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Up to standard? A critique of IPSO's Editors' Code of Practice and IMPRESS' Standards Code: Part 2

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***Comms. L. 112** The second part of this article will complete a comparative analysis of the contents of the Editors' Code of Practice and Standards Code which commenced in the previous issue of Communications Law.¹ It will address four substantive areas of the codes labelled sources, reporting of crimes and courts, independence, and discrimination and violence. It will draw comparisons with the content of 55 European national media codes to see whether the contents of these two codes address the issues which the majority of these codes address, and where appropriate draws upon the wording of the European media codes to discuss the breath of coverage and thresholds adopted in the two domestic codes. In addition, this article will compare the "public interest" provisos within the two domestic codes with each other and the other European media codes studied here. Finally, the article considers the adequacy of both codes in addressing ethical issues which arise in digital media.

6. Sources

The manner in which the two codes deal with sources is one area of substantial difference. Whilst both address issues of protection of confidential sources and place restrictions on the payment of criminals and those involved in criminal proceedings, the Standards Code imposes additional restrictions. In addition, the Standards Code also has provisions on plagiarism and attribution, and places restrictions upon payment of public officials which are not addressed at all by the Editors' Code.

6.1. Protection of sources

As Part I of this article showed,² provisions relating to the protection of sources was the most common provision in the European codes studied, providing succour for those who assert that protection of sources is the "central tenet" of journalism. The vast majority of European codes with such provisions (31/48), including the Editors' Code and the NUJ's Code of Conduct, provide absolute protection of journalistic sources, which means that if we adopt a Kantian interpretation there are no circumstances in which revelation of anonymous sources can be justified. I have argued elsewhere³ that this position is fundamentally at odds with what I consider to be "central tenet" of journalism - the truth - and a handful of European codes⁴ have recognised that if the source provides the journalist with false information, any obligation of anonymity towards that source is expunged. The Standards Code also adopts this approach, stating that the obligation of confidence does not apply "where the source has been manifestly dishonest."⁵ The wording is important. It does not demand disclosure of every source who supplies false information, in part because experience has shown that sometimes sources pass on false information which they genuinely believe to be true,⁶ and seems to require the source to be at risk of exposure only if they are deliberately lying. Such a standard would have demanded that Piers Morgan reveal the identity of the Territorial Army soldiers who had fabricated photographs of alleged abuse of Iraqis by British soldiers.⁷ Although Morgan justified his position by reference to the argument that to reveal a confidential source, even one which was supplying false information, would have a chilling effect on future sources, this argument was rejected by the European Court of Human Rights in the *Financial Times v United Kingdom* case, although the court did demand "compelling evidence"⁸ of the wrongdoing before demanding disclosure. Clause 8.1 of the Standards Code does not demand disclosure of the source's identity if there has been false information supplied by a "manifestly dishonest" source, but does provide this as an option available to the publication which is only likely to be used in the most extreme of situations. Publications may be able to comply with their obligations under this clause simply by correcting the falsehood, or admitting that the information was false.

There is a clear suspicion of use of anonymous sources by IMPRESS summed up in paragraph 8.13 of the guidance, which states that "Where journalists propose to use anonymous sources, it would be best practice to have a system to ensure this happens only in exceptional circumstance.' This reflects the fear that journalists might themselves abuse the use of anonymous sources by granting anonymity too willingly (thus depriving the readership of important information), or simply fabricating anonymous sources as Clive Goodman and other journalists caught up in the phone hacking scandal were shown to do: in their case to hide **Comms. L. 113* their illegal/unethical actions. The Standards Code itself demands that "Publishers must take reasonable steps to ensure that journalists do not fabricate sources,⁹ but leaves determination of what these steps are largely to the publisher. The one exception is the suggestion in paragraph 8.13 of the Guidance that the editor should sign off its use. This is a very weak obligation, and in many media publications' codes the obligation on the reporter demands that the reporter reveal to the editor the source's identity,¹⁰ which acts as a check on fabrication. However, politically this might have been a very difficult obligation to impose in either the Standards Code or Guidance given the heavy criticism directed towards News Group Newspapers/News International forwarding the identity of anonymous sources their journalists had used to Operation Elveden (the investigation into unlawful payments to public officials), which resulted in the convictions of 32 informants. Leaving the detail of the internal control procedures to the publications themselves allows a degree of flexibility so that publications can adopt the appropriate mechanism based upon their size and hierarchy.

6.2. Payment to sources

Payment to sources is frowned upon in many journalistic cultures. Nine European codes in this survey have prohibitions or restrictions on paying sources.¹¹ However, 'chequebook journalism' has been a longstanding feature of British journalism,¹² but it is one which both the Editors' Code and Standards Code have recognised creates problems, particularly in relation to specific categories of sources; witnesses, or potential witnesses, in legal proceedings; criminals and their families and associates; and, in the case of the Standards Code, public officials.

6.2.1. Witnesses or potential witnesses

Payment of witnesses in trials has proven a controversial issue in the UK. Numerous cases have arisen over the years in which payments to witnesses, or potential witnesses, have raised fears of the possible adverse impacts on the trial. These have included high-profile cases, such as the prosecutions of Rosemary West and Peter Sutcliffe, where substantial numbers of witnesses had sold their stories to different newspapers; and where 'conditional payments' were agreed between witness and newspaper (as in the case of the agreement between the *Sunday Telegraph* and Peter Bessell in the Jeremy Thorpe case, and the *News of the World* and Allison Brown in the Gary Glitter prosecution)¹³ where payment to the witness was increased if the person against whom the testimony was given was convicted. The Editors' Code was strengthened in 2003 to address these fears, and avert the threat of statutory prohibitions on the payment of witnesses.¹⁴ In the current code, clause 15(i) prohibits any payment or 'offer of payment' to any witness or potential witness whilst proceedings are active under the Contempt of Court Act 1981. This is clearly a 'law=' provision, but clause 15 goes on to add additional ethical obligations in regards to payment of witnesses in cases not yet 'active' but likely to be.¹⁵ Newspapers can pay such witnesses, but can only publish such information if there is a 'demonstrable' public interest. Additionally, there is a bar on 'conditional payments' and a requirement to inform both prosecution and defence if the witness is to give evidence.¹⁶

Clause 6.4. of the Standards Code at first glance adopts a 'law=' approach as it allows payments to witnesses, as permitted by law. Given the failure of the government to introduce a legal bar on payments to witnesses, the law which the IMPRESS subscribers need to be aware of is the Contempt of Court Act 1981, and paragraph 6.21 of the Guidance refers to the key elements of this legislation. Paragraph 6.22 provides that "it is not appropriate for a journalist to approach [a witness] with an offer of payment while the trial is ongoing.' This wording provides a very weak additional ethical obligation and does not have to be justified in the 'public interest.' There is no mention of any restrictions on 'conditional payments.' Consequently, the restrictions on payment to witnesses seem weaker than those in the Editors' Code.

6.2.2. Criminals and their associates

Both codes also place restrictions on payment to criminals, their family and associates which is based upon two concerns which are both explicitly recognised in clause 16(i) of the Editors' Code, and in paragraph 6.23 of the Guidance to the Standards Code. First, there is a concern that payment to a criminal would allow the criminal to 'exploit a particular crime' he or she has committed. As there are no 'Son of Sam' laws¹⁷ in the UK, prohibiting a criminal from benefitting from writing about his crime, it is left to the ethical sphere to adopt restrictions on such payments. The Editors' Code has clear 'law+' provisions requiring that in general no payment should be made to criminals unless there "was good reason to believe the public interest would be served."¹⁸ The PCC accepted that convicted criminals can be paid for discussing their experience of prison or other sanctions,¹⁹ or when they raise the issue that they have been a victim of a miscarriage of justice,²⁰ and it is generally thought to be wrong to deny a convicted criminal who has reformed the right to write about his crime (although the IPSO/PCC preference would be that in such cases payment is made to charity rather than the convicted person). Payments to family or friends are viewed less suspiciously, although IPSO has indicated that payment should not be for either 'kiss n' tell stories', or 'irrelevant gossip' which infringes a person's privacy.²¹

On the face of the Standards Code, IMPRESS adopts a 'law =' approach to the issue, although the Guidance describes expectations on IMPRESS subscribers which go well beyond legal obligations. Paragraph 6.23 indicates that "clause is designed to reduce the risk that criminals might benefit from their crimes or that criminal activity might be glamorised through the payment or offer of payment to convicted or self-confessed criminals or their associates", but if that is its objective it does not achieve this. Even the wording of this clause in the Guidance does not cure this defect, as it does not seek to interpret the clause but gives an account of its objectives which the literal wording cannot be said to be seeking. The restrictions in paragraph 6.24 of the guidance is more 'law+' in that it is indicative of restrictions on who can be paid, but again this adds a gloss which strictly speaking clause 6.4 does not allow.

