



ST HELENA

REVISED EDITION OF THE LAWS, 2017

**EMPLOYMENT & COMMERCE**

**MEDIA STANDARDS ORDINANCE, 2011<sup>1</sup>**

*Ordinance 18 of 2011  
In force 9 October 2012*

*Amended by Ordinance 3 of 2012*

*Subsidiary legislation:*  
**MEDIA STANDARDS REGULATIONS, 2012**  
*Legal Notice 30 of 2012*

*Also included:*  
**MEDIA STANDARDS CODE OF PRACTICE, 2023**  
*Gazette Notice 124 in Extraordinary Gazette, Vol. LIX No.47, August 2023*

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**MEDIA STANDARDS ORDINANCE, 2011**

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<sup>1</sup> Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 October 2023.

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AN ORDINANCE to regulate media services, to establish a Media Commission to monitor and enforce media standards, and for connected and incidental purposes.

**PART 1 PRELIMINARY****Citation and commencement**

**1. (1)** This Ordinance may be cited as the Media Standards Ordinance, 2011, and comes into force on a date the Governor appoints by notice in the *Gazette*.

**(2)** A notice or notices issued under subsection (1) may appoint different dates for the purposes of different provisions or for different purposes of the same provision.

**Interpretation**

**2. (1)** In this Ordinance—

“**broadcaster**” means a person who holds a broadcasting licence under the Telecommunications Ordinance, 1989;

“**Code**” means any Code of Practice issued, or adopted and applied, under section 6;

“**Commission**” means the St Helena Media Commission established under section 3;

“**media service**” has the meaning given in subsection (2), subject to the exceptions in subsection (3).

(2) “**Media service**” includes, subject to subsection (3), any radio or television broadcast, printed or internet publications and every other activity which constitutes the dissemination of information in a manner capable of being received (whether on payment or otherwise) by the public or by any section of the public.

(3) None of the following activities is a “media service” for the purposes of this Ordinance—

- (a) any audible or visual dissemination of information which is presented in such a way as to be received only by persons in the same building as, or otherwise in the immediate vicinity of, the person presenting the information;
- (b) the sale or hire (or offering to sell or hire) to members of the public of audio or video tapes or other means of recording sound or visual images, or both;
- (c) anything published on the internet by a person in a private capacity, unconnected with any trade, profession or vocation;
- (d) anything lawfully broadcast in St Helena by way of a re-broadcast of material lawfully broadcast elsewhere, in circumstances under which the person responsible for the rebroadcast has no effective means of editorial control;
- (e) any other activities prescribed by or under this Ordinance as not being media services.

(3A) Regulations made under section 11 may provide that, in prescribed circumstances, the activities mentioned in subsection (3)(b) are to be treated as a media service.

## **PART 2 MEDIA COMMISSION AND CODES OF PRACTICE**

### **Constitution of Media Commission**

3. (1) This section establishes a body of persons, to be known as the St Helena Media Commission, having the functions, powers and duties conferred or imposed upon it by this Ordinance or any other law.

(2) The Commission comprises a President and not less than 2 nor more than 4 other members.

(3) The Chief Magistrate is the President of the Commission; but if the office of Chief Magistrate is vacant, or the holder of that office is absent or otherwise unable to act, the Governor (acting in his or her discretion, but after consulting the President of the Judicial Service Commission) may appoint a Justice of the Peace to act as President of the Commission.

(4) The Governor must appoint the members other than the President, but may not appoint any person who is either a member of the Legislative Council or a member of the public service.

(5) Sections 90 to 93 of the Constitution apply to the members appointed to be members of the Commission in accordance with subsection (4), as they apply to judicial officers; except that a member of the Commission who becomes a member of the

Legislative Council or a member of the public service is deemed to have resigned from the Commission.

(6) The Governor, acting in his or her discretion, may appoint a person (not being a public officer or a member of the Legislative Council) to act as Clerk to the Commission.

