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## EXTRAORDINARY

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### ST HELENA MEDIA COMMISSION

NOTICE UNDER SECTION 6(1) AND (2) OF THE MEDIA STANDARDS ORDINANCE, 2011

The St Helena Media Commission is considering issuing a new Code of Practice for media services. A draft of the Code is hereby gazetted.

Any comments or objections can be made to the Clerk of the Commission, Miss Yvonne Williams at Judicial Services, The Court House, Jamestown or by email at [yvonne.williams@judicialservices.sh](mailto:yvonne.williams@judicialservices.sh).

Comments or objections must be received on or before 29<sup>th</sup> May 2023.

Duncan Cooke  
Chairman, St Helena Media Commission

## **Media Standards Code of Practice 2023**

### **Preamble**

In 2014 the first Code of Practice was issued to the media by the St Helena Media Commission. This new Code replaces the 2014 Code and has effect from..... The regulatory objectives of the Media Commission are:

- (a) protection of vulnerable persons (including, without limiting that objective, children and young persons);
- (b) protection of the public from the inclusion in media services of defamatory, discriminatory, offensive or harmful material;
- (c) ensuring accuracy and impartiality in the delivery of factual material, and clear differentiation between material delivered as fact and that delivered as opinion or commentary;
- (d) preventing the inclusion of advertising which is misleading, harmful or offensive;
- (e) preventing the use of techniques which exploit the possibility of conveying a message to the public, or of otherwise influencing members of the public, without their being aware, or fully aware, of what has occurred;
- (f) ensuring compliance with any international obligations of St Helena relating to media services;
- (g) protection of public safety, public health, public order and public morality.

The Commission must have regard to the constitutional rights to freedom of opinion and of expression, but must ensure by the Code and the way it is administered that due regard is also had to:

- (i) the protection of the reputation, rights and freedoms of other persons, and the private lives of persons concerned in legal proceedings or proceedings before any other tribunal or authority;
- (ii) preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, and regulating telephony, posts, telegraphy, electronic communications, broadcasting and public shows in accordance with the rights to freedom of conscience, privacy, and freedom from discrimination.

This new Code consists of 10 individual Codes of Practice along with a guidance booklet to assist media services and those who are concerned about the conduct of a media service, or anything published or broadcast by a media service. In this way assistance is provided as to how the 10 Codes should be interpreted and how they will be applied. The guidance booklet will be a 'living document' that can be amended but it is intended that the 10 core Codes of Practice will provide a framework for future regulation of the media

The Codes themselves do not mirror the regulatory objectives in the way they are presented in the legislation as many of the regulatory objectives overlap with one another. For example accuracy, and avoiding misleading advertising are contained in (c) and (d) of the regulatory objectives but both require there to be accuracy. Those regulatory objectives are therefore all primarily to be found in Code 1 which relates to accuracy and impartiality.

Importantly the Codes now specify which of them may be breached in the public interest and which may not. Codes to which the public interest test can be applied are marked \*. Guidance is also given on applying the public interest test. This makes it clear that some Codes are absolute

and there is no public interest test that can be used to justify breach. In addition the requirement for media services to now have a complaints procedure that reacts quickly is all part of ensuring accuracy and protecting reputations, so that when things do go wrong they can be put right quickly.

### **Date of Commencement**

The Media Standards Code of Practice 2014 is hereby revoked except so far as it relates to any matters that may be, or are, a breach of that Code occurring prior to the commencement of the Media Standards Code of Practice 2023

The Media Standards Code of Practice 2023 has effect from.....

### **Accuracy and Impartiality (Code 1)**

- 1.1 A media service must take care not to publish or broadcast inaccurate, misleading or distorted information or images, including headlines not supported by the content
- 1.2 A significant inaccuracy, misleading statement or distortion must be corrected promptly with due prominence and an apology where appropriate
- 1.3 A fair opportunity must be permitted to respond to significant inaccuracies
- 1.4 A media service may campaign and express opinions but must distinguish clearly between comment, conjecture and fact, especially in radio news bulletins. Where an opinion is expressed the media service must not distort the facts
- 1.5 Advertisements must be differentiated from other content
- 1.6 A media service must not unfairly promote any product in which someone closely associated with the media service, or a member of their immediate family, has a financial interest. This prohibition does not apply to paid advertising
- 1.7 Recordings of all radio programmes must be made and retained for at least 70 days
- 1.8 Should a media service receive a request from any person to provide a copy of a recording then it must be provided if the person making the request indicates that he or she is considering whether to make a complaint or not. A reasonable fee may be charged for the provision of the recording
- 1.9 If a request is made pursuant to 1.8 above, or a complaint is made to the media service or to the Commission, then the recording must be retained for at least 12 months

### **Privacy/Intrusion/Exploitation (Code 2)**

- 1.1 Everyone is entitled to respect for their private and family life, home, physical and mental health and correspondence, including private digital communications
- 1.2 A media service must not publish or broadcast defamatory or offensive material
- 1.3 A media service must be able to justify intrusions into any person's private life without consent. In deciding whether any person has a reasonable expectation of privacy a media service can take into account that person's own public disclosures and the extent to which any material is already in the public domain. Intrusions into any child's private life can only be made in the most exceptional circumstances and where the public interest permits it\*

- 1.4 It is unacceptable to photograph a person without their consent in any public or private place where there is a reasonable expectation of privacy\*
- 1.5 In cases involving grief or shock enquiries and approaches must be made with sympathy and discretion and be handled sensitively. This does not restrict the right to report legal proceedings
- 1.6 When reporting suicide special care must be taken to have regard to 1.5 above and the method used must not be reported unless the public interest permits it, or when reporting legal proceedings relating to the suicide\*
- 1.7 Journalists must identify themselves and obtain permission of a responsible person before entering any hospital, home for the elderly or vulnerable, school or children's home\*
- 1.8 A media service must not seek to obtain or publish material or information obtained by using hidden cameras or clandestine listening devices, or by intercepting private communications, or accessing digitally held information without consent, or by the unauthorised removal of documents or photographs\*
- 1.9 Obtaining information by subterfuge or misrepresentation is not permitted\*
- 1.10 A media service must not publish any article or broadcast any material that might cause distress or embarrassment to any individual in their private capacity unless that person has been warned in advance of the publication or broadcast\*
- 1.11 A media service must protect confidential sources and must not disclose their identity unless directed to do so in accordance with an order pursuant to s.10 of the Contempt of Court Act 1981, or such other lawful order of a court

### **Harassment (Code 3)**

- 1.1 A media service must not engage in intimidation, harassment or persistent pursuit
- 1.2 A media service must desist in questioning, telephoning or photographing an individual when asked to do so and must leave property when requested so to do by someone empowered to make such a request
- 1.3 A media service must not knowingly use material obtained by a third party in contravention of 1.1 or 1.2 above and must, where there is reasonable cause to believe material has been obtained in such a manner, make sufficient enquiries to establish if it has been so obtained