Whilst both codes are virtually unique amongst the European codes studied in having provisions dealing with payments to these two types of sources,²² and therefore set standards above the 'international baseline', there are potentially ways in which the codes could be strengthened. MediaWise has suggested that the terms of any agreement needs to be published in the news organ alongside a clear statement of what the public interest is in payment of the criminal.²³

6.2.3. Payment to public officials

Although the Leveson Report seemed to downplay the extent of payments to public officials by journalists for information,²⁴ Operation Elveden resulted in 32 public officials being convicted of selling information to journalists. Whilst a common narrative amongst the journalistic community is that many of these sources *Comms. L. 114 were supplying public interest stories, the nature of some of the paid for tipoffs which were salacious gossip (such as the police officer who gave a *News of the World* reporter information about a model getting angry after finding her boyfriend getting amorous with another woman on a flight),²⁵ or downright dangerous (such as a police officer being paid for information about the then Kate Middleton's security).²⁶ Additionally, the willingness of journalists to pay for these tips corrupted officials, who supplied regular and low value information to journalists which compromised these officials' obligations to the state. The Standards Code addresses this problem by prohibiting payments to public officials "Except where justified by an exceptional public interest."²⁷ The wording of this provision demands a high threshold of justification which would be satisfied by, for example, the revelations of widespread abuse of expenses by MPs where the *Daily Telegraph* paid £110,000 for what was clearly a 'public interest' story.²⁸ However, the provision is still weaker than the legal provision found in the Bribery Act 2010, section 1 and the Criminal Justice and Courts Act 2015, section 26, which respectively punish someone who offers an inducement to, or reward to another for "improperly perform[ing] a public function, and a police constable for exercising a power or privilege for his personal benefit. In neither case is a 'public interest' defence available, although if there is genuinely an 'exceptional public interest' it is unlikely that a journalist will be prosecuted.²⁹ Whilst clause 8.3. is a 'law-' provision, it imposes an ethical obligation upon IMPRESS subscribers which is unique amongst all the codes studied.

6.2.4. Plagiarism and copyright

In 58 per cent of the European Codes studied for this article there were provisions governing plagiarism and copyright, so the absence of such a provision from the Editors' Code suggests the

code falls below international standards. Its absence is more surprising given the regularity of the practice of 'lifting of articles', or substantial quotes, without attribution by one newspaper from another.³⁰ This has led *Private Eye* to devote a regular column, 'Just Fancy That', identifying such pieces, whilst a number of British journalists (eg Johann Hari and Neil Harman³¹) have been exposed as serial plagiarists. Competitive pressures, and the presence of easily accessible material online, have encouraged a culture of 'cut and paste' amongst the mainstream press. Two stories in the *Press Gazette* in August 2017 reveal some of the dangers of these pressures. In the first a freelancer was reported to have forced *The Independent* into paying him for lifting substantial parts of an article he had supplied to *Wales Online* without attribution,³² whilst the parents of Charlie Gard (who unsuccessfully fought for the infant to be allowed to go to the United States for experimental treatment to save his life) made a complaint to IPSO against *The Sun* and its sister publications for lifting large chunks quotes from an exclusive interview they had given to the *Daily Mail*.³³ As IPSO does not entertain copyright complaints, the parents had to argue the claim by *The Sun* that their article was 'exclusive' was inaccurate under clause 1 because it sensationalised and misused the quotes stolen from the *Mail's* article.

Many of the European codes in this study have very clear prohibitions against such plagiarism and copyright infringement. Clause 12 of the NUJ's Code of Conduct states bluntly, 'Avoid plagiarism;' the Yerevan Press Club's Code states that 'Plagiarism, copyright infringement' are unacceptable; whilst paragraph 18 of the Belgium Press Council's Code states 'The journalist does not commit plagiarism.'

Whilst clause 2 of the Standards Code is titled 'Attribution & Plagiarism,' and may seem designed to address these issues, the reference to 'plagiarism' in its title may be a misnomer because its focus is on attribution without any further mention, let alone definition, of plagiarism.³⁴ Other codes, such as the Azerbaijan Code of Professional Ethics for Journalists, and the Bosnian Press Council, provide examples, or definitions, of plagiarism which indicate that it occurs when there is reproduction of material from another source without the consent of the copyright holder. Clause 2.1 by contrast is much more limited. It states '[p]ublishers must take all reasonable steps to identify and credit the originator of any third party content,' and clause 2.2. requires '[p]ublishers must correct any failure to credit the originator of any third party content with due prominence at the earliest opportunity.' This imposes a lesser burden than codes such as those mentioned above, and is much weaker than domestic copyright law requires. Under section 31 of the Copyright, Design and Patents Act 1988 unauthorised use of copyright material is only permitted where it relates to news reporting and criticism and satisfies the 'fair dealing' requirement which places limits on the amount of copyrighted material which can be used there. Photographs are explicitly excluded from the fair dealing defence,³⁵ and consent must always be obtained from the copyright owner before use, unless the copyright has been waived (ie via a creative commons licence), or if the publication can rely on the public interest defence,³⁶ something which must be very rare.

What 'reasonable steps' may be required under clause 2.1 is considered in paragraph 2.12 of the Guidance, which includes contacting the provider and attempting 'to contact the subjects pictured or referenced' in the article. Strictly speaking copyright law demands non-publication of material without the consent of the copyright owner or unless the material is 'copyright free,' so the 'reasonable steps' are much weaker than the law requires, and much laxer than 16 European codes which address plagiarism (and usually provide an absolute bar on plagiarism,³⁷ or indicate it is seen as a grave breach of journalistic ethics),³⁸ and require compliance with copyright laws. Supporters of this provision in the Standards Code may argue that at least it prohibits (and makes unethical) the blatant lifting of another's articles, and is a practical 'halfway house' position which still enables publications to use work whose provenance may be uncertain or which may be 'orphan works', thereby not hampering reporting. Critics will claim that by omitting any reference to the need for permission the code gives IMPRESS subscribers a false sense of security as to what they can print without ethical sanction, and that because there is no 'copyright' in news it is still possible to use other articles/publications as sources without the need to copy word for word or substantially from other sources.

Although clearly stronger on this issue than the Editors' Code, which lacks any provision on plagiarism at all, the Standards Code provides an inadequate mechanism to stop unauthorised use of another's works. It may be argued that the laws of copyright provide an adequate mechanism to redress such abuses, and newspapers have used this law against each in the past when other newspapers have hijacked their exclusives.³⁹ However, whilst major publishers may be able to afford to take such legal action on occasion, high costs and inequalities of power between publishers and freelancers or social media users who have had their copyrighted material used without consent and

attribution, does seem to call out for an alternative to litigation which a provision in a code of practice may provide, and which are sadly lacking in both domestic codes.

***Comms. L. 115 6.3. Reporting of crime and the courts**

The two codes address a number of the same issues involving the reporting of crime and court proceedings, much of which is influenced by legal constraints (although on occasions the ethical obligations are weaker and could in practice undermine justified reporting restrictions).

6.3.1. Identifying children involved in criminal cases

The English law recognises the need to protect the identity of those under eighteen who are involved in legal proceedings.⁴⁰ This paternalistic and protective approach is based upon a series of concerns about the traumatic or distressful impact that taking part in litigation imposes on children; privacy concerns; and in criminal proceedings the need to permit young criminals to rehabilitate themselves. Both codes to a different degree recognise this. The Standards Code imposes a *prima facie* ban on publishers "directly or indirectly identify[ing] persons under the age of 18 who are involved in criminal or family proceedings."⁴¹ By contrast the Editors' Code *prima facie* prohibits identification only of those under sixteen who are involved in sex cases.

Whilst the obligation in clause 7 of the Editors' Code is clearly designed to be more restrictive than the law (as the restriction applies even if the law permits it), and can only be justified if there is a public interest, it only applies to that limited category of cases. Beyond sex cases where children are involved as victims or witnesses, the Editors' Code only require journalists to take into account the "potentially vulnerable position of children who witness, or are victims of, crime."⁴² By only treating the vulnerability of the children in non-sexual offence cases as a consideration and not a *prima facie* prohibitor the rights of children are less well protected in the Editors' Code than the Standards Code. Although the existence of strong legal sanctions for breaching automatic and discretionary reporting restrictions in juvenile cases may make it unnecessary to include an ethical obligation to the same effect in the code.

