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Up to standard? A critique of IPSO's Editors' Code of Practice and IMPRESS'

Standards Code (Part 1)

Introduction: An overview of the emergence of the two codes

Today it would be unimaginable that an industry or profession could claim to be self-regulated without that industry having a code by which it was governed. Such codes are usually part of the armoury of devices employed to keep the state away from interfering or controlling. Yet from the establishment of the General Council of the Press in 1953 (the birth of self-regulation of the press) to 1989, the print media in the United Kingdom was without any such document. Sparse¹ and then weak codes² were drafted before the Press Complaints Commission ('PCC') was established in 1991 and governed by a sixteen clause code known as the Editors' Code. Although the Leveson Inquiry found many failings in regards to the PCC, it recognised that there was 'substantial consensus that the existing code captures much good practice' and was in general 'both readily understandable and usable.'³ Where concerns were raised it was largely about its enforceability rather than its contents.

However, the Leveson Report has led to a Balkanisation of self-regulation in the British print media. The replacement of the PCC, the Independent Press Standards Organisation ('IPSO') which adopted a revised version of the Editors' Code, lost from its subscribing publications *The Guardian*, *Financial Times* and *Independent* newspapers who created their own individual self-regulatory schemes because they believed IPSO's structure would stop it from regaining the public's trust in the press. Despite this the *Financial Times* still uses the Editors' Code as part of its self-regulatory regime and it has been claimed that *The Guardian* sought to.⁴ Leveson's recommendation led to the passing of the Royal Charter on Self-Regulation of the

Press (‘the Royal Charter’) which created the Press Recognition Panel (‘PRP’) whose purpose was to approve regulators who met certain conditions laid down in schedule 3 of the Charter. IPSO refused to seek approval, but a newly formed regulator, the Independent Monitor of the Press (‘IMPRESS’) became the first, and so far, only self-regulator to achieve ‘approved regulator’ status. Although IMPRESS was willing to use the Editors’ Code as the code for its subscribers it was faced with the problem that the copyright to the Editors’ Code was owned not by IPSO itself, but by the Regulatory Funding Company (‘RFC’). This print industry’s body collected the subscription fees which was then paid to IPSO to allow it to operate, and its membership was strongly opposed to the Royal Charter. Although the RFC were apparently willing to allow IMPRESS to use the Editors’ Code it was on the condition that IMPRESS must do nothing which would ‘[contradict] or is otherwise inconsistent with any application of the Editors’ Code by IPSO.’⁵ IMPRESS saw this as an attempt by the RFC to muzzle IMPRESS’ independence, preventing it from seeking ‘approved regulator’ status, and or develop a more rigorous (in application) regulatory system. IMPRESS was actually granted ‘approved regulator’ status before it had finalized its own code, with the PRP being happy to accept that IMPRESS’ board use of the Editors’ Code prior to the adoption of its own code.⁶ Despite the RFC’s claims to copyright over the Editors’ Code, IMPRESS believed that it could use the code without a licence, and the PRP accepted that so long as the Editors’ Code was easily accessible to the IMPRESS subscribers (a link was provided to it on the IMPRESS website) then IMPRESS could adopt it as an interim code.⁷

The Standards Code which came into effect on 24 July 2017 was IMPRESS’s own code and whilst covering, as shall be seen, a substantial amount of the same topics as the Editors’ Code has been drafted in a way which tries to avoid any possible copyright infringement action by the RFC. One particular technique the drafters use is to move some of the principles covered

in the Editors' Code into *The Guidance to the IMPRESS Standards Code* ('*The Guidance*').⁸ Whilst the RFC created a similar document, the *Editors' Codebook* to summarize key rulings of the PCC/IPSO to help guide journalists, editors and complainants as how an adjudication panel will interpret the code, *The Guidance* goes beyond simple interpretation of the Standards Code and seems in practice in many cases to supplement what is in the Standards Code to ensure it covers the same issues as in the Editors' Code rather than explain what the existing clause in the Code does.

2. Are the codes 'fit for purpose'?

This series of articles will compare and contrast the content of the Editors' Code and Standards Code ('the two codes') to determine their relative strengths and weaknesses, but also to determine whether they are 'fit for purpose.' This will be determined by reference to a number of divergent considerations.

2.1. General objectives of the code

Firstly, it is important to have an understanding of what might be termed the general objectives of a code of ethics. A cynical view sees codes as purely a 'public relations' exercise, with others suggesting that in the context of industry codes of practice (like those which are the focus of this article) the goal is to avoid statutory intervention.⁹ Certainly, one can argue that the birth of the original Editors' Code, and the earlier print industry codes in the two years which preceded it, was because of fears over the possible creation of a statutory tort of privacy.

However, proponents of codes argue they also perform educative functions which can enhance the professionalism and ethical behaviour of those towards whom the codes are directed.¹⁰ The

language of the Preamble to the Editors' Code certainly emphasizes this goal. It states that the code 'sets the framework for the highest professional standards that members of the press subscribing to the Independent Press Standards Organisation have undertaken to maintain' and later on emphasizes the expectation that it will be 'honoured not only to the letter, but in the full spirit.'¹¹

Others presuppose that setting ethical standards codes may also be designed to give journalists and publishers guidance which will enable them to avoid breaking the law. Ian Walden suggests that the contents of codes actually are comprised of three types of provisions two of which are actually statements of law that are either applicable to all (Law = statements) or statements of law applicable only to the media (Law – statements).¹² Only the third type of provision (Law +) actually involves the code imposing ethical obligations above that which is required by law. One issue which therefore will be considered is the extent to which the code provisions go beyond the law.

2.2. User-friendly

Determination of whether the full spirit of the code is complied with is beyond the remit of this article as it requires an examination of what journalists / publications do in practice, whilst this article is essentially a study of the language and content of the two codes. However, if the codes are to impact upon practice they must as the Preamble to the Standards Code be 'a practical working tool that enables journalists, editors and publishers to do their job.'¹³ To achieve this the language of the codes must be clear and unambiguous, and the principles or prohibitions clear to grasp, both for the 'editors and journalists'¹⁴ and for the general public and potential complainants.¹⁵

2.3. Coverage

What the 'letter of the codes' say is important as it determines whether the codes are capable of addressing all, or at least the most common, ethical issues that journalists face. This means that the issues addressed in the two codes are important (i.e. what topics they cover and what principles they set). One of the enduring qualities of the Editors' Code is that it is very much a living document which has undergone constant updating as new ethical issues and scandals have required extension or revision of the code to cover these issues.¹⁶

There are a number of means of deciding whether the codes' coverage is adequate. The starting point has to be Schedule 3 of the Royal Charter which in paragraph 8 requires that approved regulators must have a code which

'cover standards of:

- a) conduct, especially in relation to the treatment of other people in the process of obtaining material;
- b) appropriate respect for privacy where there is no sufficient public interest justification for breach; and
- c) accuracy, and the need to avoid misrepresentation'

and

'the need for journalists to protect confidential sources of information, and the rights of individual....'.

These are in general quite broad concepts (especially a)) and were clearly modelled on the Editors' Code which existed at the time Leveson was writing his report. Consequently, it might be expected that both codes would meet this bare criteria: IMPRESS because it has achieved 'approved regulator status' in part because it met these criteria; and IPSO because a previous

version of the Editors' Code shaped Leveson's ideas upon what the minimum content of a code should look like. Whilst revisions of the Editors' Code have taken place since Leveson reported these have not greatly altered its contents. Therefore, in order to consider the adequacy of coverage it is important to look outside of the UK to see what other codes address. This approach was adopted by the drafters of the Standards Code which consulted 56 codes from around the world to help them draft the code.¹⁷

Comparative research on media codes has shown that there is a great deal of variation in what these codes cover so finding a 'common international baseline' by which to adjudicate the adequacy of a code is beset with difficulties. Issues such as who drafted the code (e.g. industry, journalistic organisation, news organ);¹⁸ the relationship between the press and the government of particular countries (and their level of freedom of expression); cultural differences and the time the code was last drafted may have an impact upon what issues are covered. No two codes are ever the same. In an attempt to determine if the content of the two codes under analysis are sufficient in coverage by international standards this research will use as a comparison national codes of practices used in European countries. Such national codes include any which are drafted by publishers, journalists, organisations, a combination of the two, self-styled press councils, and state and journalist/publisher co-authored codes. The reason for this is twofold. Firstly, there is a sub-database titled *Code of Ethics: Europe* in the Accountable Journalism database of media codes¹⁹ which provides a relatively easy way to find such codes.²⁰ Secondly, Tiina Laitilla used such codes in the 1990s to see if it was possible for there to be a European-wide standard for media codes.²¹ Her study of 31 national codes revealed 61 principles in at least one of the codes, and she then identified 24 which appeared in more than 50% of these codes,²² and used this as the basis for her suggestion as to what could form the basis of a European code.²³ The methodology adopted in this research modifies Laitilla's

research method, using the same type of codes to develop a 'standard' by which to compare European national codes ('the European media codes')²⁴ with the Editors' Code and Standards Code ('the two codes'). Using this method 55 national codes were identified which broke down into: a union or association of journalists (34 in this study), combined journalists' and publishers' associations (2 in this study), self-styled press councils (10), the state and journalists (3), and publishers only (4 including both the Editors' Code and the Standards' Code). Immediately, one may suggest that the comparison adopted is hampered by the fact that so few are codes in which publishers²⁵ have a role in drafting, and a better comparison may be to compare the codes with other publisher only or publishers as contributor codes from around the world, but such an exercise in identifying those who met this criteria from the Accountable Journalism database would be too time-consuming.

