Additional Material for chapter 4: News-gathering avoiding unjustified intrusion

Section numbers from the book are used when relevant. Its content provides fuller explanations and context.

4.1 The codes and intrusion

Checklist on intrusion

This is a rough checklist on whether intrusion occurs from photography, filming or recording, including from publication of images taken from social media.

- Was the person filmed or photographed or recorded in a location where he/she had a reasonable expectation of privacy? An individual could reasonably expect privacy at home, in a secluded garden or on a private beach, but would normally have less or no expectation of it in a public place or somewhere easily visible from a public place – see 4.4 in *McNae's* and below.
- Was the person in a condition or situation which itself gave rise to a reasonable expectation of privacy, even though he/she was in or could be seen from a public place? For example, was the person mentally ill, injured, having medical treatment or attending therapy? - see 4.4. in *McNae's*. For relevant privacy law, see the *Campbell* and *Peck* cases in 27.1, 27.6 and 27.10 in the book.
- Was the photograph or footage shot with a telephoto or zoom lens? Was this covert photography, covert filming or recording with hidden microphones? Even if it was not, if the target is unaware of his or her image or conversation being captured, the media activity is likely to be more intrusive because the target may assume (have the 'expectation' that) the situation is private, and act accordingly - see 4.1.2 and 4.4.1 in *McNae's* and below.
- Have a photographer persistently harassed the person? Each regulator's code bans harassment by journalists, unless there is a public interest justification, and journalists could be prosecuted if they breach the Protection from Harassment Act 1997 - see 4.6 and 4.7 in *McNae's* and below. As regards the civil law of privacy, a court is more likely to decide that a person's rights have been infringed if she or he has been persistently photographed or filmed, even if this was in public places - see the Von Hannover No. 1 (Princess Caroline) case in 27.1 of *McNae's*.
- Is the person a child and therefore more likely than an adult to be upset or traumatised by being filmed or photographed or recorded or by such images or sound being published? Children's vulnerability mean they may have a reasonable expectation of privacy in a location where an adult does not. See 4.13 in *McNae's* and below, and the *Weller* case in 27. 7 of the book.

4.4 Public and private places

Photography and filming in streets

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Case study: Ipso ruled in 2016 that *The Sun* had not breached a woman's privacy by photographing her walking in a public street or by publishing the photo. She was a professional carer. It published an article airing criticism of her care of a disabled pensioner. She said the photograph had been taken without her knowledge or consent in breach of clause 2 of the Editors' Code. *The Sun* said the picture was taken by a photographer from his car. Ipso said she had been photographed in a public road; she did not have a reasonable expectation of privacy, and she was not engaged in any private activity. In the full circumstances therefore, the journalist was not obliged to seek her consent before taking the photograph. Not doing so did not raise a breach of clause 2. Neither did the publication of the photograph itself, as it did not reveal anything intrinsically private about her, Ipso added. It also said that while the photograph had been taken from a location not obviously visible to the woman, the photographer had not engaged in misrepresentation or subterfuge, and the camera was not 'hidden', and therefore there was no breach of the code's clause 10 (*Price v The Sun*, 10 June 2016; *The Sun,* 10 and 12 March, and 20 April 2016).

Case study: Ipso ruled in 2015 that publication of household CCTV footage of a postman in a news story of a dispute about a delivery did not infringe his privacy because he was on a public road, not doing anything private and his face was pixelated (*Allen v Worcester News*, 12 March 2015).

Case study: In 2017 Ofcom ruled that the privacy of Mrs Marjorie Osborne was not infringed by the broadcast of CCTV footage of her sweeping in a public street outside her home, because she did not have a legitimate expectation of privacy in that situation. The footage was broadcast by Channel 5 in its *Nightmare Neighbour Next Door* series about neighbour disputes. Mrs Osborne and her next door neighbours - Karen Price and Carl Mills - were in an ongoing dispute which had previously involved the police and the local council. The footage was shot by one of the CCTV cameras installed by couple. The footage included Mr Mills saying Mrs Osborne was sweeping 'the muck' into a drain by his house rather than the one by hers, and then showed her and Mr Mills sweeping 'furiously' in opposite directions in what Ofcom described as 'a minor stand-off'. Factors referred to by Ofcom included that it was likely she would have known about the CCTV cameras, and that this incident was in a public place which could have been witnessed by any member of the public present. Ofcom said that the information in the programme, including images of her street and reference to her first name, meant she may have been identifiable to people who knew her or were aware of the incidents that had occurred between neighbours but the poor quality of the images broadcasts meant she was not 'widely identifiable'. The footage did not show her engage in, or revealing, anything private or sensitive about her (*Ofcom Broadcast Bulletin*, No. 327, 24 April 2017).

Case study: In 2016 Ofcom cleared Channel 5's *Nightmare Tenants, Slum Landlords* series of a complaint made by a tenant that her privacy was breached by a programme showing her - identifiably and named - being denied access to one property after the landlord gained a court order to evict her from it, and during an attempt to serve eviction papers on her for another.

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The programme pointed out she had 'barely paid a penny' in rent for months and owed one landlord almost £8,000 and the other almost £2,500. She was filmed in public spaces – sitting in her car on a road and when walking to a car park – outside the properties. Ofcom said that the tenant, who made clear during the filming that she objected to it, had a legitimate expectation of privacy on both these occasions because she was filmed without prior warning; because for anyone being evicted the situation could reasonably be characterised as distressing and 'sensitive'; and because she may well have been feeling 'under pressure' during the attempt to serve her with the papers. But Ofcom ruled there had been no 'unwarranted infringement' of her privacy, because her Article 8 rights were outweighed by the broadcaster's and landlords' Article 10 rights to freedom of expression. It ruled there was a 'genuine public interest' in the programme's exploration of and conveyance to viewers of 'the difficulties, emotional impact and expense' that non-payment of rent can have on landlords, and both the filming and what was broadcast was 'proportionate' to this subject matter. Ofcom said too there a public interest in naming and including unobscured footage of the tenant, to alert other potential landlords of the possible risks associated with letting a property to her (*Ofcom Broadcast Bulletin*, No. 310, 1 August 2016)

Outside courthouses

Ipso has upheld the press's right to photograph people involved in court proceedings when they are in a public street outside the courthouse, saying there is 'no reasonable expectation of privacy' in these circumstances (*Sutton v Express and Star*, 7 December 2015; *Winter v The News (Portsmouth)* 21 June 2017), though it will take into account whether the images themselves disclose anything private. See also the *Lisle-Mainwaring v Mail Online* case study in 4.6, below.

Showing police work in streets and police stations

Case study: In 2017 Ofcom ruled that ITV's *Rookies* programme had not unwarrantably infringed the privacy of 17-year-old Mr B either during filming or in what was broadcast. His mother complained about footage showing his arrest in a public place on suspicion of attempted murder. The filming was of a probationary police officer's shift. It showed how the office set off and arrived at the incident scene, and Mr B sitting on the ground speaking to police and as he was led away to a police van. The audio included him saying: 'He told me to stab him so I done it.' Mr B was not named. In the programme his face was blurred and voice pitch was altered by the programme makers. The programme included the fact that he had later pleaded guilty to grievous bodily harm with intent and possessing an offensive weapon. ITV said the programme makers had been 'particularly careful' to conceal his identity in the footage, and were aware that when it was broadcast a court order under section 45 of the Youth Justice and Criminal Evidence Act banned his identification in connection with the criminal proceedings until he was 18. But – ITV said - there was no legitimate expectation of privacy in the commission of a serious crime or its aftermath, and therefore his consent to being filmed was not required. NB: 10.6 in *McNae's* explains section 45 orders. His mother complained to Ofcom that parental consent should have been obtained for the footage to be broadcast, because her son was not in a position to consent to the filming because of his 'mental health issues' and his state of heightened distress. She said 'numerous people' had

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recognised him from the footage, including 'relative strangers'. Ofcom said that it was not clear whether he was aware he was being filmed for footage which could be broadcast, but that it would not have been 'realistic' in the circumstances for the programme makers to have got his prior consent to filming. Ofcom noted what his mother said about his mental health. It said that when being filmed he was upset and distressed by the incident and his actions. It said these factors meant he was filmed in a 'sensitive' situation and he had a legitimate expectation of privacy, albeit limited by him being in a public place. Ofcom said that the filming of Mr B had been 'unobtrusive' because it was from a distance, and other than revealing his reaction to the stabbing incident, no private or sensitive information about him had been disclosed in the programme, Also, it had not identified him to the public, and, if he was recognisable to any extent, this would only have been to a very limited number of people who already knew him and were likely to already have knowledge of his involvement in the incident. Ofcom ruled, taking these factors into account, that there was a 'genuine public interest' in conveying to viewers an understanding of the nature of police work and the kind of difficult situations probationary officers faced. It said this, and the broadcaster's right to freedom of expression, outweighed Mr B's privacy in the case's circumstances (*Ofcom Broadcast Bulletin*, No. 326, 3 April 2017).

Case study: In 2015 Ofcom upheld a complaint by Mr D that his privacy had been unwarrantly infringed by footage broadcast without his consent by Channel 5's *Police Interceptors* series. It showed him and a friend – with their faces unobscured - being stopped and searched on a public road by a police officer who suspected them to be in possession of cannabis. The search found the friend possessed a small amount but that Mr D had none. In what was broadcast the officer disclosed that Mr D had been found previously to be in possession of the drug. Ofcom ruled that Mr D had a legitimate expectation of privacy in this situation, because it was 'sensitive' in that a person being searched and questioned by police will often feel under pressure; because that search did not find he had committed any offence; and because the previous incident alluded to – in which he had been found to possess the drug – was not a matter of public record or previously in the public domain, in that it had led to him being given a formal warning for possession, and not to a court case. Ofcom said there was some public interest in showing 'the police's day-to-day activities', but this was not sufficient in this case to justify the broadcast of the footage identifying Mr D (*Ofcom Broadcast Bulletin*, No. 265, 3 November 2014)

Case study: Ofcom ruled in 2014 that the broadcasting of CCTV footage showing a woman being arrested for being drunk and disorderly did not breach its Broadcasting Code's protection of privacy. The footage shown in the Channel 5 series *Criminals: Caught on Camera* included shots of Miss C's face, and of her swaying, falling and vomiting at the feet of a person trying to help her. She complained that her friends and friends had identified her from the footage, which was shown without her consent. Channel 5 said that because she had been committing a crime in a public place – which had led to her being fined in court for being drunk and disorderly – she did not have privacy rights engaged under Article 8 of the European Convention of Human Rights. Ofcom said that as Miss C was drunk she was in a vulnerable state and so she had some legitimate expectation of privacy, but this was limited

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because the filming was of a public place, and that expectation was outweighed by the public interest in the programme showing the work of the CCTV control room operators and of the police. It took into account that 'she was not shown doing anything particularly confidential or personal'. Ofcom added, though, its view that in some circumstances a person's Article 8 rights *can* be engaged even if they are acting unlawfully in a public place (*Ofcom Broadcast Bulletin,* No. 252, 14 April 2014).

Case study: Ofcom ruled in 2007 that the BBC programme *Shops, Robbers and Videotape* had not breached the privacy of a man who was filmed openly in Sheffield city centre when police stopped and arrested him in a one-way street after he drove down it the wrong way, and when he refused to provide a breath sample there. Ofcom was satisfied that he did not have a legitimate expectation of privacy in relation to the filming in the street. Ofcom therefore found there was no infringement of his privacy in relation to the footage from the street shown in the programme. It also included footage of him in a police station, after his arrest. Ofcom examined the unedited footage shot there, and noted that when giving his personal details to one of the arresting police officers, he had requested 'can you get the camera off me please' to which a police officer answered 'no'. Ofcom considered he had a heightened expectation of privacy when in the police station, noting that it was a place where the general public does not have unrestricted access. Ofcom took the view that being arrested and taken to a police station was a sensitive situation in which he could have legitimately expected a certain degree of privacy, especially when he had requested not to be filmed. Ofcom said it appreciated there was a fine balance to be drawn in deciding whether he had a legitimate expectation of privacy there. But Ofcom's view was, because he had been arrested for an offence, his expectation of privacy in the sensitive location of the police station was significantly diminished. Furthermore Ofcom was satisfied that in what was broadcast the programme makers had taken steps to conceal Mr Jones's identity: his face was obscured in the programme and he was not otherwise identified. Ofcom was satisfied, having taken all the factors referred to above into account, that he did not on balance have a legitimate expectation of privacy in relation to the recording of the programme. Accordingly Ofcom decided his privacy was not infringed in the making of the programme in either of the two locations or in what was broadcast. It did not therefore need to consider whether any potential infringement was warranted (*Ofcom Broadcast Bulletin,* No. 89, 16 July, 2007).