### **Children (Code 4)**

- 1.1 All pupils must be free to complete their time at school without unnecessary intrusion
- 1.2 Children must not be approached or photographed without the express permission of the child and an adult responsible for the welfare of the child. In obtaining permission the child and responsible adult must be made fully aware as to what use the material obtained might be put\*
- 1.3 The provision at 1.2 above does not apply to the coverage of events which children may normally be expected to take part in and are part and parcel of the everyday life of the community, or a section of the community. Examples may include (but are not limited to) sporting activities, scouts, guides, public processions, fund raising events, youth clubs, celebrations, plays or any other similar activity. However should a journalist or photographer be asked by a child, or a person responsible for the welfare of that child, not to photograph or talk to a particular child then they must not do so
- 1.4 Any material obtained with permission in accordance with 1.2 above must not be published or broadcast in circumstances where consent was obtained by misrepresentation as to the use

for which the material was to be used, or in excess of the terms (if any) of the permission granted\*

- 1.5 Children or their parents/guardians must not be paid by a media service for the purposes of obtaining journalistic material or information in relation to a child\*
- 1.6 A media service must not, even if legally free to do so, publish any information that may lead to the identity of a child who is a victim or witness in cases involving sex offences
- 1.7 In cases of sex offences where a child is a victim or witness the relationship between the child and the alleged offender must not be implied or referred to. Any suggestion of an incestuous relationship when a party to that relationship is a child must be avoided
- 1.8 It is not permitted for a journalist to attend any place where a child resides without the prior express permission of the child and an adult who is responsible for the welfare of the child (see also 1.7 in the Code for Privacy/Intrusion/Exploitation above)\* This provision does not apply where the purpose of attending the child's residence does not relate to the child residing there
- 1.9 The notoriety or position of a child's parent cannot be the sole justification for publishing information about that child

### **Vulnerable Adults (Code 5)**

- 1.1 Vulnerable adults must not be approached or photographed without express permission, and if the adult suffers from a mental disorder or lack of mental capacity, the permission of an adult responsible for the welfare of the vulnerable adult must also be obtained. In obtaining permission the vulnerable adult and responsible adult (where appropriate) must be made fully aware as to what use the material obtained might be put\*
- 1.2 The provision at 1.1 above does not apply to the coverage of events which persons may normally be expected to take part in and are part and parcel of the everyday life of the community, or a section of the community. Examples may include (but are not limited to) sporting activities, public processions, fundraising events, clubs, celebrations, plays or any other similar activity. However should a journalist or photographer be asked by a vulnerable adult, or a person responsible for the welfare of a vulnerable adult if the vulnerability is due to a mental disorder or lack of mental capacity, not to photograph or talk to a particular vulnerable adult then they must not do so
- 1.3 Any material obtained with permission in accordance with 1.1 above must not be published or broadcast in circumstances where consent was obtained by misrepresentation as to the use for which the material was to be put, or in excess of the terms (if any) of the permission granted \*
- 1.4 Vulnerable adults or those responsible for their welfare must not be paid by a media service for the purposes of obtaining journalistic material or information in relation to a vulnerable adult\*
- 1.5 A media service must not, even if legally free to do so, publish any information that may lead to the identity of a vulnerable adult who is a victim or witness in cases involving sex offences
- 1.6 In sex offences where a vulnerable adult is a victim the relationship between the vulnerable adult and the alleged offender must not be implied or referred to. Any suggestion of an incestuous relationship when a party to that relationship is a vulnerable adult must be avoided
- 1.7 It is not permitted for a media service to attend any place where a vulnerable adult resides without the prior express permission of the vulnerable adult and an adult who is responsible for the welfare of the vulnerable adult if that vulnerability is due to a mental disorder or lack of mental capacity (see also 1.7 in the Code for Privacy/Intrusion/Exploitation above).\* This

provision does not apply where the purpose of attending the vulnerable adult's residence does not relate to the vulnerable adult residing there

### **Reporting of Crime (Code 6)**

- 1.1 Relatives or friends of persons convicted or accused of crime should not be identified without their consent, unless they are genuinely relevant to the story or material to be disseminated\*
- 1.2 Particular regard must be had to the vulnerable or children who witness or are victims of crime. This does not restrict the right to report legal proceedings. (See also the Codes for Children and Vulnerable Adults)
- 1.3 A media service should not name or publish any information that may lead to the identification of a child who has been arrested for a criminal offence but has not been charged, or has not appeared before a court
- 1.4 No payment shall be made, or an arrangement entered into for future payment, to any person who is expected to be a witness in a criminal trial for the provision of information in relation to that trial, unless the relevant legal proceedings are at an end
- 1.5 No payment shall be made, or an arrangement entered into for future payment, to any person charged with a criminal offence for the provision of information in relation to that offence, or the proceedings that relate to it, unless the relevant legal proceedings are at an end and that person was acquitted of all offences with which he or she was charged

### **Discrimination (Code 7)**

- 1.1 A media service must avoid prejudicial or pejorative references to an individual's perceived race, colour, religion, sex, gender identity, sexual orientation, physical or mental illness or disability
- 1.2 An individual's perceived race, colour, religion, sex, gender identity, sexual orientation, physical or mental illness or disability should not be referred to unless genuinely relevant to the story or material to be disseminated

### **Special Arrangements during Elections and Referendums (Code 8)**

- 1.1 This rule applies during the election and referendum periods
- 1.2 Due weight must be given to the coverage of candidates
- 1.3 Discussion and analysis of election and referendum issues must not take place from 00.01 hours on the day polling stations open for votes to be cast until such time that all polling stations have closed
- 1.4 Opinion or exit polls must not be published or broadcast from 00.01 hours on the day polling stations open for votes to be cast until such time that all polling stations have closed
- 1.5 A media service may not allow any candidate to act as a journalist or presenter during the election period.
- 1.6 Any electoral report after nominations for candidates has closed must include a list of all candidates

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**Complaints Procedure (Code 9)**

- 1.1 All those who provide media services at least once a month must have a complaints procedure that allows those who wish to complain about the content of any material published or broadcast, or the conduct of a media service, to do so. This procedure must be specific to complaints about content and conduct
- 1.2 The complaints procedure must provide that the media service will determine any complaint within 7 days of receipt of a complaint, such time limit may only be extended in exceptional circumstances. Should a complainant not be happy with the response from the media provider to their complaint then he or she must have a right of appeal and be allowed a reasonable time to submit an appeal. Any such appeal procedure must be concluded within 7 days of the notice of appeal being served on the media service, such time limit may only be extended in exceptional circumstances
- 1.3 If the media service publishes a newspaper then in March and September of each year the full complaints procedure must be published on at least half a page of that newspaper
- 1.4 All media services must publish their complaints procedure on their website and the procedure must be easily found and accessible from the website. Potential complainants must also be able to access the procedure by making a request to the media service in person or by telephone
- 1.5 The absence of a fair complaints procedure, or a failure to follow one, is something that the Media Commission may, if appropriate, take into account when determining whether a media service has acted in breach of this code due to bad faith or unreasonable conduct