The textual analysis adopted in this research differs from Laitila in that it focuses on topics covered rather than functions. These topics are divided as followed: functions and purposes; truth and accuracy; correction and right of reply; sources; privacy; reporting of courts and criminal investigations; independence; and discrimination and violence.

However, the research tries as best as possible to categorise the principles within these topics in a similar way to how Laitila categorised her principles. This was hampered by the fact that this really was only in relation to those which she identified as principles appearing in 50% of the codes or more.

Using this method, the research found that (excluding references to digital journalism) there were a total of 152 principles. This divergence to Laitila's finding can be explained by a difference in how principles were categorised; the fact that with a larger sample a greater

number of principles would emerge; the potential for new principles to emerge to deal with new ethical issues; and the fact for the purpose of this research discrimination and related clauses were split into individual targeted/ protected groups whereas Latilia merged several groups together in her categorisation. In this research a total of 21 principles were found in more than 50% of the codes surveyed and these will serve as the baseline for seeing if the two codes meet international standards. These principles are as follows:

Protection of sources	87% (48/55)
Truth/ accuracy	84% (46/55)
Correction of errors	76% (42/55)
Prohibition of bribes and other favours	76% (42/55)
Freedom of information/ right to inform	72% (40/55)
Privacy	69% (42/55)
No race discrimination etc.	69% (38/55)
No religious discrimination etc. ²⁶	69% (38/55)
Free press, freedom of speech & to criticise	67% (37/55)
Separate advertising & editorials	67% (37/55)
Separation of facts, opinions and conjecture	64% (35/55)
Do not mislead/distort	62% (34/55)
No gender discrimination etc.	62% (34/55)
Special consideration of child's privacy	62% (34/55)
Presumption of innocence	62% (34/55)
Verification	60% (33/55)
Respect copyright/avoid plagiarism	58% (32/55)
Conscience clause	55% (30/55)

No ethnic discrimination etc. 55% (30/55)

No discrimination etc. on grounds of nationality 53% (29/55)

No misuse of journalist's position to gain a benefit 53% (29/55)

2.4. Thresholds and standards

However, the mere fact a topic is covered does not mean that it will be addressed in the same way, and in this research it will be necessary to look at the actual wording of the individual provisions within the European media codes (and some codes from further afield) to see whether the obligations or thresholds applied are stronger, weaker or similar to those in the two codes. The strength of the obligation offered is influenced by the balance that the code wishes to make between different rights or interests. In the Preamble to the Editors' Code there is seen to be a clash between 'the individual' (i.e. the subject of a news story) and the 'public's right to know' with the journalist being required to exercise his 'freedom of expression' carefully so as not to infringe individuals' rights and not 'to [prevent] publication in the public interest.'

The Preamble to the Standards Code also talks of a balance of rights but between 'public, journalists and publishers' and notes that whilst journalists have an important role in society which should be protected, they also have responsibilities. Written in this way the obligations of journalists and publishers covered by the Standard Code are not phrased as a simple clash of 'public interest' versus 'individual rights' but seem influenced by ideas of social responsibility, and possibly virtue ethics. Does this difference in emphasis change the language or balance between interests in the two codes?

The balance between the competing interests identified in the preambles is dictated in part by the way in which the two codes address the issue of what is the public interest, and when the public interest can be relied upon to overcome the interests of individuals affected by the newsgathering or publication. The codes differ on both these elements, and this will be examined in depth in the second article in this series. In this article reference will be made to when particular provisions protecting individuals' rights can be overridden by 'public interest' considerations.

2.5. Digital journalism and ethics

IMPRESS claims that its code is 'practical and responsive to emerging challenges in the digital era,'²⁷ and it is true that the internet creates a series of ethical issues which are different to those in traditional mainstream media. Whilst several theorists are of the view that traditional journalistic ethics can generally be applied with little alteration to digital journalism,²⁸ some ethicists who have identified new problems suggest digital specific solutions are needed, although others accept that there needs to be a mixture of adaptation of traditional journalistic ethics and the development of specific solutions to digital ethical dilemmas (e.g. those relating to archiving and hypertext linking).²⁹

Whilst the study of European media codes comes nowhere close to recognising any common provisions dealing with emerging digital ethics issues, individual media codes have tried to change to accommodate this form of journalism, and the question that needs to be asked is whether either or both of the two codes deal sufficiently with these issues.

3. Basic comparison between the two codes.

At first thought one might expect the content of the two codes to differ greatly as the Editors' Code has sixteen clauses and the Standards Code only ten clauses. However, the Standards Code is framed in such a way as to bring together in some clauses some topics which are dispersed throughout the Editors' Code. A good example of this is the privacy clause in the Standards Code which covers issues dealt with in four separate clauses in the Editors' Code (i.e. those on privacy,³⁰ grief and sorrow,³¹ harassment,³² and clandestine devices and subterfuge³³). It has to be said that some of the mixture of topics within the Standard Code's clauses seem ill-suited (see clause 10, Transparency), and the headings in the Editors' Code better reflect the content of their clauses. This is probably the result of drafters of the Standards Code trying to avoid a copyright infringement action from the RFC. Once one sets aside the dispersal of these principles throughout the two codes, a close inspection of the codes shows (perhaps not surprisingly) a significant amount of provisions covering the same issues. These include: accuracy;³⁴ privacy;³⁵ children;³⁶ discrimination;³⁷ harassment;³⁸ restrictions on payments to witnesses and criminals;³⁹ prohibition on the identity of victims of sexual offences;⁴⁰ protection of sources;⁴¹ sensitivity when reporting stories involving grief, shock and distress;⁴² restrictions on those involved in financial journalism;⁴³ the reporting of suicide;⁴⁴ and payments to witnesses and defendants in criminal cases.⁴⁵ Whilst as shall be seen there are some key differences in a number of these provisions to all intents and purposes the central topics are the same in each code. Differences also occur in some instances as to when a code permits exceptions to their general rules. These often will rely upon a public interest justification which as the second article in this series will show are not the same between the two codes. Finally, there are a number of topics addressed by only one of the codes: such as the restrictions on paying public officials for information⁴⁶ and the identification of paid for editorial content⁴⁷ in the Standards Code; and

the restrictions imposed on interviewing in ‘non-public areas of hospitals’ which only the Editors’ Code provides.⁴⁸

4. Analysis of provisions

The remainder of this article will examine how the two codes deal with the topics of functions and purposes; truth and accuracy; correction and right of reply; and privacy. The remaining topics will be analysed in a follow-on article which will appear in a later volume of Communications Law.

4.1. Functions and purposes

For the purposes of this research the concept of functions and purposes refers to broad statements about the purpose and role of journalism and/or its self-regulation. In many of the European media codes the preamble, or values clauses, project an image of what the drafters of the code believe the role of the media is, and the importance of values such as a free press, freedom of expression and the media’s role in controlling the powerful.⁴⁹ Several, such as the Norwegian Press Authority and Code of Ethics for the Estonian Press, are written in a manner reflective of the more common theories of freedom of expression.⁵⁰ Indeed references to free press, freedom of speech and the right to criticise is one of the common principles in the European codes.

The content of the two codes place much less stress on these values. There is no explicit mention of freedom of the press in either, although the Editors’ Code does make reference to ‘the fundamental right of freedom of expression’ before going on to list a series of roles it expects the press to perform such ‘as to inform, to be partisan, to challenge, shock, be

satirical and to entertain.’⁵¹ A similar list appears in the Standards Code⁵² and what both share in common, which is unique amongst the European codes studied, is a perception of the press as having a role beyond the constitutional, namely that the media has a right to entertain. Given that the public interest clause in the Editors Code recognises that freedom of expression is a public interest itself,⁵³ the provisions can be read collectively to conclude that entertainment can be used to trump ‘individual rights.’ It might be claimed that this is an overly pessimistic or cynical interpretation of these provisions, but it does seem to provide weaker protection for ‘individual rights’ than that demanded by the Standards Code which in its Public Interest Clause requires that ‘the public has a legitimate stake in a story because of the contribution it makes to a matter of importance to society’⁵⁴ before a public interest claim can be made.

The right to inform is the second common function or purpose articulated in the European codes, and the Editors’ Code is one such code which recognises this right. There is also an argument that the Standards Code in identifying the types of issues journalists should be writing about also implicitly accept that this is a function of the press.⁵⁵ In many ways therefore, the conception of what the role of the media should be is very similar in the two codes.