For legal considerations as regards media coverage of police work, see ch. 5 in *McNae's* and that chapter's Additional Material on www.mcnaes.com. That material includes case studies of adjudications by regulators on complaints about media coverage of police 'raids' to arrest or search.

Photography and filming in or around hotels

Case study: In 2018 Ipso ruled that clause 2 of the Editors' Code had not been breached by the *Belfast Telegraph* taking a photo of a couple in their wedding dresses when they were within the precincts of a hotel after their civil partnership ceremony there or by the photo's publication. The photo was in a report by the *Telegraph* that the father of one of the women was a senior member of the Orange Order, and that he had attended the ceremony and

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walked his daughter down the aisle. It reported that his involvement may cause controversy, due to the organisation's opposition to same sex marriage. Ipso said while the couple had not been aware that they were being photographed as they chatted with guests, they had been photographed standing outside the venue where they were visible from the road. The photo published did not contain any private information about them and showed only their appearance, and one of their fathers, which the couple had put into the public domain themselves, as they had posted photographs of the day on social media. In these circumstances, their expectation of privacy, if any, was limited. Also, Ipso said there was a genuine public interest in reporting on the attendance of a high profile member of the Orange Order at the event, given the organisation's comments on same-sex relationships (*Beattie and Atkinson v The Belfast Telegraph*, 3 August 2018)

Case study: In 2018 Ipso upheld a complaint by the former Liberal Democrat MP Lembit Opik that photographs published by *The Sun* without his consent breached his privacy under clause 2 of the Editors' Code. *The Sun's* article reported that his former partner had 'revealed' to it that in August 2016 he had 'accidentally sent her pictures of him nuzzling [another, named woman's] boobs as she lay on a sun lounger in a bikini'. The article was illustrated with the photographs which Mr Opik had allegedly sent. It described one as a 'saucy snap' and suggested this showed that Mr Opik and the woman on the lounger were 'more than "just good friends"'. Mr Opik said that the photographs were private, and had been taken while he and the other woman had been on a private holiday together, at a location they had specifically selected because it was private. He said that at the time the photographs were taken, he had been joking with his friend and several other holidaymakers, one of whom took the photographs. They were within a closed courtyard with no visual access from outside of it. He said that there was no public interest justification for publishing this photograph, which had caused severe intrusion into his life and his relationships with his former partner and their very young child. He said he had not sent the photos to his former partner, accidentally or otherwise; he did not know how they had come to be sent but said it was extremely unlikely that it had been an accident as they had been transmitted as attachments in three separate emails, minutes apart. He speculated that they had been sent to her from his email account by a third party, or that they were stolen from him. Mr Opik said that *The Sun* had created an inaccurate story about the nature of his relationship with the other woman; she was not his 'lover'. Ipso said that the alleged 'saucy snap' photo had captured a moment which would have only been seen by a small number of people, and had been taken while Mr Opik was enjoying a private holiday. Notwithstanding his position that he was joking around with a friend and the fact that the photos had been taken by a third party, they showed an intimate moment with a close friend, which had taken place in a closed courtyard within a private hotel with limited access to the wider public, Ipso said. It ruled that he was entitled to expect that photos showing an intimate moment with a close friend in a private place would not be published without his consent, in that their publication clearly had the potential to intrude into his private life. His former partner had approached the newspaper in order to speak about the breakdown of her relationship with him. As enshrined in the Code, she had a right to exercise her freedom of expression, Ipso said. But, it said, the story was focussed on the photo of Mr Opik and the other woman, and what the newspaper said the photo showed. Mr

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Opik's former partner had not been present on the holiday, and the photo had been disclosed to her without his consent. *The Sun* had not identified a public interest that would justify the publication of a photo of him sharing an intimate moment, and the extensive speculation and discussion of this moment, Ipso said. However, it did not uphold complaints made by Mr Opik under clause 1 of the Code, saying it was not its role to determine the truth or otherwise of the claim that he was the other woman's 'lover' or that he was a 'love rat'. Ipso said that in the article *The Sun* had taken care to be clear throughout that the basis for these allegations were the claims made by his former partner, and it had contained his denial of the general claim of infidelity (*Opik v The Sun*, 10 July 2018)

Case study: In 2013 Ofcom ruled that the privacy of a woman it referred to as Ms D was unwarrantably infringed by the inclusion of 10 seconds of footage of her with her face visible, including shots of her dancing, in an episode of Channel 4's programme *The Hotel*. It showed a 'ladies night' attended by 300 women and featuring male strippers. Ms D made clear she did not want to appear in the programme. The footage was included because of 'human error'. Ofcom said there were elements of 'personal sensitivity' in attendance at such an event (*Ofcom Broadcast Bulletin,* No. 236, 27 August 2013).

Photography and filming in commercial premises

Case study: In 2016 Ofcom upheld a complaint by Mrs Carly Hatley that three seconds of footage showing her identifiably wearing her wedding dress in a wedding boutique was an unwarranted infringement of her privacy because it was broadcast before her wedding. Ofcom ruled she had not consented to this footage being in the TLC channel programme *Say Yes to the Dress*. She was not one of three women whose choosing of wedding dresses was the programme's main focus. They had been asked by its makers to sign a 'release form' to agree to their participation. Mrs Hatley was one of the 'background brides' who – the channel's licensee Discovery Corporate Services said – had been covered by 'the crowd release'. It said this was effected by a method commonly used by programme makers to obtained 'informed consent'. This method was that a poster-sized notice, which greeted anyone entering the boutique, said that by entering they consented to be their 'voice and likeness' being videotaped 'for exploitation on television and other media' unless they informed a member of the production team that they did not wish to be on camera. Mrs Hatley said she did not see the notice and did not know she specifically had been filmed. She said she had told the team twice before the programme was broadcast, after she was contacted by its makers, that she did not want footage of her to be in it. Discovery disputed her account of what this phone contact was but had no notes or evidence of what was said in it. Ofcom accepted that in this contact she had made a general statement to the programme-makers that she 'didn't want to be on TV'. It ruled that, although she had been filmed in a public-facing area of the boutique, accessible to the general public, cultural tradition meant she had a legitimate expectation of privacy that her future husband, who was not there, and wedding guests would not without her consent see her dress until the wedding, but that the programme had shown the dress's cut, colour and some of its detail (*Ofcom Broadcast Bulletin*, No. 330, 5 June 2017)

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Case study: In 2015 Ofcom ruled there had been no unwarranted infringement by Channel 5's *Can't Pay? We'll Take It Away* programme of the privacy of a Brighton businesswomen. She complained about the programme which named her, showed her face and included her voice. She was filmed by its camera crew in the public reception area of her business's premises as she negotiated with High Court enforcement officers about repayment of £20,000 debts. The programme's footage included some shot by body cameras worn by the officers, including as they talked to her in her office. Ofcom ruled that the use of these body cameras was not surreptitious, because, while small, they were not concealed and were mounted prominently on the officers' anti-stab vests. Filming by the programme's camera crew too was done openly, and when at one stage the woman asked the crew to leave the building, they did. Ofcom said that in the circumstances she had a legitimate expectation of privacy, and that it had been infringed because ordinarily, financial conversations in which an individual understood the matter would be treated in confidence could reasonably be regarded as sensitive; because the officers and camera crew had arrived unannounced; and because she was immediately questioned about the debt. So, Ofcom said, the material filmed was sensitive and private. But it ruled there was a genuine public interest in filming the High Court officers to convey to viewers an understanding of their work and the impact the repossession of goods to satisfy a debt can have on individuals. Ofcom therefore concluded that, even though the businesswoman did not consent to the filming or to what was broadcast, the infringement of her privacy was warranted. It said that the means of obtaining the footage was proportionate, and that the public interest and the broadcaster's right to freedom of expression outweighed her legitimate expectation of privacy (*Ofcom Broadcast Bulletin*, No. 285, 17 August 2015)

Case study: Ipso's predecessor, the Press Complaints Commission ruled in 2006 that a bank cashier's privacy was breached when he was photographed by a magazine for an article on a lottery winner. The cashier, pictured as he served the winner in the bank, had not consented to the photo or its publication. The PCC said he had a reasonable expectation of his privacy in his workplace (*Kisby v Loaded*, 28 April 2006).

Photograph of a grieving family in a church

Case study: The PCC upheld a complaint by Paul McCartney against *Hello!* magazine's publication in 1998 of a photo of him and two of his children lighting a candle in Notre Dame cathedral, Paris, for his wife Linda, who had died a month earlier. The PCC deplored publication of the photo as breaching its clauses 2 (Privacy) and 4 (Intrusion into Grief and Shock) of the Editors' Code, saying that it had stated before that it expected journalists to respect the sanctity of individuals' acts of worship, and said that a cathedral is 'a clear example of a place where there is a reasonable expectation of privacy' (*McCartney v Hello!* Report 43, 1998).

Wedding photo

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Case study: In 2017 Ipso ruled that a woman's privacy had not been breached by a newspaper's publication of a photo of her taken at her wedding. The photo was used in a report of a court case in which she admitted fraudulently claiming benefits. Ipso said she was not engaged in private activity at the time the photo was taken and that the photo had not disclosed any private information about her (*A woman v Daily Star Sunday*, 10 March 2017)

4.4.1 'Long Lens' photos

Case Study: In 2017 Ipso upheld a complaint by Prince Harry that photographs taken of him when he was on a private beach in Jamaica and published by *Mail Online* breached his privacy. Some of the photos showed him in swimming shorts on the beach, at a beachside bar and in the sea. They were taken with a 500 mm 'long lens' from 700-800 yards away. *Mail Online* said it had been misinformed that the beach was a public one, and that the photos had 'seemed innocuous'. But it agreed to stop publishing them and apologised. Ipso said the photos were of the Prince 'engaging in private leisure activities in circumstances in which he had a reasonable expectation of privacy', and that their publication was 'a significant and unjustified intrusion'. It said photographing an individual in such circumstances is unacceptable, unless it can be justified in the public interest, and that *Mail Online* had not sought to justify publication of the images in the public interest (*HRH Prince Henry of Wales v Mail Online,* 4 May 2017).

4.4.3 Addresses

Case study: In 2017 Ofcom ruled that a *Channel 4 News* report which partially identified the location of the home address of a UKIP official had not unwarrantably infringed his privacy. Adam Heatherington had resigned as chairman of UKIP's Merseyside branch after comments by the party's then leader, Paul Nuttall, about the Hillsborough disaster. The report showed a journalist knocking at Mr Heatherington's front door, which was white, to seek his comment, and – in a light-hearted reference - also disclosed the name of that road, which was Mystery Close. Mr Heatherington complained to Ofcom that he had been 'targeted' because this broadcast, and that his house's 'distinctive' privet hedge was shown. Channel 4 said it had taken care not to show a clear image of the door/driveway, or any wide shot of the house, that it blurred his house number in the report, and that the doors of most of the 40 or so houses in that street were similar to his, and a lot were painted white. After becoming aware of the complaint, Channel 4 removed the reference to Mystery Close and footage of the road sign from the online version of the report. In its ruling, Ofcom noted that Mr Heatherington was a company director whose home address was publicly available from the Companies House public register, even though he could have chosen, under company law, not to have used his home address in these public records. Ofcom said that a person may have a legitimate expectation of privacy in relation to the location of his or her home even where that location is publicly available on a variety of searchable databases (such as the electoral roll). But it noted that Mr Heatherington was 'a public figure' who had chose to stand for UKIP in a high profile Mayoral election. His home address had previously been published in full in the context of his candidacy for local elections and those council documents remained accessible to the public at the time of the broadcast. Ofcom said that therefore, given that

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only the street name was disclosed, it did not consider that the footage broadcast revealed anything particularly private or sensitive about Mr Heatherington, and that – taking all factors into account - it did not consider he had a legitimate expectation of privacy in relation to the broadcast of footage which included the name of his road (*Ofcom Broadcast Bulletin*, No. 332, 3 July 2017).

In the Marjorie Osborne case - see **Photography and filming in streets,** above - Ofcom ruled that broadcast of footage which showed shots of the exterior of her home did not breach its code's normal prohibition on broadcasts identifying people's home addresses. In that case Ofcom took into account that the filming had been done openly and from a public place, that none of the shots captured anything that could reasonably be considered private or sensitive to her; that although the district in Bolton where she lived had been named, the street name and her house number was not given; and that hers was a semi-detached house, very similar to many others. This meant, Ofcom said, it was unlikely that viewers not familiar with houses in that area would have been able to identify her house and its location.