(7) If there is no subsisting appointment of a Clerk to the Commission, the duties of the Clerk may be performed by the Clerk of the Peace.

### **Function and duties of Commission**

4. (1) The function of the Commission is to oversee media services delivered in or from St Helena, in accordance with the regulatory objectives set out in section 5, and for this purpose the Commission must—

- (a) issue Codes of Practice in accordance with section 6;
- (b) monitor compliance with the Codes; and
- (c) investigate and adjudicate upon any alleged or suspected breach of the Codes, and may (subject to this Ordinance and any other rule of law) do all things which in its

opinion are necessary or expedient for any of those purposes.

(2) Without limiting subsection (1), the Commission must, if so requested by the Governor, and may on its own initiative, from time to time advise the Governor in Council in relation to the Codes and their operation, and generally as to issues relating to the regulatory objectives.

### **Regulatory Objectives**

5. (1) The regulatory objectives 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.

(2) In applying the regulatory objectives, the Commission must have regard to the Constitutional rights to freedoms of opinion and of expression, but must ensure by the Codes and the way they are administered that due regard is had also to the matters

mentioned in section 17(3)(b) of the Constitution and to the rights to freedom of conscience, privacy, and freedom from discrimination.

### **Codes of Practice**

**6. (1)** The Commission may issue Codes of Practice calculated to secure the regulatory objectives in relation to media services provided in or from St Helena.

**(2)** Every Code of Practice issued by the Commission must be published by notice in the *Gazette*.

**(3)** The Commission may, instead of issuing a separate Code, declare (by notice in the *Gazette*) that any relevant Code which is from time to time in use in England is to be adopted and applied (with or without amendment) to St Helena.

**(4)** A Code of Practice must not be issued under this section unless, at least 42 days before it is issued, a draft of it has been published by notice in the *Gazette* and the Commission has considered any comments or objections submitted in writing to the Clerk to the Commission within a period (not being less than 21 days) specified in the notice.

## **PART 3 COMPLAINTS TO COMMISSION**

### **Complaints to Commission**

**7. (1)** Any person who is of the opinion that any media service has acted in breach of any Code may submit a written complaint to the Commission, through its Clerk.

**(2)** A written complaint under subsection (1) must set out all the relevant particulars relating to the alleged breach of the Code.

**(3)** Upon receipt of a complaint under subsection (1), the Commission must investigate it.

**(4)** In this section “**written**” includes fax and e-mail.

### **Procedure on investigation and findings**

**8. (1)** Subject to the following subsections the procedure to be adopted in the investigation of each complaint is as prescribed in regulations made under section 11.

- (2)** The Clerk must conduct a preliminary investigation into each complaint by—
- (a)** seeking clarification from the complainant of any ambiguity in the complaint; then
  - (b)** calling upon the media service provider against whom the complaint is made to respond to the complaint and to provide a recording, transcript or copy (as the case may be) of the particular publication giving rise to the complaint; then

(c) inviting the complainant to comment upon the response received from the media service provider,  
and must then submit the papers (together with any recording or other relevant material) to the President.

- (3) Upon receiving the papers from the Clerk, the President must either—
- (a) order that the complaint be dismissed on the basis that it reveals no issue worthy of further investigation; or
  - (b) convene a meeting of the Commission at which the complaint is to be further investigated and the parties are to have an opportunity to attend, to call witnesses, and make any representations they wish to make.

(4) A meeting of the Commission convened under subsection (3) must be conducted as a judicial inquiry of an inquisitorial nature, and accordingly—

- (a) regulations made under section 11 may provide that the Commission is to have powers to summon witnesses or require the production of documents or other exhibits, to require witnesses to take an oath or make an affirmation, and to administer any such oath or affirmation; and
- (b) the power of the Supreme Court to punish contempt of its authority is extended to include a power to punish contempt of the Commission.