4.2. Truth and accuracy

A need for truth or accuracy is the second most popular principle amongst the European media codes studied, and this should not be surprising as it has often been described by Kovach and Rosenstiel as the ‘first obligation of journalism’⁵⁶ and by Clifford G. Christians as one of the protonorms which can be found across different journalistic cultures.⁵⁷ The

central importance of truth and accuracy to the two codes under study can be seen in the fact that the first clause in each code is labelled ‘Accuracy.’

The content of these clauses has some similarity. Both impose an obligation to try to publish only accurate information;⁵⁸ the need to distinguish between comment/opinion, conjecture and fact;⁵⁹ and the need to correct inaccuracies.⁶⁰ Yet even here there are some differences in phraseology which are important. The Editors’ Code also demands that care is taken not to publish ‘misleading or distorted information or images, including headlines not supported by facts,’⁶¹ but such requirements are missing in the Standards Code. Although not appearing in most of the European codes, prohibition of distorted images is quite popular, appearing in some form in 23 of the codes surveyed. Its absence from the Standards Code, along with any reference to misleading or ‘unsupported headlines’ seems somewhat surprising given the stated goal of IMPRESS being to create a code that is ‘responsive to emerging challenges in the digital era’⁶² and the issue of photo manipulation and clickbait headlines have been identified as particularly relevant to digital journalism.⁶³ However, this apparent divergence between the two codes is nullified by *The Guidance* which provides an interpretation of Clause 1.2 in regards to corrections which covers both distorted images and unsupported headlines.⁶⁴ The burying of such principles in *The Guidance* rather than the code itself undermines the goal of making the ‘rulebook’ user friendly.

Secondly, both codes seem, like 60% of the codes surveyed, to accept a need to verify the information, although in both cases this is implied rather than expressed.⁶⁵ The majority of the European codes make more explicit reference to verification. For example, the Albanian Media Institute, Article 1 includes the requirement that ‘Information be truthful, balanced and verified’, whilst Article 10 of the Council for Mass Media in Finland states, ‘Information

obtained must be checked as thoroughly as possible, including when it has published previously.’ Demanding a more explicit verification requirement may be an improvement for both codes, and this is especially true given what the *Codebook* and *The Guidance* say on the issue. Under the heading ‘Taking Care’, the *Codebook* suggests a range of circumstances in which inaccuracies can occur including failing to give prior notification to the subject of the story, failing to get both sides of the story and warning that allegations are not proven.⁶⁶ Other European media codes explicitly include each of these as principles in their codes,⁶⁷ but the language of the *Codebook* suggests that the Editors’ Code Committee is against giving more explicit and concrete obligations in the code as to what amounts to ‘taking care’ to ensure reports are accurate. This does provide more flexibility for the journalist, but requires the complainant to provide justifications as to why certain non-mandatory verification steps need to be taken. *The Guidance* by point of contrast whilst accepting that the steps taken ‘to verify the truth of the information presented’ will vary,⁶⁸ goes on to present a checklist of factors which should determine what are ‘reasonable steps.’⁶⁹ These factors are similar to some of those Lord Nicholls identified as being necessary in considering whether the ‘responsible journalism defence’ was available.⁷⁰ Like Lord Nicholls’ factors they are not obligatory in every case, but a failure of a journalist/ publisher to follow one of these steps would make it easier for a complainant to make his case that ‘reasonable steps’ were not taken.

Thirdly, the provisions regarding distinguishing between fact, opinion and conjecture are to all intents and purposes the same,⁷¹ and this is one of the principles which is common in the European codes studied. It is, however, one of the few provisions in the then Editors’ Code which led to criticism from Lord Leveson in his report on the ground that the separation of fact and opinion ‘was impossible to comply with.’⁷² George Eustice MP was less certain of

this pointing out in his evidence to the Inquiry that regional newspapers seemed much more able than national newspapers to do this:⁷³ reflective of willingness not skills. The two codes both persevere with such provisions because whilst the distinction between the two has often perplexed the minds of great lawyers, in journalistic terms the obligation performs three important functions. Firstly, the idea of ‘journalistic truth’ does not demand that the journalist prove everything is an absolute truth, but without a regular foundation of widely agreed upon facts in his stories, a journalist would not be viewed with any credibility. Secondly, by attempting to highlight what the facts are which form the basis of the story, the journalist opens himself up to scrutiny of others who can assess whether the facts are credible or true. Finally, it is important that the readership is able to see the basis for the individual journalist’s critique or commentary or even conjecture.

The contents of both codes on accuracy can be considered Law+ in Walden’s terms. There is no need to prove ‘serious harm’ or indeed any reputational harm that the law of defamation requires, inaccuracy will suffice. The added gloss that both codes add to this in terms of prohibitions on misleading, misrepresented or distorted information is intended to protect the public from being misinformed, as well as providing those affected with a right of complaint. However, there are arguments that the accuracy clauses could go further. Prohibiting conjecture or banning the report of rumours⁷⁴ may encourage journalists to be more selective in what they report when they lack a proven factual basis for their story.

4. 3. Correction and right of reply

Once mistakes are made, the majority of the European media codes (76%) required the publication or journalist to make a correction. Both codes have such a provision but there are significant differences between the two. Whilst both require that ‘a significant error’ is

corrected quickly,⁷⁵ the Standards Code requires the correction to have ‘equal prominence’ to the original article, whilst the Editors’ Code only requires ‘due prominence.’ The Standards Code’s approach reflects criticism of PCC/IPSO subscribers hiding away corrections in less prominent positions than the original article thereby camouflaging their transgressions. This was particularly the perception of critics of what was occurring during the existence of the PCC,⁷⁶ and whilst IPSO now has the power to dictate where a correction should be made it has still been criticised for not always ensuring that the correction has the same amount of prominence as the original article.⁷⁷ The demand that corrections of all ‘significant inaccuracies’ need ‘equal prominence’ as the original article must also be questioned, and indeed *The Guidance* itself recognises that issues such as breaking news or the inaccuracy not going to the ‘heart of the story’⁷⁸ can displace this requirement. However, ‘significant inaccuracies’ can be divergent. They may include misquoting official statistics by mistake, or making an allegation which is potentially defamatory. The former ‘may go to the heart of the story’ but may be resolved either by correcting the original article and noting the inaccuracy (a common approach in online journalism) in which case the ‘equal prominence’ requirement is satisfied, or by simply clarifying in a corrections column what was wrong.

Another noticeable difference in relation to the correction provisions in the two codes is that under the Standards Code, the need to correct is solely at the discretion of subscribing publication. This is a result of a basic weakness in the IMPRESS regime, namely that the regulator is not able, unlike IPSO,⁷⁹ to demand that the offending publication publish a correction at all or in a specified place. Indeed, it would seem that the IMPRESS regime will only publish its decisions on its own website,⁸⁰ and this approach was rightly criticised by Hacked Off during the consultation on the Standards Code.⁸¹ By European standards whilst such obligations are rare the Standards Code will always be compared with the Editors’ Code

which may actually set the gold standard in relation to reporting of adverse findings as it not only is one of only a handful of codes which demand that adverse regulator rulings are published,⁸² but goes further in requiring that adverse libel judgments are also published.⁸³ IMPRESS' failure to follow suit means the Standards Code looks considerably weaker than the Editors' Code on this issue, and has led to suggestions that the failure means that the IMPRESS regime is not a 'Leveson-compliant regulator'⁸⁴ as it falls foul of paragraph 15 of Schedule 3 which requires that the regulator 'has the power to direct... the publication of corrections and apologies.' This deficiency not only raises questions as to whether IMPRESS meets the recognition criteria, but also will undermine public confidence in the organisation for not being as transparent as it could be.

Given that the overwhelming majority of publications regulated by IMPRESS are online, the obligation to correct and/or publish adjudications would not impose unnecessary burdens on subscribers. The code could have imposed a requirement that the original article online was amended with the corrections noted at the bottom of the page which is a frequent technique used on online news organs. Additionally, it would be simple to hyperlink the original article to any decision taken by IMPRESS. This is one of the opportunities for IMPRESS to draft a provision which was adapted to digital journalism which it failed to take.

One of the few criticisms of the then Editors' Code in the Leveson Inquiry came from the Media Standards Trust over the lack of a right of reply for those that were the subject of a news story.⁸⁵ This was found to be a common requirement in Latilia's study in 1995, but whilst frequent the right or opportunity to reply appears in only 25 of the European codes in this study. Sixteen of these codes refer to a right of reply which was recommended by the Calcutt Committee, but the Editors' Code has only ever offered an 'opportunity to reply' which in its

current form is limited to when '[a] fair opportunity to reply to significant inaccuracies should be given, when reasonably called.'⁸⁶ Despite the word 'reasonably' suggesting an objective standard, the history of this provision has shown that the PCC/IPSO were too willing to accept the publication's determination as to whether an opportunity of reply should be given, with none of the 650 complaints on this provision ever being upheld. It seems therefore to have been a provision designed for window-dressing in the Editors' Code to dissuade Parliament from passing a statutory right of reply which has been proposed by private members on a number of occasions.⁸⁷ It is also reflective of the general common law reluctance to entertain such a right on the grounds that it interferes with editorial freedom.⁸⁸ Whilst this editorial freedom argument is clearly based in part upon the belief that the editor must choose what appears in his publication (essentially an autonomy argument) and there may be a chilling effect which deters publications from publishing controversial stories,⁸⁹ it was also underpinned by a cost argument which suggested that if publications were forced to publish these replies it would limit the space available for that publication's article and advertisers. The latter also being deterred by the content of the right to reply articles. This 'chilling effect' is at best speculative, and the finite space argument redundant in the digital era, where there is no *de facto* limit on a publication's capacity. Additionally, the idea that it should be the editor's, and the editor's alone decision, as to what appears in his newspaper is undermined both by the IPSO regulatory regime itself (with the power to order corrections and judgments to be published), and the law of defamation which provides several defences such as offer and amends⁹⁰ and certain statutory qualified privileges⁹¹ in which statements by the party who claims to be defamed has to be published if the editor wishes to rely on those defences. Editorial freedom has therefore already been curtailed.