4.4.4 People at home

Case study: In 2017 Ipso did not uphold a complaint by a sacked police officer about a photo which had been taken of her when she opened the door of her home. The photo was published by the *Newcastle Chronicle* when it reported she had been dismissed by Northumbria Police after she pleaded guilty to improperly exercising the powers and privileges of a police constable. For that offence she was sentenced to do 120 hours unpaid work (a community order). That report said of the offence that she and another police officer had allowed a drug user to walk free with heroin sold to him by drug dealer in return for information, and the officers had tried to cover their tracks with a false intelligence report. A reporter had knocked on her door after the disciplinary hearing which dismissed her. She told Ipso that when she looked through the door's spy hole she could not see anyone, but that when she opened it the reporter, who she recognised from her court case, 'jumped out from the side' and said her name. She said she had shut the door within two seconds but in that time a photographer took the photo. She said that when she looked out of the window she saw the journalist laughing in a vehicle parked opposite her house. The *Chronicle* said its reporter had acted professionally. He said he did stand slightly to the side of the door but denied that he was hiding. When the woman opened the door, he introduced himself as working with the newspaper, at which point she shut the door in his face. The *Chronicle* also said that it was entitled to take pictures from a public place. Ipso said that the woman - as a non-public figure, standing at the door of her own home, having opened it following the reporter's knock, and with no prior notice of the reporter's visit - had a reasonable expectation of privacy in the circumstances in which she was photographed. Photographing an individual in such circumstances is intrusive, and the newspaper was obliged under the Editors' Code to justify its decision to photograph her, Ipso said. But it added that the intrusion in this instance was limited by the fact that the woman would have been visible in her doorway from the street, and because the photo did not disclose any information about her which was particularly private or embarrassing. In any event, Ipso agreed with the

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newspaper that it was in the public interest to identify her as the woman convicted of an abuse of her public position, and for the newspaper to illustrate the report with her photograph. Further, Ipso said, the limited level of intrusion in this instance was proportionate to the public interest the newspaper had identified. Ipso ruled there was no breach of the Code's clause 2 (*Turnbull v Newcastle Chronicle*, 7 March 2017).

Case study: Ofcom ruled in 2011 that Channel 5's *Police Interceptors,* when featuring the work of a police unit in Sheffield, did not breach the privacy of a woman filmed when she answered her door while wearing a dressing gown. Police wanted to trace a couple who failed to pay a taxi fare. The woman was not involved in that incident, but was filmed when police knocked at several houses around midnight. Her face was obscured in the programme, she was not named and no street address was given. But the programme specified the district and her voice could be heard as she told police she lived alone. She told Ofcom she did not know she had been filmed. Ofcom's adjudication said her identity would have been discernable to people who knew her, but noted that the programme's measures to limit infringement of her privacy included obscuring her house number and car registration plate. It did not uphold her complaint, ruling that the public interest in showing the challenges faced by police officers was significant, and that in the case's particular circumstances the broadcaster's right to freedom to impart information outweighed her expectation of privacy (*Ofcom Broadcast Bulletin* No. 196, 19 December, 2011).

Case study: In 2007 the Press Complaints Commission ruled that a newspaper's publication of a photograph showing Gail Sheridan, wife of Scottish politician Tommy Sheridan, in her back garden did not breach her privacy. The picture was taken with a telephoto lens. But the PCC said she was visible from a public road and therefore had no reasonable expectation of privacy under (what is now) clause 2 of the Editors' Code of Practice. It added that the photo was 'innocuous' because Mrs Sheridan was not doing anything private (*Sheridan v the Scottish Sun*, 3 May 2007).

For regulatory adjudications concerning footage shot or photos taken inside people's homes, see the Additional Material for *McNae's* ch. 5 on www.mcnaes.com: **Journalists showing police 'raids'**

4.5 Doorstepping

Case study: In 2017 Ofcom ruled that the BBC Wales *X Ray* consumer affairs programme had not unwarrantably infringed the privacy of car dealer Jason John, either in its filming of him or in what was broadcast. During its investigation of his business C and N Automotive Trade Ltd ("C &N") he was filmed covertly on its premises. This broadcast footage including him speaking to an undercover reporter posing as a potential customer. The programme also included footage subsequently filmed openly during a 'doorstepping' attempt by a reporter to interview him. Ofcom said that the BBC had complied with practice 8.13 of Broadcasting Code, which governs covert filming. Ofcom noted that, before beginning the covert filming, the BBC - which had broadcast two earlier investigative reports about his company - had received 'an unprecedented number' of complaints from former customers

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for a car dealership of that size. Customers had told the programme they had been sold cars which quickly developed faults, and often had to go to court to get their money back. The BBC had gathered new evidence suggesting the company was selling vehicles 'written off' by insurance firms but was not telling customers of the 'write off', thereby potentially acting contrary to consumer law. This had raised concerns that the business could be misleading the public. Ofcom said this information amounted to *prima facie* evidence of a story in the public interest and gave reasonable grounds for the programme makers to suspect that further evidence could be obtained by covert filming, and that it would have been unlikely that without using this technique they could have captured footage of Mr John speaking openly to customers about vehicles for sale and 'acting in his typical manner'. Ofcom considered that the covert filming was necessary, too, to the credibility and authenticity of the programme – which is another requirement of the code's practice 8.13 - because without the footage the programme makers would have had to rely on second-hand accounts of Mr John's sales practices, which would have been less credible than direct evidence of them. Ofcom said that a person may have an expectation of privacy in relation to activities carried out at their place of business or in the course of their employment, and Mr John had that expectation, because when filmed he was likely to have believed he was having a one-to-one conversation with a potential customer. But, Ofcom said, that expectation was limited because he was filmed in a publicly accessible area of his business and it was reasonable to expect that he would have been aware than any conversation had the potential to be overheard by any members of the public. Also, the conversation filmed was not of a particularly personal or sensitive nature, being a business conversation. Ofcom ruled that the BBC had a genuine public interest in obtaining the footage covertly and broadcasting it, to demonstrate concerns it had about Mr John's business practices; that more broadly the programme formed part of an investigation which highlighted the potential health and safety risks of driving unroadworthy cars; that Mr John had persisted in misleading business practices despite previous investigations by the programme makers; that the programme could act as a deterrent for other salespeople who may be engaged in 'similar practices'; and that it was proportionate to film him covertly. As regards the BBC's decision to film him openly in a 'doorstep' attempted interview, Ofcom ruled that the BBC had complied with practice 8.11 of the code. In the preceding days, the BBC and Mr John had been in communication. In particular, the BBC had sent him a letter on 25 October 2016 giving detailed information about consumer complaints they intended to feature in the programme and raising serious concerns about his business practices, including asking him why his website did not specify if a vehicle for sale was a 'write off', why he had not paid outstanding county court judgments, and why he had sold a vehicle which an expert said was dangerous and not safe to be on the road. This letter offered him the opportunity to respond by giving an interview or by providing a statement for inclusion in the programme. Ofcom said he had responded through his solicitor on 31 October 2016, but this response did not specifically address all the concerns raised. The programme makers wrote back to him the same day, asking for a more specific response to the concerns raised and saying they would need an additional response by noon the following day. After they received no further response, they proceeded with the 'doorstep' interview. Ofcom said that as regards the obtaining of that footage, which

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showed him claiming his solicitor had already 'answered' for him, asking the reporter to leave and closing a garage door to shut the programme makers out, Mr John did not have a legitimate expectation of privacy. Ofcom said he was aware he was being filmed; he was filmed a public accessible area of his business premises; he was not filmed engaged in any conduct or action that could reasonably be regarded as being particularly private; the filming did not capture any information which could reasonably be regarded as being private or sensitive to him, and it did not consider that the reporter had 'bullied' him in this approach in order to create drama (*Ofcom Broadcast Bulletin*, No. 330, 5 June 2017).

For other case studies on undercover filming, see 3.4.16 **Secret filming and recording - deception and privacy** in the Additional Material for ch. 3 on www.mcnaes.com and, below: **Parental consent for photographs, filming or interviews**.

4.6 The codes' protection against harassment

Case study: In 2016 Ipso ruled that clause Zipporah Lisle-Mainwaring had not been harassed by a photographer taking photos of her after she left a building having attended a court hearing there. This concerned a demand that she repaint her house in a planning row. She complained that, by pulling her coat over her head, she had made clear she did not want to be photographed, and that she had asked the photographer to desist. Ipso said the photographer had not been aggressive or intimidating, and only four pictures had been taken of her, over a period of six seconds. This did not amount to 'persistent pursuit' under clause 3 of the Editors' Code (*Lisle-Mainwaring v Mail Online*, 5 May 2016).

Ipso interprets clause 3 as generally relating to the conduct of journalists during the newsgathering process – that is, normally it does not see the clause's use of the term 'harassment' as applicable to what is published, so that a complaint about the number of articles published will not generally be considered under the clause (for example, see *Flower v Bournemouth Echo*, 9 December 2015, not upheld as regards what is now clause 3; *Spinks v The Sun*, 28 April 2014, not upheld).

4.7 Law against harassment

In 2016 the Metropolitan Police and the Independent Police Complaints Commission finally admitted that police had been wrong to issue a written warning to journalist Gareth Davies that he could face prosecution under the Protection from Harassment Act 1997. The 'Prevention of Harassment' warning – in the form of a police information notice (PIN) – was made after he tried to put allegations of fraud to a woman he was investigating following complaints about a dating website, so that she could respond.

The police climbdown represented an important victory for investigative journalism. A journalist investigating a person's conduct needs to approach him or her to try to check what is true, to avoid any libel problem – see the Additional Material for ch. 22 on www.mcnaes.com: **Test whether your story has a defence**. And regulatory codes of ethics say journalists should take care to be accurate, so this is another reason why it is proper practice to approach the person to give him or her the chance to respond, and it is necessary for fairness too. See the Additional Material for ch. 2 on

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www.mcnaes.com: **Sufficient care to be accurate**? and 3.4.11 and 3.4.13.2 in *McNae's*. So, a journalist being professional and ethical by making such approaches should not have to fear being prosecuted for harassment.

The PIN was issued to Mr Davies in March 2014 when he was the *Croydon Advertiser's* chief reporter. Mr Davies approached the woman once at her home and sent two politely-worded e-mails, in order to put allegations to her. Before he sent the second email she complained to police, saying she was being harassed by him. This led officers to issue the PIN warning to him. Three police officers went to the *Advertiser's* offices to serve Mr Davies with it. They told him the woman felt 'persecuted' and 'harassed' by the news stories. They warned that if he contacted her again he could be arrested.

Mr Davies denied harassing her, saying he was simply doing his job, and his paper made a formal complaint to the Metropolitan Police about the PIN. But the force upheld the decision to issue the PIN, saying his attempts to question the woman went 'beyond what was reasonable'.

The IPCC too upheld the police decision to issue the PIN, so Mr Davies and the newspaper's publisher, Local World, applied to the High Court for judicial review.

Their barrister, Christina Michalos argued in the submissions for the application that the police and IPCC were wrong to reach the conclusions they did. Her submissions pointed out that Mr Davies visited the woman's home only once - accompanied by a photographer. In addition, Mr Davies contacted the woman only twice via e-mail, and sent one e-mail to her solicitor, in attempts to get her response to allegations being made by people who said they had lost money through a dating website.

Ms Michalos also pointed out that Metropolitan Police guidance says no such warning should be issued where a suspect denies an allegation of harassment or there are no reasonable grounds to support or corroborate it.

Ms Michalos submitted too that Mr Davies's contact with the woman did not amount to harassment. The allegations she made about him were denied.

She submitted that police were wrong to issue the PIN notice because:

- It was irrational to conclude that a Prevention of Harassment warning could be issued without considering whether the conduct complained of could amount to harassment;
- The warning was issued contrary to guidance on such matters from the Association of Chief Police Officers (ACPO) and the Metropolitan Police, so the IPCC was wrong to reject Mr Davies's appeal against the issue of the warning;
- The failure adequately to investigate the woman's claims about Mr Davies before issuing the warning to him breached the ACPO guidance, and this was another reason why the IPCC was wrong to reject Mr Davies's appeal – the woman's allegations of harassing contact by telephone or electronically were amenable to proof and should have been properly

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investigated, and a failure to investigate adequately, particularly when allegations were made by someone who had questionable credibility, breached standards of fairness required by common law;

- Issuing harassment warnings to journalists over journalistic activity – in this case, contact with the subject of a story so as to put allegations of fraud to her - breached the right to freedom of expression under Article 10 of the European Convention on Human Rights and would have a seriously chilling effect across the media, and should only be done in exceptional circumstances.

Mr Davies and Local World sought a declaration that the PIN warning should not have been given in the first instance, an order quashing the IPCC decision to uphold it, and an order directing the IPCC to instruct the Metropolitan Police to remove the PIN from their records, or to re-investigate the case.

In February 2016 Mr Justice Picken granted permission for judicial review. A hearing was listed for May 20. But the Metropolitan Police and IPCC then settled the case – the police agreed to revoke the PIN, and Metropolitan Police Commissioner Sir Bernard Hogan-Howe and the IPCC both agreed to write to the College of Policing to ask it to review national guidance relating to the use of such warnings against journalists.

