Hanna and Dodd: McNae’s Essential Law for Journalists, 25th edition

Additional Material for chapter 4:

News-gathering avoiding unjustified intrusion

*Section numbers from the book are used when relevant. Its content provides fuller explanations and context – for example, about what regulators’ codes say – and has other case studies.*

4.1 The codes and intrusion

**Checklist on intrusion**

A major concern for media organisations is to avoid unjustified intrusion into people’s lives when gathering material for news or feature items, or in what is published. One form of intrusion is into personal privacy, a topic covered in *McNae’s* ch. 4, but – as it explains, and as this Additional Material shows – there are other types of intrusion.

This is a rough checklist on whether intrusion into privacy could occur when journalists take photographs or shoot footage or make sound recordings of a person, or try to get such images or sound, or because of what was published. The checklist assumes that the person who was being photographed, filmed or recorded, or who featured in some other way in what was published, did not give informed consent to that journalist activity or publication. The checklist applies to material copied from social media or supplied to journalists, as well as to material gathered first-hand by journalists. The checklist was compiled from factors which regulators and judges have said are relevant considerations when they decide whether such intrusion occurred. If it is ruled there was intrusion, the regulator or court will then decide the intrusion was justified ‘in the public interest’ or by some other consideration, as ch. 4 in *McNae’s* explains, and as case studies below illustrate. No single factor in the checklist list is necessarily determinative by itself in such decisions by regulators or judges. NB: In this context, informed consent is when the person permits an intrusion into their privacy – for example, by what is filmed or published - having full knowledge of what detail may be gathered or published, and how and why. The material below primarily relates to decisions by regulators whose roles are explained in chs. 2 and 3 of *McNae’s*, but there is some allusion to privacy law, covered in ch. 27 and applied by judges.

* Was the person filmed or photographed or recorded in a location where he/she had a reasonable expectation of privacy? An individual could reasonably expect privacy at home, in a secluded garden or on a private beach, but would normally have less or no expectation of it in a public place or somewhere easily visible from a public place – see 4.1 and 4.3 in *McNae’s,* and 4.3 below.
* Was the person in a condition or situation, or doing something, which itself gave rise to a reasonable expectation of privacy, or of some privacy, irrespective of whether he/she was in or could be seen from a public place? For example, was the person mentally ill, injured, having medical treatment or attending therapy, or in distress or in a sensitive and/or humiliating situation? - see 4.3, 4.8 and 4.9 in *McNae’s,* and 4.3 and 4.9 below. For relevant privacy law, see 27.3, 27.4 and 27.9 in the book.
* Was the photograph or footage shot with a ‘long lens’ (that is, a telephoto lens, a zoom lens)? Was this covert photography, covert filming or recording with hidden microphones? Even if it was not, if the person was unaware of his or her image or conversation being captured, the media activity is more likely to be intrusive, because the person may have assumed (had the ‘expectation’ that) the situation was private, and acted accordingly - see 4.3.1 and 27.12 in *McNae’s,* and 4.3.1 and other sections below. NB: coverage in *McNae’s* of what regulatory codes say about covert work, including use of hidden cameras by journalists, is primarily in chs. 2 and 3.
* Has any journalist harassed the person by taking photos, filming or recording despite being asked to desist? Each regulator’s code bans harassment by journalists, unless there is a public interest justification, and journalists could be prosecuted if they breach the Protection from Harassment Act 1997 - see 4.5 and 4.6 in *McNae’s,* and 4.5 below. As regards the law on privacy, a court is more likely to decide that a person’s rights have been infringed if she or he has been persistently photographed or filmed, even if this was in public places - see the Von Hannover No. 1 (Princess Caroline) case in 27.3 in *McNae’s*.
* If there was justification for some material to be obtained intrusively, was the method used and extent of material obtained proportionate to that justifiable aim, or was the method or extent excessive in the degree of intrusion? Was the nature or extent of material published proportionate to that aim, or excessive? (for the proportionality principle, see 4.1.2 and 27.4 in *McNae’s*).
* Has any of the material been published before with the informed consent of the relevant person - for example, the one depicted in that photo or footage? If it has, or if it or similar material showing or about the person is lawfully in the public domain for some other reason, subsequent publication of such material is less likely to be ruled to be intrusive, or significantly intrusive, even if no such consent was given for that publication and it reveals private matters. The wordings of clause 2 of the Editors’ Code and section 8 of the Broadcasting Code include this general principle about what is already in the public domain – see 4.3 and 4.4 in *McNae’s* - and Impress guidance on clause 7 of its code includes it. See in 2.5 in *McNae’s* on Impress.
* Is the person a child and therefore more likely than an adult to be upset or traumatised by being filmed or photographed or recorded, and/or to suffer a harmful impact from the image(s) or sound or sensitive information being published? Children’s vulnerability mean they may have a reasonable expectation of privacy in a location where an adult does not, including when on a family outing, and their immaturity may mean that what a child says publicly online should not, in his or her own interests, be given wider circulation by journalists. See 4.3, 4.11 and 27.8.1 in McNae’s, and 4.11 below.

4.3 Public and private places

Photography and filming in streets

**Case study:** Ipso ruled in 2020 that *Birminghammail.co.uk* had not breached the Editors’ Code by photographing people in a queue outside a supermarket or by publishing the photos. They were in a report about the impact of the coronavirus pandemic. A man shown in some of the photos complained they breached his privacy and so breached clause 2 of the code. He told Ipso that he and some others in the queue had asked the photographer not to take photos of them. The man said he had asked the photographer where he was from, and that the photographer had replied he was ‘from space’ and was in a public place and could take photos. The man told Ipso that this behaviour amounted to harassment in breach of clause 3 of the code (under which normally a photographer should stop taking photos if the subject requests this, and should identify which publication the photos are being taken for). *Birminghammail.co.uk* said that no-one had asked the photographer to desist; he had heard someone shouting but could not tell who it was or what they said. In its ruling, Ipso said that the photos in the report were taken in a public place, and simply showed the man’s likeness. It added that there was no information in the images in respect of which the man had a reasonable expectation of privacy, and so there was no breach of clause 2. Ipso said that newspapers regularly take and publish photographs of people to illustrate articles, and doing so in and of itself does not constitute a breach of clause 3. Ipso added, based on photographs which *Birminghammail.co.uk* provided,that the man appeared to be at a distance from the photographer, which supported the *Birminghammail.co.uk’s* position that the man had been too far away for the photographer to be aware he was being particularly addressed or was being specifically asked to desist, and its position that there had been no interaction between the man and the photographer. Therefore, Ipso could not find that there had been any failure to respect a request to desist or that the photographer had failed to identify himself in breach of clause 3. Prior to Ipso’s involvement, as a goodwill gesture *Birminghammail.co.uk* deleted from the report photos showing the man identifiably (*Saled v Birminghammail.co.uk*, 7 August 2020). For further case studies on clause 3 complaints, see below at 4.5: **The codes’ protection against harassment**.