6.3.2. Reporting the identity of victims of sexual offences

Both codes prohibit the identification of "victims of sexual offences."⁴³ This phrase is used in all the European codes surveyed that have a provision restricting reporting of sexual offences, and also appears as the label given to section 1 of the Sexual Offences (Amendment) Act 1992 which creates the legal restrictions on reporting the identify of victims of sexual offences. However, in section 1(2) of the Act the language changes and it is made clear that anonymity covers those who are "complainants" (ie individuals who may not be able to prove the sexual offence occurred). The possibility therefore exists that if a literal interpretation was given to the codes' use of the concept of "victims of sexual offences" it would cover in practice a much smaller group of individuals than "complainants of sexual offences." However, IPSO has already rejected an argument made by the *Daily Record* that because a judge had found as there was no public interest in prosecuting a woman for rubbing her breasts against the complainant, there had not been a "sexual assault" and hence the complainant was not a victim and could be identified;⁴⁴ the Guidance to the Standard Code points out that the "clause applies irrespective of the outcome of any criminal trial";⁴⁵ whilst both Codebook⁴⁶ and Guidance⁴⁷ make it clear that newspapers need to avoid providing any information about the victim/complainant which might result in identification.

The Standards Code goes on to state that the victim can also be identified with his/her "express consent." Although there are only a small number of the European media codes which address the anonymity of victims of sexual offences, most of these codes also only permit that the obligation to secrecy is lifted if expressly consented to by the victim.⁴⁸ However, such a provision in a UK code is problematic in that it comes into conflict with the detailed provisions of sections 5(2) and (3) of the Sexual Offence (Amendment) Act 1992 which requires consent to be in writing and obtained without unreasonable interference "with the peace or comfort of the person giving the consent."⁴⁹ It cannot genuinely be considered that the law imposes harsh burdens on publications to get consent (there is for example no need for a court order), and the provisions of sections 5(2) and (3) are designed to give the victim protections from such thing as intimidation by the media, so for clause 6.3 to offer a means of circumventing these protections is not in the victims' interests. The reference to "express consent" should therefore be excised from this clause and replaced with "written consent".

6.3.3. Standards clause 6.1

The wording of this clause is clearly influenced by s 2(2) of the Contempt of Court Act 1981, and draws the publication's attention to the principles which underlie this law. It is made clear in the Guidance that it is not an attempt to "distil or summarise every aspect of the law,"⁵⁰ and may even in practice act as a "law+" rather than "law-" provision as it allows IMPRESS to rule on when a story "impedes, obstructs or prejudices" court proceedings. For complainants who may not be able to persuade the Attorney-General to take legal action against the offending newspaper, the inclusion of this provision in the Code provides an alternative mechanism to challenge unfair and prejudicial coverage of their case in the newspaper. Whether the wording "significantly" provides a lower threshold than the "substantial risk" that proceedings are "seriously prejudiced or impeded," is uncertain but at the very least it should not be interpreted more restrictively than the statutory standard.

In other European codes, there is much clearer guidance upon what a publication can say about ongoing or imminent proceedings, with 62% emphasising the need to respect the presumption of innocence. Clause 6.1. probably performs the same function as the proclamation that a suspect is guilty would prejudice the case. However, there are several other provisions in the European codes which whilst not commonly adopted, may be considered desirable to deter some unfair journalistic practices. For example, several codes demand that where a publication has reported on the arrest or trial of a person they must report the fact that he has been released without charge or acquitted,⁵¹ whilst others demand a "balance in reporting the two sides in a dispute."⁵² Neither of these are directly addressed by the philosophy which underpins strict liability contempt in this country, and which influences clause 6.1, and adoption of both could encourage a fairer approach to reporting of criminal proceedings.

6.4. Independence

According to the Ethical Journalism Network, one of the five core values of journalism is independence. This is defined as,

*"...we should not act, formally or informally, on behalf of special interests whether political, corporate or cultural. We should declare to our editors - or the audience - any of our political affiliations, financial arrangements or other personal information that might constitute a conflict of interest."*⁵³

***Comms. L. 116** Essentially it requires journalists to be independent of outside influence, and that at the very least conflict of interests are declared. This definition of "independence" is at the weaker end of the spectrum, with several of the European codes studied imposing additional protections to ensure journalistic independence from their editors (eg conscience clauses), and absolute bars on writing on any subject where there may be a conflict of interest.⁵⁴ Three types of provisions seeking to protect "journalistic independence" are generally found in these codes: the prohibition of journalists accepting bribes (76%); the separation of advertising and editorial (67%); and conscience clauses designed to allow journalist to refuse assignment which breach either the relevant code of ethics applicable to them or their own ethical conscience or set of beliefs (55%). The Editors' Code addresses none of these issues, whilst the Standards Code only imposes an obligation to "clearly identify content that appears to be editorial but has been paid for."⁵⁵ However, both codes do address a major potential area of conflicts of interest, namely "financial journalism", and have introduced whistleblower protections elsewhere in their regulatory regimes which may make the need for a conscience clause unnecessary.

6.4.1. Conflicts of interest

According to Louis Alvin Day "a *conflict of interests* is a clash between professional loyalties and outside interests that undermines the credibility of the moral agent,"⁵⁶ with Associated Press saying it "compromise[s] our ability to report the news fairly and accurately, uninfluenced by any person or action."⁵⁷ Thus the goal of conflict of interest provisions is to protect journalism's reputation for objectivity, and prevent writers/publications having this objectivity compromised by relationships with the subject of an article or news story, or an interest (financial or otherwise) in what they are writing about. In a journalistic culture like the UK where partisan publications are the norm in the news market, the political interests of newspapers and news magazines, or their writers, are often clear to

see, and partisanship is permitted provided it does not affect the accuracy of the story.⁵⁸ Other conflicts of interests may not be so obvious: familial relationships between writer and subject of story; the influence which advertisers may have the newsdesk; perks and freebies which journalists receive which might colour their judgment of a person or organisation; and the benefits which financial journalists may get from insider information or their ability to influence the market can all be hidden from the readership. Baroness Onora O'Neil in the BBC Reith Lecture in 2002 stated: "A lot could be [achieved] by procedural changes, such as a requirement for owners, editors and journalists to declare financial and other interests (including conflicts of interest)."⁵⁹ Whilst disclosure may not be the panacea to all conflicts of interest problems it does provide an important mechanism in preventing "audience manipulation."

The approach of the Standard Code has been to endorse transparency⁶⁰ and impose on the IMPRESS-regulated publications duties to identify "paid for" editorials,⁶¹ significant conflicts of interest,⁶² and interests or conflicts of interest in any financial products which they write about.⁶³ The Editors' Code by contrast only deals explicitly with conflicts of interest in the context of financial journalism.⁶⁴

6.4.2. Separation of editorial/advertising

"Appropriate disclosure' is particularly necessary in relation to "paid for' editorials, as clause 10.1 of the Standards Code requires. "Advertorials' (advertorials which look like news articles) have been in existence for some time, but the ease with which "native advertising' can take place in online platforms may make it much more difficult to identify than print. In the context of most national newspapers, advertorials are usually identifiable by them being inserts into the newspaper or the clear use of the word "advertisement' at the top of the "article' or pages on which the articles appear. However, there has been at least one case of a national newspaper being found not to have adequately indicated that the "article' in question had been paid for.⁶⁵ The existence of rule 2.4 of the Advertising Standards Authority's CAP Code, which states "Marketers and publishers must make clear that advertorials are marketing communications..." may seem to make an explicit reference to this in either of the media codes unnecessary.

However, there are other ways in which advertisers can influence the content of publications which are not covered by the existing rules in either code. One example of this can be seen in relation to Peter Osborne's resignation as political commentator for the *Daily Telegraph*, which he claimed was due to the newspaper's failure to discuss the fine imposed on HSBC for money laundering which he said was because the newspaper feared it would lose the bank's advertisements.⁶⁶ In an economy where, as circulation falls, hard-copy publications are increasingly reliant on advertising income rather than income from sales, and where few online publications have been able to sustain themselves from subscription revenues, publications are more susceptible to influence from large advertisers. Succumbing to these influences clearly damages traditional media's claims to objectivity, and it is not surprising that several European media codes include provisions which seek to block such influences. For example, clause 7 of the German Press Council's Code states that: "The responsibility of the Press towards the general public requires that editorial publications are not influenced by the private or business interests of third parties ... Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial and commercial content.' The absence of such a provision from both codes is worrying, with the Danish Press Council's code stating that "compliance with outsiders' demands for influence over the content of the media ... may raise doubt as to the freedom and independence of the media.'