Ms Michalos, who was instructed by Peter Singfield of the Foot Anstey law firm, said: 'The agreement by the Met Police to revoke this PIN was a substantial victory for both Mr Davies and freedom of the press.

'Issuing of harassment warnings to journalists for just doing their job is completely unacceptable and would obviously have a serious chilling effect across the media.'

She said: 'It is to be hoped that the College of Policing do in fact carry out a review and that they recommend that harassment warnings should not be issued to journalists in respect of journalistic activity save in exceptional circumstances.'

A major problem with PINs is that police are not obliged to conduct any proper investigation into harassment allegations before issuing one – and there is no process by which a person who gets one can appeal against it. There is no formal police procedure for issuing PINs and no set time limit during which they have effect. They are not formal police cautions and signing one does not imply that the alleged harassment has taken place. But the police may use them in future legal proceedings.

For further details of Mr Davies's case, see *Media Lawyer* reports of 9 February and 2 June 2016, and the *Croydon Advertiser* website.

Cases in which courts ruled there was harassment

If a journalist's conduct towards a person causes alarm and distress, is repeated and is not deemed to be justified in the public interest or otherwise covered by the journalist's rights under Article 10 of

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the European Convention on Human Rights, he or she may be prosecuted under the 1997 Act and/or be made subject to an injunction in a civil lawsuit brought under the Act's provisions.

Case study: A journalist who conducted what a judge described as being 'almost a personal vendetta' against a property developer was in 2015 made the subject of a final injunction under the Protection from Harassment Act 1997. Judge Patrick Moloney QC said in the High Court that journalist John McAllister's coverage of businessman Edward Ware's activities started as a legitimate exercise in public interest journalism, but could no longer be justified as freedom of expression. The story started in 2002, when Mr McAllister reported on the dangers of a site in Bristol with which Mr Ware's company was involved. Mr McAllister took photographs of the site which showed that it was dangerous, and published a series of online articles outlining the dangers it posed to the public. This led to the local authority becoming involved, and the site was cleared up and made safe. It was accepted that from then onwards neither that site, nor any others owned by Mr Ware and his company, Edward Ware Homes, posed a danger to the public. In 2004 Mr Ware asked Mr McAllister to take the articles down, but he refused to do so. In 2011 Mr Ware instructed lawyers. Mr McAllister then updated his articles and began criticising Mr Ware to various public authorities and clubs with which he was associated. The journalist was convicted of harassment and banned from publishing anything about Mr Ware. The ban was lifted on appeal – and Mr McAllister reacted by increasing his campaign. Judge Moloney said harassment had to be conduct which took place on at least two occasions and was directed at the victim. It also had to be calculated objectively to cause alarm or distress, objectively judged to be oppressive and unacceptable, not just unreasonable, but amounting to 'torment' of the victim, and warranting criminal prosecution, the judge said. Mr Ware was seeking a final injunction to restrain future harassment, and the court had to be sure that unless it was granted the harassment would continue. The conduct had occurred on numerous occasions, and was targeted at Mr Ware. A reasonable person would infer that the conduct would cause distress. The judge added that Mr McAllister's conduct towards Mr Ware was not merely unattractive and unreasonable, but had already incurred criminal liability. The *prima facie* ingredients of harassment had been made out and there was ample evidence to suggest that it would continue, the judge said. Mr Ware had been caused severe anxiety and distress and his Article 8 rights to respect for privacy and family life were substantially engaged. Mr McAllister's original articles were legitimate exercises in public interest journalism, but by 2015 it was hard to see that there was any public interest or any other legitimate reasons for the campaign, said Judge Moloney, adding that those who wanted to exercise their Article 10 rights had a countervailing responsibility to show that if the words were injurious to others there was sufficient justification for them (*Media Lawyer*, 29 July 2015).

Case study: In March 2014 One Direction singer Harry Styles won permanent High Court orders against four paparazzi photographers to end the 'crazy pursuit' of him. His barrister told a judge in London that four individuals had so far been identified since these harassment proceedings were launched – and they had now consented to permanent injunctions. Efforts to identify other photographers were continuing, Mr Justice Dingemans was told (*Media Lawyer*, 27 January 2015 and 10 March 2014).

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Case study: In 2002 the Court of Appeal upheld a judge's finding that a reference in *The Sun* to the colour of a woman embroiled in a dispute with police could constitute harassment. *The Sun* had published a story in 2000 about three police officers who were disciplined and demoted over remarks they made about an asylum seeker. The piece said, in effect, that the policemen were disciplined after a complaint about a private joke was made by 'a black clerk', who was named as Esther Thomas. *The Sun* then ran a further story which included extracts from readers' letters and referred again to 'the black clerk'. Ms Thomas sued for damages under section 3 of the Protection From Harassment Act 1997, claiming that the articles had caused her distress and anxiety. A judge found that the reference in the article to Ms Thomas's colour was not reasonable and that she had made out an arguable case of racism. The Court of Appeal rejected *The Sun's* appeal against that finding. It said that it was not the conduct that made up an offence or tort of harassment, but rather the effect of that conduct. In general, press criticism, even if robust, would not amount to unreasonable conduct or fall within the natural meaning of harassment – so a claim which simply alleged that a series of articles in a publication caused distress was liable to be struck out as failing to disclose a claim of harassment. Clear facts which alleged harassment were required, and it was for the newspaper to show that it had a reasonable motive for its conduct. But the judge was right to find that it was arguable that the newspaper's reference to Ms Thomas's colour was not reasonable. It was also arguably foreseeable that *Sun* readers would send hate mail after the article – and the newspaper had made no attempt to disassociate itself from the contents of those letters. The Court of Appeal added that the test of whether a series of publications constituted harassment turned on whether the publisher's conduct was reasonable, and required the publisher to consider whether a proposed series of articles that was likely to cause distress to an individual was an abuse of the freedom of the press, needing to be curbed (*Esther Thomas v News Group Newspapers and Simon Hughes* ([2001] EWCA Civ 1233; [2002] EMLR 4).

4.8 Accidents and major incidents

Case study: In 2008 the Press Complaints Commission (PCC) criticised a newspaper's publication of an online image of a road accident victim, part of whose face was shown, receiving emergency medical treatment at the scene. It said: 'There is a clear need for newspapers to exercise caution when publishing images that relate to a person's health and medical treatment, even if they are taken in public places.' The public interest in reporting the accident, which was not a rare or large-scale event, was not sufficient to override (what is now) clause 2 (Privacy) and justify use of the image. A photo published in the paper, showing the woman at the crash scene but with her face entirely obscured, was 'just on the right side of the line' (*Kirkland v Wiltshire Gazette & Herald*, 23 April 2008).

After a major incident – for example, a disaster or a terrorist bombing – the public interest in journalists reporting it immediately is so strong that breaches of an individual's privacy may be justified to show photos or footage of, for example, victims needing or getting medical treatment, even though they had not consented to being depicted. Section 8 of the Ofcom Broadcasting Code

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says: 'We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy.'

The PCC said: 'Rare and large-scale events such as terrorist attacks and natural disasters involve a degree of public interest so great that it may be proportionate and appropriate to show images of their aftermath without the consent of those involved' (*Kirkland v Wiltshire Gazette & Herald*, cited above).

4.9 Prohibitions on intrusion into grief or shock

Case study: In 2018 Ipso ruled that the *Daily Record* had not breached clause 4 of the Editors' Code of Practice in an article published on a Wednesday about the sudden death of a young child the preceding Saturday. The article named the child and was illustrated with a photo of him. It reported that 'tributes pour in for tragic seven-year-old' and said that it was understood that the child and his family had been 'celebrating his brother's 10th birthday when the tragedy occurred'. The article included a photo of the child's mother and said she was being supported by family members. The article was published in substantially the same form online, under the headline: 'Tragic seven-year-old collapses and dies just hours after celebrating older brother's birthday'. The child's aunt complained that publication had been handled insensitively. She said that the *Record* had published, without parental consent, details concerning the child which had not been formally released by the police. She said the article had caused further distress at a difficult time for the family, and had been intrusive. She said that although close immediate family members had been informed, that at the time the article had been published some family members and friends had been unaware of the child's death, which had occurred three days earlier. Some of these people had found out about the child's death after seeing the article in print and having been circulated on social media. She also complained that the article had disclosed private details of the child's older brother, namely his age and the fact that it had been his birthday, without parental consent. The *Record* agreed it had obtained both photos from the child's mother's Facebook page: it said that at the time of publication her profile was open to seen by the public. It provided screenshots taken at the time of publication, which it said demonstrated that her profile was set to a 'public' setting. Ipso acknowledged that the aunt and her family had been distressed at the reporting of the child's death. But it said it wished to explain that journalists have a right to report the fact of a person's death; a person's death may have an impact on communities, as well as individuals, and as such constitutes a legitimate subject for reporting. Ipso said that the Editors' Code of Practice does not prevent journalists from using any photos of the people who have died, but that the Code also makes clear that journalists should approach such stories with sensitivity, and give appropriate consideration to the feelings of the recently bereaved. In this instance, immediate family members were aware of the child's death at the time of the article's publication. Further, Ipso noted that the article had been published three days after the tragedy had occurred. Ipso said that in those circumstances, and because the article did not contain gratuitous detail of the circumstances surrounding the

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child's death, it did not conclude that the report of the child's death represented a failure to handle publication sensitively. There was no breach of clause 4. Ipso said that the screenshots provided by the *Record* had demonstrated that the contents of the mother's social media account were available to be viewed by the newspaper, the *Record* did not disclose any private or personal information about her, and similar photographs remained accessible to be viewed by the public on her Facebook account. Ipso ruled, therefore, that the publication of the two photos did not breach the code's clause 2, which protects privacy. It said that the reported information relating to the child's sibling was limited to his age and the fact that he had been celebrating his birthday at the time the tragedy occurred. The article had not revealed his name or other personal details. Ipso said that in those circumstances publication of the article did not represent a failure to respect the child's sibling's private life, and was not unnecessary intrusion into his time at school. It ruled there was no breach of clause 2 as regards the sibling, or clause 6 (*McGurk v Daily Record*, 7 August 2018). For clause 6, see 4.13 in *McNae's*, and below.

Case study: In 2017 Ipso ruled that *The Sun* had breached clause 4 of the Editors' Code of Practice by publishing within three days of the death of prison inmate Shabal Ahmed that he had died after smoking the banned substance 'spice' – synthetic cannabis – in his cell. The paper had checked that his family knew of his death. But, Ipso said, given that this cause of death had not yet been confirmed, publication was not handled with the sensitivity required under clause 4. His mother and brother – the complainants – said that a toxicology report had found no trace of synthetic drugs, and that they had been caused anxiety by headline text saying he had 'screamed for help in his cell as he died after smoking outlawed synthetic marihuana'. Ipso ruled that *The Sun* had also breached clause 1 (accuracy) by presenting speculation – from allegations made by other prisoners - that 'spice' was the cause of his death as fact when there was no 'on the record' confirmation of this (*Ahmed and Begun v The Sun*, 21 June 2017).

Case study: Ipso ruled in 2017 that the *Lincolnshire Echo* had not breached clause 4 by publishing eight seconds of CCTV footage showing a head-on crash between a car and a bus. The *Echo* published this four hours after the crash, with a photo showing the damage to the car (with no-one in it). The car's driver could not be identified from the footage, and its registration number was not shown in that or the photo. By the time his family saw these images they knew from a paramedic he was being taken to hospital for tests after a road traffic accident. The driver complained to Ipso that publication of the footage was insensitive, because - having seen these images on the *Echo's* website - his family had come to the 'reasoned conclusion' from the make and model of the car that it was his, which caused them further distress because at that stage they had not had confirmation that his injuries were not life-threatening. The *Echo* said that any distress they suffered came about because the driver had not by then given his family further detail about his injuries. He was able to leave hospital later that day. Ipso said that the model, make and colour of the car was not unique, and while the extent of the driver's injuries had not been confirmed when the images were published, the newspaper's assessment – based on the fact that police did not close the road after the

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crash - that there had been no fatality or serious injury was reasonable, and that the material had been published sensitively (*Goldsmith v Lincolnshire Echo,* 17 March 2017).