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

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

**Case study:** In 2019 Ofcom ruled that a Channel 5 programme had not infringed the privacy of a one-year-old boy by filming him being pushed along a street in a pushchair by his mother, or by broadcasting some of the footage. The programme was *Who Needs a Man When You’ve Got a Spray Tan: Single Mums & Proud*, a documentary about the lives of single mothers in Knowsley, Liverpool. The mother and boy were shown for approximately two seconds in footage which also showed other, general members of the public in a Knowsley shopping area. The mother’s and boy’s faces were not obscured but they were not referred to, or shown again, in the programme. Accompanying the footage, the programme’s narrator said: ‘One in four children round here are said to be living in poverty. Knowsley mums don't have much, but they always find what they need. Whether it's their car on credit, or cash for the kids’. The mother complained that her son had been filmed and shown in the programme without her consent, and that she was not aware that they were being filmed. Channel 5 said that the film crew and its camera were ‘very visible’ and that unedited footage clearly showed that a number of people were clearly aware that they were being filmed. It said that the following could be discerned from the case law about photographs or footage of people (including children) taken in a public place (it cited *Weller v Associated Newspapers*, see 27.8.1 of *McNae’s,* and *Murray v Express Newspapers plc,* [2007] EWHC 1908 (Ch)): there was a distinction between a person engaged in family and sporting activities and something as simple as a walk down a street, or going into a grocery shop; there could be no complaint over a photograph (even surreptitiously taken) of someone going about their business in a street and later published as a street scene; there were specific circumstances where people in a public place were not protected by privacy law, for instance, crowd shots of a street showing unknown children. Channel 5 said that in order to establish that there was a legitimate expectation of privacy in a public place, the information or activity photographed must be private, and that was not the case with this footage. It said there was nothing to suggest that the boy was aware of, or was caused fear or distress by either the filming or broadcast. Channel 5 said too that it did not consider that any information contained in the less than eight seconds of footage filmed of him, or the less than two seconds of footage that was broadcast of him reached the level of seriousness required to engage Article 8 of the European Convention on Human Rights (for context, see 27.1 and 27.2 in *McNae’s*). Channel 5 said that to conclude that there had been an unwarranted infringement of privacy in this case would constitute a disproportionate interference with the rights of the media to report in a responsible and engaging way, and would effectively remove the ability of the media to film and broadcast general high street, crowd or location footage in which individuals feature and may be identifiable, but which do not name them or disclose any private information about them. Adjudicating on the mother’s complaint, Ofcom said that the filming was conducted in a public place – that is, a busy shopping area - and that the boy could have been seen by any members of the public who were there at the time. Ofcom said that from the unedited footage, it appeared that the camera crew had filmed openly in full view of members of the public passing by in the area, including the mother. Ofcom added that, although it did not appear that she was particularly aware of the filming, it did not consider that the filming of her and her son was surreptitious. It said that he was filmed incidentally, and was not the specific focus of the filming, and was not filmed doing anything of a particularly private or sensitive nature, nor was he filmed in a particularly sensitive or private situation that would reasonably attract an expectation of privacy. Taking all of the above factors into account, Ofcom ruled that he did not have a legitimate expectation of privacy in relation to the obtaining of footage of him or the broadcasting of it. Ofcom said that therefore it was not necessary to assess whether any infringement of his privacy was warranted (*Ofcom Bulletin 388*, 7 October 2019).

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

**Case study:** In 2016 Ofcom cleared Channel 5’s *Nightmare Tenants, Slum Landlords* series of a complaint made by a tenant that her privacy was breached by a programme showing her - identifiably and named - being denied access to one property after the landlord gained a court order to evict her from it, and during an attempt to serve eviction papers on her for another property. The programme pointed out she had ‘barely paid a penny’ in rent for months and owed one landlord almost £8,000 and the other almost £2,500. She was filmed in public spaces – sitting in her car on a road and when walking to a car park – outside the properties. Ofcom said that the tenant, who made clear during the filming that she objected to it, had a legitimate expectation of privacy on both these occasions because she was filmed without prior warning; because for anyone being evicted the situation could reasonably be characterised as distressing and ‘sensitive’; and because she may well have been feeling ‘under pressure’ during the attempt to serve her with the papers. But Ofcom ruled there had been no ‘unwarranted infringement’ of her privacy, because her Article 8 rights were outweighed by the broadcaster’s and landlords’ Article 10 rights to freedom of expression. It ruled there was a ‘genuine public interest’ in the programme’s exploration of and conveyance to viewers of ‘the difficulties, emotional impact and expense’ that non-payment of rent can have on landlords, and that both the filming and what was broadcast was ‘proportionate’ to this subject matter. Ofcom said too that there was a public interest in naming and including unobscured footage of the tenant, to alert other potential landlords of the possible risks associated with letting a property to her (*Ofcom Broadcast Bulletin*, No. 310, 1 August 2016)

Outside courthouses

Ipso has ruled that the press can justifiably photograph people involved in court proceedings, if they are photographed in a public place such as a street outside the courthouse, and publish such photos. Ipso has made clear there is normally ‘no reasonable expectation of privacy’ in these circumstances (*Sutton v Express and Star*, 7 December 2015; *Winter v The News (Portsmouth),* 21 June 2017), and has also made such a ruling in respect of a defendant’s relative photographed with the defendant outside a courthouse after accompanying him there (*A man v* *Mail Online*, 1 May 2019 – see the case study in 14.13, below). But Ipso will take into account whether the images themselves disclose anything private. See also the *Lisle-Mainwaring v Mail Online* case study in 4.5, below.