(5) Upon conclusion of its inquiry the Commission must declare whether it is satisfied on the balance of probabilities that the media service committed a breach of a Code and, if so satisfied, must—

- (a) specify the nature of the breach and the Code which has been breached; and
- (b) make such one or more of the orders or recommendations mentioned in section 9 as are in the opinion of the Commission appropriate in the circumstances.

### **Sanctions when Code is breached**

9. (1) The orders and recommendations referred to in section 8 are—
- (a) in the case of a complaint against a broadcaster - a recommendation to the Governor that its broadcasting licence be revoked or restricted;
  - (b) in the case of any ongoing publication - an order that the publication be discontinued;
  - (c) in any case, an order that—
    - (i) a retraction or apology, or both, be published;
    - (ii) any owner or manager of the media service take any other remedial action that is appropriate in the circumstances;
    - (iii) any owner or manager of the media service take any steps that are in the opinion of the Commission reasonable to prevent a recurrence of the breach;
    - (iv) the Clerk refer the matter to the Attorney General for consideration whether any criminal proceedings should be initiated.
- (2) The Commission may not make a finding that any publication—
- (a) amounted to an actionable defamation (nor may it assess compensation on that

- basis);
- (b) constituted a criminal offence; or
- (c) violated any person's fundamental human rights under sections 5 to 25 of the Constitution.

### **Right of appeal**

**10. (1)** Subject to the following subsections, any person aggrieved by a decision, order or recommendation of the Commission under section 9 may appeal to the Supreme Court.

**(2)** An appeal under this section may not be made unless an application for leave to appeal is made to the Chief Justice within 28 days of the date of the decision, order or recommendation of the Commission, and the Chief Justice has granted such leave.

**(3)** Rules of court may provide that notice must be given to the Commission of any application for leave pursuant to subsection (2) and for the Commission to have an opportunity to make representations before a decision is made on the application for leave. Any such rules of court must also provide that the person seeking leave to appeal must have an opportunity to respond to any representations made by the Commission.

**(4)** The decision of the Chief Justice upon any application for leave to appeal is final and conclusive.

## **PART 4 MISCELLANEOUS**

### **Regulations**

**11. (1)** The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

- (2)** Without limiting the power in subsection (1), regulations may—
  - (a) provide for forms to be used and fees to be paid for or in connection with the operation of this Ordinance;
  - (b) prescribe the procedures to be adopted by the Commission;
  - (c) prescribe any other matter which may be prescribed under this Ordinance.

### **Offences**

- 12.** Any person who—
- (a) fails to comply with an order made under section 9; or
  - (b) knowingly gives any false information to the Commission,
- commits an offence.

Penalty: A fine of £2,500 or imprisonment for 12 months, or both.

### **Amendment of legislation**

13. *Omitted*

**Transitional provisions**

14. *Omitted*

**SCHEDULE**

**Amended legislation**

*Omitted*

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**MEDIA STANDARDS ORDINANCE, 2011**

**MEDIA STANDARDS COMMISSION REGULATIONS**  
(Section 11)

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**Citation, commencement and application**

**1. (1)** These Regulations may be cited as the Media Standards Commission Regulations, 2012, and come into force with effect from the date on which the Ordinance comes into force.

**(2)** These Regulations apply to all inquiries under the Media Standards Ordinance, 2011.

**Interpretation**

**2.** In these Regulations—



**“complaint”** means a complaint to the Commission by any person under section 7 of the Ordinance;

**“complainant”** means any person who submits a complaint;

**“controls”** means has authority or the ability to manage or direct;

**“provider”** means any person who controls a media service;

**“provider’s complaints procedure”** means any internal procedure of a provider for the investigation and resolution of complaints alleging a breach of any Code by such provider.

### **Provider’s complaints procedure**

**3. (1)** The complainant must, unless the President otherwise directs, follow the provider’s complaints procedure (if any) before the Commission will proceed to inquire into a complaint.

**(2)** If a complainant is not satisfied with the provider’s response to the complaint, or the provider has not responded within 14 days of the making of such complaint, the complaint may be inquired into by the Commission.