Case study: In 2015 Ipso ruled that the *Lincolnshire Echo* breached clause 4 of the Editors' Code by reporting that Carly Lovett had been killed earlier that day in a terrorist attack in Tunisia. Lincolnshire police complained that the *Echo's* reporting Ms Lovett's death as fact before it had been confirmed to her family had caused enormous upset at an already highly distressing time. The article had been published at 8.57 pm, when the family knew only that Ms Lovett had been involved in the attack and had been injured. Shortly after midnight, Ms Lovett's fiancé, who was in Tunisia, had been taken to the hospital to see Ms Lovett, who at that stage had been identified as 'a casualty'. At the hospital he had been asked to identify her body. He had then told the rest of the family of her death. The *Echo* denied that it had breached the Code. It said that it had waited several hours to publish the information, until it had received confirmation from multiple sources that it considered to be reliable that Ms Lovett had died and that the family were aware. Reporters had then contacted various family, friends and colleagues of Ms Lovett. The *Echo* said that one source, close to the family, had confirmed that Ms Lovett had been killed. At around 5pm a reporter had visited an address where he had spoken to her step-father, who had declined his request to comment on Ms Lovett's 'involvement' in the attack. The *Echo* added that at 6pm another source, a friend of Ms Lovett's, confirmed that Ms Lovett had been killed, and that her death was being discussed among friends as fact. Later that evening, the reporter spoke again to the first source, who confirmed that Ms Lovett's family were fully aware that she had died in the attack. A reporter had also telephoned Lincolnshire Police to make enquiries; they were not aware of any local involvement in the attack. The *Echo* noted that the attacks in Tunisia were of international importance, and that in such cases editors had a responsibility to keep the public informed. Its confidential sources were reliable and close to the family. It said that it could not have known that Ms Lovett's family had retained some hope at the time of the article's publication that she had survived the attack. Nonetheless, it apologised for any further distress that the article had caused to the family, and offered to write personal letters of apology to Ms Lovett's parents, as a means of resolving the complaint. But Ipso ruled that it was foreseeable, in the aftermath of a terrorist attack that had taken place overseas, that there would be uncertainty back in the UK among the families of those involved as to the fates of their relatives for some hours, or potentially days. Contradictory and premature reports were highly likely, given the chaos caused by the attack and the difficulties of communicating with overseas survivors and emergency services. The newspaper was entitled to report on a local connection to the attack, Ipso said. It acknowledged that the *Echo* did not intend to cause distress. But, Ipso said, the *Echo* had a responsibility to ensure that its report was prepared with appropriate regard for the position of those most directly concerned: Ms Lovett's surviving family. Ipso said that the claims by the *Echo's* confidential sources that the family had been told, definitely, of Ms Lovett's death were evidently inaccurate. Neither the death nor the family's knowledge of it had been confirmed by any official source. Ipso said that, as the *Echo* had relied solely on confidential sources, the newspaper was unable to show that before it took the decision to publish it had taken appropriate care to ensure that Ms Lovett's family knew she had been killed. It had therefore failed to demonstrate that it had acted with the level of sensitivity

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required by the Code. Ipso said that the publication of the information that Ms Lovett had died, so soon after the attack and before it had been confirmed to her immediate family, was a serious failure to handle publication sensitively (*Lincolnshire Police v Lincolnshire Echo*, 16 October 2015).

See too, below, **4.17 Material from social media sites** for an Ipso adjudication that a newspaper's naming of a family who were victims of crime – and whose names had been published by the father in a Facebook post - did not breach clause 4. Other adjudications covered in 4.17 are that clause 4 was not breached by media use of photos and tributes taken from the internet, including Facebook, after people died.

Programmes covering past traumatic events

Practice 8.19 of the Ofcom Broadcasting Code says broadcasters should try to reduce the potential distress to victims and relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. It adds that so far as reasonably practicable, surviving victims and the immediate families of those whose experience is to feature should be told of the plans for the programme.

4.11 Health information

Case study: In May 2016 Ipso ruled that *The Sunday Times* breached the privacy of Conservative MP Sir Nicholas Soames in an article which reported that he had lost a considerable amount of weight and said there was speculation that he had had a gastric band fitted. It quoted an unnamed Tory frontbencher who said that in the House of Commons tearoom, Sir Nicholas had been 'complaining that he can't even look at food', and an unnamed 'friend and former frontbencher' who said that 'Soames had been advised to lose weight to ease a back ailment that had been causing him pain'. The article also reported that Sir Nicholas, after having been contacted twice, 'declined to confirm or deny details of his weight loss regime or the presence of a gastric band', and had simply issued a 'brief and unprintable two-word statement' in both instances. Sir Nicholas – whose response to the journalist's inquiries was to send him a text message telling him to 'Fuck off' – complained to Ipso that the specific references to gastric band surgery and back problems, and the speculation that these medical matters had resulted in weight loss, were particularly intrusive. Ipso ruled that clause 2 of the Editors' Code of Practice was breached. It said it was not intrusive to report the mere fact that Sir Nicholas had recently lost weight, given that he was a figure in the public eye, and the change in his appearance was visible. 'However, the article went further than this, and speculated about possible medical causes for his weight loss, including questioning whether the complainant had undergone an invasive surgical procedure, which may have been due to back pain. This was information in relation to the complainant's health about [which] he had a reasonable expectation of privacy and the committee was not satisfied that the newspaper had demonstrated a sufficient public interest to justify publication' (*Soames v Sunday Times*, 19 April 2016).

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Case study: In 2015 Ofcom ruled that the filming and broadcast of footage used in a BBC *Reporting Scotland* programme had unwarrantly breached a couple's privacy. It featured the work of the ambulance service in Glasgow dealing with alcohol-related call-outs. Mr F was shown, his face obscured by blurring, sitting on the pavement against the wall of a pub, being attended by a paramedics and two police officers, and sitting in the ambulance – his face still obscured but body and clothing visible. Three seconds of the footage also showed Mrs F attending him in the ambulance, and him being discharged into her care – her face blurred but clothing visible. The audio included her using his first name. The programme otherwise did not name him, or her, but said he was 'a civil servant in his fifties' who had fallen and cut his head after an office party. The couple complained that they did not consent to being filmed. Mrs F had made clear to the reporter in the ambulance that she did not want the footage to be used. They complained that what was broadcast, including about the location, had identified them to 'a lot of people'. The BBC argued that Mrs F's reference to her husband's first name was too 'indistinct' to have been picked up by viewers. It noted that Mr F had confirmed to the paramedics that he had drunk too much. It argued that there was a strong public interest in filming and broadcasting this footage, to show the strain put in NHS resources and 'time wasted' ambulance crews because of 'alcohol abuse'. Ofcom said that although there was this genuine public interest in making the programme, this was outweighed – as regards the complained-of footage - by the couple's privacy rights. Mr F had 'a heightened legitimate expectation of privacy' because of the circumstances, in which he was receiving medical treatment – 'a particularly sensitive situation'. Ofcom said that in the ambulance he had repeatedly indicated he did not want to be filmed. The filming had appeared to make him agitated and confused. Ofcom added that his wife also had a legitimate expectation of privacy in these circumstances, and that her consent for the filming had not been sought. Ofcom ruled that several pieces of information in the programme rendered the couple identifiable – including that it was broadcast only four days after the events shown, identified the pub, showed Mr F's clothing and included audio of his voice, from which people who knew him might well have recognised them (*Ofcom Broadcast Bulletin,* No. 307, 20 June 2016).

See also **Children's medical conditions**, below.

4.12 Relationships

Case study: Ipso ruled in 2018 that the *Belfast Telegraph's* news coverage of a civil partnership wedding ceremony had not breached the privacy of the couple as regards their sexual orientation. Ipso said that a marriage or civil partnership is a public declaration of a relationship. The fact of their civil partnership was in the public domain and was not information about which they had a reasonable expectation of privacy, it said (*Beattie and Atkinson v The Belfast Telegraph*, 3 August 2018).

For context about this adjudication, see the relevant case study in **Photography and filming in and around hotels**, above.

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4.13 Protecting children's welfare and privacy

Case study: In 2018 an article published by the *Daily Star on Sunday* revealed that a 17-year-old youth, who it identified and described as a 'gun nut', had 'threatened to kill Muslims in a series of vile Facebook rants'. The article published a selection of these Facebook posts, as well as his photograph. The article said that his 'shocking comments' had been posted on social media with pictures of guns he owned. It pointed out that the previous week a 19-year-old had killed 17 people in Florida during a high school shooting. A woman who was the 17-year-old's custodial guardian was quoted in the article as telling the reporter that the teenager had 'complex needs', and 'when he says he is going to shoot Muslims he isn't really going to do that – how many people say that but actually do it?'. After its publication she complained that the article breached clause 6 (i) of the Editors' Code, which says that all pupils should be free to complete their time at school without unnecessary intrusion. She said the article had led to a college withdrawing an offer of place it had made to him and that the *Daily Star on Sunday* had intruded into his privacy, because it had not obtained his consent to publish the photograph and the posts from his Facebook account. Ipso said that as the article had resulted in the teenager losing his place at college, it had intruded into his time at school. But Ipso agreed with the *Daily Star on Sunday* that there was 'an exceptional public interest' which justified this intrusion. Ipso said that the comments he had made on a social media platform were alongside photographs which indicated that he had readily available access to an array of weapons. Ipso said too that the newspaper's coverage had revealed behaviour by him which had raised safeguarding concerns, and requests for assurances that he posed no, or limited, risk. Ipso ruled there was an exceptional public interest in revealing those potential safeguarding concerns for his future classmates, and disclosing the identity of the source of these concerns. It said the exceptional public interest identified by the newspaper was proportionate to the intrusion into his time at school. Therefore was no breach of clause 6, Ipso ruled. It noted that the teenager's Facebook accounts had privacy settings which demonstrated that only those people who he had accepted as a 'friend' would be able to see his posts. But he had had 595 'friends' on Facebook, one of whom had approached the newspaper to complain about his social media activity. Ipso said the posts did not reveal any private information about the teenager: they were expressions of opinions which could not be considered private in circumstances where they were shared with almost 600 individuals. It ruled he did not have a reasonable expectation of privacy in relation to this information, so there was no breach of the Code's clause 2 (*A woman v Daily Star on Sunday,* 20 July 2018).

Case study: In 2017 Ipso criticised the publication by the *Daily Star* of a photograph of a child in coverage which said she was missing after the terrorist attack on Manchester Arena in May that year. In that attack a suicide bomber killed 22 people, including children. Pauline Gorman complained to Ipso that the photo used by the newspaper on its front page and on an inside page - which had the caption 'MISSING: Lucy Cross' – was of her 13-year-old daughter, whose name was not Lucy Cross and who was not missing because she had been at home at the time of the attack. Pauline Gorman said that the publication of her daughter's photograph alongside those of individuals who were missing or dead had been traumatic and had intruded

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into her daughter's private and family life, as well as her time at school, and so had breached clauses 2, 4 and 6 of the Editors' Code of Practice, as well as clause 1. The *Daily Star* accepted that clauses 2 and 6 were breached. It said that when told of the inaccuracy it had immediately offered a prominent apology, which was published the following day on the paper's page 2, with a front page reference to it. It said the error occurred because the complainant's daughter's details had been 'appropriated' (by someone else) and used to make a fake social media account. It told Ipso that at the time the photo was published there was no consideration of Code issues at editorial level because the story had been filed by a freelance agency, with whom it had a longstanding and trusted relationship. The *Daily Star* said it had no reason to believe that the information was false. Ipso said that while there was no reason to doubt that the newspaper had acted in good faith, it was ultimately responsible for the inaccuracy. The newspaper had taken no further steps to establish the accuracy of the claims that had been circulated on the Twitter account. Ipso said that the *Daily Star* did not, for example, attempt to contact the Twitter account holder or the family of the child pictured. This represented a failure to take care over the accuracy of the article, in breach of Clause 1(i). Ipso said that by publishing this photo, without consent, alongside photographs of those who were missing or dead in the attack, the newspaper had published false information related to the welfare of the complainant's daughter, and intruded into her private life and into her time at school, breaching clauses 2 and 6. The publication of the photo had caused the complainant and her family significant upset, but - as her daughter was not missing - this was not a case which involved the personal grief or shock of the complainant, or her daughter, and so the terms of clause 4 were not engaged, Ipso said *(Gorman v Daily Star*, 10 August 2018)

For another, Ipso adjudication on whether publication of material about a child breached clause 6 by causing unnecessary intrusion, see above, 4.9: **Prohibition into intrusion into grief or shock**

Parental consent for photographs, filming or interviews

Case study: In 2015 Ofcom ruled that the BBC News Channel documentary *Britons Living Behind the Veil* had unwarrantably infringed the privacy of two brothers, aged 10 and 13, both in the actual filming for the programme and in what was broadcast. The documentary focussed on attacks on Muslim women who wore a niqab (veil) or hijab (headscarf). It included interviews with Muslims who had been physically or emotionally abused because of their religion. One interviewee's face was obscured for legal reasons by the BBC, and others wore face veils. One part featured Finsbury Park Mosque, showing that having banished radical extremists from its congregation, it was engaging with the wider, local community to weaken the influence both of those extremists and 'right wing' elements who committed hate crimes against Muslims. The footage included an interview with the mosque's chairman about its 'open door' policy. To illustrate this the footage included shots of children using the mosque's youth club, playing video games, table tennis and pool. Children's faces were shown, including – fleetingly - those of the brothers as they watched and talked to other children. Their mother – Mrs D - complained that she had not been asked if they could appear in the programme, and that because their faces had not been obscured, the programme had put them at risk of 'hate crime' abuse. The BBC said that the producer had agreed with the