**Case study:** A woman accused of fraud and of stealing £39,000 from a primary school, where she had worked as a secretary, complained to Ipso that *The Northern Echo* breached the Editors’ Code because a photographer took photos of her outside a courthouse and because one was published in reports of her case**.** She said that because the reports featured the photo, they intruded into her privacy in breach of clause 2 of the code, and she was concerned that the reports included her name and address. She complained that the photo was taken in circumstances of harassment in breach of clause 3. She said that the photographer had run towards her on the path outside the courthouse and continually tried to take photographs of her, despite her having a coat covering her face and saying several times that she did not want her photograph taken. The newspaper denied breach of the code. It cited the importance of open justice and said that the role of the press in identifying defendants is central to this role. It said the photographer asserted that he was waiting outside the courthouse next to a bin on a public footpath, the woman came around the corner and covered her face straight away, and he took her photograph as she came towards him. The photographer said that it would not be possible to chase or follow her due to where he was standing in relation to the court entrance; he had not moved from the bin. The newspaper said the photographer did not hear the woman speak, let alone ask for her photo not to be taken. The newspaper said that notwithstanding its position that there was no breach of the code’s clauses 2 and 3, the inclusion of the photo and the means to achieve it were in the public interest. It said this was considered prior to publication. Ipso ruled that the code has not been breached. It said that the photo was taken in a public place outside a court building and it only showed the woman’s likeness, which is not private information. Her name and address were heard in open court and the newspaper was entitled to report on the court proceedings, Ipso added. It said that there is a public interest in identifying defendants, and that simply asking for a photograph not to be taken, or communicating this by attempting to conceal identity is not a sufficient basis to deny publications the right to photograph people outside of court cases. Ipso added that the purpose of clause 3 is to prevent intimidation, harassment or persistent pursuit by the press, subject to public interest exemptions. Ipso said it could not be established whether the woman asked the photographer to desist, or whether this request was heard. However, the woman did not claim that the photographer had said anything to her, or engaged in any physical contact; she accepted that the photographer was several feet away. Under these circumstances, photographing an individual in a public place, in a short passage of time, does not amount to harassment, Ipso said. It added that it was satisfied that the photographer had not engaged in intimidation, harassment or persistent pursuit. The woman made a similar complaint to Ipso 17 months later after *The Northern Echo* published a photo of her entering the courthouse of Durham Crown court. This was in a report of her being sentenced for the thefts and fraud. It was headlined ‘Sentence suspended for thieving Bishop Middleham school secretary.’ She said that the photo of her entering the courthouse building was taken without her consent and that the photographer who took it was hiding behind a pillar and was obscured by a bush. She said that this behaviour had unnerved her and was therefore harassment. She also said that, because she was not aware of the photographer at first, she had not had the opportunity to disguise or cover her face. The newspaper stated that the photographer was not hiding or disguised. Rather, as photographers are not allowed within court property, there was nowhere else for the photographer to wait, other than behind the wall, pillars or foliage. It stated that as court proceedings are public, a defendant in a court case has no reasonable expectation of privacy over their identity or a picture merely revealing it. It did not accept that the taking of a photograph constituted harassment; as part of the principle of open justice, defendants should expect to be identified or photographed when visiting court.  Ipso did not uphold her complaint. It said that when the photo was taken she was entering the courthouse, a venue which is generally open to, and accessible by, members of the public, that she was not engaged in any private activity, that the photograph only revealed her likeness, and that she did not have a reasonable expectation of privacy in these circumstances. As such, there was no need for the newspaper to have her consent to photograph her there, and so clause 2 of the code had not been breached, Ipso said. While she had been startled by the presence of the photographer in the vicinity of the court, this did not constitute ‘intimidation, harassment or persistent pursuit’ and so clause 3 was not engaged, Ipso ruled (*Dickinson v The Northern Echo*, 29 November 2018 and 11 May 2020).

NB: Ipso has consistently made clear that media organisations can justifiably publish the home addresses of defendants in court cases – see too 4.3.3, below.

**Showing police work in streets and police stations**

**Case study**: In 2017 Ofcom ruled that ITV’s *Rookies* programme had not unwarrantably infringed the privacy of 17-year-old Mr B either during filming or in what was broadcast. His mother complained about footage showing his arrest in a public place on suspicion of attempted murder. The filming was of a probationary police officer’s shift. It showed how the officer set off and arrived at the incident scene, and Mr B sitting on the ground speaking to police and being led away to a police van. The audio included him saying: ‘He told me to stab him so I done it.’ Mr B was not named. In the programme his face was blurred and voice pitch was altered by the programme makers, to shield his identity. The programme included the fact that he had later pleaded guilty to grievous bodily harm with intent and possessing an offensive weapon. ITV said the programme makers had been ‘particularly careful’ to conceal his identity in the footage, and were aware that when it was broadcast a court order under section 45 of the Youth Justice and Criminal Evidence Act banned his identification in connection with the criminal proceedings until he was 18 (for context about this type of order, see *McNae’s* 10.4). But - ITV said - there was no legitimate expectation of privacy in the commission of a serious crime or its aftermath, and therefore his consent to being filmed was not required. His mother complained to Ofcom that parental consent should have been obtained for the footage to be broadcast, because her son was not in a position to consent to the filming because of his ‘mental health issues’ and his state of heightened distress. She said ‘numerous people’ had recognised him from the footage, including ‘relative strangers’. Ofcom said that it was not clear whether he was aware he was being filmed for footage which could be broadcast, but that it would not have been ‘realistic’ in the circumstances for the programme makers to have got his prior consent to filming. Ofcom noted what his mother said about his mental health. It said that when being filmed he was upset and distressed by the incident and his actions. It said these factors meant he was filmed in a ‘sensitive’ situation and he had a legitimate expectation of privacy, albeit limited by him being in a public place. Ofcom said that the filming of Mr B had been ‘unobtrusive’ because it was from a distance, and other than revealing his reaction to the stabbing incident, no private or sensitive information about him had been disclosed in the programme, Also, it had not identified him to the public, and, if he was recognisable to any extent, this would only have been to a very limited number of people who already knew him and were likely to already have knowledge of his involvement in the incident. Ofcom ruled, taking these factors into account, that there was a ‘genuine public interest’ in conveying to viewers an understanding of the nature of police work and the kind of difficult situations probationary officers faced. It said that this, and the broadcaster’s right to freedom of expression, outweighed Mr B’s right to privacy in the case’s circumstances (*Ofcom Broadcast Bulletin*, No. 326, 3 April 2017).

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

**Case study:** Ofcom ruled in 2014 that the broadcasting of CCTV footage showing a woman being arrested for being drunk and disorderly did not breach the Broadcasting Code’s protection of privacy. The footage shown in the Channel 5 series *Criminals: Caught on Camera* included shots of Miss C’s face, and of her swaying, falling and vomiting at the feet of a person trying to help her. She complained that her friends and family had identified her from the footage, which was shown without her consent. Channel 5 said that because she had been committing a crime in a public place – which had led to her being fined in court for being drunk and disorderly – she did not have privacy rights engaged under Article 8 of the European Convention of Human Rights. Ofcom said that as Miss C was drunk, she was in a vulnerable state and so she had some legitimate expectation of privacy, but this was limited because the filming was done in a public place, and that expectation was outweighed by the public interest in the programme showing the work of the CCTV control room operators and of the police. Ofcom took into account that ‘she was not shown doing anything particularly confidential or personal’. Ofcom added, though, its view that in some circumstances a person’s Article 8 rights *can* be engaged even if they are acting unlawfully in a public place (*Ofcom Broadcast Bulletin,* No. 252, 14 April 2014).

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

For legal considerations as regards media coverage of police work, including a recent development in privacy law concerning people under official investigation, see ch. 5 in *McNae’s* and that chapter’s Additional Material on [www.mcnaes.com](http://www.mcnaes.com). That material includes case studies of adjudications by regulators on complaints about media coverage of police ‘raids’ to arrest or search.