### **Form of complaint**

**4. (1)** Complaints must, unless the President otherwise directs, be submitted to the Commission in writing (which includes fax or e-mail).

**(1A)** If the President so directs, the Clerk must reduce any verbal complaint to writing.

**(2)** Unless the President otherwise directs, the Commission will only inquire into a complaint if it is submitted through the completion of the Commission’s complaint form in accordance with the Schedule to these Regulations.

- (3)** All complaints should include, where known—
- (a)* the complainant’s full contact details (including email address where appropriate);
  - (b)* the provisions of the relevant Code which it is alleged have been breached;
  - (c)* the name and address of the provider;
  - (d)* the name or title of the media service;
  - (e)* the date and time of the media service;
  - (f)* the channel, publication, internet site or other media on which the media service was broadcast or printed;
  - (g)* the nature of the complaint and the particular parts of the media service complained about;
  - (h)* whether (and, if so, when) the complainant made a complaint to the provider (and details of the complaint);
  - (i)* any supporting material or evidence which the complainant considers relevant to the substance of the complaint;
  - (j)* any explanation for the complaint not being made within the prescribed period; and

- (k) any connected proceedings in a court in St Helena or elsewhere.

### **Time limits**

**5. (1)** The President may, after considering all relevant factors (including the complainant's explanation for any delay in submitting the complaint), refuse to inquire into a complaint if it appears not to have been submitted to the Commission within—

- (a) 28 days after the last occasion when the media service was broadcast or printed; or
- (b) 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.

**(2)** If a complaint is made to the provider and submitted to the Commission simultaneously, the Commission will not normally proceed to inquire into the complaint until the provider has first had a period of 14 days to resolve the complaint under the provider's complaints procedure.

**(3)** A provider must retain all recordings or publications and any related material, for a period of 6 months from the last occasion when the relevant media service was broadcast or printed or until the final determination of any subsisting complaints, whichever is later.

### **Assessing whether to inquire into a complaint**

**6. (1)** When a complainant submits a complaint to the Commission, the Clerk must, unless otherwise directed by the President, conduct a preliminary inquiry into the complaint in accordance with section 8(2) of the Ordinance.

**(2)** If it appears to the Clerk that—

- (a) the matter complained of is the subject of proceedings in any court of law in St Helena, or is a matter in respect of which the complainant has a remedy by way of proceedings in any court of law in St Helena; and
- (b) in the particular circumstances it is not appropriate for the Commission to inquire into the complaint,

the Clerk must seek a direction from the President who may dismiss or stay any inquiry until a time the President directs.

**(3)** The Clerk must require the complainant to clarify any ambiguity in the complaint or invite the complainant to comment upon any response received from the provider in terms of section 8(2)(a) or (c) of the Ordinance within 14 days.

**(4)** The Clerk must provide a copy of the complaint to the provider, and require the provider to respond to it, to specify the full legal title and address of the provider and to provide a recording, transcript or copy (as the case may be) of the particular broadcast or publication in terms of section 8(2)(b) of the Ordinance, within 14 days.

(5) On receipt of any written responses of the complainant or provider at any stage in the inquiry, the Clerk must provide a copy of it to all other parties.

(6) The Clerk must, on being satisfied that all preliminary inquiries have been completed, submit the papers together with any recording or other relevant material to the President in accordance with section 8(2) of the Ordinance.

### **Decision of President**

7. (1) On receipt of the papers from the Clerk, the President must act as provided for in section 8(3) of the Ordinance and may dismiss all or part only of a complaint and convene a meeting of the Commission in relation to all or the remaining part of the complaint not so dismissed.

(2) If any facts become apparent to the President in the course of inquiring into a complaint, such that in his or her judgement there is no issue worthy of further investigation, or that in his or her opinion actions under these Regulations would have been otherwise had such facts been known at a previous time, the President may –

- (a) cease to proceed with inquiring into all or part of the complaint; or
- (b) take any other action that in the President's judgment is appropriate to achieve the regulatory objectives of the Commission.