The Standards Code does not even have a provision that deals with an ‘opportunity to reply’ and though *The Guidance* does have a paragraph with this heading⁹² its language is very confusing. It states that whilst a ‘significant inaccuracy’ may demand an ‘opportunity to reply,’ ‘a right of reply’ might exist as an alternative to a ‘correction.’ The relegation of the ‘opportunity/right to reply’ to *The Guidance* downgrades its importance, as does treating the right of reply on par with a correction. Whilst it is true that the right of reply laws in many jurisdictions are concerned simply with correction of facts, the most expansive laws (and indeed media codes) expect the right of reply or opportunity to put one’s side of the story to stimulate debate.⁹³ The difference in quality between treating the opportunity/right to reply as a correction, and as a stimulus for debate or differences of views can be seen in one of the few examples of when a British newspaper did offer an offended party the right to reply. *The Daily Mail* gave Ed Miliband the opportunity to write⁹⁴ an article countering the claim in the newspaper that Miliband’s father hated Britain.⁹⁵ This was not simply about changing facts but was about giving an alternative opinion of events / a personality which might be disputed. It was underpinned by the value of fairness. Miliband’s political position backed by support from political opponents got him this opportunity of reply, but as currently constructed neither of the print industry codes in the UK can ensure that if an ordinary man in the street is subjected to similar character assassination or false assertions they will be guaranteed a right to be heard in the newspaper. Both codes need to enact a right of reply to rebalance the power between newspaper and subject of news story.

4.4. Privacy

With 69% of the European media codes studied making specific reference to the respect for privacy, it is not surprising that both the Editors’ Code and the Standard Code explicitly include this principle, but both codes go well beyond adherence to this general principle with

provisions that provide for special treatment of certain individuals; certain topics in which privacy, dignity and sensitivity need to be respected; and restrictions on certain methods of newsgathering which might infringe privacy. Whilst other European codes also include such provisions, none emphasize the importance of privacy as much as the Editors' Code and Standards Code.

In the original version of the Editors' Code over half the provisions addressed privacy issues;⁹⁶ today, ten of the sixteen clauses do to some extent.⁹⁷ The Standards Code addresses privacy issues in half of its clause.⁹⁸ This part of the article will examine the privacy issues which do not overlap with reporting of criminal investigations and the courts.⁹⁹

Many of the European media codes make a general reference to the right to respect an individual's privacy,¹⁰⁰ and then go on to identify a series of situations in which privacy concerns are particularly at stake. Whilst both of the UK print industry codes to an extent do the latter, what sets them apart from most of the other European media codes is there is an attempt to give some general definition of privacy and/or when it is engaged.

In the first version of the Editors' Code the privacy clause was very simplistic providing only a bare extension upon simple references to privacy you see in many of the European media codes. It stated that 'Publishing material or making inquiries about the private lives of individuals without their consent is not acceptable unless there is a public interest.'¹⁰¹ However, a new definition, which largely remains in place today, was made in 1998 modelled on the European Convention on Human Rights as a result of the intention of the Labour government to introduce the Human Rights Act 1998. Although the current clause 2(i) continues this tradition it now has an added gloss by with references to 'digital

communications' being covered by the concept of 'correspondence.' Clause 2(ii) emphasizes the importance of privacy rights to individuals by requiring the publication to justify 'intrusions into private life' without the subject's consent.

Whilst this might seem to require a public interest justification, the clause considers that an individual's right to privacy can be restricted in circumstances where 'the complainant [has made their] own public disclosures of information.' Whilst a person making such a disclosure does not automatically lose their right of privacy, the language of this provision does suggest that the claim to privacy is weakened. A similar provision appears in the Standard Code¹⁰² although here there is a recognition that the individual concerned may place one part of his private life in the public domain without losing all of his rights of privacy. Thus public discussion of one's sex life does not mean that a publication can discuss another part of that person's private life, such as medical history, without their consent. Case-law, both domestically¹⁰³ and in the European Court of Human Rights,¹⁰⁴ have stated similar conclusions, and this again shows the influence of legal materials on the shaping of clauses in both codes.

This is most clearly seen in the usage of the concept of 'reasonable expectation of privacy' which was coined in the *Campbell v Mirror Group Newspaper*¹⁰⁵ case to describe the new tort of misuse of private information (the de facto privacy tort). The two codes both use this concept albeit differently. Whereas in the Editors' Code its use is limited to whether photographs can be taken in a public or private place,¹⁰⁶ the Standards Code adopts it (instead of Article 8) as the touchstone as to whether privacy has been breached.¹⁰⁷ In doing so it then lists a series of non-exhaustive factors which needs to be considered in determination of the issues.¹⁰⁸ These factors although sometimes influenced by legal material are written in

laymen terms often giving examples of private information¹⁰⁹ and situations in which privacy can be presumed to arise.¹¹⁰ This use of examples provides a very effective way of making the public (and journalists) understand in practical terms the scope of privacy. However, the way in which clause 7.1 of the Standards Code is written suggests quite strongly that the concept of ‘reasonable expectation of privacy’ is limited to what might be described as private occasions. The examples of the ‘nature of the place’ which must be taken into account in the determination of this issue (home, school or hospital)¹¹¹ are clearly private or semi-private locations, and there is nothing explicit in the code to suggest that individuals may have a right of privacy in public places. *The Guidance* to the Code rectifies this omission with the first sentence of paragraph 7.13 stating ‘People may also have a reasonable expectation of privacy in a public place’, and also with the sentence that paragraph 7.12 stating ‘People may have a reasonable expectation of privacy not only in private places but also when doing private things.’ Whilst the effect of this guidance is to put the two codes on par with each other on this issue, the fact that to find this a reader has to go to *The Guidance* undermines the Standards Code’s ‘user friendly objective.’ Clause 7 of the Standards Code needs to make clear that ‘reasonable expectation of privacy’ can be enjoyed in public.

4.4.1. ‘Intrusion into grief etc.’

Both codes recognise that there are times when individuals are distressed where reporting needs to be sensitive. However, the framing of the two provisions have the potential to be interpreted differently. Clause 4 of the Editors’ Code states, ‘In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively.’ The word ‘grief’ is closely linked to the feelings one has when someone close to you has died, and this would be an occasions in which one would expect journalists to be careful in how they approach individuals enduring this event. The

word ‘shock’ is defined as ‘the emotional (or physical reaction) to a sudden unexpected, and usually unpleasant event or experience.’¹¹² In 24 European codes the type of sudden and unexpected event are specified to include, ‘accidents and disasters’,¹¹³ and being ‘victims of crime.’¹¹⁴ This is not done within the Editors’ Code and it is possible that the phrase ‘grief or shock’ might be possible to stretch into other areas in which a person is distressed, such as the individual or a loved one suffering being diagnosed with an illness. A limited number European codes also specify that this is a situation where there is a need to be sensitive in reporting,¹¹⁵ or need to be protected by anonymity.¹¹⁶ However, the wording ‘shock’ seems to require a sudden event and the fact that a person suffers distress because of a long-term illness of himself, or a loved one, would seem to fall foul of the letter of the code if not its spirit.¹¹⁷ The need to rely on a specific reference to illness may not be necessary given that health is protected under the privacy clause (clause 2(i)) and it could be argued that those suffering distress because of the illness of their relatives or friends could rely upon the ‘private and family life’ provision in that clause. If these provisions were adequate one might ask why clause 4 was required, and this may reflect the fact that some aspects of privacy have to be articulated separately from the main definition to provide clearer guidance to journalists. Whilst the Editors’ Code is one of the few European media codes that recognises the need to respect privacy of those ill in hospital,¹¹⁸ it does not extend to imposing additional burdens on journalists when dealing with the ill and their relatives.