**Photography and filming in or around hotels**

**Case study:** In 2018 Ipso ruled that clause 2 of the Editors’ Code had not been breached by *The Belfast Telegraph* taking a photo of a couple in their wedding dresses when they were within the precincts of a hotel after their civil partnership ceremony there, or by the photo’s publication. The photo was in a report by the newspaper that the father of one of the women was a senior member of the Orange Order, and that he had attended the ceremony and walked his daughter down the aisle. It reported that his involvement had potential to cause controversy, due to the organisation’s opposition to same sex marriage. Ipso said while the couple had not been aware that they were being photographed as they chatted with guests, they had been photographed standing outside the venue where they were visible from the road. The photo published did not contain any private information about them and showed only their appearance, and one of their fathers, which the couple had put into the public domain themselves, as they had posted photographs of the day on social media. In these circumstances, their expectation of privacy, if any, was limited. Also, Ipso said there was a genuine public interest in reporting on the attendance of a high-profile member of the Orange Order at the event, given the organisation’s comments on same-sex relationships (*Beattie and Atkinson v The Belfast Telegraph*, 3 August 2018)

**Case study**: In 2018 Ipso upheld a complaint by the former Liberal Democrat MP Lembit Opik that photographs published by *The Sun* without his consent breached his right to privacy under clause 2 of the Editors’ Code. *The Sun’s* article reported that his former partner had ‘revealed’ to it that in August 2016 he had ‘accidentally sent her pictures of him nuzzling [another, named woman’s] boobs as she lay on a sun lounger in a bikini’. The article was illustrated with the photographs which Mr Opik had allegedly sent. It described one as a ‘saucy snap’ and suggested this showed that Mr Opik and the woman on the lounger were ‘more than “just good friends”’. Mr Opik said that the photographs were private, and had been taken while he and the other woman had been on a private holiday together, at a location they had specifically selected because it was private. He said that at the time the photographs were taken, he had been joking with his friend and several other holidaymakers, one of whom took the photographs. They were within a closed courtyard with no visual access from outside of it. He said that there was no public interest justification for publishing this photograph, which had caused severe intrusion into his life and his relationships with his former partner and their very young child. He said he had not sent the photos to his former partner, accidentally or otherwise; he did not know how they had come to be sent, but said it was extremely unlikely that it had been an accident, as they had been transmitted as attachments in three separate emails, minutes apart. He speculated that they had been sent to her from his email account by a third party, or that they were stolen from him. Mr Opik said that *The Sun* had created an inaccurate story about the nature of his relationship with the other woman; she was not his ‘lover’. Ipso said that the alleged ‘saucy snap’ photo had captured a moment which would have only been seen by a small number of people, and had been taken while Mr Opik was enjoying a private holiday. Notwithstanding his position that he was joking around with a friend and the fact that the photos had been taken by a third party, they showed an intimate moment with a close friend, which had taken place in a closed courtyard within a private hotel with limited access to the wider public, Ipso said. It ruled that he was entitled to expect that photos showing an intimate moment with a close friend in a private place would not be published without his consent, in that their publication clearly had the potential to intrude into his private life. His former partner had approached the newspaper in order to speak about the breakdown of her relationship with him. As enshrined in the code, she had a right to exercise her freedom of expression, Ipso said. But, it said, the story was focussed on the photo of Mr Opik and the other woman, and what the newspaper said the photo showed. Mr Opik’s former partner had not been present on the holiday, and the photo had been disclosed to her without his consent. *The Sun* had not identified a public interest that would justify the publication of a photo of him sharing an intimate moment, and the extensive speculation and discussion of this moment, Ipso said. However, it did not uphold complaints made by Mr Opik under clause 1 of the code, saying it was not its role to determine the truth or otherwise of the claim that he was the other woman’s ‘lover’ or that he was a ‘love rat’. Ipso said that in the article *The Sun* had taken care to be clear throughout that the basis for these allegations were the claims made by his former partner, and that the article had contained his denial of the general claim of infidelity (*Opik v The Sun*, 10 July 2018)

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

**Photography and filming in commercial premises, shops and cafes**

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

**Case study**: In 2015 Ofcom ruled there had been no unwarranted infringement by Channel 5’s *Can’t Pay? We’ll Take It Away* programme of the privacy of a Brighton businesswoman. She complained about a broadcast episode which named her, showed her face and included her voice. She had been filmed by the programme’s camera crew in the public reception area of her business’s premises as she negotiated with High Court enforcement officers about repayment of £20,000 debts. The programme’s footage included some shot by body cameras worn by the officers, including as they talked to her in her office. Ofcom ruled that the use of these body cameras was not surreptitious, because, while small, they were not concealed and were mounted prominently on the officers’ anti-stab vests. Filming by the programme’s crew too was done openly, and when at one stage the woman asked the crew to leave the building, they did. Ofcom said that in the circumstances she had a legitimate expectation of privacy, and that it had been infringed because ordinarily, financial conversations in which an individual understood the matter would be treated in confidence could reasonably be regarded as sensitive; because the officers and crew had arrived unannounced; and because she was immediately questioned about the debt. So, Ofcom said, the material filmed was sensitive and private. But it ruled there was a genuine public interest in filming the High Court officers to convey to viewers an understanding of their work and the impact the repossession of goods to satisfy a debt can have on individuals. Ofcom therefore concluded that, although the businesswoman did not consent to the filming, or to the broadcast of footage, the infringement of her privacy was warranted. It said that the means of obtaining the footage was proportionate, and that the public interest and the broadcaster’s right to freedom of expression outweighed her legitimate expectation of privacy (*Ofcom Broadcast Bulletin*, No. 285, 17 August 2015). See too the case study from *Ofcom Broadcast Bulletin*, No. 330, which is in 4.4, ‘Doorstepping’, below, which concerned filming on commercial premises.

**Case study**: Ipso’s predecessor, the Press Complaints Commission (PCC) ruled in 2006 that a bank cashier’s privacy was breached by publication of a photo showing him in his workplace. He had been photographed by a magazine for an article on a lottery winner. The cashier, pictured as he served the winner in the bank, had not consented to the photo being taken or its publication. The PCC said he had a reasonable expectation of privacy in his workplace, and that by publishing the photo the magazine had breached (what is now) clause 2 of the Editors’ Code of Practice (*Kisby v Loaded*, 28 April 2006).

**Case study**: The PCC upheld a complaint from a man who objected to the *Dorking Advertiser* taking a photo in a café and publishing it. He and his dining companion were clearly visible in it. It was published in a review of the café. He did not know that it had been taken and did not consent to its publication. The man said that its publication demonstrated a lack of respect for both himself and his companion, as the reporter had no knowledge of their identities or the circumstances of their meeting. Members of the public had a right of free entry into the café, but the PCC said that customers of ‘a quiet café’ could expect to sit inside such an establishment without having to worry that surreptitious photographs would be taken of them and published in newspapers. There was no suggestion that the man was easily visible from the street. The PCC considered that all the circumstances suggested that he and his companion were clearly in a place where they had a reasonable expectation of privacy (*Tunbridge v Dorking Advertiser*, 23 May 2002).

**Photograph of a grieving family in a church**

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

**Use of wedding photo**

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

**4.3.1 ‘Long Lens’ photos**

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

See also, in 4.3.4 below, the ruling by the Press Complaints Commission in *Sheridan v the Scottish Sun*.

