.com
1989	09479-20	Nulty v Daily Express
1991	02581-20	Tarman v mirror.co.uk
1994	00236-20	Sharp v Take a Break
2003	08775-20	Bromley v The Spectator
2032		Request for review
2022	06731-20	Gilbert v The Northern Echo
2037		Request for review
2013	05094-20	Gething v The Sun
2033	08136-20	Mitchison v express.co.uk
2042		Request for review
1985	02672-20	Parker v Mail Online
1999	09788-20	Parker v liverpoolecho.co.uk
2021	01257-20	Islamic Human Rights Commission v The Jewish Chronicle
2051		Request for review
2026	12131-20	Emmett v Daily Mirror
2034	11861-20	Commuter Club Ltd v The Sunday Times
2035	09798-20	Taylor v Sunday Mirror
2036	12103-20	Smith v Mail Online
2039	10490-20	Devlin v dailyrecord.co.uk
2055		Request for review