Whilst the Standards Code does not do so explicitly, clause 7.2(c) has potential to cover a much broader set on circumstances in which the media needs to be sensitive towards the subjects of news stories. It requires the publisher to ‘Take all reasonable steps not to exacerbate grief or distress through intrusive newsgathering or reporting.’ Whilst ‘grief’ again seems limited to the death of an individual, the use of the word ‘distress’ can cover a

whole range of situations in which a person may be severely upset – from the break-up of a relationship, to the loss of a job and many other scenarios in which neither death or serious injury result. Despite this potential, *The Guidance* to this clause is written in a manner which suggests that IMPRESS will only be concerned with how journalists treat those affected by issues of death and serious injury.¹¹⁹

The Standards Code also seems, at first glance, weaker than the Editors' Code in the protections it affords those suffering 'grief etc.'. This stems from the fact that the sensitivity can be ignored if the journalist can justify it in the 'public interest',¹²⁰ whereas clause 4 in the Editors' Code is one of the few in that code which does not permit a journalist to rely on the 'public interest' to ignore its strictures. Nonetheless, given the potential overlap of complaints based on insensitive handling of 'grief and shock' with the privacy and suicide clauses in the Editors' Code, the sensitivity issue can be ignored if the complainant claims there are breaches of these clauses.¹²¹ Additionally, clause 4 of the Editors' Code relieves the journalist of the 'sensitivity' requirement if they are reporting legal proceedings. This latter point can be justified on the basis that if it were otherwise the media would be failing in its duty as a public informer and would in effect permit sanitisation of the reporting of criminal trials.¹²²

4.4.2. Children and hospitals

A common theme in the European media codes is the need to be sensitive towards children's privacy (62%), and both the Editors' Code and Standards Codes have specific provisions which address children's privacy issues.¹²³ Whilst some provisions make reference only to a general obligation to be 'especially tactful',¹²⁴ or sensitive towards stories or sources who are children, there are other codes which provide more specific guidance, limiting the

interviewing of children, their identification and circumstances in which photographs of a child can be taken. Both domestic codes adopt a very high level of protection for children and require an ‘exceptional public interest’¹²⁵ before an interference with a child’s privacy is justified. There are, however, significant differences between the two codes.

The Editors’ Code makes clear, like many of the European media codes, that interviews and photographs of children (defined as under sixteen in the code) cannot take place without the consent of a parent or ‘similarly responsible adult’ (i.e. a teacher) on issues of that child’s or another child’s welfare.¹²⁶ The consent requirement acts as a means of protecting the child’s innocence from being abused by journalists who simply want the story, and the interests of the child are protected further by restrictions on payments to the child ‘unless it is clearly in the child’s interest.’¹²⁷

By point of contrast, clause 3 of the Standards Code controversially allows children under the age of sixteen to give consent for themselves to being interviewed, photographed etc.¹²⁸ or identified.¹²⁹ Whilst such interviews etc. are constrained by the need to show that ‘this is not detrimental to the safety and wellbeing of the child’ the question that is raised is how does a journalist know what is detrimental in regards to many situations? Whilst clause 3.1. (although not clause 3.2) does place an obligation on the journalist concerned to ‘consider carefully the age and capacity of the child to consent’ this is requiring the journalist to engage in a determination of *Gillick*¹³⁰ competency in circumstances where the journalist lacks full knowledge of the child’s ability to understand and has a self-interest in overestimating the child involved capacities. Such decisions would often be made without a real chance to appreciate either the maturity or potential impacts on the child concerned. This provision is unique in the European media codes, and whilst it perhaps can be supported on the grounds

that it respects the child's right to express their own opinion, it has potential to be abused by unscrupulous journalists who can play on the naivety of immature children.

The Standard Code's protection of children's privacy interests is possibility further weakened by the manner in which it pulls together different privacy issues dealt with in a number of different clauses of the Editor's Code into clause 7 (the privacy clause). Whilst it makes reference to hospitals and schools in clause 7.1(b) identifying rightly that attempts at newsgathering in these locations can engage privacy concerns, it does so without putting in place the extra protections which the Editors' Code separate provisions provided. These are namely the need for journalists to get permission to interview people in non-public areas of hospitals (and similar institutions) from a responsible person in the hospital,¹³¹ and permission of the school for children to be interviewed or photographed.¹³² In the Standards Code there is also not the heavy presumption laid out in clause 6(i) of the Editors' Code that 'pupils should be free to complete their time at school without unnecessary intrusion.' One may question the need for such an explicit reference given that clause 3.1 on Children begins with the statement that there needs to be 'exceptional public interest' to interview or photograph a child. However, by not recognizing specifically the importance of schools as a place of safety, the Standards Code comes across as offering weaker protection of children's privacy interests than the Editors' Code. It is noticeable that the guidance to neither clause 3 nor clause 7 corrects this or specifically mentions the importance of teachers in safeguarding the child's well-being.

Surprisingly no objection was made to permitting the child themselves to give consent in the public consultation on the draft Standards Code (or 'assent' as it was in the draft version of the code) to be interviewed etc., although the Transparency Project (a project concerned

primarily with reporting of family courts) did suggest the need for guidance as to different types of consent.¹³³ Where concerns were raised it was largely about the appropriateness of defining children as being sixteen and under. Both the Equalities and Human Rights Commission,¹³⁴ and the Standing Committee for Youth Justice¹³⁵ recommended that the definition of child be with reference to persons under the age of eighteen to keep it in line with Article 1 of the UN Convention on the Rights of the Child, and large areas of domestic law. No other media code defines children to include individuals of this age (the Editor's Code also defines children by reference to 'under 16'),¹³⁶ and many set lower age limits of 14 and 15 years old,¹³⁷ reflecting those countries' beliefs as to when children are old enough to have 'informed consent' or legal capacity.

Clause 3.3 of the Standards Code also creates an additional obligation on the publication to consider requests to anonymise people who were identified in online articles for activities committed when they were under the age of sixteen. This is clearly a law+ provision, as the existing right to be forgotten obligations currently applies only to internet search engines,¹³⁸ and whilst the General Data Protection Regulation 2016¹³⁹ gives a broader 'right of erasure' to data subjects, the Information Commissioner's Office seems to think that online newspapers may be protected by 'freedom of expression' exemptions in the Regulation.¹⁴⁰ Yet the extent to which this clause will provide protection to a substantial number of people has to be questioned. Most individuals who would wish to have their youthful activities erased are likely to be those convicted of criminal activity, or involvement in such activity as a victim or witness. Many of these individuals will be protected by mandatory restrictions on identification which are rarely lifted,¹⁴¹ or be protected by judges exercising discretion to impose anonymity orders,¹⁴² so reliance of clause 3.3 becomes unnecessary. Even if a person has been identified by the newspaper and now wishes that his youthful indiscretions be

erased, the obligation on the editor is that they must give ‘reasonable consideration’ to the request for removal. There is no presumption to accede to the request, however that may change if court decisions begin to allow modification of archives or articles of newspapers.

4.4.3. ‘Covert means’/ Subterfuge and clandestine devices

Another aspect of privacy that the Standards Code brings into its privacy clause which is dealt with in a separate clause¹⁴³ by the Editors’ Code is the issue of obtaining information by ‘covert means.’ The statement in clause 7.2 (a) is short, stating that publishers must ‘Not use covert means to gain or record information.’ This is similar to a number of provisions in 21 other European media codes which emphasis the need to use fair or honest means to get information (without specifying what these are), although most also provide exceptions similar to that in clause 7.2(a) which permits the use of such measures if ‘justified by the public interest.’

In point of contrast the comparative clause in the Editors’ Code gives much more guidance as to what amounts to ‘covert means.’ Labelled ‘Clandestine devices and subterfuge’ that clause lists a whole series of journalistic newsgathering practices which are *prima facie* unacceptable (unless justified in the public interest). These include the use of hidden cameras; clandestine listening devices; interception of telephone calls, messages and email; unauthorised removal of documents and photographs; accessing digitally held information; using misrepresentation and subterfuge. This is a comprehensive list that is more detailed than anything to be found in the limited number of European media codes which explicitly prohibit or restrict the use of hidden devices,¹⁴⁴ and may be explained by the history of the evolution of this provision in response to scandals in regards to newsgathering techniques in the UK.¹⁴⁵

Whilst this might seem a very comprehensive list based upon existing technologies it is a closed list, and does not provide any general phrase which deals with technological developments although the concept of ‘subterfuge’ in clause 10(ii) may cover such information gathering as it involves ‘trickery.’¹⁴⁶ Clause 7.2(a) of the Standards Code is by contrast lacking in specificity. Whilst again *The Guidance*¹⁴⁷ provides more concrete examples to guide the journalist they are not as extensive as those provided by Clause 10 of the Editors’ Code. To assume a journalist would accept that an unspecified newsgathering technique is prohibited may be expecting too much, and again questions can be raised as to whether the Standards Code provides sufficient practical guidance to journalists on this point.