**4.3.3 Addresses**

**Home addresses**

**Case study:** A woman convicted by a court of unlawfully accessing social care records complained to Ipso that the *Bournemouth Echo’s* report of the case had included her home’s street level address. She said this breached clause 2 of the Code. She said inclusion of the street level address also breached clause 6, because she had two young children and – she said - printing her full name and her street level address had put them at risk. The newspaper did not publish the number of the house where she lived. Ipso did not uphold her complaint. It said that the circumstances in which people have a reasonable expectation of privacy in relation to their address are limited. In this case, her address had been disclosed in an open court. It added that the publication of addresses serves to identify defendants and helps to distinguish them from others. Therefore, Ipso said, she had no reasonable expectation of privacy over this information and the newspaper was entitled to publish her street level address. It added that the fact that she had children did not mean that the newspaper was not entitled to report the address, noting that the report did not refer to the children (*Shipsey v Bournemouth Echo*, 5 June 2020).

For another adjudication in which Ipso made clear that publication of a defendant’s home address does not normally breach the code, see *Dickinson v The Northern Echo* at 4.3 above.

**Case study:** In 2019 Ofcom ruled that news footage which showed the location of a house as being where a child’s death was being investigated did not breach the Broadcasting Code. STV’s *North News At Six* programme had a report of around 17 seconds in which the presenter said: ‘Police are investigating after the sudden death of a child at a property in Aberdeen yesterday. Enquiries are continuing at the house in the Mastrick area. Officers say the death is being treated as unexplained and a report will be submitted to the Procurator Fiscal’. The footage showed a police van parked in that residential area, and focussed on one house in particular, with a police officer shown outside it. The footage showed the house’s number on its front door and wheelie bin. The road name was shown. Ms K complained to Ofcom that her privacy was unwarrantably infringed by this detail about her house. Ms K said that her son had died suddenly of ‘cot death’ in his sleep. Post mortem and toxicology results proved that this was his cause of death. She said that the footage shown made her feel like ‘a criminal’ and that she was disgusted that the report was broadcast at a time when the port mortem was being performed. Ms K told Ofcom that people had seen the report and had contacted her family about it. STV said that the broadcast did not infringe Ms K’s privacy. It said that what it broadcast was ‘a warranted public interest news story’ and that the footage was filmed openly from a public place to which members of the public had access, and from where they could see the police presence. STV said that it took particular care to ensure that no individuals, including Ms K, were identified from the footage, and that the broadcast was limited to the facts provided to it by the police. STV said that it was alerted to police being at the address as a result of the death of a child, at that time, in unexplained circumstances. It said it contacted the police to establish the situation, and that Police Scotland’s Communications Office had confirmed that a child had died in ‘unexplained’ circumstances, and had said that, while there were no suspicious circumstances, a report was to be submitted to the Crown Office and Procurator Fiscal Service – Scotland’s prosecution service. STV also said that the ongoing police presence at the house ‘had already alerted local public interest and knowledge’, and that the news report was broadcast only once. STV said that it became aware of the cause of the child’s death (that it was ‘by natural causes’) the day after that broadcast. Ofcom in its ruling observed that, while the STV report disclosed the full address of where the death had occurred, it did not refer to or identify Mrs K or her child, or anyone else who lived at the property, and reflected only the limited non-specific factual information that had been released to STV by the police. Ofcom said that the footage appeared to have been filmed openly by the programme makers and from a public place (the public highway) from which the police activity outside the property was clearly visible to members of the public. Ofcom said it recognised, however, ‘that there are circumstances in which the broadcast of footage of a person’s home and information which discloses its location may nevertheless give rise to an expectation of privacy’. Ofcom added that it was likely that from the STV report a small and limited number of people would have identified Ms K as the person who lived at the property, and Ofcom noted that the report also revealed that the police were investigating the death of a young child there. Ofcom said that in these circumstances, it considered that the information disclosed in the report ‘was personal and sensitive to Ms K and, as such, attracted a legitimate expectation of privacy’. But it said that, while it recognised the distress Ms K said she had experienced as a result of the broadcast, and sympathised with her grief at the loss of her child, it also took into account the genuine public interest in broadcasters being able to report news stories and impart information to the audience. It ruled that the reporting of the sudden death of an infant that was being investigated by the police, and which would later be subject to a public judicial inquiry, was a matter that was in the public interest. Ofcom said that in the particular circumstances of the case, it considered that Ms K’s legitimate expectation of privacy did not outweigh the broadcaster’s right to freedom of expression and the public interest in reporting the story. So Ofcom concluded that there was no unwarranted infringement of Ms K’s privacy in what was broadcast (*Ofcom Broadcast Bulletin*, No. 383, 22 July 2019).

**Case study**: In 2017 Ofcom ruled that a *Channel 4 News* report which partially identified the location of the home address of a UKIP official had not unwarrantably infringed his privacy. Adam Heatherington had resigned as chairman of UKIP’s Merseyside branch after comments by the party’s then leader, Paul Nuttall, about the Hillsborough disaster. The report showed a journalist knocking at Mr Heatherington’s front door, which was white, to seek his comment, and – in a light-hearted reference - also disclosed the name of that road, which was Mystery Close. Mr Heatherington complained to Ofcom that he had been ‘targeted’ because of this broadcast, and that his house’s ‘distinctive’ privet hedge was shown. Channel 4 said it had taken care not to show a clear image of the door/driveway, or any wide shot of the house, that it blurred his house number in the report, and that the doors of most of the 40 or so houses in that street were similar to his, and a lot were painted white. After becoming aware of the complaint, Channel 4 removed the reference to Mystery Close and footage of the road sign from the online version of the report. In its ruling, Ofcom noted that Mr Heatherington was a company director whose home address was publicly available from the Companies House public register, even though he could have chosen, under company law, not to have used his home address in these public records. Ofcom said that a person may have a legitimate expectation of privacy in relation to the location of his or her home even when that location is publicly available on a variety of searchable databases (such as the electoral roll). But it noted that Mr Heatherington was ‘a public figure’ who chose to stand for UKIP in a high-profile Mayoral election. His home address had previously been published in full in the context of his candidacy for local elections, and those council documents remained accessible to the public at the time of the broadcast. Ofcom said that therefore, given that only the street name was disclosed, it did not consider that the footage broadcast revealed anything particularly private or sensitive about Mr Heatherington, and that – taking all factors into account - it did not consider he had a legitimate expectation of privacy in relation to the broadcast of footage which included the name of his road (*Ofcom Broadcast Bulletin*, No. 332, 3 July 2017).

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

**Work addresses**

Ipso has said: ‘Individuals do not generally have a reasonable expectation of privacy in relation to information concerning their place of work’. It stated this after a car dealer who had been convicted of perverting the course of justice, complained that a newspaper’s report of the court case gave the address of his dealership and included a photo of those commercial premises. He said the dealership was not relevant to the court case. Ipso said that the premises were visible from a public street, and that the photo did not contain any private information about him. It ruled that he did not have a reasonable expectation of privacy in relation to the information in the photograph, Consequently, it ruled that clause 2 of the Editors’ Code had not been breached (*McGurk v Banburyguardian.co.uk*, 3 April 2020).