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mosque chairman that the chairman would speak to parents of children who attended the mosque, to explain the nature of the programme and get their consent for their children to be filmed. The chairman had warned that many of the parents did not speak English, and so the BBC had decided not ask the parents to sign forms consenting to the filming because cultural and linguistic barriers made standard paperwork impractical. It did not believe that any child shown incidentally would be under threat from hate attacks as a result. The chairman had confirmed, before filming began that evening, that he had obtained verbal consent from the parents of all 50 children there though, as an additional precaution, the producer had told these young people to let him know if they or their parents did not wish to appear in the programme. Only one – a girl – said her parents objected, and was not filmed. The BBC said that after Mrs D complained, the mosque chairman explained that because her two boys were not regular attendees he had not spoken to Mr and Mrs D about the planned filming, and had apologised for the oversight. Mrs D said her sons had been going to the youth club since 2014 and had only been absent when they were unwell or when it was closed. She said they were not old enough to fully understand the impact the filming would have on them, pointing out that the mosque had been attacked recently after terrorism in Paris. She said that the mosque chairman did not know her or her husband personally, and therefore was not the right person to speak on her behalf. She said it was unacceptable for the BBC not to have sought consent directly from parents, by using an interpreter if necessary. Ofcom said her sons had not been filmed doing anything of a particularly private or sensitive nature, but because they were under 16 they had 'a higher expectation of privacy', particularly because the environment in which the filming took place was 'potentially sensitive' because the mosque and its congregation had been the focus of increasing hate attacks. Ofcom also said the children's attendance formed part of 'private recreational time.' It ruled that the matter being investigated by the programme was not trivial or uncontroversial but serious – the increase of verbal and physical attacks on UK Muslims – and therefore Mrs D's individual consent to her sons being filmed was necessary. It was not sufficient, Ofcom said, for the BBC to have relied on the mosque chairman to have given consent for any of the children to be filmed in these circumstances (*Ofcom Broadcast Bulletin*, No. 303, 25 April 2016).

Case study: In 2018 Ipso ruled that the Editors' Code had been breached by *The Daily Telegraph's* publication of a photo of a child in a report of how a British woman had been shot when her family attacked by 'bandits' when on holiday in Brazil. The report included a photo from the woman's Facebook page which showed her, her husband and one of their children. The woman later complained that this had been a private photo, and that the newspaper had not pixelated the child's face when using the photo in the report. She said that her child had been disturbed by the publication of the photo and by the fact that friends at school had sent her messages about what had happened to her, because of the report. Ipso said the coverage was on a subject which involved the welfare of the woman's children: they had been involved in a shooting while on holiday with their family, and they had witnessed their mother being shot and seriously injured. Ipso ruled that publishing the unedited image of the child in the context of this story, without the consent of a parent or a similarly responsible adult, breached clause 6 (iii). It said there was no specific public interest in publishing this image, particularly as in the Code an exceptional public interest justification was required in the case

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of a child. But Ipso said that while it understood that the child had been upset by the coverage, the fact that the mother had three children who were involved in the Brazil incident was relevant information about it. The coverage had given the children's ages, but not named them. The fact that the children's friends were informed of what had happened in Brazil to the family did not represent an intrusion into the children's time at school, so there was no breach of clause 6 (i). Ipso also ruled that images taken from the woman's social media account were publicly available there, and did not show her in any private activity, and so their publication by the newspaper had not breached of the code's clause 2 (*Dixon v The Daily Telegraph*, 29 March 2018).

See too, below, **4.9 Prohibitions into intrusion into grief and shock, 4.15 Relatives and friends of those accused or convicted of crime,** and **4.17 Material from social media sites** for other adjudications concerning clause 6.

Case study: In 2008 Ofcom rejected complaints by several parents whose children were filmed by the BBC during an undercover investigation into standards at a nursery as part of an inquiry into how nurseries were regulated. These parents complained that their children's privacy was infringed by the filming and by what was broadcast in the programme *Whistleblower: Childcare*, in which the children's faces were blurred. The BBC said its decision to film undercover had been taken only after serious consideration of pre-existing evidence of poor practices at the nursery. This evidence came from a senior member of staff who had worked there for around a year, and who had told the BBC that some of the nursery's staff were paid below the minimum wage, there had been a time when a shortage of staff had impacted on the care of the babies, and that the toddlers' area of the nursery was dirty. The BBC said that based on this evidence it was decided that a reporter would, undercover, get a job at the nursery, but that she would not initially secretly film. The BBC said that the permission to film secretly was granted only after further consideration of the reporter's own discoveries; on her first day the nursery had not checked whether she had a criminal record and had left her unsupervised in sole charge of five children. This, the BBC said, completely contravened the Ofsted regulations which have the force of the law. The BBC also said that no one had checked the reporter's references. The programme showed the nursery had broken glass in the garden and power tools were left unattended near children, and the reporter raised concern about children being allowed to play with metal garden tools and long sticks. Ofcom said that it was satisfied that there had, before the BBC's decision to film covertly at the nursery, been *prima facie* evidence of a story in the public interest and that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered on the reporter's first day of employment. Also, Ofcom said, the surreptitious nature of the investigation was essential for its authenticity and credibility. Therefore the BBC had complied with what practice 8.13 of the Ofcom Broadcasting Code says about the justifications for covert filming – for that part the Code, see 3.4.16 in *McNae's*. Ofcom said that the surreptitious filming of the children without parents' consent was an infringement of the children's privacy, but was warranted by the strong public interest served by the investigation into the care of very young children. Ofcom said there was a difference between the 'public face' of the nursery and the actual care it provided. As regards what was broadcast,

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Ofcom said that only people who knew the children very well and were already aware that they attended the nursery would have been able to identify the children, because their faces had been heavily blurred. Ofcom considered that for the small group of those who were capable of identifying the children, the footage would not have revealed information that was of a private or sensitive nature. Therefore, the broadcast of the programme did not infringe the privacy of the children (*Complaint by Ms M on behalf of her child (a minor); Complaint by Ms A on behalf of her son (a minor); Complaint by Ms B on behalf of her son (a minor); Complaint by Ms C on behalf of her son (a minor);* Ofcom Broadcast Bulletin, No, 116, 1 September 2008)

Scope of the term 'interview'

Case study: In a ruling in 2016, Ipso made clear that the term 'interview' in clause 6 (iii) of the Editors' Code is 'broader than circumstances where a journalist directly solicits comment or information from a child', and 'might cover the republication of material solicited by third parties', or cases in which a child had posted comments online. Ipso made these points after a man complained that a *Leicester Mercury* article had quoted comments made online by his 15-year-old daughter about her school's policy on uniforms. Under clause 6 (iii), parental consent is normally needed for a journalist to 'interview' a child under 16 about a matter concerning the child's welfare. The *Mercury's* online article he complained of concerned controversy caused by the school's policy on what type of shoes its pupils were permitted to wear. The article named the man's stepdaughter, who was 15, as having posted the quoted comments on an online petition opposing the policy. The man said that he did not expect the *Mercury* to simply republish her comments without parental consent. Ipso did not uphold his complaint. It said that her comments were 'innocuous in nature', and were not about her or any other child, but were about the school's uniform policy, which Ipso said was not a matter that concerned her welfare. Ipso said she had not experienced unnecessary intrusion into her time at school as a direct result of having her comments included in the article, and there was no breach of clause 6. The newspaper's disclosure that she had posted the comments did not reveal any intrinsically private information about her, so there had been no intrusion into her private life, Ipso said (*Lightfoot v Leicester Mercury*, 2 December 2015).

Children's medical conditions

Case studies: In 2017 Ipso ruled that clauses 2 and 6 of the Editors Code were breached by a *South Wales Evening Post* report which included a reference to a medical condition suffered by a teenage boy. It gave an account by a lifeboat crew member of how the boy had been involved in an incident when a life-ring had been taken away from a lifeboat station. This meant the life-ring was not available for rescues, until a member of the public returned it. The crew member said he had later been made aware by the parent of the boy responsible that the boy a medical condition, which was named in the *Post's* report. It related how after the incident the boy and his family had been invited to the lifeboat station to learn about its work. The report was illustrated with a still taken from CCTV footage of the boy with the life-ring, with his face obscured. The boy's father complained that the report had intruded into his

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son's privacy. He said his son was well known in the local community and his distinctive physical appearance and clothing meant he could be easily identified from the image, despite the pixilation of his face. The father said he had provided information about his son's medical condition in strictest confidence to the lifeboat volunteer, and that the newspaper's report, and specifically the reference to the condition, had had a detrimental effect on his son's health. Ipso noted the *Post's* position that it could not have known that the image included features specific to the boy which meant that he could be identified. But Ipso said that the *Post* should have considered carefully whether there was sufficient justification under the Code to include details about the boy's medical condition in the event that he was identifiable from the information published. Ipso said the boy had a reasonable expectation of privacy regarding his medical information, which was sensitive in nature, and this expectation was heightened due to his age. In publishing this information, without consent, the newspaper had intruded into the child's private life and into his time at school. Ipso acknowledged that there was a public interest in reporting the serious dangers posed by the removal of life saving equipment, such as the life-ring, from the life boat station. But Ipso said this public interest did not outweigh the boy's reasonable expectation that details of his medical condition, which is a particularly private class of information, would not be published without consent (*A man v South Wales Evening Post*, 17 October 2017).

Case study: In 2012 the PCC ruled that a newspaper which published the fact that a child had ME (myalgic encephalomyelitis) had breached clauses 2 and 6 of the Editors' Code. Her parents complained that they had not been asked to consent to her illness being mentioned. They said that publication of the article had caused their daughter great distress as the family had tried to avoid labelling her as having ME, and so told people of her condition only when necessary. The article was published after a photographer spoke to a 13-year old girl was selling cakes at a farmers' market. She was doing this to raise funds for ME Research UK because her friend, who was with her, had the condition. The 13-year-old had said her friend had ME, and the photographer took a picture of them for the article, which was about the fund-raising. The newspaper said it had intended to support the fund-raising, and it apologised for the distress caused (*A married couple v Camberley News and Mail*, 13 July 2012).

If payment made to parents

Case study: Clause 6 (iv) of the Editors' Code warns that parents or guardians should not be paid for material about their children or wards, unless it is clearly in the child's interest. In 2014 *The Sun* published a front page article and photos about what was described as a 'devil mark' which had appeared on a four-year-old boy's torso. His parents had approached the newspaper through an agency, and had been paid by *The Sun* for the story. Dr Sarah Wollaston MP complained to Ipso about the possible impact on the boy of such a story, and that it might encourage others to come forward with similar stories. She did not believe that the story was in the boy's best interests and felt that *The Sun* should have been more careful in its presentation of the story, in particular the references to the devil and the occult in relation to the clearly identified boy. As a consequence of her complaint, *The Sun* met her and

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the Children's Commissioner for England. It accepted there were legitimate concerns about the tone and prominence of the story, which it said had been intended to be light-hearted and fanciful but which had 'clearly been received by many in a different spirit'. It said it was grateful for the manner in which Dr Wollaston and the Children's Commissioner had raised the relevant issues, and for the opportunity for it to learn valuable lessons for the future. Consequently, a statement published on page 2 of *The Sun* said of the story 'we didn't get it right'. It said that, as a result, it had tightened internal procedures on all stories involving children, including the issue of paying parents (*Ipso press release*, 20 October 2014).

4.13.1 Children in crowds and at public occasions

Case study: In 2016 Ipso considered a complaint that the *Daily Mail*'s publication of photos of Sophie Murray, the four-month-old daughter of tennis player Andy Murray, breached clauses 2 and 6 (iii) and 6 (v) of the Editors' Code. The photos showed Sophie in a pram being pushed by her mother Kim Murray arriving at the gate at the All England Club, Wimbledon, used by the media, players and officials. Kim was taking Sophie to the tournament's crèche during The Championships tournament. One of the photos was cropped to show only Sophie lying in the pram, and her forehead, nose and one eye were visible. Ipso said that because this was a major sporting event there would inevitably be a large number of photographers at the gate, which was a public location, and it appeared photographers were allowed to stand in a position looking over it. Kim had been photographed entering the gate in previous years. That morning the *Daily Mail*'s photographer had taken photos of other people entering the gate and there was no suggestion that the photographer had been there to target Sophie. Ipso did not consider that Sophie was recognisable from either photo published, and said that although the photos showed family activity related to her care, that activity was relatively unremarkable. Taking these factors into account, Ipso ruled that Sophie did not have a reasonable expectation of privacy, and that neither the taking or publication of the photos had breached clauses 2 or 6 (*Representatives of Sophie Murray v Daily Mail*, 28 October 2016).