**Exceptions to the Codes - The Public Interest (Code 10)**

- 1.1 There may be exceptions for the codes that are marked with \* where they can be demonstrated to be in the public interest, or in the case of children, vulnerable adults or suicide exceptional public interest
- 1.2 The public interest includes, but is not limited to:
  - i. Detecting or exposing crime, or the threat of crime, or serious impropriety
  - ii. Protecting public health or safety
  - iii. Protecting the public from being misled by an action or statement of an individual or organisation
  - iv. Disclosing a person or organisation's failure to comply with an obligation to which they are subject
  - v. Disclosing a miscarriage of justice
  - vi. Raising or contributing to a matter of public debate including serious cases of impropriety, unethical conduct or incompetence concerning the public
  - vii. Disclosing concealment, or likely concealment, of any of the above
- 1.3 There is a public interest in freedom of expression itself
- 1.4 A media service invoking public interest will need to demonstrate that they reasonably believe publication or broadcast, or journalistic activity with a view to publication or broadcast, would both serve and be proportionate to the public interest and will need to explain how they reached that decision if called upon to do so
- 1.5 Where the methods used to obtain the material were in the public interest but the material obtained is not such that it is in the public interest to publish or broadcast it, the material must not be published or broadcast

## **Code 1 Guidance – Accuracy and Impartiality**

### **What the Code Says**

- 1.1 A media service must take care not to publish or broadcast inaccurate, misleading or distorted information or images, including headlines not supported by the content
- 1.2 A significant inaccuracy, misleading statement or distortion must be corrected promptly with due prominence and an apology where appropriate
- 1.3 A fair opportunity must be permitted to respond to significant inaccuracies
- 1.4 A media service may campaign and express opinions but must distinguish clearly between comment, conjecture and fact, especially in radio news bulletins. Where an opinion is expressed the media service must not distort the facts
- 1.5 Advertisements must be differentiated from other content
- 1.6 A media service must not unfairly promote any product in which someone closely associated with the media service, or a member of their immediate family, has a financial interest. This prohibition does not apply to paid advertising
- 1.7 Recordings of all radio programmes must be made and retained for at least 70 days
- 1.8 Should a media service receive a request from any person to provide a copy of a recording then it must be provided if the person making the request indicates that he or she is considering whether to make a complaint or not. A reasonable fee may be charged for the provision of the recording
- 1.9 If a request is made pursuant to 1.8 above, or a complaint is made to the media service or to the Commission, then the recording must be retained for at least 12 months

### **Guidance**

Code 1 goes to the heart of good practice. It is about getting the story right in the first place, putting it right if mistakes are made and, where appropriate, saying sorry. The fact that a media service is reporting on a breaking news story is no excuse for reckless or sloppy journalism. The Code takes a realistic view, setting high, but not impossibly high, standards.

The Code does not demand infallibility but it does require that care should be taken and, when there is a significant inaccuracy, it expects prompt action to make amends. There is no Public Interest defence under Code 1.

Key questions any broadcaster or author should ask about a news article or story include:

- i. Can I demonstrate that the story is accurate?
- ii. Can I demonstrate that we have taken care? For example, do we have notes to support the story?
- iii. Have we put the key points of the story to the people mentioned in it? Do we need to? If we have, have we given proper consideration to how or whether the story should reflect what they have told us?
- iv. Is the headline supported by the text of the story?
- v. Are the pictures misleading?
- vi. Have we distinguished between claims and facts?
- vii. If we have made a significant error, how prominently should we run the correction?
- viii. Should we apologise in addition to running a correction? Does our correction make clear what we got wrong and what the truth is (or that we don't know)?
- ix. Are we acting promptly to resolve the problem?
- x. Should we offer a complainant an opportunity to reply if there is a significant inaccuracy?



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### Taking Care

Clause 1.1 says the media service must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the content.

The emphasis is on taking care. That means doing a thorough job on a story, particularly when it is complex, involves statistics that could be interpreted in different ways or when the story is very sensitive. It may also mean contacting the people involved for their side of the story. A failure to include relevant sides of the story can lead to inaccuracy and breach the Code. That may be the case if the story has come from a confidential source. In those circumstances it might be that contacting the parties involved will strengthen the story, or it may help a media service avoid making a serious error.

If the media service can demonstrate the story is true, then it is unlikely that it will breach the Code if it has not approached the parties involved for comment. And if individuals have not been approached and dispute the story after publication, it is wise to publish that denial as swiftly as possible – unless it can be proved the story is true. Taking care also means remembering that allegations are just that – not proven facts.

### Court Reports

Claims and counter claims are made in court, but accurate reporting of court cases will not normally be a breach of the Code. It is, of course, essential that allegations are not reported as facts, that the defence is fairly reported as well as the prosecution, and that headlines likewise accurately reflect what the court has been told. Comments made outside court may breach the Code if they are found to be inaccurate.

### Significant Inaccuracy

It is impossible to be perfect, and some mistakes may be annoying but not alter the overall accuracy of a story. If the inaccuracy is not significant, there is no breach of the Code but if it is significant it must be corrected. If a correction is offered promptly, then the significant inaccuracy may not be a breach of the Code. It is a question of judgment – getting a name wrong may not alter the thrust of a story. On the other hand, it might make the story very damaging.

### Corrections and Due Prominence

When a mistake has been made Code requires it to be corrected with due prominence. Due prominence does not mean equal prominence when it comes to the placement or broadcast of corrections. It is a question of judgment on the part of the media service, who must take into account the seriousness of the inaccuracy and the spirit of the Code. If a complaint is made and the Commission does not feel the correction was made with due prominence it may direct the media service how it is to publish or broadcast the correction. Corrections must be carried on all the media platforms that carried the story originally.

### Apologies

If an inaccuracy is serious, it might merit an apology as well as a correction. Deciding whether an apology is required and what form it should take is again a matter for the media service, taking into account the spirit of the Code. If a story has caused significant personal hurt or embarrassment, or it has been the basis of criticism, then an apology may well be the appropriate response. Sometimes a published or broadcast apology might be the last thing that a complainant wants because it could highlight the error and cause renewed embarrassment, so it is important to discuss with the complainant how they wish to receive their apology. In some cases a personal letter or phone call may be more suitable. A genuinely apologetic note from a sincere journalist may allow the complainant to consider the matter closed. It could also be seen as an example of the spirit of the Code in action.

### Opportunity to Reply

The Code requires the media service to provide a fair opportunity to reply to significant inaccuracies when reasonably called for. It means that where it is reasonable – as in cases of significant inaccuracy – an opportunity to reply may offer a remedy beyond a simple correction. How the opportunity to reply is put into practice and the prominence it is given is a matter for the media service.

### Comment, Conjecture and Fact

The Code protects a media service's freedom to editorialise and campaign, but it also demands that a media service must distinguish between comment, conjecture and fact. That may lead to columnists or broadcasters being asked to justify the factual basis for cases they are arguing. In the news announcements on radio, news articles in the papers and in press releases it might result in a complaint because a claim has been presented as a fact.

### Differentiation between Advertisements and Other Content

The aim of this code is to ensure that readers or listeners are fully aware of what is an advertisement and what is not.

### Promotion by a Media Service

The intention of clause 1.6 is clear: no person involved in a media service should undertake any form of activity relating the sale of products which could be unfair or open to misinterpretation or which could damage the integrity of his or her media service. Products includes financial products as well as goods and other services. Not only must those involved in the media service not be in a position to profit from promotion but those close to the author of the article, or the broadcaster, must also not be able to profit. A member of someone's immediate family can include a partner to whom the author or broadcaster is not married, as well as that partner's immediate family.