**4.3.4 People at home and the home’s interior**

**People photographed or filmed in their doorway**

**Case study**: In 2017 Ipso did not uphold a complaint by a sacked police officer about a photo which had been taken of her when she opened the door of her home. The photo was published by the *Newcastle Chronicle* when it reported that she had been dismissed by Northumbria Police after she pleaded guilty to improperly exercising the powers and privileges of a police constable. For that offence she was sentenced to do 120 hours unpaid work (a community order). That article said of the offence that she and another police officer had allowed a drug user to walk free with heroin sold to him by a drug dealer in return for information, and that the officers had tried to cover their tracks with a false intelligence report. A *Chronicle* reporter had knocked on her door after the disciplinary hearing which dismissed her. She told Ipso that when she looked through the door’s spyhole she could not see anyone, but that when she opened it the reporter, who she recognised from her court case, ‘jumped out from the side’ and said her name. She said she had shut the door within two seconds but in that time a photographer took the photo. She said that when she looked out of the window she saw the journalist laughing in a vehicle parked opposite her house. The *Chronicle* said its reporter had acted professionally. He said he did stand slightly to the side of the door but denied that he was hiding. When the woman opened the door, he introduced himself as working with the newspaper, at which point she shut the door in his face. The *Chronicle* also said that it was entitled to take pictures from a public place. It added that, in any event, there was a clear public interest in identifying a police officer who had behaved in the manner set out in the article. Ipso said that the woman - as a non-public figure, standing at the door of her own home, having opened it following the reporter’s knock, and with no prior notice of the reporter’s visit - had a reasonable expectation of privacy in the circumstances in which she was photographed. Photographing an individual in such circumstances is intrusive, and the newspaper was obliged under the Editors’ Code to justify its decision to photograph her, Ipso said. But it added that the intrusion in this instance was limited by the fact that the woman would have been visible in her doorway from the street, and because the photo did not disclose any information about her which was particularly private or embarrassing. Anyway, Ipso agreed with the newspaper that it was in the public interest to identify her as the individual convicted of an abuse of her public position, and for the newspaper to illustrate the article with her photograph. Further, Ipso said, the limited level of intrusion in this instance was proportionate to the public interest the newspaper had identified. Ipso ruled there was no breach of the code’s clause 2 (*Turnbull v Newcastle Chronicle*, 7 March 2017).

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

**Filming inside people’s homes**

**Case studies:** In 2018 Ofcom ruled that filming for some programmes in the Channel 5 series *Can’t Pay? We’ll Take It Away!,* and what was broadcast from such footage,unwarrantably infringed the privacy of people visited in their homes by High Court Enforcement Agents (HCEAs - a type of bailiff) after getting into debt. The series followed HCEAs as they tried to resolve debt disputes by negotiated settlements with debtors while also assessing whether personal property they had at home could be legally seized during the visit to pay debt. The HCEAs filmed the visits using body cameras supplied by the programme makers. A couple referred to in the relevant Ofcom adjudication as Mr and Mrs T complained that the two HCEAs who arrived without warning at their home about a debt of more than £3,000 did not tell them the footage could be used in a TV programme. The couple said that if they had been told this, they would not have let the HCEAs into their home, or discussed private matters and their financial situation with the HCEAs. Footage shot by the HCEAs and included in the relevant programme included Mr T’s face, and his voice was heard in the programme. Mrs T’s face was obscured in what was broadcast. However, her voice was heard, and she was identified in the programme as being Mr T’s wife, The broadcast footage also showed the interiors of rooms and some of their personal belongings, and that they did not have much furniture. Mr and Mrs T said that one of the HCEAs told them that the sole purpose of his body camera was to record what happened during the visit in case of any subsequent questions or dispute about it. A camera crew working for the programme was outside of their home, but all footage of the couple included in the programme was filmed by the HCEAs. Mrs T said that she had clearly been distressed and upset by the visit, and had been humiliated and exploited by the programme including the footage of her. Channel 5 said that the activities of HCEAs, and impact of these activities, and the kind of difficulties HCEAs faced in their duties are all matters of public interest. Channel 5 agreed that Mr and Mrs T had not consented to being filmed or to their home being filmed, but it argued that because the HCEAs were engaged in official court business, it was not necessary for them to gain the couple’s consent for the filming. Channel 5 said that the camera crew outside the house had explained to the couple that it was filming for a series about the HCEAs. Channel 5 said too that examination of all the footage showed there had been no discussion between the HCEAs and the couple about the body cameras and their use. Channel 5 maintained there had been no breach of the couple’s privacy because of the body cameras, especially given that the cameras were not hidden or concealed. It argued that its rights under Article 10 of the European Convention of Human Rights to impart information, and the public’s Article 10 rights to receive it, should weigh heavily in Ofcom’s decision (see *McNae’s* 1.3. on Article 10). Channel 5 argued that the broadcast of the footage was clearly capable of contributing to a debate of general, public interest - namely the manner in which debt judgments are enforced, the powers granted to HCEAs, and the consequences of not paying proper attention to personal debts (for the legal significance of the ‘debate’ argument, see 27.6 and 27.7 in *McNae’s*). Channel 5 also said that footage of the interior of the complainants’ home was included solely because it demonstrated the kinds of items the HCEAs would seize if payment was not made. In its ruling against Channel 5, Ofcom said that the fact that the programme-makers had supplied the body cameras to the HCEAs in an advance agreement (a fact that Channel 5 did not initially disclose to Ofcom), whereby the programme makers owned the copyright to footage shot with the cameras, showed that their fundamental purpose was to obtain footage for potential broadcast. Ofcom said that a consequence of this agreement was that Channel 5 acquired access to observe and record sensitive and intimate exchanges between Mr and Mrs T and a relative who arrived to give them money to clear the debt during what was a stressful and emotional event. Ofcom said that at no time had Mr and Mrs T been made aware by the HCEAs or the camera crew outside the house that the footage recorded by the body cameras could be used in a TV programme, and in fact the couple had been given a misleading impression that footage shot inside the house would not be used in any programme. Ofcom said that this impression was given because a member of the crew outside the house had asked Mr T to be allowed to film inside it, but, after he refused to consent to this, did not tell him that the footage being shot inside it by the HCEAs was owned by the programme makers to use on TV. Ofcom therefore ruled that the footage shot inside the house had been obtained surreptitiously (that is, deceptively) even though the body cameras were visible. Consequently, Ofcom said that the footage was obtained in contravention of practice 8.13 of the Broadcasting Code, because none of Channel 5’s arguments about the public interest value of the footage ‘pointed to a *prima facie* story in the public interest which would ordinarily warrant the use of surreptitious filming’, particularly as the filming took place in a private home and concerned not just the official duties of the HCEAs but Mr and Mrs T’s personal reaction to the visit and their intimate reactions with one another in the light of the situation which confronted them there. NB: for context about *prima facie*, see *McNae’s* 3.4.15. Ofcom ruled that the ‘public interest’ arguments submitted by Channel 5 were not ‘of sufficient order and weight’ to warrant surreptitious filming in the case’s circumstances. Ofcom said that the couple had a legitimate expectation of privacy in the circumstances in which they were filmed, which, on balance, outweighed the broadcaster’s right to freedom of expression and the public interest in the particular circumstances of the case. Ofcom therefore ruled that the privacy of Mr and Mrs T was unwarrantably infringed by the filming inside their home and the broadcast of this footage, in breach of code’s rule 8.1. Factors which Ofcom took into account included that the footage showed the interior of their home and so how they lived; captured personal and financial conversations between the couple, and negotiations with the HCEAs in which the couple felt they could speak openly and understood the matters being talked about would be treated in confidence, in a situation that was distressing and sensitive for them; and during which Mrs T had become increasingly upset – she wept at one point (*Ofcom Broadcast Bulletin*, No, 356, 18 June 2018). Later in 2018 Ofcom ruled that Channel 5 had unwarrantably infringed the privacy of a single mother and her four-year-old daughter in the filming for and broadcast of another *Can’t Pay? We’ll Take It Away!* programme. Footage was shot inside the mother’s and daughter’s home by HCEAs who (legally) let themselves into the house wearing body cameras supplied by the programme-makers, and by a film crew from the programme. The mother, who had a debt of just over £2,000, and was on medication for depression (a fact referred to in the programme), was filmed by an HCEA coming out of her bedroom having just woken up, with the programme showing her as she arrived drowsy in the hallway, and she was shown crying. The programme also showed her bedroom, clothes and belongings scattered about, and dirty dishes in the kitchen sink. The faces of mother and daughter were shown, and the mother was named. Channel 5 argued that she had consented to the filming. But Ofcom said that the mother was in a ‘vulnerable condition’, and that in view of her being upset and in a fragile state of mind, and appearing distracted and withdrawn, it did not consider that she was in position to given informed consent (see *McNae’s* 3.4.12.1, 4.11 and 4.12 on consent). In the same bulletin, Ofcom published another ruling on *Can’t Pay? We’ll Take It Away!,* which was that it had unwarrantably infringed the privacy of a mother and her two children in what was filmed for and broadcast in another programme. This was footage shot during a visit by HCEAs to her rented home over a £4,651 debt owed by her estranged husband (*Ofcom Broadcast Bulletin*, No, 367, 3 December 2018). NB: In February 2018 a High Court judge ruled that the broadcasting by Channel 5 in a *Can’t Pay? We’ll Take It Away!* programme of footage shot inside a couple’s home had intruded too far into their privacy. It was shot while they were being legally evicted. He awarded £10,000 damages each to the husband and wife. He said that the programme contributed to a debate of general interest – about the consequences of increasing levels of personal debt - but that inclusion of ‘private information’ in the footage went beyond what was justified for that purpose (*Ali and Aslam v Channel 5 Broadcast Limited* [2018] EWHC 298 (Ch)).