Case study: In 2016 a mother complained to Ipso that the *Sunday Mirror* had breached clauses 2 and 6 of the Editors' Code because her son's face and those of other children were shown in a photo of part of the crowd at a Manchester City football game. The photo illustrated a report of how Burnley fans had singled out City player Raheem Sterling for criticism. It showed some fans - adults and children - making offensive hand gestures in the footballer's direction. The mother said that that the newspaper did not know anything about her son – a child who was not making gestures. She said her son could have been adopted, or under child protection, and in such circumstances, the photograph should not have been published. She also said that because of the behaviour of the other children, their faces should have been pixelated. She said that she and her son were upset by people's remarks about the photo after it was published on a number of internet forums. The *Sunday Mirror* said that the photograph did not single out her son as being involved in bad behaviour, and that it would be disproportionate to pick out individual members of a crowd to pixelate where others had been involved in 'disrespectful' behaviour. Ipso said the son not named in the report, It said that although the mother did not provide her express consent to her son being photographed,

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he was present at a high-profile sporting event where he would have been seen by a large number of people, and in circumstances where she would have been aware of the possibility that her son might be photographed by press photographers, or appear on television. In these circumstances, her son had no reasonable expectation of privacy, so there was no breach of clause 2. Ipso said her son's inclusion in the photo was incidental. In such circumstances, it did not consider that the photo involved an issue involving his welfare. Ipso noted the mother's position that the comments made on internet forums following republication of the photo caused an intrusion into her son's life, but Ipso did not consider that the publication of the photo by the newspaper caused any intrusion such as to breach clause 6 (*Lloyd v Sunday Mirror*, 31 March 2017).

Case study: In 2006 the Press Complaints Commission ruled that a photo published by *Zoo* magazine of a father and his 10-year-old daughter among a football crowd at Old Trafford stadium did not breach clause 6 of the Editors' Code, even though her welfare was engaged because of what the photo showed. This was the father and the girl making offensive gestures, described as terrace bigotry, following Chelsea's defeat to Liverpool in the FA Cup. The father complained that his daughter had been ridiculed by the magazine and that her face had not been pixelated, despite other newspapers doing so, in breach of clause 6. The PCC said: 'What marked this photograph as different from a more innocuous face-in-the-crowd picture were the girl's anti-social gesture and her proximity to her father, who was simultaneously giving a Nazi salute for which it was said he had later been arrested.' The PCC said it acknowledged the argument that, as the photo revealed something about the manner in which the girl was being brought up, for which she was not herself responsible, her welfare was indeed involved. But, the PCC said, this was a significant sporting occasion, where he and his daughter would have been seen by a large number of people, and where he must have been aware of the possibility of being photographed by press photographers or even appearing on television. In these circumstances, it was hardly unreasonable for some in the media to assume that he was unconcerned about publication of pictures of him and his daughter using such gestures, and that consent had therefore been implied. If the opposite was true, there was nothing to stop him restraining his behaviour and that of his daughter. On balance, therefore, the PCC considered that there was no breach of the Code in the taking of the photograph or in publishing it, even if the subject matter of the photograph could be considered to concern the girl's welfare (Q*uigley v Zoo,* 23 June 2006).

For other Ipso adjudications which concerned clause 6, see 4.15 and 4.17, below. See too the case study on the Additional Material for ch. 5 on www.mcnaes.com about a teenager whose image from CCTV footage was published, at the request of police, after crowd disorder at a football match.

4.15 Relatives and friends of those accused or convicted of crime

The Editors' Code says in clause 9:
(i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.
(ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.'

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Clause 9 can be breached in coverage of crime before any court proceedings, or in coverage of those proceedings, or in any other type of article.

Not 'genuinely relevant'

Case study: Ipso ruled in 2018 that *Mail Online* had breached clause 9 in an article identifying a 'mystery man' who, it said, had been photographed with a famous heiress. The article speculated that the pair may be in a relationship. It included four pictures of the pair walking together on the street and stated that his family had a 'colourful past'; that his father had been jailed for fraud; and that his brother-in-law was an international drug smuggler. The article detailed the circumstances of the two men's convictions and their sentences. The article speculated that the heiress's family may be concerned that her alleged new boyfriend had those two family members with criminal convictions. It also named the man's mother and sister and included details of the businesses they had run. The man complained about this article to Ipso on his own behalf and for his mother and sister. Ipso said there could be circumstances where, in giving an account of an individual's background, there will be a justification for referring to family members' criminal convictions, because they have a specific relevance. However, Ipso said that clause 9 'sets a high bar', and this relevance needs to go further than the mere fact of a relationship. Ipso pointed out that *Mail Online* had not argued that the criminal convictions had any specific relevance to the article in question, or to the man, his mother and sister. Ipso said there was no suggestion that any of these individuals were relevant or connected to the crimes reported in the article, and therefore identifying these individuals in this context was in breach of clause 9 (*A man v Mail Online*, 23 April 2018).

Case study: In 2017 Ipso ruled that the *Jewish Chronicle* had breached clause 9 in a report that a man had been convicted of fraud. The newspaper reported that the court had heard that the defendant's friends and family had compensated the victim. The article then identified the defendant's brother and parents, and reported biographical details about each. The brother complained to Ipso that neither he nor his parents were relevant to the story of the man's conviction, and that they should not have been identified in the report. He said that while the court heard that the defendant's family and friends had compensated the fraud victim, no further detail about who had done this given to the court. The brother said that he was not one of the individuals who had helped compensate the victim. He could not confirm whether his mother and father had done so, but said that this was not relevant, as they had not been referred to in court. Ipso said that the defendant's family and friends had been referred to by the judge in the court proceedings as having helped compensate his victim. However, it did not appear that during the proceedings, anybody had referred either to any individual friend or family member, or specified their relationship with the defendant. Ipso decided that 'the limited nature of the reference' in court to the defendant's family, 'which could apply to a broad class of individuals', did not mean the defendant's brother and parents were 'genuinely relevant' to the story. It said the newspaper was unable to demonstrate that the brother and parents were genuinely relevant to the story, or that that there was a sufficient public interest

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to justify their identification regardless. Ipso added that the reference to the brother and parents in the article associated them with a criminal act for which they were not responsible, without an adequate justification. The complaint was therefore upheld (*A man v Jewish Chronicle*, 7 July 2017).

Case study: In 2017 *Kent Online* accepted that it had breached clause 9 in a report of a court case referred to the father of a defendant. In the case the defendant had admitted killing a 10-year-old child and his aunt in a car accident while being chased by police. The report included detail of the value of the defendant's father's house and of the companies the father owned, as well as reporting that were three cars in the driveway of the father's house. It also reported the father had not seen his son for 16 years. The father complained that linking him to his son in the context of this court case breached clause 9 as he was not genuinely relevant to the story. After Ipso began an investigation, *Kent Online* took full responsibility for publishing the story, and said that this was not done with the required care and attention. *Kent Online* agreed to remove all mention of the father from the report and apologised to him. Therefore Ipso itself did not make a determination as to whether there had been any breach of the Code (*A man v Kent Online*, 22 March 2017).

Case study: In 2014 the Press Complaints Commission upheld a complaint that *Best* magazine breached clause 9 by identifying a defendant's estranged wife in a report of his convictions on eight charges of inciting children to engage in sexual activity and two charges of making indecent images of children. *Best's* report named his wife and gave details of her profession and education, despite her not being mentioned in court. In her complaint to the PCC she accepted that the fact of their marriage was of potential relevance, particularly as the material had been found at the marital home, but said that this could have been reported without identifying her. She had played no part in the case's proceedings. She pointed out that - contrary to the report's implication – she had been separated from him for over a year. *Best* accepted that her identification was not justified. But it said she had been publicly identified in other media coverage, it had not known that she objected to being identified, and that no court order preventing her identification had been imposed. But the PCC said that her identification in the reports had been a clear breach of clause 9, which could have been avoided had *Best* taken active steps to ascertain whether she had consented to her identification in this context. The PCC said that it is the responsibility of each editor to ensure that material complies with the Code, before publication. 'It is not acceptable to proceed on the basis that appropriate care will have been exercised by other publications.' It said too that the Code's clause 1 (requirement to take care to avoid inaccuracy) was also breached, because *Best* had not provided evidence to suggest that it had made inquiries before publication on whether the wife had separated from her husband (*A woman v Best*, 11 September 2014).

Case study: The *Daily Record* accepted that it breached clause 9 when its report of a shooting at a man's home included the name of his young child, who saw the incident (*A man v Daily Record*, 4 April 2011).

'Genuinely relevant' if named in court proceedings

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Ipso adjudications show that if a person is named in court proceedings, and if the court has not made any order to give them anonymity, Ipso is likely to rule they are 'genuinely relevant' to the court case, even if the person is a child.

Case study: In 2017 Ipso ruled that *Wales Online* had not breached clause 9 in a report of a court case in which a businessman and his father admitted fraud and were jailed. The report said that the pair's business funded a 'lavish lifestyle', including a large house that the businessman shared with his wife and two children, who were named in the report. The father of the businessman's wife complained to Ipso that his daughter and grandchildren were not 'genuinely relevant' to the story. He also said that clause 6 of the Code had been breached by the naming of his grandchildren. He said this represented an unnecessary intrusion into their time at school, and that their names had only been published in the article because of the notoriety of their father. *Wales Online* said that the names of the complainant's daughter and grandchildren were mentioned in open court by the businessman's barrister as part of his mitigation and so they were 'genuinely relevant'. It said that as there were no reporting restrictions in place, it was entitled to report this information. However, as a gesture of goodwill, after the complaint it removed the names of the children from the article. Ipso agreed that because the names of the daughter and grandchildren were disclosed in open court in the businessman's mitigation, they were 'genuinely relevant' to the reporting of these particular proceedings. It said that publications are, in the absence of reporting restrictions, entitled to include information revealed in open court in reports of proceedings. So clause 9 was not breached. Ipso said too that in circumstances where the children's names were revealed in open court as part of their father's mitigation, the publication of their names did not represent an unnecessary intrusion into their time at school, nor was the sole reason for the publication of their names the notoriety of their father. Therefore, there was no breach of clause 6. However, Ipso added that editors are able to exercise their discretion to omit details from articles in such circumstances, and it 'welcomed' *Wales Online*'s action in deleting the names of the children from the article (*A man v Wales Online*, 24 January 2017).

Case study: In 2015 Ipso rejected a complaint made against the *Grimsby Telegraph* by the grandmother of a baby whose father had been jailed for 12 years for inflicting grievous bodily harm on him. The attack left the baby severely disabled and dependent on 24-hour care. The baby's mother, the complainant's daughter, was given an 18-month suspended prison sentence for cruelty to him for failing to protect him from his father. The grandmother, now the baby's legal guardian, said that the *Telegraph's* coverage of the Crown court case should not have included the baby's surname and details of his condition. She complained that this had breached clauses 2, 6 and 9 of the Editors' Code. She said that it was insensitive of the newspaper to detail her grandson's injuries and the struggles he may face in future. The article failed too to respect his right to privacy and medical confidentiality, she said. She also complained that - as her grandson attended nurseries, play groups and specialist sessions - the *Telegraph*'s report of the court case had drawn unwanted and unnecessary attention to him, his disabilities, and the cause of his injuries. The *Telegraph* said that the judge had asked the barristers if they objected to there being no reporting restriction concerning the child, and no

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objection was raised. The judge had acted in line with his clear policy to allow the newspaper to name very young victims in cases where their age meant that they could not be adversely affected by newspaper reports. The *Telegraph* added that it believed that a further factor taken into account was that the nature of the child's injuries meant that he would not be inconvenienced or embarrassed by publicity. Ipso said that clause 9 had not been breached because the child was genuinely relevant to the coverage, and the judge had not imposed any reporting restrictions. Ipso said that while it understood the grandmother's position that the newspaper could have chosen not to identify the child by name, he was clearly identifiable through his relationship to his parents who were identified legitimately as the defendants in the case. Ipso expressed sympathy for the grandmother, and said it understood her concern to protect both of her grandchildren from unwanted attention. But, Ipso said, there is a strong public interest in open justice and, furthermore, while reports on court cases involving child cruelty may be extremely distressing for family members and others to read, newspapers play an important role in informing the public about the nature of such offences, the identity of those responsible and the consequences of their actions. Ipso ruled too that clauses 2 and 6 of the Code had not been breached, saying that the information reported by the *Telegraph* had been aired in open court, and it was in the public interest to detail the baby's injuries in order to inform the public about the impact that 'shaking' a baby can have on a child (*Mooney v Grimsby Telegraph*, 26 October 2015)

Circumstances made high-profile relative 'genuinely relevant'

Case study: In 2009 the Press Complaints Commission rejected a complaint by England and Chelsea footballer John Terry that *The Sun* breached clause 9 by naming him in an article about his mother Sue Terry being arrested for shoplifting, for which she received a police caution. Terry's solicitors said that *The Sun's* coverage was almost entirely focused on him, although he was not involved in the incidents. *The Sun* said his mother and mother-in-law, Sue Poole, were cautioned for shoplifting from Tesco, a corporate sponsor of the England team, and from Marks and Spencer, supplier of suits to the England football team. *The Sun* said this made the crime relevant to his high-profile position as England captain, and in the public interest. It added that both women lived in properties he had bought for them. The PCC said Terry's relationship to both his mother and Mrs Poole was already in the public domain, not least as part of the high profile coverage of his wedding. The PCC said too that Terry could legitimately be made the focus of *The Sun's* coverage of the shoplifting incidents because he was one of the highest-earning footballers in the world who, it was said, provided for his family financially. The PCC added: 'The fact that – despite such wealth – his mother and mother-in-law had been involved in claims of shoplifting was clearly relevant to the matter' (*John Terry v The Sun*, 30 April, 2009).