Perhaps one way to avoid this problem is to provide a definition of what is ‘covert means,’ but *The Guidance* adopts another means namely to recognise that many covert techniques are also unlawful, and advises that ‘Publishers should take legal advice before contemplating any such activities.’¹⁴⁸ A good lawyer would consider two key issues in deciding whether the activity was legal. Firstly, whether the journalist could justify his actions in ‘the public interest’ under s55 of the Data Protection Act 1998.¹⁴⁹ This would cover a variety of covert activities from which personal data could be obtained, including interception of communications and going undercover to obtain access to documents / witness activities in which personal information may be revealed (e.g. obtaining employment in a hospital or old people’s home where allegations of mistreatment had been made). Secondly, consideration would have to be given to the *DPP Guidelines for prosecutors on assessing the public interest in cases involving the media*¹⁵⁰ which suggests that even in cases where crimes may have been committed for offences which do not have a specific public interest defence (e.g. theft) prosecutors could take into account factors including the public interest served by the

activities of the journalist.¹⁵¹ Discussion of the issue of ‘public interest’ will be considered at length in the next article, but another observation which can be made at this point, is that *The Guidance* seems ultimately to allow legal considerations to take precedent, and does not attempt to carve out a separate ‘ethical domain’ for decisions about using ‘covert means.’

Another observation about clause 7.2 (a) is that unlike clause 10 of the Editors’ Code there is no requirement that the obligations regarding use of ‘covert means’ applies to ‘agents or intermediaries’¹⁵² or any other third parties the publisher may use to get information, although again *The Guidance* makes this clear that it does apply to such individuals.¹⁵³ This is another example of where a very important principle which should be in the code rather than *The Guidance*, and the criticism by Hacked Off! that ‘It should also make clear the key rules on the face of the Code, not bury them in guidance as they plan to for several issues if the Code is to be “easily understandable” by the public’¹⁵⁴ has particular resonance here.

However, one may claim that as the decision to use the information obtained by ‘covert means’ rests ultimately with the publisher they should be aware that their obligations cover third parties and any complainant would not be concerned with nuances of whether the covert means of obtaining information was by a journalist, private detective or other person. They would believe the publication is responsible and make a complaint against it.

Both codes generally prohibit the use of trickery to obtain information although the phrasing of the relevant provisions are completely different. In clause 10(ii) of the Editor’s Code there is a general prohibition (subject to a public interest justification) on ‘[e]ngaging in misrepresentation and subterfuge’, whereas clause 5.2(a) of the Standards Code states that ‘publishers must ensure journalists... [d]o not engage in deception’ (again subject to public interest exceptions). There is no real difference in what the two provisions achieve, although

questions can once again be raised as the appropriateness of the location of a provision in the Standards Code, as this deception provision appears under the label ‘harassment.’ Whilst there are clearly circumstances in which deception might amount to harassment (e.g. posing as a police officer to obtain information) but in many cases the target of the deception is unaware what has happened and is unlikely to be distressed by being deceived (e.g. where the journalist gets financial information about someone by ‘blagging’ the information from a bank clerk).

4.4.4. Harassment

The issue of harassment could easily have been consumed into the privacy clauses of the two codes, as aspects of it fit into the classic infringement of the ‘right to be left alone.’ However, both codes address this issue via standalone clauses. Again there is some commonality between the two codes with the codes both prohibiting intimidation;¹⁵⁵ except that, unless otherwise justified in the public interest, journalists should obey requests from their target to desist in their interview,¹⁵⁶ and requirements that the journalist identify themselves and their publication.¹⁵⁷ However, the Standards Code expects subscribers to identify themselves in all cases, whereas the Editors’ Code only requires self-identification by the journalist if the target of his investigation requires it. Other differences include the prohibition in the Editors’ Code of ‘harassment and persistent pursuit.’ Whilst the former seems perhaps superfluous given the title of the clause, intimidation may not be synonymous with ‘harassment.’ Many dictionaries give a definition of harassment which suggests it requires force to get people to do what you want them to do,¹⁵⁸ but others suggest that in England its usage is broader in covering what amounts to little more than irritation.¹⁵⁹ The Standards Code inclusion of a specific and absolute prohibition on ‘intimidation’¹⁶⁰ (with no public interest exception) echoes similar sentiments in ten continental codes, with a few of these making clear that this

includes a prohibition on the use of pressure.¹⁶¹ This therefore covers much more than the persistent pursuit or inconvenience caused by the paparazzi, but covers prohibiting threats and blackmail.

4.4.5. Suicide

Specific provisions dealing with the reporting of suicide in media codes is a relatively recent phenomenon, and therefore rare. When MediaWise conducted a survey of 188 media codes in 2001 it found reference to suicide in only 13,¹⁶² and sixteen years later only nine of the continental codes studied make reference to the issue. Therefore, the appearance of specific clauses dealing with suicides in the two domestic codes are evidence that the codes are progressive when it comes to their coverage.

Provisions in some of the European codes are ambiguous with clause 15 of the Croatian Journalists' Association code simply saying 'Special attention, caution and responsibility are required when reporting on suicides,' but several have a much harder edge with the German Press Council in general prohibiting identification of the suicide victim and the circumstances around his death,¹⁶³ and the Danish Press Council prohibiting any mention of the suicides unless there was a public interest. The suicide clauses in the two domestic codes also adopt hard-edged restrictions. Both restrict 'excessive detail on the method used'¹⁶⁴ to prevent copycat suicides like those hanging suicides which occurred amongst teenagers in Bridgend in the period 2007 to 2009, and to minimise the 'grief and sorrow' suffered by relatives of the deceased. The Standards Code goes further, and influenced by a well-orchestrated campaign by The Samaritans, and other mental health charities, to improve the coverage of suicide it also prohibits speculation about the motives of the deceased which were often far from accurate.¹⁶⁵ Whilst such statements clearly came within 'conjecture' of clause 1(iv) of

the Editors' Code this provision does not prohibit conjecture but just requires that the statement is clearly identified as 'speculation.'

The protections afforded to suicide victims are much stronger in the Standards Code as unlike clause 4 of the Editors' Code there are no exceptions to its general principles on the ground of public interest and reporting of legal proceedings.

5. Interim conclusions

With a study of half of the topics covered by the codes complete there are a number of initial observations which can be made. Firstly, as against European media codes studied the two domestic codes seem to provide clearer and more substantial protections in regards to privacy in general, children and suicide in particular. Secondly, whilst IMPRESS tries to mimic many of the principles in the Editors' Code it often does so at the expense of making the Standards Code and *The Guidance* user friendly. Too many principles are relegated to *The Guidance* or appear in inappropriately headed clauses. It also results in a number of situations where the Standards Code is noticeable weaker than the Editors' Code in regards to protection of individual rights such as in relation to when children are interviewed. At the same time the Standards Code has provisions which give broader protection or stronger for individual rights (e.g. the prohibition on speculation of motives regarding why someone committed suicide), so a comparison between the two codes reveals they both have some strengths and some weaknesses. Whilst the provisions studied thus far show that both codes seem highly influenced by legal concepts and thresholds, there is also evidence that both codes impose ethical obligations beyond the law.

¹ The Newspaper Publishers Association's Declaration and Code of Practice consisted of five clauses on privacy, opportunity for reply, prompt corrections, conduct of journalists and race and colour (also covered irrelevant references to religion) (see Appendix L in David Calcutt, *Report of the Committee on Privacy and Related Matters*. Home Office June 1990 Cm1102).

² Press Council Code of Practice (see Appendix P, *ibid*).

³ *Leveson Inquiry: Culture, Practices & Ethics of the Press*. (Part K, chapter 4) para 8.13.

⁴ See Paul Dacre in Foreword to *The Editors' Codebook*. Regulatory Funding Company, 2016, 7.

⁵ Walter Merricks (Chair of IMPRESS) 'IMPRESS and the future of press regulation in the UK', lecture delivered at London School of Economics on 20th January 2016, para 52 <<http://impress.press/news/impress-and-the-future-of-press-regulation-in-the-uk.html>> accessed 20 August 2017.

⁶ *PRP Board Decision in Respect of the Application for Recognition from IMPRESS: The Independent Monitor of the Press CIC* (Press Recognition Panel, November 2016) 84.

⁷ *ibid*, 82

⁸ This can be found at < <http://www.impress.press/downloads/file/code/impress-code-guidance.pdf>. > accessed 22 August 2017.

⁹ Richard Keeble, *Ethics for Journalists* (2nd edn, Routledge, 2008)13.

¹⁰ *ibid*; Chris Frost, *Journalism Ethics and Regulation* (4th edn Routledge, 2015) 226.

¹¹ See Preamble to Editors' Code <<https://www.ipso.co.uk/editors-code-of-practice/>> accessed 21 August 2017.

¹² Ian Walden, 'Press Regulation in a converging environment' chapter 4 in *The Legal Challenges of Social Media* (ed David Mangan & Lorna E. Gilles)(Edward Elgar, 2017) 70.

¹³ See Preamble to Standards Code, 2 <<http://www.impress.press/downloads/file/code/the-impress-standards-code.pdf>> accessed 21 August 2017.

¹⁴ See Leveson (n 3), (Part K, chapter 9) para 2.3 recommended that there should be an early review of the Editors' Code to provide a clearer statement of the standards expected of editors and journalists.'

¹⁵ See Preamble to the Standards Code envisages that its code be 'easily understood by the public.'

¹⁶ See 'History of the Code' (Editors' Code of Practice Committee) <https://www.editorscode.org.uk/history_of_the_code.php> accessed 15 August 2017.