This prohibition includes making unfair comparisons between products or campaigns to promote products or services where that campaign does not form part of paid advertising. The code does not prohibit a volunteer radio presenter occasionally advising his or her listeners of products or

services he or she may be providing, so long as the provision of that information is incidental to the other content of the programme.

### **Code 2 Guidance – Privacy/Intrusion/Exploitation**

#### **What the Code Says**

- 1.1 Everyone is entitled to respect for their private and family life, home, physical and mental health and correspondence, including private digital communications
- 1.2 A media service must not publish or broadcast defamatory or offensive material
- 1.3 A media service must be able to justify intrusions into any person's private life without consent. In deciding whether any person has a reasonable expectation of privacy a media service can take into account that person's own public disclosures and the extent to which any material is already in the public domain. Intrusions into any child's private life can only be made in the most exceptional circumstances and where the public interest permits it\*
- 1.4 It is unacceptable to photograph a person without their consent in any public or private place where there is a reasonable expectation of privacy\*
- 1.5 In cases involving grief or shock enquiries and approaches must be made with sympathy and discretion and be handled sensitively. This does not restrict the right to report legal proceedings
- 1.6 When reporting suicide special care must be taken to have regard to 1.5 above and the method used must not be reported unless the public interest permits it, or when reporting legal proceedings relating to the suicide\*
- 1.7 Journalists must identify themselves and obtain permission of a responsible person before entering any hospital, home for the elderly or vulnerable, school or children's home\*
- 1.8 A media service must not seek to obtain or publish material or information obtained by using hidden cameras or clandestine listening devices, or by intercepting private communications, or accessing digitally held information without consent, or by the unauthorised removal of documents or photographs\*
- 1.9 Obtaining information by subterfuge or misrepresentation is not permitted\*
- 1.10 A media service must not publish any article or broadcast any material that might cause distress or embarrassment to any individual in their private capacity unless that person has been warned in advance of the publication or broadcast\*
- 1.11 A media service must protect confidential sources and must not disclose their identity unless directed to do so in accordance with an order pursuant to s.10 of the Contempt of Court Act 1981, or such other lawful order of a court

## **Guidance**

### **Privacy**

Privacy is not an absolute right. It can be compromised by conduct or consent. For example, when considering complaints of alleged intrusions, the Commission will take into account previous activity by the complainant.

Privacy is not a commodity which can be sold on one person's terms – the Code is not designed to protect commercial deals.

Privacy does not mean invisibility. Pictures taken in genuinely public places and information already in the public domain can be legitimate. However, a media service should take special care in relation to pictures of children and vulnerable adults. This is addressed in more detail in the guidance in Code 4 (Children) and Code 5 (Vulnerable Adults).

Privacy may be outweighed by the public interest – such as when it is used to keep secret conduct that may reflect adversely on a public figure who should expect consequential media comment, but it should be proportionate.

A media service should ask the following questions if they intend to publish material taken from social media:

- i. To what extent, if at all, is the material in the public domain?
- ii. If the material is in the public domain, who has placed it there?
- iii. What privacy settings are in place for the material?
- iv. Does the individual have a reasonable expectation of privacy in relation to the material?
- v. What is the nature of the material?
- vi. Does it depict anything private, such as medical information or private activities?
- vii. Might the publication of this information, in context, be intrusive into the subject's privacy?
- viii. If it is intrusive, is there a public interest in publishing it?
- ix. Are there particular reasons for exercising caution – for example, does the information feature or relate to a child; to an individual experiencing grief or shock; or does it also include an individual who is not relevant to the story?
- x. Are there any legal issues arising from publication of the material?
- xi. Who posted the material? Who put the information in the public domain?
- xii. How many people had access to it, and what was their relationship with the subject/person who posted the material?
- xiii. Would the poster have had a reasonable expectation that the material would not be circulated further?
- xiv. What disclosures of private information, if any, has the individual previously made?
- xv. Does the information feature individuals who are not relevant to the story?

### **Reasonable Expectation of Privacy**

In assessing if there is a reasonable expectation of privacy a media service should ask itself:

- i. Does the material published reveal anything that is essentially private?
- ii. If what is published is a photograph was it taken in a public or private place where there was a reasonable expectation of privacy?
- iii. Is the material in the public interest?

#### Intrusion into Grief or Shock

- i. The fact of someone's death is not private. Deaths affect communities as well as individuals and are a legitimate subject for reporting.
- ii. Media services should show sensitivity towards people in a state of grief or shock. Reporting should be handled sensitively, and appropriate consideration should be given to the wishes and needs of the bereaved.
- iii. A member of a media service should take care not to break news of the death of an individual to the immediate members of their family.
- iv. Particular care should be taken with the reporting of suicide to avoid the possibility of other people copying the same method (see below).

#### Suicide

Reporting of a suicide is a particularly difficult subject for the press to report on. Unless there is a very good reason reporting of a suicide should be avoided. However where reporting is legitimate a media service must bear in mind there is a risk of simulative acts.

There is a particular need to take care to avoid excessive detail of the method used, which might prompt or encourage copycat cases. At the same time, the Code strikes a balance by protecting the media's right to report legal proceedings, such as inquests.

A media service should apply the "excessive detail rule." This means that it might be relevant to report that an individual died by hanging, but including details of the ligature or point of suspension is likely to be considered excessive. Other examples of potentially excessive detail include:

- i. The quantity or type of pills taken in an overdose
- ii. The steps taken to ingest a poison
- iii. The position of wounds on a body and how they were incurred

Exceptions could be made if the media service could demonstrate that publication was in the exceptional public interest (Code 10 1.1).

#### Clandestine Methods and Subterfuge

It is a basic principle that a media service is open and transparent when it makes inquiries about a story. This means anyone working for them must tell people they interview who they are, who they are working for, and the nature of the story they are investigating. They must not use hidden cameras or listening devices, intercept private messages or phone calls, or misrepresent who they are.

It is no defence to say the investigation was brought to the media service, or carried out, by an agent or intermediary. Once a media service takes ownership of material it is responsible for ensuring that every aspect of it complies with the Code, even if initial inquiries were carried out by a third party.

Key questions to be asked include:

- i. Was there a reasonable belief, based on credible evidence, that the investigation would uncover material that is in the public interest? How can that belief be demonstrated? Fishing expeditions are not allowed.
- ii. Is there a reasonable belief, based on evidence, that all institutions or individuals subject to an investigation are engaged in the activity being investigated?
- iii. Can the information be obtained by any other means?
- iv. Is the subterfuge involved proportionate to the public interest in the story?
- v. Is there a public interest in publishing the material obtained?
- vi. Is there a record of the media service's decision on each of these questions?

It is no defence to claim an investigation was justified by what it uncovered, or what happened after it was published. A media service must be able to show it had reasonable grounds to believe its investigation was in the public interest before it was launched – which is why it is important to keep records. If the investigation was carried out by someone else, they must be able to demonstrate the consideration they gave to the public interest before embarking on it.