6.4.3. Financial journalism

In the original Editors' Code of 1991, its financial journalism clause only placed restrictions on the journalist not profiting from information they received in advance. The current clause 13 of this code has expanded restrictions on writing about shares they, or their families, have a significant financial interest in without disclosing such facts to their editors,⁶⁷ and a total prohibition on the buying and selling of shares that they have recently written about or intend to write about.⁶⁸ These clear cut rules are further enhanced by the Financial Journalism Best Practice Note⁶⁹ which additionally emphasises the need for financial journalists to "take care not to publish inaccurate material and to distinguish between comment, conjecture and fact' (ie obligations expressed in cl 1 on accuracy). These restrictions (on paper at least) place significant controls on the activities of financial journalists and news organs, reflecting the fact that they have been accepted by the EU Commission as being equivalent to the Regulatory Technical Standards("RTS") made under the Market Abuse Regulations.

⁷⁰ These standards require that "persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy' must "take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates."⁷¹ The recognition by the EU Commission of the equivalency of the *Comms. L. 117 code and Practice Note to the RTS may suggest they are robust and clearly comply with the RTS, but Damian Tambini suggested that under the previous Market Abuse Directive⁷² in practice many publications were not in compliance with the letter or spirit of the law/code.⁷³ One of the reasons for this is clause 13(ii), which permits journalists to write about shares or securities that they or their family have significant interests in provided that this is disclosed to their editor. It does not mean that the readership has to be informed of this. The Standards Code would demand disclosure to the public in this type of situation, and it is easy to make it clear at the beginning or end of the article the interest of the writer.

One of the problems which Tambini found with the old system was that the lack of recording mechanism in many publications of these significant interests made it hard for the policing of clause 13(ii) when, for example, a new editor took over. A simple solution would be for either the Code or the Practice Note to require that publications maintain a register of the financial interests of their journalists. This is demanded by BBC Financial Journalism Guidelines, which require that journalists should "register all their shareholding, financial and business interests or dealings in securities"⁷⁴ and, in line with the current code, the financial interests of their family, in a company register. *The Financial Times* Editorial Code of Practice also provides for such a register, and gives the editor two options when it comes to permitting publication of the article: publication with "appropriate disclosure" of the financial interest in the article, or refusing to permit the article to be published.⁷⁵ Whilst the Practice Note recommends a register it does not require it, and as Tambini showed in the past at least many publications lacked such a mechanism.

An alternative mechanism is to demand as the Standards Code does that "any interests or conflicts of interest' are disclosed whenever there is a discussion of "financial products."⁷⁶ At first glance the threshold for when an interest needs to be disclosed demanded by IMPRESS seems to be much lower than that set for IPSO members. However, the Guidance limits this to "any significant financial interest they or close members of their family have in any shares or securities they are writing about."⁷⁷ No guidance is given as to what is "significant" and what is "significant" to a particular journalist may be reflective of their relative wealth. "Significant" if applied subjectively provides an inadequate control mechanism to avoid the appearance of potential financial conflict of interests; it needs either that all financial interests in the shares or company are disclosed in the article by the journalist (as suggested in cl 10.3), or that more quantitative thresholds for disclosure are used (eg shareholdings above £1,000 or a percentage of overall wealth of the journalist).

Once again the Guidance imposes additional obligations beyond that which is explicitly stated in the Standards Code, as paragraph 10.16 suggests that clause 10.3 "prohibits them from using [financial] information for their own, or their family's benefit.' This goes beyond the actual wording of this clause, which relates only to financial information which is "presented" (ie published). Therefore, clause 10.3 explicitly makes the practice of "pump and dump" articles that formed the basis of the legal action against the former *City Slicker* journalists unethical, but does not prohibit the journalist from utilising "insider information" obtained as a result of his professional position.

This obligation in paragraph 10.16 is a desirable limitation on the activities of journalists, but it should be included in the body of the Code. Many of the European codes (17) in this study prohibit the journalist from personally benefitting from his/her professional position.⁷⁸ Whilst this is not so frequent as become an international norm, it is perhaps a necessary if one wants the British public to have confidence in its journalists.

6.4.4. Conscience clause and the whistleblowing hotline etc

Conscience clauses exist in 55 per cent of the codes surveyed in this research. Most of these clauses are designed to allow journalist to refuse to undertake certain reporting tasks that "are contrary to their conscience or convictions."⁷⁹ It thus recognises that the publisher must respect the personal ethics of their employees. Such a requirement can make the journalist less valuable to the publication as the clause sets limits to what he/she is willing to do, but the NUJ which has long advocated such a clause to be adopted in the Editors' Code on the grounds that "no journalists should be disciplined or suffer detriment to their careers for asserting their right to act ethically."⁸⁰ The PCC was reluctant to accept a conscience clause, with its acting chair Robert Pinker stating in 2004 stating at a NUJ

Conference that 'It is not our job to be involved in disputes between employers and staff.' Whereas there are certainly existing conscience clauses which allow the personal convictions of the journalist to be used as a trump card,⁸¹ others adopt a more *de minimis* approach which would only allow the journalist to refuse an assignment which breached the relevant code.⁸² Such provisions therefore can act as another means of ensuring compliance by publications with the code, and should not be portrayed simply as 'employment issues.'

In light of evidence he received about the bullying culture in some newspapers, Lord Leveson recommended that any new press regulator should require its members to have a term in contracts with journalist staff which would prevent disciplinary action being taken against the journalist if he/she refused to do something contrary to the code.⁸³ The IPSO's Scheme Membership Agreement has adopted this *de minimis* proposal and requires that no action should be taken against an employee who 'has refused to act in a manner which he or she reasonably and in good faith believes is contrary to the Editors' Code'⁸⁴ and, in complying with Leveson's recommendation, requires that this term should be inserted automatically in the employment contracts of its subscribers' employees. IMPRESS' Regulatory Scheme also has similar terms, stating that subscribers should 'not to take any action to the detriment of anyone who uses the hotline or declines to breach the Code. Publishers are required to provide a specific contractual right for employees to act in this way free from any sanction.'⁸⁵

These provisions make the inclusion of a conscience clause in the industry codes unnecessary, and indeed in many ways the contractual underpinnings of this clause provides a greater degree of protection than the conscience clauses in the codes of many other countries as it gives both a degree of job security and a set of civil remedies which can be relied upon if a journalist is sanctioned for relying on the clause to refuse an assignment. These provisions provide journalists with a similar degree of protection to whistleblowers, who are covered by the Public Interest Disclosure Act 1998, although legal action will have to be taken via the courts rather than via a tribunal should it result in the employer taking sanctions. The whistleblowing hotlines provides a mechanism whereby the regulators can monitor attempts by newspapers to breach the code, but can only work if journalists have confidence that they are both protected and the regulator will investigate.

6.5. Discrimination and violence

'Discriminatory reporting', whereby certain groups, or individuals *Comms. L. 118 because of membership of certain groups, 'are singled out for hostile treatment by news publishers,'⁸⁶ has been addressed by all but five of the European codes studied in this research. Which groups are protected under these codes varies considerably but discrimination on grounds of race (69%), religion (69%), gender (62%), ethnicity (55%) and nationality (52%) is generally prohibited. The mechanisms adopted to address this issue range from prohibitions on the use of pejorative or insulting words;⁸⁷ restrictions upon when an individual's membership of a 'protected group' can be mentioned⁸⁸ (including a number of codes which impose particular restrictions upon when it can be mentioned in relation to a crime)⁸⁹ and bars on the use of language likely to incite hatred towards a 'protected group.'⁹⁰ There are also 18 codes which prohibit the promotion of war or glorification of violence⁹¹ which may be of relevance to the incitement of hatred.

Both the Editors' Code and the Standards Code have anti-discrimination clauses,⁹² and they protect a broader range of groups than those generally protected in the European codes. Although neither code explicitly refers to ethnicity or nationality, it is possible that both are covered in either a liberal interpretation of the word 'race', or in the case of the Standards Code, the general words at the end of clauses 4.1 and 4.3 'another characteristic that makes that [person/group] vulnerable to discrimination'. In regard to 'racially aggravated offences' Parliament has defined 'racial group' by 'reference to race, colour, nationality (including citizenship), or ethnic or national origins.'⁹³ IPSO has suggested in its ruling in the *Miller v Mail Online* adjudication, that 'While nationality is not a characteristic listed in clause 12, a prejudicial or pejorative reference to an individual's race or colour could be made by reference to nationality, and therefore such references should always be considered in their specific context.'⁹⁴ This opens up the opportunity that in appropriate cases nationality (and ethnicity) may be viewed by IPSO as covered by the term 'race,' although in Miller's case the fact she was Guyanan-born was held relevant to the articles which related to her funding legal challenges to the government's approach to Brexit.