For other regulatory adjudications concerning footage shot or photos taken inside people’s homes, see the Additional Material for *McNae’s* ch. 5 on [www.mcnaes.com](http://www.mcnaes.com): **Journalists showing police ‘raids’**

**Gardens and drives**

**Case study:** In 2018 the *Sunday World* newspaper reported on an attack against members of a security firm as they attempted to evict tenants from a farm in the Republic of Ireland. It said that a gang ambushed the men, and that the owner of the firm had a gun put to his head, as the gang shot his security dog. The article said that when a reporter went to the house of the firm’s owner, the driveway was filled with expensive 4x4 vehicles and work vans. The owner complained that the article’s reporting of the general location of his home intruded into his privacy in breach of clause 2 of the Editors’ Code of Practice, and had added to the threat against him and his family. He also said that it was misleading to state that his driveway was ‘filled with expensive 4x4 vehicles’ as some of these belonged to family and workmen. Ipso ruled that clause 2 had not been breached. It said that the article did not disclose the full address of the house, or include details such as a house name or number, and that reporting the home’s general location did not reveal anything private about the owner. It added that revealing the existence of or describing the vehicles which were situated in the driveway did not reveal anything private about him, but had ‘simply reported what was visible to any passer-by’ (*Gordon v Sunday World*, 8 October 2019).

**Case study**: In 2009 a complaint was made on behalf of a police officer that *The People* had breached (what is now) clause 2 of the Editors’ Code by publishing, in a news report, a photo which showed him standing in his private driveway. The Press Complaints Commission did not uphold the complaint. It said the photo was taken from a public road, the officer was not in a place where he had a reasonable expectation of privacy, and the photo did not show him engaged in any private activity (*Phyllis Goble v The People*, 29 September 2009 – for a case study on another aspect of the complaint, see 4.15, below).

**Case study**: In 2007 the Press Complaints Commission ruled that a newspaper’s publication of a photograph showing Gail Sheridan, wife of Scottish politician Tommy Sheridan, in her back garden did not breach her privacy. The picture was taken with a telephoto lens, but the newspaper said she would have been visible to someone on the street without such magnification. It argued that she was not involved in any private activity as she was merely standing on her driveway with her keys in her hand. It said too that she was a public figure with a high media profile, and had previously posed for photographs in her garden that were published in a magazine. The PCC said she was visible and identifiable from a public road, and was not hidden from public view in an enclosed back garden, and therefore had no reasonable expectation of privacy under (what is now) clause 2 of the Editors’ Code. It added that the photo was ‘innocuous’ because Mrs Sheridan was not doing anything private (*Sheridan v the Scottish Sun*, 3 May 2007).