#### Advance notice

This code is designed to ensure that those who are the subject of reporting that may cause distress or embarrassment in their private capacity are made aware in advance of the publication. This is to avoid them being taken by surprise.

This code is not a licence to invade a person's privacy so long as they are told about it in advance, the balance of the code must also be complied with.

#### Confidential Sources

A media service must protect its confidential sources to safeguard the interests of society. On the record sources are best as the reader or listener can assess credibility, motivation and actual existence. Sometimes informants will only speak about secret or confidential matters if their anonymity is preserved. They may be whistle blowers who are acting in the best interests of society but fear reprisals if their names are made public.

The law recognises the importance of confidential sources in section 10 of the Contempt of Court Act 1981 which provides that:

*No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.*

The obligation of confidence should not be used by a media service as a shield to defend inaccurate reporting. Wherever possible, efforts should be made to obtain on the record corroboration of a story from unnamed sources. Where a media service is making use of material from confidential sources, it should have special regard for how it will demonstrate that it has taken care over the accuracy of the coverage, should it be challenged.

In most instances there are various means of doing so, for example by obtaining corroborative material to substantiate the allegations fully or partly, or by providing the subject with a suitable opportunity to comment on them. There would be a particular responsibility on a media service to give a reasonable opportunity of reply to complainants who felt they were victims of allegations from an unnamed source.

### **Code 3 Guidance - Harassment**

#### **What the Code Says**

- 1.1 A media service must not engage in intimidation, harassment or persistent pursuit
- 1.2 A media service must desist in questioning, telephoning or photographing an individual when asked to do so and must leave property when requested so to do by someone empowered to make such a request
- 1.3 A media service must not knowingly use material obtained by a third party in contravention of 1.1 or 1.2 above and must, where there is reasonable cause to believe material has been obtained in such a manner, make sufficient enquiries to establish if it has been so obtained

#### **Guidance**

This is one of the strictest codes and speaks for itself. The wording is plain and requires no explanation of the interpretation of the words within it, or intention behind the code. There is no public interest defence to breaching this code.

The clause covering harassment relates to the conduct of persons during the newsgathering process. It is not usually the case that publishing a number of articles on one issue constitutes harassment.

Not only must a media service not engage in harassment but it must not rely on material obtained through harassment

### **Code 4 Guidance - Children**

#### **What the Code Says**

- 1.1 All pupils must be free to complete their time at school without unnecessary intrusion
- 1.2 Children must not be approached or photographed without the express permission of the child and an adult responsible for the welfare of the child. In obtaining permission the child and responsible adult must be made fully aware as to what use the material obtained might be put\*
- 1.3 The provision at 1.2 above does not apply to the coverage of events which children may normally be expected to take part in and are part and parcel of the everyday life of the community, or a section of the community. Examples may include (but are not limited to) sporting activities, scouts, guides, public processions, fund raising events, youth clubs, celebrations, plays or any other similar activity. However should a journalist or photographer be asked by a child, or a person responsible for the welfare of that child, not to photograph or talk to a particular child then they must not do so
- 1.4 Any material obtained with permission in accordance with 1.2 above must not be published or broadcast in circumstances where consent was obtained by misrepresentation as to the use for which the material was to be used, or in excess of the terms (if any) of the permission granted\*
- 1.5 Children or their parents/guardians must not be paid by a media service for the purposes of obtaining journalistic material or information in relation to a child\*
- 1.6 A media service must not, even if legally free to do so, publish any information that may lead to the identity of a child who is a victim or witness in cases involving sex offences
- 1.7 In cases of sex offences where a child is a victim or witness the relationship between the child and the alleged offender must not be implied or referred to. Any suggestion of an incestuous relationship when a party to that relationship is a child must be avoided
- 1.8 It is not permitted for a journalist to attend any place where a child resides without the prior express permission of the child and an adult who is responsible for the welfare of the child (see also 1.7 in the Code for Privacy/Intrusion/Exploitation above)\* This provision does not apply where the purpose of attending the child's residence does not relate to the child residing there
- 1.9 The notoriety or position of a child's parent cannot be the sole justification for publishing information about that child

#### **Guidance**

The Code goes to great lengths to safeguard children by defining tightly the circumstances in which a media service's coverage would be legitimate. This applies up to the age of 18 – but the requirement that pupils should be free to complete their time at school without unnecessary intrusion provides a measure of protection into the sixth form and so includes those aged 18 who are still at school.



In the absence of a public interest justification, pupils cannot be approached at school, photographed or interviewed about their own or another child's welfare unless consent is given by the parent or guardian. There is a public interest defence available to some of the provisions, but here again the bar is raised in favour of protecting children and the public interest Code states that "an exceptional public interest" would need to be demonstrated in the case of children (Code 10 1.1).

### Consent

The code is quite clear that not only must parental or guardian's consent be obtained to publish material or photographs about a child but the consent of the child must also be obtained. Children are mostly able to appreciate the request for consent and are capable of deciding for themselves if they want to be referred to in a media service report. Obviously the very young who have limited ability to communicate or understand are not able to give consent and in those circumstances a media service can rely on the parental or guardian's consent.

Consent is obtained by informing the child and parent/guardian of the use to which the material would be used and consent then being given, or withheld. It is not permissible to use the material in a way which is contrary to the basis upon which consent was obtained. If a media service wishes to use material in a different way to that which was put to the child and parent/guardian then fresh consent must be obtained. Consent may also come with conditions attached by those giving consent. Use of the material must be within the bounds of the conditions.

Children are very much part of our society and the Code does seek to strike a balance between the private life of the child and community events the child may be involved in. For example school sports days are often reported upon and the Code does not seek to prevent that. The media service will of course need the permission of the school to take any photographs. Remembrance Sunday is another example where children are involved and it would be next to impossible to publish any photograph of that event which does not include a picture of a child.

### Children in Sex Cases

All children in sex cases, including defendants, are protected from identification under the Code. In this instance the Code goes further than the law: the press must not identify children in cases involving sexual offences, "even if legally free to do so".

An essential element is a formula to prevent "jigsaw identification" – which could occur if media organisations observe in different ways the law intended to protect the anonymity of incest victims. The law prohibits identification of any alleged victim of a sex offence but it does not specify the method of doing so. So, in incest cases, publications may face a choice. They can describe the offence as incest, but not name the defendant, or they can name the defendant but omit the exact nature of the offence. To avoid differing media services using differing approaches and leading to identification by reading the two accounts together the Commission directs that there must be a common approach.

Under the Code, the defendant is named but all references to incest are omitted. When followed by all media organisations this means alleged victims are not identified. Even so, reporting child sex cases means taking exceptional care to ensure that no reference might identify an alleged victim. The same approach must be taken when referring to the relationship between defendant

and victim. If the victim is a step child it is not permissible to say so as this may well identify who it is.

It may well be the case that by naming a defendant and the nature of the offence he faces it is obvious who the victim must be. The press bears a heavy responsibility in all cases involving child sex cases and must tread a very fine line in reporting. People are entitled to know, and indeed should know, what goes on in their courts but that can never be at the expense of a child victim or witness in child sex offences.

There is no public interest defence when it comes to child sex offences.