The absence of specific references to nationality and ethnicity can be explained by the influence of equality legislation on the descriptors of protected groups. Both codes are influenced by the

"protected characteristics' listed in Part II, chapter 1 of the Equality Act 2010. Clause 12 of the Editors' Code protects individuals from prejudicial and pejorative comment, or irrelevant reference, to their 'race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.' Clause 4.1 of the Standards Code by contrast copyouts almost the entire list of "protected characteristics"⁹⁵ (albeit with a little gloss in relation to disability),⁹⁶ omitting only reference to "belief' which would cover "political beliefs' on the grounds this would prevent criticism of political views and be an unjustified restriction on political discussion. Clause 4.2. in restricting irrelevant references to personal characteristics further omits age and gender from protection on the grounds these can never be irrelevant to describing the subject of a news story, as well as reference to "marital and civil partnership' status which relevance may be more debatable in many stories.

However, the "copyout' approach of the Standards Code has been criticised on a number of grounds. First, questions were raised as to whether this was necessary to meet Leveson's recommendations that the code "reflect the spirit of the equalities legislation."⁹⁷ Hacked Off suggests that the inclusion of "pregnancy' is superfluous, perhaps in a mistaken belief that there is no situation in which abuse or prejudice is directed towards pregnant women. However, the concept of "pregnancy' in the Equality Act includes postpartum activities, which means it covers the issue of breastfeeding - the subject of a series of critical and offensive comments in the media.⁹⁸

A further criticism of the "copyout' approach is that there are many targeted and vulnerable groups who are not protected by the provisions. The Equalities and Human Rights Commission⁹⁹ recommended that the draft version of the Standards Code include explicit reference to other individuals facing discrimination on the basis of their immigration, socio-economic or welfare status. The Guidance suggests that the catch-all words of "another characteristic that makes that person vulnerable to discrimination"¹⁰⁰ would cover membership of such groups, and it is therefore unnecessary to explicitly list them. The phrase certainly has the flexibility to apply to members of other marginalised groups (eg travellers or the homeless) and future groups which may become marginalised, but perhaps the explicit listing of immigrants etc would provide both journalists and subjects/complainants a clearer indicator that the monsterring of East European nationals,¹⁰¹ engaging in poverty porn, or "chav-labelling' is not acceptable. However, such derogatory statements have become a staple diet of a number of right-wing newspapers in this country as they pursue political agendas in regards to immigration and welfare dependency, and it is highly unlikely that IPSO would ever adopt wording in its discrimination clause which would restrict comments about such groups.

These agendas are pursued by a combination of attacks on both individual members of the group and the group itself, yet the Editors' Code (perhaps fearful of the impact this will have on certain national newspapers) has failed to include any specific reference to these vulnerable groups, nor a "catch-all phrase' to cover such groups, and does not prevent derogatory and abusive remarks directed towards groups as a whole. The weakness of this approach can be seen in the way IPSO dealt with complaints about how Katie Hopkins described North African migrants crossing the Mediterranean Sea as "cockroaches' and likened them to the "norovirus."¹⁰² Whilst recognising the "strength of feeling' aroused by the column, the adjudication committee said as it did not involve any "identifiable individuals,' it was unable to entertain a complaint under clause 12 (the discrimination clause) and had to hear the complaint only in regards to complaints about accuracy under clause 1 in relation to what benefits immigrants were entitled to.¹⁰³

Despite language in the column which urged the government to deploy "gunships' in the Mediterranean Sea to deter migrants, the IPSO adjudication committee chose not to address the issue, claiming they lacked the power of investigation into breaches of the code,¹⁰⁴ despite its own website indicating that standards investigations could be launched "in exceptional circumstances' where it is "desirable because substantial legal issues are raised."¹⁰⁵ Whilst it noted there was a police investigation, its reluctance to order such an investigation despite the widespread criticism of the language Hopkins used was justified on the bases that "columnists were free to be partisan and to use rhetorical devices, including exaggeration¹⁰⁶ and "satirical comment,¹⁰⁷ and the Editors' Codebook further explains this reluctance to restrict such comments on the grounds that;

*This would inhibit debate on important matters, would involve subjective views and would be difficult to adjudicate upon without infringing the freedom of expression of others.*¹⁰⁸

Clause 4.3 of the Standards Code deals with "hate speech.' It states that publications

***Comms. L. 119** *must not incite hatred against any group on the basis of that group's age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race,*

religion, sex or sexual orientation or another characteristic that makes that group vulnerable to discrimination.

Hate speech legislation in the UK is restricted to race,¹⁰⁹ religion¹¹⁰ or sexuality,¹¹¹ so the breadth of this provision prima facie extends protection to groups without any legal recourse and can be seen as curing a 'deficiency' in the law. However, in importing the 'incitement to hatred' standard the provision has been criticised as setting too high a standard which will not address the unnecessary use of abusive material.¹¹² Indeed, this criticism seems valid given the Guidance suggests it will only apply if the article in question either incites violence against members of the vulnerable group or encourages discrimination.

6.6. The public interest

A significant number of ethical obligations in both of the codes are qualified in that they may be ignored if the publication can justify this in the 'public interest', with occasionally a requirement that a higher threshold of 'exceptional public interest' is met.

Both permit the disregard of restrictions on privacy,¹¹³ including (in the case of the Standards Code) disregard of privacy settings;¹¹⁴ harassment issues,¹¹⁵ use of covert devices,¹¹⁶ and deception;¹¹⁷ and both require 'exceptional public interest' to disregard the restrictions on reporting children.¹¹⁸ There are differences between the codes in relation to grief and distress, where the Standards Code permits a disregard of the obligation in the public interest and the Editors' Code does not; and the reporting of suicide, where it is the Editors' Code which permits 'excessive details of method used' if in the public interest.¹¹⁹ The inclusion of both these exceptions can be viewed as controversial as they both seem to disregard the sensitivity of the subject for a news story.

There are substantially more situations where the Editors' Code permits the public interest to prevail over ethical obligations, which in addition to those referred to above include the reporting of children in sex cases,¹²⁰ reporting in hospitals,¹²¹ reporting of crimes,¹²² witness payments in imminent proceedings¹²³ and payments to criminals.¹²⁴ The only other ethical obligation which can be disregarded under the Standards Code is where the 'exceptional public interest' permits payment of a public official for information¹²⁵ (an ethical obligation which does not exist in the Editors' Code). There is a danger that the breath of exemptions available in both codes will neuter the ethical obligations in the relevant clauses.

However, both regulators adopt a position articulated in the Codebook and Guidance which emphasises that not everything is in the public interest because it is what the public is interested in;¹²⁶ that the burden is upon the journalist/publication to justify the breach is in the public interest;¹²⁷ and that if the journalist/publication wishes to justify their breach of the relevant code they should maintain a contemporaneous note providing the public interest justification.¹²⁸ The Standards Code requires the contemporaneous note to provide justifications for the breach of the ethical obligation by considering issues such as whether the information could be gathered through another means, and proportionality. It therefore imposes a number of hurdles before the public interest can be relied upon.

There has been a public interest proviso in the Editors' Code since its inception, but it was changed in January 2016 to be, according to IPSO, "updated and expanded in line with the Defamation Act, Data Protection Act and Crown Prosecution Service guidance."¹²⁹ This assertion has been challenged by Hacked Off on the grounds that neither of the Acts provide a definition of public interest.¹³⁰ Indeed, the definition of 'public interest' is largely a 'copyout' from paragraph 31 of the CPS guidance (which itself is heavily influenced by the definition of 'protected disclosures' in the Public Interest Disclosure Act 1998).¹³¹ There is an additional gloss which recognises "There is a public interest in freedom of expression itself",¹³² which has been a stalwart of the Editors' Code's public interest code from its inception. The problem with this latter element of the public interest is that it provides a very broad exception to the ethical obligations imposed by the code, especially in light of the 2016 amendments to the code's preamble which defines freedom of expression to include speech which is "to inform, to be partisan, to challenge, shock, be satirical and to entertain." The amorphous nature of "freedom of expression" gives a great deal of latitude to editors in determining situations in which this justification for the public interest can be employed, and is in danger of creating what Leveson described as the danger of "an editor ...creat[ing] his own definition of the public interest without any constraint [making] the standards will be meaningless."¹³³ Only if the regulator consistently interprets this part of the code in the same way will there be any meaning in this phrase,¹³⁴ and there is a danger that "freedom of expression" will be used too readily to justify celebrity gossip and other low value speech.