(3) The Clerk must provide the complainant and the provider with a copy of the President's decision in terms of section 8(3) of the Ordinance or otherwise in terms of these Regulations, indicating whether (and to what extent) the Commission will be inquiring into a complaint.

### **Hearings**

8. (1) A complaint determined to be worthy of inquiry and submitted to the Commission must be inquired into at a meeting of the Commission convened under section 8(3) of the Ordinance.

(2) The Commission must give at least 14 days' notice to the parties of such a Commission meeting date, unless all parties agree to a shorter period of notice.

(3) Hearings must be held in private and the following persons must be given an opportunity to attend, to call witnesses with the permission of the President, and to make representations:

- (a) the complainant or an authorised representative;
- (b) the provider or his authorised representative;
- (c) any other person the President considers might be able to assist at the hearing.

(4) The President may at any time, either on his or her own initiative or on the application of any party, make any orders necessary or reasonable in all matters relating to—

- (a) the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) the joinder or separation of complaints, complainants or providers;
- (c) adding or removing parties to the complaint;
- (d) the amendment of a complaint or response;
- (e) issuing summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid; (f) proving any fact by affidavit;
- (g) such other procedural orders as may be competently made by the Magistrates' Court.

(5) Subject to sub-regulation (4), evidence given by a witness at any hearing must be on oath or affirmation of that witness, unless the President otherwise directs.

### **Issue of findings**

9. (1) Once the Commission has heard representations from the parties, the Commission must conclude its inquiry into a complaint by issuing its findings setting out whether the complaint is upheld, not upheld, or upheld in part and any further particulars, orders or recommendations provided for by section 8(5) of the Ordinance.

(2) The President has a discretion, whether in the inquiry or in any findings, to protect the anonymity of a complainant or provider where the President considers this is required in order to enable the Commission to fulfil its regulatory objectives in terms of section 5 of the Ordinance.

### **Non -disclosure**

10. (1) Subject to sub-regulations (1A) and (2), the parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint received during the course of the inquiry unless required to do so in due course of law.

(1A) The requirement of non-disclosure does not limit what the Commission, with due regard to its regulatory objectives, may disclose during the inquiry or in its findings at the end of the inquiry.

(2) The complainant or the provider may make public the fact that a complaint has been submitted to the Commission or that the Commission is inquiring into a case.

(3) During the inquiry the identity of a complainant or provider may only be disclosed by the complainant or provider to those with a direct interest in the matter complained of and for the purposes of assisting in the inquiry or otherwise as required by law.

(4) Once a complaint has been submitted to the Commission, no party should take any steps which could, whether intentionally or not, compromise, or risk compromising,

a fair decision on the matter by the Commission or otherwise constitute, in the Commission's opinion, an abuse of process.

(5) Failure to follow this regulation may result in the Commission ceasing to inquire into the party's representations, without affecting the power to refer any contempt of the Commission to the Supreme Court in terms of section 8(4)(b) of the Ordinance.

**Service on parties**

11. Service of any document on any party must be made as provided for in the Civil Procedure Ordinance, 1968, and may be carried out by e-mail or fax.

**Discretion of President**

12. (1) The President may, if the President considers it appropriate (in the interests of fairness or in order properly to inquire into a complaint) amend or adapt the time limits set out in these Regulations in relation to a particular complaint.

(2) Any complainant or provider seeking an extension of a time limit should explain in writing to the President why he, she or it believes it is appropriate and the President will decide if an extension is appropriate and inform all parties accordingly.

(3) Subject to sub-regulation (3A), the President may direct that there be a departure from these Regulations in any material respect in a particular case for reasons of fairness or in order for the Commission properly to inquire into a complaint.

(3A) The President must canvass a proposed departure with the parties present at any meeting of the Commission or otherwise write to the parties who are not so present setting out the nature and extent of the departure and the reasons for directing the departure and seeking the relevant parties' response.