¹⁷ See 'Standards Code Infographics: A Standard Code for the Future of Journalism', (IMPRESS website) <<http://impress.press/standards/infographic.html> > accessed 15 August 2017.

¹⁸ Although this does not seem to be the sole factor.

¹⁹ See Accountable Journalism: Code of Ethics, <<https://accountablejournalism.org/ethics-codes>> accessed 15 August 2017. Note all references to codes hereafter, unless otherwise stated will be accessible from this website and no individual webpage for these codes will be given.

²⁰ Although it omitted to index, in this sub-database, the Cyprus Journalists' Code of Conduct and the Swiss Press Council which appear on the general database. These were added to the comparators. Also although the sub-database included both codes of news organs and state imposed broadcasting codes which are not of interest for this research these were easy to filter. In addition, codes which were not active were left out of the survey.

²¹ See Tiina Laitila, 'Journalistic codes of ethics in Europe' (1995) 10(4) *European Journal of Communications* 527-544.

²² *ibid*, 537.

²³ *ibid*, 543.

²⁴ Note the European codes includes the National Union of Journalists.

²⁵ The Press Councils usually have publishers' representatives on board, so if you add these to the other categories there are only 16 codes in the study which have publishers' input in the drafting.

²⁶ In relation to all the discrimination principles this also includes rules which prevent irrelevant references to a characteristic protected by the code, stereotyping and incitement to hatred.

²⁷ See 'IMPRESS Standards Code' (IMPRESS website, undated) < <http://impress.press/standards/impress-standards-code.html>> accessed 28 August 2017.

²⁸ See Cecilia Friend and Jane B. Singer, *Online Journalism Ethics: Traditions and Transitions* (Routledge 2007).

²⁹ See Mark Deuze & Daphna Yeshua, 'Online journalists face new ethical dilemmas: Lessons from the Netherlands' (2001) 16(4) *Journal of Mass Media Ethics* 273-292; Denis Muller, *Journalism Ethics for a Digital Age* (Scribe Publications, 2015)

³⁰ Editors' Code, clause 2.

³¹ *Ibid*, clause 4.

³² *Ibid*, clause 3.

³³ *Ibid*, clause 10

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- ³⁴ Editors' Code, clause 1; Standards Code, clause 1.
- ³⁵ Editors' Code, clause 2; Standards Code, clause 7.
- ³⁶ Editors' Code, clause 6; Standards Code, clause 3.
- ³⁷ Editors' Code, clause 12; Standards Code, clause 4.
- ³⁸ Editors' Code, clause 3; Standards Code, clause 5.
- ³⁹ Editors' Code clauses 15 and 16; Standards Code, clause 6.4..
- ⁴⁰ Editors' Code, clause 11; Standards Code, clause 6.3..
- ⁴¹ Editors' Code, clause 14; Standards Code, clause 8.
- ⁴² Editors' Code, clause 4; Standards Code, clause 7.2.
- ⁴³ Editors' Code, clause 13; Standards Code, clause 10.3..
- ⁴⁴ Editors' Code, clause 5; Standards Code, clause 9.
- ⁴⁵ Editors' Code, clauses 15 and 15; Standards Code, clause 6.4..
- ⁴⁶ Standards Code, clause 8.3.
- ⁴⁷ Ibid, clause 10.1.
- ⁴⁸ Editors' Code, clause 8(i).
- ⁴⁹ See Belarusian Association of Journalists' Declaration of Principles 'remember one of the functions of the mass media is to control the authorities' actions'; Norwegian Press Association article 1.5. 'It is the task of the press to protect individuals and groups against injustices or neglect, committed by public authorities and institutions, private enterprises, or others.'
- ⁵⁰ See Eric Barendt, *Freedom of Speech* (2nd edn Oxford University Press, 2005) 6-22.
- ⁵¹ See Preamble to Editors' Code.
- ⁵² 'Every day, journalists report significant events, policies and controversies, expose wrongdoing, challenge unfairness and satirise, amuse and entertain,' see Preamble to Standards Code, 2.
- ⁵³ Editors' Code, Public Interest clause, point 2.
- ⁵⁴ See (n 13).
- ⁵⁵ *ibid*.
- ⁵⁶ Bill Kovach and Tim Rosentiel, *The Elements of Journalism* (Crown Books, New York 2007).
- ⁵⁷ See Clifford G. Christians, 'The ethics of being in a communications context' chapter 1 in *Communications Ethics and Universal Values* (Clifford Christians and Michael Traber eds) (Sage, 1997); Clifford G. Christians et al, 'Towards a global media ethic: theoretical perspectives' (2008) 2 *Ecquid Novi: African Journalism Studies* 135-172.
- ⁵⁸ Editors' Code, clause 1(i); Standards Code, clause 1.1.
- ⁵⁹ Editors' Code, clause 1(iv); Standards Code, clause 1.3.
- ⁶⁰ Editors' Code, clause 1(ii); Standards Code, clause 1.2.
- ⁶¹ Editors' Code, clause 1(i).
- ⁶² See (n 27).
- ⁶³ See Stephen A. Ward, 'Digital media ethics' (*Center for Journalism Ethics, School of Journalism and Mass Communication The University of Wisconsin-Madison Website*, undated) <<https://ethics.journalism.wisc.edu/resources/digital-media-ethics/>> accessed 20 August 2017.
- ⁶⁴ See *Guidance* para 1.15.
- ⁶⁵ See Editors' Code, clause 1(i) 'The Press must take care...'; the Standards Code, clause 1.1., 'The publisher must take reasonable steps to ensure accuracy.'
- ⁶⁶ *Editors' Codebook*, 13.
- ⁶⁷ See for example, Code for Professional Journalists (Azerbaijan) principle 1.2 'Journalists shall study and convey the viewpoint held by the target of criticism in their articles'; Luxembourg Press Code of Ethics, article 1.1 '...to label information issuing from unreliable sources as such...'
- ⁶⁸ *The Guidance*, para 1.11.
- ⁶⁹ *ibid*, para 1.12.
- ⁷⁰ *Reynolds v Times Newspaper* [2001] 2 AC 127.
- ⁷¹ See Editors' Code, clause 1(iv); Standards Code, clause 1.3.
- ⁷² See Leveson (n 3) (Part K, chapter 7) para 4.19.
- ⁷³ Evidence of George Eustice MP to Leveson Inquiry <<http://webarchive.nationalarchives.gov.uk/20140122193418/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Submission-by-George-Eustice-MP.pdf>> accessed 25 August 2017.
- ⁷⁴ Explicitly stated in 20 European media codes.
- ⁷⁵ Editors' Code, clause 1(ii) uses the word 'promptly'; the Standards Code, clause 1.2. 'the earliest opportunity.'
- ⁷⁶ See *Self-Regulation of the Press* (7th Report Session 2006-2007, House of Commons Select Committee on Culture, Media and Sport) para 62.
- ⁷⁷ *Front Page Failures* (Hacked Off, July 2017).