Whilst the Standards Code adopts much of the same justifications for ignoring ethical obligations in its public interest proviso, it does not have a 'freedom of expression' exception, and makes it clear that "public interest means that the public have a legitimate stake in a story because of the contribution it makes to a matter of importance to society."¹³⁵ Mere entertainment value is insufficient, and the Guidance highlights the fact that the story must be concerned with the actions of individuals or organisations which the public have a right to know about.¹³⁶ However, why "[t]he discussion or analysis of artistic or cultural works"¹³⁷ is included amongst its specified examples of what could be in the 'public interest' is questionable on the grounds that it is difficult to see how such discussion might breach the code. The only possible scenarios I can think of relate to where the private life of the author or artist is referred to in order to explain the works in question, or control or access to a work of art or historical artefact. As the examples listed in both codes' public interest provisos are non-exhaustive, the inclusion of a specific example whose application will be very rare does seem unnecessary.

7. Do the codes adequately address ethical issues of digital journalism?

IMPRESS has made much store of the fact that the Standards Code "been designed for the era of digital publication...",¹³⁸ and there are three provisions which it highlights as addressing digital era ethics: respect privacy settings when reporting on social media content unless it can be justified in the public interest;¹³⁹ "give reasonable consideration to the request of a person who, when under the age of 16 years, was identified in their publication and now wishes the online version of the relevant article(s) to be anonymized";¹⁴⁰ and the right not to lift material off the internet without attribution.¹⁴¹ By point of contrast the Editors' Code makes no specific reference to any ethical issues specific to digital journalism, although it has recently issued a guidance note for using material from social media which focuses on privacy rather than copyright issues which has a number of similarities *Comms. L. 120 with clause 7.2 of the Standards Code.¹⁴² Two of the three considerations in the guidance note are similar to the Guidance to the Standards Code: the extent to which the information is in the public domain;¹⁴³ and consideration of whether privacy settings were set to private (which imposes a prima facie obligation not to disclose the information).¹⁴⁴ The only point of difference relates to the guidance note requiring the journalist to consider the nature of the information disclosed, although this may well in practice work in a similar way to the consideration of the public interest in clause 7.2. of the Standards Code.

This rather sparse reference to the ethical dilemmas posed by digital journalism may be because the drafters of both codes believe that traditional ethical obligations can easily be applied to the digital sphere without modification. This certainly seems to be the position of the Editors' Code Committee, who in drafting the guidelines make several references to the fact that specific clauses in the Editors' Code must be considered when dealing with digital content. Indeed, none of the other codes studied, except the Online Publishers Association of Greece, include more than a handful of provisions dealing with specific ethical issues of online journalism, with 67 per cent making no reference specifically to digital issues at all, suggesting the firm belief amongst drafters of the codes that traditional ethical obligations are sufficient (although a number of these codes were written before the rise of online journalism).

The logic of this position can be tested by reference to a number of ethical concerns raised by digital journalism and analysing whether traditional principles in media codes are sufficient to deal with them. The first of these relates to user-generated content, which is an increasingly important contribution to online news sites and often their hardcopy equivalent. The Online News Association recognises essentially four issues: verification and accuracy; permission from the supplier of information; accreditation of the supplier of information; and safety and security attached to the person obtaining the information.¹⁴⁵ The first of these can easily be dealt with by existing obligations as to accuracy, although in the digital world there is often additional pressures to publish without the usual verification processes. This is indeed especially true in the case of comment sections in online news sites. Mistakes, however, are easier to correct online than in print, and in the case of comment sections on news sites there can be moderation both pre and post publication. Some of the verification comes from the network of other users who comment and bring attention to facts which help the news site and other readers assess the truth of the original comment. Whilst this may lead to correction it can also lead to an uncorrected debate or discussion which meets what Jane Singer describes as an 'honesty' standard.¹⁴⁶ This is not the same as the 'accuracy' standard that has traditionally been employed in media codes of ethics, but is akin to a 'marketplace of ideas' where the reader will decide the truth based upon the debate and discussion that the materials online throw up. However,

from a legal and ethical viewpoint the publication does need to be careful to control, remove or edit material which falls foul of the accuracy standard (eg fake news), is libelous, or otherwise breaches other ethical principles like the right of privacy. Moderation is something which infringes upon the user's freedom of expression, and it is important that publications make clear its ability to moderate material to those supplying content. A handful of the European codes studied require either the publication states to its readers how comments are to be used,¹⁴⁷ or demand that publications draw to their users' attention the ability of the publication to remove or moderate content.¹⁴⁸

The ease by which journalists can access information online often means that it can be utilised without the knowledge of the creator. The first a person may be aware that content from their social media pages or blog is going to be used on a news site is when they see it there, or their attention is drawn to it. None of the codes studied adopts a "permission first" approach to user-generated content,¹⁴⁹ even though to do so would provide protections against copyright claims. Partly this reluctance can be explained by the fact a "permission first" approach would hinder a great virtue of online publishing, namely its speed. It may also place traditional journalists at a disadvantage in regards to bloggers who may not abide by the same rules.

It has been noted that there is generally a low-level of crediting of user-generated content on mainstream news sites, and the inclusion of an attribution requirement in the Standards Code is a welcomed development.¹⁵⁰ However, the guidance to this clause is relatively sparse. It does state that the publication must take "reasonable steps" to "discover and identify the creator" including material taken from "social media,"¹⁵¹ but there is no direction as to what these "reasonable steps" may be, and the ability to correct attribution at a later date may encourage publications to publish first and ask questions later.¹⁵²

The safety and security of the user providing content to the news organ is not considered in any of the codes studied, although a degree of protection after the material has been supplied to the news organ can be provided by source anonymity. However, one concern relates to when obtaining photo or video evidence may place that user in danger. At one level, as there is unlikely to be a pre-existing relationship between user and news organ so there can be no "employer-employee" standard of care, and in other situations the taking of pictures/videos may never be intended for mass circulation, so there cannot be any responsibility of safety owed to such individuals by news organs if their content ends up on a news site. However, safety obligations are much more likely to arise in regards to the "subject" of a picture as the user taking the video/photograph or publishing information is much less likely to be concerned about the subject's privacy, distress etc than traditional journalists. Since 2004 the Editors' Code must be followed by contributors as well as staff members,¹⁵³ and so in theory editors should be alert to potential online material gathered from other sources which does not meet these standards. This would impose a greater responsibility upon the editor in moderating such material, and the question must be whether stronger pre-publication obligations should be imposed.

Two other areas of concern which codes need to address with digital journalism relate to hypertext links and archiving. Hypertext links are a way of linking online news articles with other online resources. They may provide links to other articles or government documents which are being commented upon, but they might also link to content which breaches the ethical code.¹⁵⁴ There are dangers that links will be to advertisements which may undermine obligations to keep editorial and advertising separate. Moderation and continual review of these links thereby needs to be an obligation imposed on publications.

Archiving raises additional problems. One of the virtues of an archive is that it presents a "historical record" of how things were perceived at a particular point in time. Two questions arise: should incorrect information be removed or corrected or subject to a note on accuracy; and should content be blocked after a period of time to protect the subject of the report? The former can be encompassed by the general obligation in the codes to accuracy and the need to correct, and probably needs no specific digital content provision. The second is a different concern which ***Comms. L. 121** raises uniquely digital concerns. As all material online can be potentially kept forever, there is a danger that the material can prove to cause harm to the subject of the news story well beyond its public interest. This has been recognised by the "right to be forgotten" in EU law,¹⁵⁵ which allows data subjects to seek the removal or concealing of information which might harm the data subject. There is no absolute obligation that the data controller (including news organs) must remove information as requested, and everything depends on the context of each case. News publications are also able to raise free speech arguments such as the public right to know which may in particular cases trump the right to be forgotten. The law in this area is developing, and controversial, as it has the ability to in effect censor. Expecting media codes to address this issue is therefore perhaps expecting too much,

so the fact that the Standards Code recognises a limited request to be anonymize in relation to acts done when under 16 is evidence of an attempt to impose higher ethical standards than most codes in this area,¹⁵⁶ but is perhaps the weakest of ethical obligations in a narrow area which falls below the "law =" standard.

There is little doubt that in most cases existing principles of media ethic codes deal with many of the problems which arise from digital journalism. Indeed, although she is sometimes ambiguous on this point, it would seem that Jane Singer accepts as much. However, what may be needed is what John C Merrill describes as "miniethics" or "specific, rather narrow legalisms of a particular area."¹⁵⁷ These might include more specific obligations in relation to online commentary, use of social media, hypertext links and archives, and greater emphasis on moderation and correction. Much more could be done in both codes to give guidance on these issues.

8. Conclusion

The two codes of practices share a lot of similarities in relation to the topics addressed, and cover a substantial number of the provisions which are standard in the European codes studied. Whilst both codes do impose an additional set of "law+" obligations, the influence of legal materials on the wording of many clauses is noticeable, which might be criticised for demonstrating a minimalist approach to additional ethical obligations. However, the distilling of legal principles into an ethical code provides a mechanism for reminding journalists and editors what the law is, and a potential alternative to legal action for a complainant - or, as in the case of clause 6.1. of the Standards Code, a mechanism of complaint which the law has denied.