(4) If the Commission considers it necessary in order to fulfil its regulatory objectives under section 5 of the Ordinance, it may initiate an inquiry in the absence of a complaint and in those circumstances the Commission ~~will~~ must follow similar procedures as when there is a complaint but adapted as appropriate to ensure that they are fair and appropriate in the particular circumstances.

**SCHEDULE**  
(Regulation 4(2))

**MEDIA STANDARDS COMMISSION**

**COMPLAINT FORM**

1. Complainant

1.1 Title

- 1.2 First Name(s)
- 1.3 Surname
- 1.4 Address
- 1.5 Telephone
- 1.6 Fax
- 1.7 Email
  
2. Complainant's Representative (if any)
  - 2.1 Title
  - 2.2 First Name(s)
  - 2.3 Surname
  - 2.4 Address
  - 2.5 Telephone
  - 2.6 Fax
  - 2.7 Email
  
3. Provisions of Code(s) alleged to have been breached
  
4. Name & Address of the Media Service Provider
  
5. Name/Title of the Broadcast/Article
  
6. Date & Time of the Broadcast/Publication  
Date: \_\_\_\_\_ Time: \_\_\_\_\_
  
7. Channel/ Publication/Internet Site etc. on which broadcast/published
  
8. Nature of Complaint & Parts of Broadcast/Publication complained about
  
9. Previous complaint to the Media Service Provider When:  
Details: \_\_\_\_\_
  
10. List and attach any supporting material/evidence relevant to the complaint
  
11. Explanation for late submission of complaint (if applicable)
  
12. Any connected proceedings in a court of law in St Helena or elsewhere
  
13. Declaration

I understand that on receipt of this complaint the Commission will provide a copy of this complaint form and any accompanying information to the relevant Media Service Provider.

I understand that the inquiry into this complaint falls under the Commission’s jurisdiction and undertake to abide by all the Commission’s regulations and procedures.

Signature of Complainant .....

Date of Complaint.....

Return to: The Clerk, St Helena Media Standards Commission, The Castle,  
Jamestown, St Helena STHL 1ZZ  
Telephone Tel: +290 2340 Fax: +290 2598 E-mail: judicial.manager@sainthelena.gov.sh

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**MEDIA STANDARDS ORDINANCE, 2011**

**MEDIA STANDARDS CODE OF PRACTICE 2023**

(Section 6(1))

In accordance with section 6 of the Media Standards Ordinance, 2011 the Media Commission issues the Media Standards Code 2023 with effect from 1<sup>st</sup> October 2023. The Code is published below

Saint Helena Media Commission  
Members: Duncan Cooke (President), Jennifer Corker, George Stevens, Desmond Wade

24<sup>th</sup> August 2023

**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 1<sup>st</sup> October 2023. 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.

### **The Public Interest Test**

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 \*. Code 10 deals with 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 ceases to have effect on the commencement of the Media Standards Code of Practice 2023, except insofar 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 1<sup>st</sup> October 2023



### **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 within 7 days if the person making the request indicates that he or she is considering whether to make a complaint or not. The cost of any media required to provide the recording (for example a USB stick or disk) is to be borne by the person requesting 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 a recording of any transmission complained of must be retained by the media service for at least 6 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.\* Telephone calls or face to face conversations may be recorded only with the consent of all parties to it
- 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

#### **Children and the Watershed (Code 4A)**

- 1.1 Broadcasters must take reasonable steps to ensure that material unsuitable for children is not broadcast between the hours of 5am and 9pm\*
- 1.2 News or discussion programmes may broadcast material that is unsuitable for children during the hours of 5am to 9pm so long as clear information is given in advance to enable adults to regulate the access of children to the material and there is a public interest in so broadcasting\*