### **Code 5 Guidance – Vulnerable Adults**

#### **What the Code Says**

- 1.1 Vulnerable adults must not be approached or photographed without express permission, and if the adult suffers from a mental disorder or lack of mental capacity, the permission of an adult responsible for the welfare of the vulnerable adult must also be obtained. In obtaining permission the vulnerable adult and responsible adult (where appropriate) must be made fully aware as to what use the material obtained might be put\*
- 1.2 The provision at 1.1 above does not apply to the coverage of events which persons may normally be expected to take part in and are part and parcel of the everyday life of the community, or a section of the community. Examples may include (but are not limited to) sporting activities, public processions, fundraising events, clubs, celebrations, plays or any other similar activity. However should a journalist or photographer be asked by a vulnerable adult, or a person responsible for the welfare of a vulnerable adult if the vulnerability is due to a mental disorder or lack of mental capacity, not to photograph or talk to a particular vulnerable adult then they must not do so
- 1.3 Any material obtained with permission in accordance with 1.1 above must not be published or broadcast in circumstances where consent was obtained by misrepresentation as to the use for which the material was to be put, or in excess of the terms (if any) of the permission granted \*
- 1.4 Vulnerable adults or those responsible for their welfare must not be paid by a media service for the purposes of obtaining journalistic material or information in relation to a vulnerable adult\*
- 1.5 A media service must not, even if legally free to do so, publish any information that may lead to the identity of a vulnerable adult who is a victim or witness in cases involving sex offences
- 1.6 In sex offences where a vulnerable adult is a victim the relationship between the vulnerable adult and the alleged offender must not be implied or referred to. Any suggestion of an incestuous relationship when a party to that relationship is a vulnerable adult must be avoided
- 1.7 It is not permitted for a media service to attend any place where a vulnerable adult resides without the prior express permission of the vulnerable adult and an adult who is responsible for the welfare of the vulnerable adult if that vulnerability is due to a mental disorder or lack of mental capacity (see also 1.7 in the Code for Privacy/Intrusion/Exploitation above).\* This

provision does not apply where the purpose of attending the vulnerable adult's residence does not relate to the vulnerable adult residing there

## **The Guidance**

The guidance provides significant protections to vulnerable adults. There is a public interest defence available to some of the provisions, but the bar is raised in favour of protecting vulnerable adults and the public interest Code states that "an exceptional public interest" would need to be demonstrated in the case of a vulnerable adult (Code 10 1.1).

### **Who is a Vulnerable Adult?**

The Commission defines a 'vulnerable adult' as a person who has attained the age of 18 and:

- i. lives in residential accommodation provided in connection with any care or nursing he or she requires
- ii. lives in sheltered housing
- iii. receives domiciliary care
- iv. requires assistance in the conduct of his or her own affairs
- v. suffers from a mental disorder
- vi. lacks mental capacity

Domiciliary care is care of any description or assistance whether provided continuously or not which a person receives in a place where he or she is living and relates to that person's age, health or disability.

A mental disorder means any disorder or disability of the mind.

A person lacks mental capacity where he or she is unable to make a decision for himself or herself in

relation to a matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

### **Identifying the Vulnerable**

It can sometimes be very difficult to identify the vulnerable, especially if the vulnerability is due to a mental disorder or lack of capacity. Those working for media services must pay particular regard to the person they are speaking to and should there be any cause for concern enquiries should be made with that person's family or anyone charged with their care.

### **Consent**

The guidance on consent differentiates between those whose vulnerability is due to a lack of mental capacity or mental disorder and those that do not suffer from these conditions but is still vulnerable. Just because someone is vulnerable does not mean they cannot give consent and it is important not to infantilise the vulnerable by treating the need for their consent as unnecessary and seeking it elsewhere.

However where there is a mental disorder or a lack of mental capacity then the consent of someone who is responsible for the welfare of the adult is also required. It is always necessary to get the consent of the vulnerable adult, whether they suffer from a mental disorder or lack capacity or do not. If informed consent cannot be given due to a mental disorder or lack of capacity then consent is to be treated as withheld.

Consent is obtained by informing the vulnerable adult of the use to which the material would be used and consent then being given, or withheld. It is not permissible to use material in a way which is contrary to the basis upon which consent was obtained. If a media service wishes to use material in a different way to that which was put to the vulnerable adult then fresh consent must be obtained. Consent may also come with conditions attached by those giving consent. Use of the material must be within the bounds of those conditions.

It is important that vulnerable adults remain very much part of our society and the Code does seek to strike a balance between the private life of the vulnerable and public events they may be involved in. For example fundraising events or tea parties are often reported upon and the Code does not seek to prevent that.

#### The Vulnerable in Sex Cases

All vulnerable adults who are victims or witnesses in sex cases are protected from identification under the Code. In this instance the Code goes further than the law: the press must not identify vulnerable adults in cases involving sexual offences, “even if legally free to do so”.

An essential element is a formula to prevent “jigsaw identification” – which could occur if media organisations observe in different ways the law intended to protect the anonymity of incest victims. The law prohibits identification of any alleged victim of a sex offence but it does not specify the method of doing so. So, in incest cases, publications may face a choice. They can describe the offence as incest, but not name the defendant, or they can name the defendant but omit the exact nature of the offence. To avoid differing media services using differing approaches and leading to identification by reading the two accounts together the Commission directs that there must be a common approach.

Under the Code, the defendant is named but all references to incest are omitted. When followed by all media organisations, this means alleged victims are not identified. Even so, reporting sex cases where vulnerable adults are concerned means taking exceptional care to ensure that no reference might identify an alleged victim. The same approach must be taken when referring to the relationship between defendant and victim. If the victim is, for example, an adult step sister it is not permissible to say so as this will clearly identify who it is.

It may well be the case that by naming a defendant and the nature of the offence he faces it is obvious who the victim must be. The press bear a heavy responsibility in all cases involving sex cases and must tread a very fine line in reporting. People are entitled to know, and indeed should know, what goes on in their courts but that can never be at the expense of the vulnerable victim or witness.

There is no public interest defence when it comes to sex offences involving vulnerable adults.

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## **Code 6 Guidance – Reporting of Crime**

### **What the Code Says**

- 1.1 Relatives or friends of persons convicted or accused of crime should not be identified without their consent, unless they are genuinely relevant to the story or material to be disseminated\*
- 1.2 Particular regard must be had to the vulnerable or children who witness or are victims of crime. This does not restrict the right to report legal proceedings. (See also the Codes for Children and Vulnerable Adults)
- 1.3 A media service should not name or publish any information that may lead to the identification of a child who has been arrested for a criminal offence but has not been charged, or has not appeared before a court
- 1.4 No payment shall be made, or an arrangement entered into for future payment, to any person who is expected to be a witness in a criminal trial for the provision of information in relation to that trial, unless the relevant legal proceedings are at an end
- 1.5 No payment shall be made, or an arrangement entered into for future payment, to any person charged with a criminal offence for the provision of information in relation to that offence, or the proceedings that relate to it, unless the relevant legal proceedings are at an end and that person was acquitted of all offences with which he or she was charged

### **The Guidance**

#### **Friends and Relatives**

One of the aims of this Code to protect family members, friends and others from being caught unnecessarily in the publicity spotlight focused on those accused or found guilty of crimes. Relatives or friends should not normally be named or pictured unless they are genuinely relevant to the story, or publication/broadcast can be justified in the public interest. Child and vulnerable adult witnesses or victims of crime are given special consideration.