In Part II of this article a number of additional ethical ("law+") obligations were found in the Standards Code which did not appear in the Editors' Code; whereas in Part I, the Editors' Code seemed to impose extra obligations in relation to the topics covered. Comparatively, therefore, the two codes have different strengths and weaknesses, with the Editors' Code being especially stronger and clearer on privacy issues and the Standards Code containing provisions on plagiarism and independence which should be in any media code.

One of the strengths of the Standards Code is its willingness to address the issue of plagiarism, although it probably needs to go further and include some reference to "seeking permission" to ensure compliance with copyright laws. The absence of a similar provision in the Editors' Code seems to cultivate the culture of "lifting", which is widespread in the print media. If the goal of the codes is to create ethical journalists, the inclusion of this very basic journalistic obligation is highly desirable.

The absence of a "conscience clause" in both codes may be considered an omission which should be remedied. Hacked Off suggests that even though the compulsory contractual protections given to whistleblowers under both regulatory regimes might achieve the same effect, the inclusion of an explicit conscience clause would reinforce the importance of this duty. On this point I am agnostic. The contractual obligations, together with the whistleblowing hotlines, provide strong protections for the ethical journalist, albeit only in relation to one seeking to comply with the code; however, would a journalist be more confident in asserting the right to refuse an assignment if the ability to do so was in the code?

Another area of weakness in both codes relates to independence provisions. Whilst both impose a set of potentially strong obligations on financial reporting, they both need to have more substantial obligations on conflict of interests which should include provisions to prevent advertisers influencing content (not only in relation to what appears in the publication, but what does not, in order to avoid future Peter Osborne situations).

Both codes could benefit from having additional obligations directed towards specific issues which arise in digital journalism, although the general approach in the European codes studied was not to address these issues or to do so in a very limited way. Maybe this is because of the belief that traditional ethical principles could apply without adaptation to the new media. However, specific reference or application of ethics to digital journalism would make it much clearer to such journalists what techniques should be followed or avoided.

Are both codes up to standard? By the standard of the European codes which were surveyed in comparison, the two domestic codes cover most of the same issues and set high benchmarks in relation to a number of issues (eg payment of witnesses in criminal cases). Weaknesses and omissions have been noted, and both could be improved, but overall this could be done by tweaks

and a few additions rather than a massive overhaul of the codes.

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1. See Damian Carney, 'Up to Standard? A critique of IPSO's Editors' Code of Practice and IMPRESS' Standards Code - Part I' (2017) 22 CL 78-89.
2. Ibid, 80.
3. Damian Carney, 'Truth and the unnamed source' (2012) 4 *Journal of Media Law* 117-45.
4. Albanian Media Institute, s 3; Journalists' Union of Moldova Code of Professional Ethics, cl 4; Portugal's Syndicate of Journalists; Russian Union of Journalists' Code of Professional Conduct, para 9. 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.
5. Standards Code, cl 8.1.
6. See the source of the doctored documents in *R v National Post* [2012] SCC 16, who believed the documents he had been given and handed over to the journalist, Andrew McIntosh, were genuine.
7. 'Vile', *Daily Mirror*, 1 May 2004, 1-4.
8. (2010) 50 EHRR 46, para 63.
9. Standards Code, cl 8.2.
10. See for example, *Houston Chronicle* Newsroom Ethics Policy, point T, 'Granting anonymity', <http://asne.org/resources-ethics-houston>, accessed 3 November 2017.
11. See Albanian Media Institute, s 4; Azerbaijan Code of Professional Journalists, principle 4.8 (permissible if there is a public right to know); Norwegian Press Association, para 3.11 'The press shall as a rule not pay sources or interviewees for information'; Guidelines of the Netherlands Press Council, 'Journalists do not pay witnesses and informers'; Code of Ethics of Lithuanian Journalists, art 12 'The journalist has no right to ... offer any compensation in exchange for information to the source of information'; Codex of Montenegrin Journalists, Guidelines to Principles, 6.4. 'Journalists must not pay people to act as information sources unless there is demonstrable public interest value in the information.'; Union of Journalists in Slovenia New Code of Ethics, art 6, 'The journalist should avoid paying for information and be wary of sources expecting money or privilege in exchange for information'; Swiss Press Council, Dir 4.3, 'Payment to a third party who is not a media professional for information or images is unprofessional behaviour and is prohibited. It distorts the free circulation of information. It is nonetheless allowable in cases where an overwhelming public interest exists, and when fact or image cannot be obtained by other means. Information should not be bought from persons involved in court proceedings.'
12. Richard Keeble, *Ethics for Journalism* (2 nd edn, Routledge, 2009) 117.
13. *Taylor v News of the World*, PCC Report 48, 1999 cited in old version of The Editors' Codebook (date unknown) http://www.pcc.org.uk/assets/449/Clauses_15_and_16.pdf 71, accessed 2 November 2017.
14. See National Heritage Select Committee, *Press Activity Affecting Court Cases* (Second Report of 1996-97 Session); The Editors' Codebook (Regulatory Funding Company, 2016) 88.
15. Editors' Code, cl 15(ii).
16. Ibid, cl 15(iii).
17. Although New York law found to breach 1 st Amendment (*Simon and Schuster, Inc v Members of New York State Crime Victims Board*, 502 U.S. 105 (1991)).
18. Editors' Code, cl 16(ii).
19. See n 13, Editors' Codebook (old version), 73 where the ruling *Thames Valley Probation Area v Mail on Sunday*, Report 74, 2007 is referred to.

20. See n 14, Editors' Codebook, 93.
21. Ibid.
22. Only the Swiss Press Council, Dir 4.3. has a similar provision, 'Information should not be bought from persons involved in court proceedings.'
23. Chequebook Journalism (MediaWise, 2011) heading 11
<http://www.mediawise.org.uk/wp-content/uploads/2011/04/Chequebook-Journalism.pdf>, accessed 10 November 2017.
24. See *Leveson Inquiry: Culture, Practices & Ethics of the Press*. (Pt G, ch 3, para 2.18).
25. 'Sun's Anthony France guilty of misconduct in public office offence after paper paid policeman £22k for stories', *Press Gazette*, 22 May 2015
<http://www.press-gazette.co.uk/sun-crime-reporter-anthony-france-guilty-misconduct-public-of-fice-after-paying-policeman-stories>, accessed 20 October 2017.
26. Lisa O'Carroll, 'Met police officer jailed for selling celebrity tipoffs to the Sun', *The Guardian*, 5 June 2013, <https://www.theguardian.com/uk/2013/jun/05/met-police-officer-sun>, accessed 20 October 2017.
27. Clause 8.3.
28. See Chris Tryhorn, 'Telegraph paid £110,000 for MPs' expenses data', *The Guardian*, 25 September 2009 <https://www.theguardian.com/media/2009/sep/25/telegraph-paid-11000-mps-expenses>, accessed 20 October 2017.
29. See *Guidelines for Prosecutors on Assessing the Public Interest in Cases Affecting the Media* (Crown Prosecution Service, 2012) especially paras 31 to 37
http://www.cps.gov.uk/legal/d_to_g/guidance_for_prosecutors_on_assessing_the_public_interest_in_cases_affecting_the_media/, accessed 20 October 2017.
30. See Mark Blacklock, 'Plagiarism is wrong: Stop it now' (2013) (Nov) *British Journalism Review* 10-12.
31. Bagehot, 'The depressing tale of Johann Hari', *The Economist*, 15 December 2011, <https://www.economist.com/blogs/bagehot/2011/09/unethical-journalism>, accessed 24 November 2017; Roy Greenslade, 'The Times's chief tennis writer, Neil Harman, admits to plagiarism', *The Guardian*, 24 July 2014, <https://www.theguardian.com/media/greenslade/2014/jul/24/thetimes-plagiarism>, accessed 24 November 2017.
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36. *Lion Laboratories v Evans* [1985] QB 526.
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38. See, for example, Malta Press Club, cl 2.9.
39. *Express Newspaper v News (UK)* [1990] 3 All ER 376.
40. See Children and Young Persons Act 1933, ss 39 and 49; Crime and Disorder Act 1999, ss 45 and 45A,
41. Standards Code, cl 6.2.
42. Editors' Code, cl 9(ii)
43. Editors Code, cl 11; Standards Code, cl 6.3.
44. See n 14, Editors' Codebook, 73.
45. Guidance, para 6.17.
46. See n 14, Editors' Codebook, 72.