'Genuinely relevant' if supporting defendant at court

If an adult friend or partner of a defendant goes to court, in a show of support for the defendant, and there is a complaint that the reporting of the case should not have identified the friend or partner as showing that support, Ipso is likely to rule they are 'genuinely relevant' to the case and

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therefore that clause 9 was not breached, provided there was no other focus on them in the reporting.

Case study: A man complained in 2016 to Ipso that the *Daily Record* had breached clause 9 by reporting that - after he was released without charge from a courthouse - he was met outside it by his 'new girlfriend'. She was named in the *Record's* report. It described the man (accurately) as a 'convicted wifebeater', said he had been detained over the weekend in custody over 'comments he allegedly made on Facebook', and stated that he had allegedly sent his ex-wife 'threatening social media messages'. Ipso said that the girlfriend had appeared with him in a public forum, namely the court where the hearing was to be held. Ipso noted that she had entered the court building, had asked where the case was to be heard, and had waited in the public gallery for the hearing to take place; only upon discovering that the man was to be released without charge did she leave. Ipso said her decision to publicly meet with and accompany him at court – in an apparent act of support – made her genuinely relevant to the story. Therefore Ipso ruled that in these circumstances, and in the context of an article that reported that the man's hearing had been cancelled and that he had been released without charge, naming her – and identifying her as his 'new girlfriend' without otherwise focusing on her – did not breach clause 9 (*Mitchell v Daily Record*, 6 October 2016).

Incidental inclusion in photo did not breach clause 9

Case study: In 2015 Ipso rejected a complaint made against *Mail Online* by a woman who was a friend of a man who was on trial for burglary and attempted burglary. She had arrived at court with him to give him 'family support', although she said that she had not attended the hearing. She complained that a photograph of her standing behind him had been included in *Mail Online's* report of the case. *Mail Online* said that she had accompanied her friend to court, and her presence on the day made her genuinely relevant to the story. Its report did not name her, nor was she referred to in the text. Ipso said that the press is generally entitled to photograph those involved in court cases arriving and leaving the court buildings, subject to any other legal restrictions. The inclusion of the woman in the photo was incidental and did not suggest the nature of the relationship between her and the man, Ipso said, adding that she was not referred to in the text of the article, nor was the relationship between her and the man specified. Ipso ruled that she had not been identified as a friend or relative of the accused man, and that the terms of clause 9 were not engaged. Nonetheless, Ipso welcomed the *Mail Online's* prompt response to her complaint, before she contacted Ipso, which was to crop her out of the photo (*A woman v Mail Online*, 24 September 2015).

The Press Complaints Commission issued guidance which warned in particular that the press should not identify the relatives of those accused of sexual offences, unless there is a public interest in doing so. This guidance remains endorsed by the Editors' Codebook. See Useful Websites, below, for the Codebook and the PCC guidance. As PCC and Ipso adjudications make clear, there is public interest in reporting what is said in open court, if this does not breach any reporting restrictions in law.

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4.17 Material from social media sites

Case study: In 2017 Sarah Bryan complained to Ipso that the *Mail Online* published in an article a photo of her in a Halloween costume. Ipso did not uphold her complaint that this had breached clause 2 of the Editors' Code, which protects privacy. Ipso ruled she did not have a reasonable expectation of privacy in respect of the photo because she had chosen to wear the costume, because the photo was not private information about her and particularly because she had, before the article was published, herself placed the photo in the public domain by posting it on her publicly available Twitter account, which had approximately 36,000 followers (*Bryan v Mail Online*, 5 October 2017).

Case study: In 2017 Ipso ruled that *metro.co.uk's* publication of a comment made by a woman in a Facebook post had not breached clause 2 of the Editors' Code. In the post the woman gave a name for a man who had been shown in someone else's photo, reproduced by the media in news coverage, as holding a pint of beer when running away to safety with other members of the public from London Bridge after the terrorist attack there in June 2017. The man she named was her brother. Her post included the comment: 'That's what happens when you're a Scouser paying London pint prices.' The woman said her Facebook account had privacy settings, and she had not shared her comments publicly. But her Facebook privacy settings had meant that her post would have been visible to many of her Facebook friends, as well to the friends of some of them. She accepted that it was possible that up to 1,358 people may have been able to view the post. Ipso said it recognised the importance of reporting a sensitive manner on the immediate aftermath of a terror attack. But it said the fact that the woman's brother was, or appeared to be, the person in the photo was not private information about her, and the information that *metro.co.uk* published about her was limited to the nature of her comments and the fact of her identification of him. The article had not identified her as the author of the comments, nor had the article identified the relationship between her and her brother. It noted that her Facebook setting had made the post visible to many of her Facebook friends, as well as, potentially, the friends of seven people she had 'tagged' in her post, one of whom had been a journalist for another publication, who had first brought her post to public attention. Ipso said that, taking into account the nature of the information and the manner in which it had been previously circulated, she did not have a reasonable expectation of privacy in relation to the post (*Armstrong v metro.co.uk*, 1 September 2017)

Case study: In 2017 Ipso ruled that the *Bootle Champion's* publication of details taken from Paul Moran's Facebook page after his family suffered an arson attack had not breached the Editors' Code. The article said Mr Moran and his family had been forced to leave their home after two men set fire to it in a case of 'mistaken identity'. The article reported his appeal for information from the public about the attack, which he had made on Facebook. Mr Moran complained that the article had included his name, those of his partner and his young daughter, and his daughter's age, a picture of their home and its partial address. He said this represented an intrusion into their private life and as they were victims of crime, their safety had been put at risk. He said this breached the code's clause 2. He also said the inclusion of

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these details infringed on his daughter's privacy and affected her safety in breach of clause 6. He also expressed concern that the newspaper had handled the details of the arson attack insensitively by including information about him and his family and that this had added to their distress, in breach of clause 4. The *Champion* said it knew about the attack because Merseyside police had made a public statement that appealed for information on this serious crime. It had published the article to help Mr Moran with his appeal for information and to generate financial support for the family via a Just Giving appeal which had been set up for this. Ipso noted that when the article was published such personal details about the family were already in the public domain because they had been in a Facebook post which Mr Moran had made public and which had gone 'viral', being 'shared' thousands of times. It ruled that clause 2 had not been breached. It said Mr Moran's Facebook post contained a photo caption which included his daughter's name. Ipso noted that the *Champion* had not published any information about his daughter apart from her first name and the fact she was his daughter. Ipso said this did not represent a failure to respect her private life, or an unnecessary intrusion into her time at school, so there was no breach of clause 6. Ipso said that given the serious nature of this crime, and the public appeal for information by the police and by the *Champion,* and that Mr Moran had made a public comment via Facebook, the *Champion's* publication of the names of Mr Moran and his family did not represent a failure to handle publication sensitively, so clause 4 was no breached. Ipso added that the *Champion* was also not obliged to obtain Mr Moran's consent for publication of such detail (*Moran v Bootle Champion*, 26 June 2017)

Case study: In 2016 Ipso ruled that *The Sun* had not breached clause 2 of the Editors' Code of Practice by publishing photographs and comments taken from a grieving father's Facebook page about his son's death. *The Sun's* article reported, based on the findings of an inquest, that John McHale's 19-year-old son had taken his own life, having fallen from a bridge over the M1'after discovering his ex-girlfriend had met someone else'. The report also, based on the inquest's findings, said his body had been repeatedly struck by vehicles when motorists failed to stop. The report included that Mr McHale was 'disgusted' by the motorists, and had posted the words 'What scum'. Ipso said that Mr McHale had publicly disclosed on Facebook 'publicly viewable posts' and pictures of his family, and that in such circumstances *The Sun's* re-republishing of them did not represent an unjustified intrusion into his private life (*McHale v The Sun*, 14 October 2016).

Case study: In 2015 Ipso did not uphold a complaint made by the sister of a man who had been seriously injured in a stabbing. She objected to the *Airdrie and Coatbridge Advertiser's* coverage of the incident using a photo of him without the family's permission. But Ipso said that because the newspaper had obtained it from a Facebook profile where it had been publicly available, and because it showed only his face, disclosing nothing private about him, the newspaper had not breached what is now clause 2 of the Editors' Code, which protects privacy. The newspaper provided screenshots to Ipso to show the photo had been publicly accessible (*Cross v Airdrie and Coatbridge Advertiser,* 9 April 2015)

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Case study: The Press Complaints Commission ruled in 2012 that a newspaper had not breached an assault victim's privacy when it published a photo of his injured face, taken from his Facebook page, and identified him. The man did not consent to the *Farnham Herald* using the photo and police did not identify him to the paper. But the PCC noted that he himself posted the photo onto Facebook and had referred there to an attack, and that there were no privacy settings. The PCC said the *Herald* used the photo in straightforward report, substantially corroborated by the police, of an incident which was a matter of legitimate local concern (*A man v Farnham Herald*, 27 November 2012).

Case study: In 2009 the PCC rejected a complaint made on behalf of a police officer that his privacy was breached when a newspaper published an apparently flippant message he posted on Facebook about the death of a member of the public, Ian Tomlinson, during the G20 protest in London. The PCC said that in the message a serving police officer commented on a matter that was the subject of considerable media and public scrutiny. He had done so in a way that made light of a person's death and the role apparently played by the police. There was a clear public interest in knowing about police attitudes (whether publicly or privately expressed) towards the incident. In any case, posting such controversial comments to people who were not obliged to keep the information secret was likely to involve an element of risk on the officer's part, given his job, the PCC added. The PCC said it considered that any intrusion into privacy was justified by the public interest, and there was therefore no breach of (what is now) clause 2 of the Code (*Phyllis Goble v The People*, September 29, 2009).

Case study: In 2011 the PCC ruled that a newspaper which published remarks a civil servant 'tweeted' about her job in her Twitter account, which had 700 followers, did not breach her privacy because this was publicly-accessible information and not of an intimate nature (*Sarah Baskerville v Independent on Sunday*, 2 February 2011).

Photographs and tributes taken from the internet after people have died

Case study: In 2015 Ipso did not uphold a complaint made by the fiancé of a man who died while on a friend's stag weekend in Budapest. She complained that tribute messages posted on his open Facebook profile and a photo of him taken from it had been used by the *Dorset Echo* in a report of his death. Ipso said that the material could be viewed by members of the public on the Facebook profile. Ipso ruled that the material had been in the public domain and the *Echo's* inclusion of it in the coverage did not represent a breach of clause 2 of the Editors' Code (*Hodder v Dorset Echo*, 16 April 2015). See too in 4.9 **Prohibitions on intrusion into grief shock**, above, the case study on Ipso's ruling in *McGurk v Daily Record*, which concerned in part a newspaper's publication of a photo of a child who had died, taken from his mother's Facebook account.

Case study: In 2005 the Press Complaints Commission ruled that publication of an 'innocuous photo' – obtained from a publicly-accessible website - showing in earlier circumstances someone who had died in the 2004 tsunami disaster was not insensitive in coverage of that disaster, and so did not breach (what is now) clause 4 of the Editors' Code. The PCC said that

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where a picture is concerned, it might rule that publication would be insensitive to the relatives if the dead person was shown 'as engaged in an obviously private, or perhaps embarrassing, activity', but that had not been the case in this instance (*The family of Alice Claypoole v Daily Mirror*: Report 71, 2005).

Useful websites

http://www.editorscode.org.uk/
Editors' Codebook

http://www.editorscode.org.uk/guidance_notes_10.php
Press Complaints Commission guidance on the reporting of cases involving paedophiles

http://www.editorscode.org.uk/guidance_notes_6.php
Press Complaints Commission guidance on the reporting of people accused of crime

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