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- ⁷⁸ Guidance, para 1.17.
- ⁷⁹ See Editors' Code, clause 1(ii).
- ⁸⁰ IMPRESS, 'Complaints FAQ' <<http://www.impress.press/complaints/complaints-faq.html>> accessed 23 August 2017
- ⁸¹ *Hacked Off submission to public consultation on IMPRESS Standards Code: IMPRESS Code analysis with Editors' Code comparison* <<http://www.impress.press/downloads/file/code/hacked-off.pdf>> accessed 20 August 2017.
- ⁸² The German Press Council, the National Association of Hungarian Journalists, and the Press Council of Ireland. However, the publication of the press council's decision in Germany is subject to a voluntary undertaking by the publishers which some major publications have refused to sign or renew (see Lara Fielden, *Regulating the Press: A Comparative Study of International Press Councils* (Reuters Institute of Journalism, April 2012) 42.
- ⁸³ Editors' Code, clause 1(v). The only other code in the survey which had a similar provision is the Austrian Press Council.
- ⁸⁴ See Jane Winter's response to the Public Consultation on the Standards Code <<http://www.impress.press/downloads/file/code/jane-winter.pdf>> accessed 24 August 2017.
- ⁸⁵ See *A Free and Accountable Media: Reform of Self-Regulation – Report and Recommendations*. Media Standards Trust submission to Leveson Inquiry (June 2012) 84.
- ⁸⁶ Editors' Code, clause 1(iii)
- ⁸⁷ See Right of Reply Bill 1984, Right of Reply 1989, Right of Reply and Press Standards Bill 2005.
- ⁸⁸ See in particular, *Miami Herald Publishing Co. v Tortillo*, 418 US 241 (1974)
- ⁸⁹ András Koltay, 'The right of reply: a comparative approach' (2007) 4 *Iustum Aequum Salutare* 203-213, 205.
- ⁹⁰ See Defamation Act 1996, ss2-4.
- ⁹¹ See Defamation Act 1996, Schedule 1, Part II.
- ⁹² See *The Guidance*, para 1.21.
- ⁹³ See (n 89) 211-212.
- ⁹⁴ See Ed Miliband, 'Why my father loved Britain', *Mail Online*, 11 October 2013 <<http://www.dailymail.co.uk/debate/article-2439593/Why-father-loved-Britain-Ed-Miliband.html>> accessed 20 August 2017.
- ⁹⁵ See Geoffrey Levy, 'The man who hated Britain', *Mail Online*, 27 September 2013 <<http://www.dailymail.co.uk/news/article-2435751/Red-Eds-pledge-bring-socialism-homage-Marxist-father-Ralph-Miliband-says-GEOFFREY-LEVY.html>> accessed 20 August 2017.
- ⁹⁶ In addition to clause 3 (privacy) these were clause 5 (Subterfuge), clause 7 (Intrusion into Grief), clause 8 (Innocent Relatives), clause 9 (Interviewing Children), clause 10 (Children in Sex Cases), clause 12 (Pictures) and clause 15 (Hospitals).
- ⁹⁷ There are ten which can be viewed in this way, including clauses on suicide (clause 5) and reporting of crime (clause 9).
- ⁹⁸ These are clause 3(Children), clause 5 (Harassment), clause 6 (Justice), clause 7 (Privacy), and clause 9 (Suicide).
- ⁹⁹ Those of clause 9 (Reporting of Crime) of the Editors' Code and clause 6 (Justice) of the Standards Code.
- ¹⁰⁰ See Albanian Media Institute, clause 4 'The journalist will respect the rights of individuals to privacy...'; Belgian Press Council, Principles, must show 'respect for privacy and human dignity.'
- ¹⁰¹ Editors' Code (original version), clause 3.
- ¹⁰² Standards Code, clause 7.1(e).
- ¹⁰³ See *Campbell v Mirror Group Newspapers* [2004] UKHL 22
- ¹⁰⁴ See *von Hannover v Germany* (2012) 55 EHRR 15, *Axel Springer v Germany* [2012] EHRR 227.
- ¹⁰⁵ See (n 103).
- ¹⁰⁶ Editors' Code, clause 2(iii).
- ¹⁰⁷ Standards Code, Clause 7(1).
- ¹⁰⁸ *Ibid*, Clause 7.1(a)–(e).
- ¹⁰⁹ *Ibid*, clause 7.1(a) and (c).
- ¹¹⁰ *Ibid*, clause 7.1(b) and (c).
- ¹¹¹ Standards Code, clause 7.1(b)
- ¹¹² *Cambridge Advanced Learner's Dictionary* (4th edn Cambridge University Press, 2013).
- ¹¹³ Albanian Media Institute Code of Ethics; Belgian Press Council, article 15; Finland Council for Mass Media Code of Ethics, article 28; Netherlands Press Council Code of Ethics; Danish Press Council 'B. Conduct contrary to sound press ethics' victims of accidents (no specific mention of disasters); German Press Council, Guideline 11.3.
- ¹¹⁴ Belgian Press Council, article 15; Finland Council for Mass Media Code of Ethics, article 28; Danish Press Council, *ibid.*; Institute of Maltese Journalists, clause 5.
- ¹¹⁵ Swiss Press Council, Directive 7.2.

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- ¹¹⁶ See Romanian Press Club, Article 4.
- ¹¹⁷ See definitions of ‘shock’ in ‘nervous shock’ by Law Lords in *Alcock v Chief Constable of South Yorkshire* [1992] AC 310 (Lord Keith, 398; Lord Ackner 918B and Lord Oliver 926B).
- ¹¹⁸ See Cyprus Journalists Code of Conduct, clause 4; Moldova Journalists’ Union Code of Professional Ethics, article 7; Swiss Press Council, Directive 7.2.
- ¹¹⁹ *The Guidance*, para 7.33.
- ¹²⁰ Standards Code, clause 7.2.
- ¹²¹ See reference to *A boy v Sunday Times* in *Editors’ Codebook*, 49-50.
- ¹²² Similar sentiments are expressed in the Code of Practice of the Irish Press Council and Press Ombudsman, clause 5.3.
- ¹²³ Editors’ Code, clause 6; Standards Code, clause 3.
- ¹²⁴ See Armenia Code of Conduct for Media Representatives, clause 4.3.
- ¹²⁵ See Editors’ Code, Public Interest clause, point 5; Standards Code 3.1.
- ¹²⁶ Editors’ Code, clause 6(iii.)
- ¹²⁷ *Ibid*, clause 6(iv).
- ¹²⁸ Standards Code, clause 3.1.
- ¹²⁹ Standards Code, clause 3.2.
- ¹³⁰ *Gillick v West Norfolk and Wisbech AHA* [1985] UKHL 7.
- ¹³¹ Editors’ Code, clause 8(i).
- ¹³² Editors’ Code, clause 6(ii).
- ¹³³ Transparency Project submission to the Public Consultation on IMPRESS’ Standards Code <<http://www.impress.press/downloads/file/code/transparency-project.pdf> > accessed 20 August 2017.
- ¹³⁴ Equalities and Human Rights Commission submission to Public Consultation on IMPRESS’ Standards Code, 2 <<http://www.impress.press/downloads/file/code/equalities-and-human-rights-commission.pdf>> accessed 20 August 2017.
- ¹³⁵ Standing Committee on Youth Justice submission to the Public Consultation on IMPRESS’ Standards Code <<http://www.impress.press/downloads/file/code/standing-committee-for-youth-justice.pdf> > accessed 20 August 2017.
- ¹³⁶ Editors’ Code, clause 6(iii) and (iv).
- ¹³⁷ See Bosnia Press Code, clause 11.
- ¹³⁸ See Case C-131/12 *Google Spain SL, Google Inc. v Agencia Española de Protección de Datos, Mario Costeja González* [2014] CMLR 50.
- ¹³⁹ Parliament and Council Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC [2016] OJ L 119/1.
- ¹⁴⁰ See ‘The right to erasure (the right to be forgotten)’ (*Information Commissioner’s Office* website, undated) <<https://ico.org.uk/for-organisations/data-protection-reform/overview-of-the-gdpr/individuals-rights/the-right-to-erasure/>> accessed 22 August 2017.
- ¹⁴¹ See Child and Young Persons Act 1933, s49.
- ¹⁴² See Youth Justice and Criminal Evidence Act 1999, s45 and s45A.
- ¹⁴³ Editors’ Code, clause 10.
- ¹⁴⁴ Only 12/55 (22 %) include such a restriction. See Netherlands Press Council, ‘It is permitted to work with a hidden camera and microphone or with a rolling camera and active microphone if such is necessary in order to expose a misconduct.’; Norwegian Press Association, clause 2.10 ‘Hidden cameras/microphones or false identity may only be used under special circumstances.’
- ¹⁴⁵ See Damian Carney, ‘Self-regulation of unlawful newsgathering techniques’ (2008) 13(3) Communications Law 76-81.
- ¹⁴⁶ *COBUILD Advance English Dictionary* (Collins Dictionary.com website) <<https://www.collinsdictionary.com/dictionary/english/subterfuge>> accessed 24 August 2017 defines subterfuge as ‘a trick or dishonest way of getting what you want.’
- ¹⁴⁷ *The Guidance*, para 7.24.
- ¹⁴⁸ *ibid*, para 7.25.
- ¹⁴⁹ Covert actions can only be justified in the ‘public interest’ under clause 7.2(a) itself.
- ¹⁵⁰ See <http://www.cps.gov.uk/legal/d_to_g/guidance_for_prosecutors_on_assessing_the_public_interest_in_cases_affecting_the_media/#a03> accessed 23 August 2017.
- ¹⁵¹ *Ibid*, paras 31-32.
- ¹⁵² Editors’ Code, clause 10(ii).
- ¹⁵³ *Guidance*, para 7.25.
- ¹⁵⁴ See Hacked Off (n 81) point 3 Improvements needed, 1.
- ¹⁵⁵ Editors’ Code, clause 4(i); Standards Code, clause 5.1.

¹⁵⁶ Editors' Code, clause 4(ii); Standards Code, clause 5.2(c).

¹⁵⁷ Editors' Code, clause 4(ii); Standards Code, clause 5.2(b).

¹⁵⁸ See *COBUILD Advanced English Dictionary*. HarperCollins 'If you intimidate someone, you deliberately make them frightened enough to do what you want them to do.' *Collins English Dictionary* 'to discourage, restrain, or silence illegally or unscrupulously, as by threats or blackmail' both found at <<https://www.collinsdictionary.com/dictionary/english/intimidate> > accessed 23 August 2017.

¹⁵⁹ See *Cambridge Dictionary* (n 112).

¹⁶⁰ Standards Code, clause 5.1.

¹⁶¹ See Code of Ethics of Lithuanian Journalists, clause 12.

¹⁶² See Bill Norris & Michael Jempson, *Reporting Suicides Worldwide: Media Responsibilities* (Media Wise Trust, 2001).

¹⁶³ See Guideline 8.5 to the German Press Council Code.

¹⁶⁴ Editors' Code, clause 5; Standards Code, clause 9.1.

¹⁶⁵ See *Media Guidelines for Reporting Suicides* (Samaritans, 2013).