Key questions to be asked by the media service include:

- i. Did relatives or friends consent to identification? This may be implied if they appear publicly with the defendant.
- ii. Are they genuinely relevant to the story?
- iii. Is mentioning relatives or friends in the public interest?
- iv. Has sufficient care been taken to protect the vulnerable and children?

#### **Children and the Vulnerable**

The special protection given to children and the vulnerable in Code 6 is a continuation of the spirit of Codes 4 and 5 and amounts to a duty of care aimed at preventing them becoming further damaged, or their welfare affected, by their innocent involvement as witnesses or victims of crime.

The law does allow children who allegedly commit crimes to be named before they appear in court, when they subsequently cannot be named. This code extends that protection to prevent such publication. There is no public interest defence to this rule which is absolute and reflects that within Code 4

#### Payments to Those Involved in Criminal Proceedings

There is an absolute prohibition on this before legal proceedings are at an end. There is no public interest defence. The rationale is that payments to defendants or witnesses can impact upon the fairness of criminal proceedings and lead those involved, and the media service, open to accusations of manipulation of evidence. The prohibition relates not just to payments while proceedings are ongoing but arrangements made for future payments once the proceedings are at an end.

Later payments may be made to defendants, but only if they are acquitted. This is to avoid those convicted of offences from benefitting from their criminality.

Proceedings are only at an end once the opportunity to appeal has passed, or any appeal has been finally determined. Bear in mind that there is a possibility of an appeal from any decision of the Magistrates' Court, Supreme Court or Court of Appeal so the media service will have to satisfy itself that proceedings are definitely at an end.

### **Code 7 Guidance - Discrimination**

#### **What the Code Says**

- 1.1 A media service must avoid prejudicial or pejorative references to an individual's perceived race, colour, religion, sex, gender identity, sexual orientation, physical or mental illness or disability
- 1.2 An individual's perceived race, colour, religion, sex, gender identity, sexual orientation, physical or mental illness or disability should not be referred to unless genuinely relevant to the story or material to be disseminated

#### **Guidance**

The aim of Code 7 is to protect individuals from discriminatory coverage, and no public interest defence is available. However, the Code does not cover generalised remarks about groups or categories of people. This would inhibit debate on important matters, would involve subjective views and would be difficult to adjudicate upon without infringing the freedom of expression of others.

The Code is striking a balance between the rights of the public to freedom of speech and the rights of the individual – in this case not to face personal discriminatory abuse. Freedom of expression must embrace the right to hold views that others might find distasteful and sometimes offensive. In a free society with a diverse press, subjective issues of taste and decency should be a matter for the media service's discretion. Newspapers and radio are constantly answerable in the court of public opinion. Like individuals, a media service must have regard to the law – extreme cases may be scrutinised for evidence of hate speech.

Key questions to be considered include:

- i. Is the reference to an individual, or a distinct class of individuals? This should be someone who is named or readily identifiable, or a distinct group of individuals who can similarly be identified.
- ii. Is the reference prejudicial or pejorative in a discriminatory way?
- iii. Is the reference to characteristics covered by the Code genuinely relevant?

Restricting complaints to discrimination against individuals rules out the consideration of some controversial stories. But even if an article cannot be considered under the discrimination Code, there may still be a case under other sections of the Code – such as accuracy – if statements are incorrect or comment is passed off as fact.

Age is not one of the categories covered by Code 7. This is because reporting a person's age, like stating their sex, is not discriminatory.

## **Code 8 Guidance – Elections and Referendums**

### **What the Code Says**

- 1.1 This rule applies during the election and referendum periods
- 1.2 Due weight must be given to the coverage of candidates
- 1.3 Discussion and analysis of election and referendum issues must not take place from 00.01 hours on the day polling stations open for votes to be cast until such time that all polling stations have closed
- 1.4 Opinion or exit polls must not be published or broadcast from 00.01 hours on the day polling stations open for votes to be cast until such time that all polling stations have closed
- 1.5 A media service may not allow any candidate to act as a journalist or presenter during the election period.
- 1.6 Any electoral report after nominations for candidates has closed must include a list of all candidates

### **Guidance**

This Code does not apply solely to broadcast media but also to the written word.

### Election and Referendum Periods

Elections include by-elections.

The election period means for a general election, the period beginning with the announcement of the dissolution of Legislative Council. For a by-election, this period begins with the date of the occurrence of a vacancy. In all cases the period ends with the close of the poll.

The referendum period means from the date a referendum is announced until the close of the poll.

### Due Weight

Due weight must be given to coverage of candidates during the election period. In determining what is due weight a media service may have regard to past electoral support and current support. Candidates with significant views and perspectives should receive appropriate coverage.

The concept of due weight is flexible and depends very much on the context of the article or broadcast. Care must also be taken to ensure, where possible, that all candidates have during the election period an extent of coverage that is broadly similar. No candidate or candidates can have coverage that is far in excess of another over the election period.

The requirement for due weight extends to referendums which are usually binary in nature. One side of the debate cannot have an amount of coverage that is disproportionate to the other. This does not mean equal but the media service must be impartial in the allocation of time to both sides.

Due weight cannot be seen just in terms of time but also in the approach to reporting. For broadcast media it is inappropriate to editorialise during an election or referendum period and to do so will demonstrate a lack of impartiality when assessing whether due weight is being given to each candidate. Comment pieces in newspapers are permissible so long as all relevant views are referred to and it is made clear any views expressed are those of the author of the article. Any facts relied upon to support an opinion must be accurate and cannot be taken in isolation from other information that may shed a different light on the interpretation of the facts.

Candidates' debates must be reported with due weight being given to each candidate present. Due weight in these circumstances includes taking into account the extent of a candidate's contribution and also impartiality in the report of what was said. This does not prevent a written editorial regarding what was said so long as the distinction between reporting of events and opinion is clearly maintained and the comment piece is separate from the news report.

Candidates in radio interviews can expect to be challenged on their views and past record but the personal views of the interviewer must not be given or be apparent in the way the interview is conducted. If the radio interview involves a number of candidates then all candidates must be afforded due weight in relation to one another. Where one candidate has been given the opportunity to promote their candidature then all participants in the interview must be afforded the same opportunity.



Codes 1.5 and 1.6 are all about ensuring due weight and impartiality in the reporting of an election.

#### Election/Referendum Day

Codes 1.3 and 1.4 are designed to prevent coverage of the election or referendum that may influence a voter on polling day. It is permissible to report that an election or referendum is taking place but reports must be entirely factual. Candidates cannot appear on radio or canvass through the media on this day.