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

- 1.1 This code applies to those who are known to be vulnerable adults. If a journalist has reason to believe that an adult may be vulnerable then he or she must take such steps as are reasonable to establish if they are in fact vulnerable having regard to the guidance issued with this code. If an adult is identified as vulnerable then they must be treated as such from that time on and any consents or permissions required by the code must be then obtained
- 1.2 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\*
- 1.3 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

- 1.4 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 \*
- 1.5 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\*
- 1.6 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
- 1.7 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
- 1.8 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 person who has declared themselves as a 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

**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 within the procedure 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 how a reader may access a copy of the procedure must be published at least once a month.
- 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 (except for material covered by Code 4A), 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 within 7 days if the person making the request indicates that he or she is considering whether to make a complaint or not. The cost of any media required to provide the recording (for example a USB stick or disk) is to be borne by the person requesting 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 a recording of any transmission complained of must be retained by the media service for at least 6 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?

### 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.\* Telephone calls or face to face conversations may be recorded only with the consent of all parties to it
- 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 4A Guidance – Children and the Watershed

### What the Code Says

- 1.1 Broadcasters must take reasonable steps to ensure that material unsuitable for children is not broadcast between the hours of 5am and 9pm\*
- 1.2 News or discussion programmes may broadcast material that is unsuitable for children during the hours of 5am to 9pm so long as clear information is given in advance to enable adults to regulate the access of children to the material and there is a public interest in so broadcasting\*

### The Guidance

This code is aimed at protecting children from material that is unnecessarily broadcast that is unsuitable for them. Children for Code 4A means those under 16. The code requires broadcasters to be careful regarding scheduling and the types of material that are broadcast.

This code applies particularly to songs that are broadcast outside of the hours of 9pm to 5am (the ‘watershed’). Many songs for example include profanity or misogynistic language. It is essential that broadcasters are aware of the content of the songs before they are played, especially where a particular song has been requested. Many songs come with a ‘radio edit’ version available or are labelled as ‘explicit’.

Material unsuitable for children includes abusive language relating to age, disability, gender (including misogyny), race, religion, beliefs and sexual orientation. Material unsuitable for children also includes profanity, offensive language and explicit references to sexual acts.

Offensive language is a feature of everyday life and in some circumstances milder language that is in context may be permissible. Listeners do not want to hear frequent or regular use of offensive language, including profanity, before the watershed. Abusive language relating to age, disability, gender (including misogyny), race, religion, beliefs and sexual orientation can be deeply offensive and levels of offence can change as language acquires new meanings, for example where mainstream culture adopts language used by a smaller group.

Taking reasonable steps requires a broadcaster to make themselves aware in advance of what they are about to broadcast, for example by accessing the lyrics of the song to be played or ensuring that the song is labelled as ‘radio edit.’ Mistakes can occur and it is important that if a song is played that accidentally breaches the code then the song is stopped and an apology is made.

News and discussion programmes often report on, or discuss, material that is unsuitable for younger listeners but where there is a public interest in broadcasting, for example reporting on, or discussing, sexual offending. It is important that there is always editorial justification for the coverage and for discussion programmes that they are scheduled when children are less likely to be listening. Warnings must be given immediately before such material is broadcast that the material may be unsuitable for children.

Note the public interest test in Code 10 does not require an exceptional public interest for breaching this code, the simple public interest applies.

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

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

- 1.1 This code applies to those who are known to be vulnerable adults. If a journalist has reason to believe that an adult may be vulnerable then he or she must take such steps as are reasonable to establish if they are in fact vulnerable having regard to the guidance issued with this code. If an adult is identified as vulnerable then they must be treated as such from that time on and any consents or permissions required by the code must be then obtained
- 1.2 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\*
- 1.3 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
- 1.4 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 \*
- 1.5 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\*
- 1.6 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
- 1.7 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
- 1.8 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 are 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.

## 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 person who has declared themselves as a 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 within the procedure 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 how a reader may access a copy of the procedure must be published at least once a month.
- 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 publish at least once a month details of how their complaints procedure may be accessed.

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 (except for material covered by Code 4A), 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 sections 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.

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