47. Guidance 6.17.
48. See Charter of Duties of Journalists, adopted by the National Federation of the Italian Press and National Council: "Names of victims of sexual violence can be neither published, nor can the journalist give details that can lead to their identification, unless it is required by the victims themselves for relevant general interest"; "Guidelines for the Interpretation and Implementation of the Basic Principles of the Codex of Montenegrin Journalists", para 10(1)(e): "The media must not identify victims of sexual assaults or publish material likely to contribute to such identification unless the victims have consented or the law has authorised the media to do this."
49. Sexual Offences (Amendment) Act 1992, s 5(3).
50. Guidance, para 6.14.
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- [76.](#) Standards Code, cl 10.3.
- [77.](#) Guidance, para 10.16.
- [78.](#) See National Association of Hungarian Journalists Code of Ethics, s 5(1)(a); Journalists' Union of Moldova Code of Professional Ethics, cl 10.
- [79.](#) See Danish Media Council, The Press Ethical Rules, Fundamental view, para 3: 'Journalists should not have tasks imposed on them that are contrary to their conscience or convictions'; Code of Ethics for the Estonian Press, art 2.4: 'Editorial staff members may not be obliged by their employer to write or perform any similar activity contradicting their personal convictions.'
- [80.](#) Laura Davison, NUJ National Organiser cited in 'NUJ repeats calls for conscience clause as journalists' ethics discussed in parliament', NUJ Press Release, 24 February 2015 <https://www.nuj.org.uk/news/nuj-repeats-calls-for-conscience-clause-as-journalists-ethics/>, accessed 8 November 2017.
- [81.](#) See n 80, Code of Ethics for the Estonian Press.
- [82.](#) See Bulgaria Media Code 2004, art 3.7. 'We respect the right of individual journalists to refuse assignments, or to be identified as the author of publications, which would break the letter and spirit of this Code.'
- [83.](#) See n 23 (Pt K, ch 9), Recommendation 2.16.
- [84.](#) See s 3.3.6.
- [85.](#) See *IMPRESS: The Independent Monitor for the Press CIC Regulatory Scheme*, version 3, para 2.2. Supplied in documentation to Press Recognition Panel in respect of the application for recognition from IMPRESS: The Independent Monitor for the Press CIC <http://pressrecognitionpanel.org.uk/wp-content/uploads/2016/07/IMPRESS-Regulatory-Scheme.pdf>, accessed 20 October 2017.
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- [87.](#) Luxembourg Press Council's Code of Ethics, art 1(c) 'prohibition...of racial, ethnic, religious and ideological discrimination.'
- [88.](#) See Bulgaria Media Code 2004, para 2.5.2; Guidelines of the Netherlands Press Council, 'Publications only state the ethnic origins, nationality, race, religion and sexual inclination of groups and individuals if this is deemed necessary for a proper understanding of the facts and circumstances that are reported on.'
- [89.](#) See Journalists' Association of Serbia's Code of Ethics, art IV.1 'In reporting crimes, national, racial, religious, ideological and political affiliation, as well as sexual orientation, social and marital status of suspects or victims, are mentioned only in case when the orientation, citizenship or status are directly related to the type and nature of a committed criminal offense.'
- [90.](#) See for example, National Association of Hungarian Journalists' Ethics Code, s 2.1. 'They must not violate human rights, incite hate and the infringement of lawful rights against peoples, nations, nationalities, denominations and races.'
- [91.](#) See, for example, Armenian Code of Conduct for Media Representatives, principle 5.3. 'Not to advocate war, violence or pornography in any form.'
- [92.](#) Editors' Code, cl 12; Standards Code, cl 4.
- [93.](#) Crime and Disorder Act 1998, s 28(4), and see *R v Rogers* [2007] 2 AC 62 for its application.
- [94.](#) See 11533-16, *Miller v Mail Online*, para 15 <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=11533-16>, accessed 2 November 2017.
- [95.](#) It reads: 'Publishers must not make prejudicial or pejorative reference to a person on the basis of that person's age, disability, mental health, gender reassignment or identity, marital or civil partnership status, pregnancy, race, religion, sex or sexual orientation...'
- [96.](#) Where it refers both to disability and mental health.
- [97.](#) See n 23 (Pt L) Recommendation 38.
- [98.](#) See Alex Dyke (BBC Radio Solent) Ofcom Broadcast Bulletin, Issue 292, 9 November 2015.
- [99.](#) Equalities and Human Rights Commission response to IMPRESS draft Standards Consultation, 29 September 2016, point 9 <http://www.impress.press/downloads/file/code/equalities-and-human-rights-commission.pdf> accessed 27 October 2017.

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- [101.](#) See the over-emphasis of nationality in some recent road tragedies in *Daily Mail*, Rachel Burford, "Our lives changed in the blink of an eye: Heartache for the family of a mother and three children killed by a Polish lorry driver, 30, as horrifying footage shows the moment he crashed into them after scrolling on his phone at 50mph, <http://www.dailymail.co.uk/news/article-3889596/Polish-lorry-driver-30-killed-mother-three-children-scrolling-mobile-phone-change-music-jail> accessed 4 November 2017.
- [102.](#) See 02741-15 *Greer v The Sun* <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=02741-15>, accessed 4 November 2017.
- [103.](#) *Ibid*, para 9.
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- [105.](#) "About Standards Investigations," IPSO website, undated <https://www.ipso.co.uk/press-standards/about-standards-investigations/> accessed 5 November 2017.
- [106.](#) See n 10, para 5.
- [107.](#) *Ibid*, para 11.
- [108.](#) See n 14, Editors Codebook, 74.
- [109.](#) Public Order Act 1986, s 18.
- [110.](#) *Ibid*, ss 29A and 29B.
- [111.](#) *Ibid*, ss 29AB and 29B.
- [112.](#) Hacked Off, n 6 in response to consultation on original draft of the Standards Code.
- [113.](#) Editors' Code, cl 2; Standards Code, cl 7.1.
- [114.](#) Standards Code, cl 7.2(b).
- [115.](#) Editors' Code, cl 3; Standards Code, cl 5.2(c).
- [116.](#) Editors' Code, cl 10(i); Standards Code, cl 7.2(a).
- [117.](#) Editors' Code, cl 10(ii); Standards Code, cl 5.2(a).
- [118.](#) See Editors' Code, public interest proviso, point 5 (in regards to "over-ride the normally paramount interests of children under 16"); Standards code, cl 3.1. (photograph or interview child under 16 without consent) 3.2 (identify child under 16 without his consent).
- [119.](#) Editors' Code, cl 5.
- [120.](#) *Ibid*, cl 7.
- [121.](#) *Ibid*, cl 8.
- [122.](#) *Ibid*, cl 9.
- [123.](#) *Ibid*, cl 15(ii).
- [124.](#) *Ibid*, cl 16.
- [125.](#) Standards Code, cl 8.3.
- [126.](#) See n 14 Editors' Codebook, 96; Standards Code, public interest proviso; Guidance, para 0.11-0.13.
- [127.](#) Editors' Codebook, 96-98;
- [128.](#) *Ibid*, 98; Guidance, para 0.25 - 0.29.
- [129.](#) See "History of the Code", Editors Code of Practice Committee http://www.editorscode.org.uk/history_of_the_code.php accessed 24 October 2017.
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- [131.](#) Inserting s 43B into the Employment Rights Act 1996.
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- [133.](#) See n 23 (Pt K, para 4.24). See also discussion in M Keppel-Palmer, 'The emperor's new clothes: IPSO's version of the editors' code of practice' (2016) 27 *Entertainment Law Review* 92-97, 97.
- [134.](#) Ibid.
- [135.](#) Standards Code, public interest proviso.
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- [146.](#) 'New technologies, new techniques' ch 6 in David Gordon et al (eds), *Controversies in Media Ethics* (3rd edn, Routledge, 2011) 218-19.
- [147.](#) See Croatia Journalists' Association Code of Honor, principle 25.
- [148.](#) Ibid; Council of Mass Media Finland, *Annex to guidelines: Material generated by the public on a news website*; Online News Association, Greece.
- [149.](#) See n 145.
- [150.](#) Clause 2.1.
- [151.](#) Guidance, para 2.12.
- [152.](#) Standards Code, 2.2.
- [153.](#) See n 129.
- [154.](#) See Norwegian Press Association Ethical Code of Practice for the Press, cl 4.16.
- [155.](#) See Reg (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Dir 95/46/EC (General Data Protection Regulation), reg 17; *Google Spain SL, Google Inc v Agencia Espan#ola de Proteccio#n de Datos*, C-131/12.
- [156.](#) Standards Code, cl 3.3.
- [157.](#) See n 146, 233.