### **Code 9 Guidance – Complaints Procedure**

#### **What the Code Says**

- 1.1 All those who provide media services at least once a month must have a complaints procedure that allows those who wish to complain about the content of any material published or broadcast, or the conduct of a media service, to do so. This procedure must be specific to complaints about content and conduct
- 1.2 The complaints procedure must provide that the media service will determine any complaint within 7 days of receipt of a complaint, such time limit may only be extended in exceptional circumstances. Should a complainant not be happy with the response from the media provider to their complaint then he or she must have a right of appeal and be allowed a reasonable time to submit an appeal. Any such appeal procedure must be concluded within 7 days of the notice of appeal being served on the media service, such time limit may only be extended in exceptional circumstances
- 1.3 If the media service publishes a newspaper then in March and September of each year the full complaints procedure must be published on at least half a page of that newspaper
- 1.4 All media services must publish their complaints procedure on their website and the procedure must be easily found and accessible from the website. Potential complainants must also be able to access the procedure by making a request to the media service in person or by telephone
- 1.5 The absence of a fair complaints procedure, or a failure to follow one, is something that the Media Commission may, if appropriate, take into account when determining whether a media service has acted in breach of this code due to bad faith or unreasonable conduct

#### **Guidance**

This Code is all about ensuring accuracy and preventing so far as possible other breaches of the Code, or where a breach of the Code has occurred then putting it right quickly. If an apology and/or correction happens very quickly then that mitigates the impact of the breach of the Code. This is very much within the spirit of the Code.

Not only must there be a complaints procedure but consumers of media services should be able to access that procedure quickly. For this reason the process must be easily discoverable on a website linked to the media service and easily accessible. Media services must make alternative arrangements for those without access to the internet, for example by having complaint forms that explain the process and can be completed available to those who telephone or attend the offices of the media service. In addition the print media are required to prominently publish in their newspaper their complaints procedure at least twice a year in March and September.

There are strict time limits for resolving complaints which can only be extended in exceptional circumstances. This is again within the spirit of the Code and is to ensure that things are put right quickly.

Complaint procedures must have two elements to them, the initial complaint submitted for resolution to the media service and an appeal process. There should be a nominated person within the media service to deal with complaints (with an alternative should the complaint be about the nominated person). The nominated person should be someone with seniority within the organisation who is able to direct that action is taken. For the appeal process arrangements should be in place for a person or persons independent of the media service to resolve them.

The procedure should be similar for workplace grievance procedures, however the initial complaint process can be quite informal to aid speedy resolution. An important element is allowing the person who wishes to complain to meet with the nominated person and explain their position. The decision of the nominated person must be in writing and with the complainant within 7 days. Reasons must be given for any decision made.

A reasonable period for appealing a decision should be allowed, at least 7 days. The appeal process should be more formal involving a meeting of all parties with the person or persons charged with resolving the complaint. The outcome of the appeal must be in writing and with the complainant within 7 days of the appeal being lodged. Again reasons must be given for decisions.

A complainant must be advised of their right to complain to the Media Commission at the end of the complaints procedure. There are time limits for making complaints to the Media Commission and the media service cannot delay the complaints procedure to such an extent that a potential complainant is outside those time limits. The time limits are:

- i. 28 days after the last occasion when the media service was broadcast or printed; or
- ii. 42 days after such last occasion if the complainant complained directly to the provider within that 28 day period before submitting a complaint to the Commission.

## **Code 10 Guidance – The Public Interest**

### **What the Code says**

- 1.1 There may be exceptions for the codes that are marked with \* where they can be demonstrated to be in the public interest, or in the case of children, vulnerable adults or suicide exceptional public interest
- 1.2 The public interest includes, but is not limited to:
  - viii. Detecting or exposing crime, or the threat of crime, or serious impropriety
  - ix. Protecting public health or safety
  - x. Protecting the public from being misled by an action or statement of an individual or organisation
  - xi. Disclosing a person or organisation's failure to comply with an obligation to which they are subject
  - xii. Disclosing a miscarriage of justice
  - xiii. Raising or contributing to a matter of public debate including serious cases of impropriety, unethical conduct or incompetence concerning the public
  - xiv. Disclosing concealment, or likely concealment, of any of the above
- 1.3 There is a public interest in freedom of expression itself
- 1.4 A media service invoking public interest will need to demonstrate that they reasonably believe publication or broadcast, or journalistic activity with a view to publication or broadcast, would both serve and be proportionate to the public interest and will need to explain how they reached that decision if called upon to do so
- 1.5 Where the methods used to obtain the material were in the public interest but the material obtained is not such that it is in the public interest to publish or broadcast it, the material must not be published or broadcast

### **Guidance**

Robust journalism is a force for good and is very much in the public interest. Journalists can produce important stories that shine a light into dark corners of society while still observing the strict rules of the Code. On rare occasions, if they are to act in the public interest, they may have to do things that might otherwise be contrary to the Code. If a complaint is made and a media service pleads public interest as a defence to breaching the Code then the Commission would be the final arbiter of the issue.

Decisions to break the Code should never be taken lightly - and citing public interest is not an easy way to dodge censure. It is not a 'get out of jail card' to be played after breaching the Code. A media service must demonstrate that they deliberately took the decision to breach the provisions of the Code after due consideration in justifiable circumstances.

What is the public interest? It is really impossible to define exactly, so the Code does not attempt to do so. Instead, it provides examples of public interest in a non-exhaustive list that reflects the

values of the society that the press serves. The list is not exhaustive and the spirit of the Code allows flexibility.

The Code does not work on the basis that public interest is essentially whatever the public is interested in. At the same time, it is not the case that every story that is published must be justified by public interest. Many stories are published simply because they are interesting or entertaining, and if they do not breach the Code there is no need to show a public interest justification for publication.

Nor should public interest be interpreted so narrowly that it prevents investigative journalism, or exposure of serious wrongdoing. The Code states that there is a public interest in freedom of expression itself and the Commission will consider the extent to which information is already in the public domain or will become so. A public interest defence can only be put forward for the elements of the Code marked \*.

The Commission will need convincing that the public interest is an adequate defence to complaints. There are three key factors involved:

- i. The media service must demonstrate that they reasonably believed publication/broadcast – or activity taken with a view to publication/broadcast – would serve the public interest. The Commission will decide if the media service’s belief that the Code should be breached to serve the public interest was reasonable at the time that the decision was taken, based on all the evidence.
- ii. The media service must demonstrate that the publication or activity was proportionate to the public interest involved. Disproportionate action must be avoided. For example, if the story did not merit the level of intrusion, or if the material could have been obtained by other means, the public interest defence may be rejected by the Commission.
- iii. The media service must explain in detail how it reached the decision to breach the Code at the time. That means producing a detailed and convincing account of the evidence available and the discussions that took place before the breach of the Code occurred.

Throughout the Code the most vulnerable members of society are given special protection and this is the case in complaints involving children, vulnerable adults or reports on suicide in which a public interest defence is put forward. The Code sets the bar very high indeed, declaring that there must be an “exceptional public interest” demonstrated to override the normally paramount interests of children and the vulnerable.

The Code also differentiates between the public interest in the methods used to obtain information and the actual publication/broadcast of it. It might be that reliable information led to a certain investigatory method that was within the Code, however if that is the case things do not stop there, the actual publication must also be in the public interest. If the method is legitimate but what is in fact obtained is not what was legitimately anticipated then that material cannot be published unless it is in the public interest to do so.