**4.4 Doorstepping**

**Case study:** In 2020 Ofcom ruled that the ITV programme *The Kyle Files* had been justified in using ‘doorstepping’ tactics to seek interviews with a property landlord. Ofcom’s adjudication referred to him as Mr B. He complained to Ofcom because he was filmed during the programme’s investigation into landlords who advertised online to women that accommodation was available and wanted ‘sex for rent’ arrangements, and because footage identifying him was shown in the programme. The programme argued that such landlords were acting illegally, because they incited a form of prostitution, and that they were exploiting women who badly needed somewhere to live. The programme told how a woman researcher from the programme had posed as a prospective tenant, after the programme team saw one of Mr B’s adverts. This had offered a ‘free room for young or homeless girl’ aged 16-25, in return for cooking and cleaning. The researcher, using the name Rachel, arranged to meet Mr B at a pub. Footage shot surreptitiously, which was broadcast, showed Mr B, aged 50, at a table outside a pub, meeting ‘Rachel’. The programme showed that in emails before the meeting, Mr B had told ‘Rachel’ as a prospective tenant that ‘the whole deal may put you off’, adding that he wanted her to share his bed and liked bondage. The programme showed that at the meeting he told her, referring to the accommodation arrangement he proposed: ‘Yes, I want to take advantage of you, you are in a difficult situation, I am not going to deny that… worst case scenario, I am not going to rape you.’ Immediately after this meeting the programme’s presenter Jeremy Kyle, who had been waiting in a van nearby listening to a transmission of what was said at the meeting, ‘doorstepped’ Mr B in a nearby car park, attempting to interview him on camera about him apparently offering accommodation in return for sex. Mr B got into his car and drove away. The programme makers then texted him, but he emailed saying he would not make a statement. The programme told how after this meeting its team discovered that Mr B had again advertised accommodation online, and so another of its female researchers arranged to meet him, posing as a prospective tenant. In emails before the meeting Mr B asked for her dress size, and said: ‘What sort of arrangement are you comfortable with?’ Mr Kyle attempted to get a ‘doorstepping’ interview with Mr B as he sat in his car after turning up at the meeting place, but he drove off. This footage too was shown in the programme. Mr B complained to Ofcom that his privacy was unwarrantably infringed by the filming and by what was broadcast, including because it revealed his sexual preference for bondage. He said the programme had put his personal safety in jeopardy, and impacted on his personal life and ‘prospects of work’. Ofcom ruled that the surreptitious filming of Mr B’s meeting with ‘Rachel’ was justified under the ‘public interest’ provisions of the Broadcasting Code, including because of the *prima facie* evidence - in particular in Mr B’s emails to ‘Rachel’ - that there was a story in the public interest about vulnerable young women being put at risk of exploitation (see *McNae’s* 3.4.15 about what the code says about surreptitious filming). Ofcom also said it considered that filming the conversation between ‘Rachel’ and Mr B was justified to obtain evidence of Mr B attempting to establish a ‘sex for rent’ arrangement, and also information about the nature of any such arrangement. Also, Ofcom ruled that surreptitious filming was necessary for the credibility and authenticity of the programme because, without it, the programme makers would have had to rely on the advertisement posted by Mr B, and email exchanges between Mr B and ‘Rachel’. By filming Mr B explaining how he envisaged the particular ‘sex for rent’ arrangement would work, viewers could see for themselves the nature of these arrangements, and how vulnerable young women desperate for somewhere to live might be exploited by such arrangements. Ofcom ruled that Mr Kyle’s attempts to get interviews with Mr B were ‘doorstepping’, because that filming appeared to have taken place without warning and without Mr B’s consent. Ofcom said that as regards the first ‘doorstepping’, it was justified under the code not to warn him because Mr B may have ‘acted differently’ in the meeting with ‘Rachel’, which was central to the programme’s investigation, if he was made aware in advance of the presence of programme makers waiting to interview him, and because of the genuine public interest in that investigation’s focus on ‘sex for rent arrangements’ of the type it appeared Mr B was seeking to enter into. Ofcom said that the second ‘doorstepping’ was justified for the same reasons, after the discovery that Mr B had continued to advertise accommodation apparently with a view to entering a ‘sex for rent’ arrangement, and because he agreed to meet up with a second undercover researcher believing she was interested in such an arrangement. Ofcom ruled that Mr B did have a legitimate expectation of privacy in relation to the footage shot during his meeting with ‘Rachel’, and during the doorstepping, because there had been discussion of his sexual preferences in the former. But taking into account all the circumstances, Ofcom ruled that Mr B’s privacy was not unwarrantably infringed by the filming or by what was broadcast, saying: ‘This material allowed the broadcaster to demonstrate the concerns it had about Mr B’s behaviour and expose the fact that he was apparently offering accommodation to young women in return for sex, underlining the exploitation of vulnerable women in the housing market.’ Ofcom said that his rights to privacy under Article 8 of the European Convention on Human Rights were outweighed by ITV’s Article 10 right to freedom of expression and its audience’s Article 10 right to receive information (*Ofcom Broadcast Bulletin*, No. 397, 24 February 2020).

**Case study**: In 2017 Ofcom ruled that the BBC Wales *X Ray* consumer affairs programme had not unwarrantably infringed the privacy of car dealer Jason John, either in its filming of him or in what was broadcast. During its investigation of his business C and N Automotive Trade Ltd (“C &N”) he was filmed covertly on its premises. The broadcast footage including him speaking to an undercover reporter posing as a potential customer. The programme also included footage subsequently filmed openly during a ‘doorstepping’ attempt by a reporter to interview him. Ofcom said that the BBC had complied with practice 8.13 of Broadcasting Code, which governs covert (that is, surreptitious) filming – for context, see *McNae’s* 3.4.15. Ofcom noted that, before beginning the covert filming, the BBC - which had broadcast two earlier investigative reports about his company - had received ‘an unprecedented number’ of complaints from former customers for a car dealership of that size. Customers had told the programme they had been sold cars which quickly developed faults, and often had to go to court to get their money back. The BBC had gathered new evidence suggesting the company was selling vehicles ‘written off’ by insurance firms but was not telling customers of the ‘write off’, thereby potentially acting contrary to consumer law. This had raised concerns that the business could be misleading the public. Ofcom said this information amounted to *prima facie* evidence of a story in the public interest and gave reasonable grounds for the programme makers to suspect that further evidence could be obtained by covert filming, and that it would have been unlikely that without using this technique they could have captured footage of Mr John speaking openly to customers about vehicles for sale, and ‘acting in his typical manner’. Ofcom considered that the covert filming was necessary, too, to the credibility and authenticity of the programme – which is another requirement of the code’s practice 8.13 - because without the footage the programme makers would have had to rely on second-hand accounts of Mr John’s sales practices, which would have been less credible than direct evidence of them. Ofcom said that a person may have an expectation of privacy in relation to activities carried out at their place of business, or in the course of their employment, and Mr John had that expectation, because when filmed he was likely to have believed he was having a one-to-one conversation with a potential customer. But, Ofcom said, that expectation was limited because he was filmed in a publicly accessible area of his business, and it was reasonable to expect that he would have been aware that any conversation had the potential to be overheard by any members of the public. Also, the conversation filmed was not of a particularly personal or sensitive nature, being a business conversation. Ofcom ruled that the BBC had a genuine public interest in obtaining the footage covertly and broadcasting it, to demonstrate concerns it had about Mr John’s business practices; that more broadly the programme formed part of an investigation which highlighted the potential health and safety risks of driving unroadworthy cars; that Mr John had persisted in misleading business practices despite previous investigations by the programme makers; that the programme could act as a deterrent for other salespeople who may be engaged in ‘similar practices’; and that it was proportionate to film him covertly. As regards the BBC’s decision to film him openly in a ‘doorstep’ attempted interview, Ofcom ruled that the BBC had complied with practice 8.11 of the code. In the preceding days, the BBC and Mr John had been in communication. In particular, the BBC had sent him a letter on 25 October 2016 giving detailed information about consumer complaints they intended to feature in the programme, and raising serious concerns about his business practices, including asking him why his website did not specify if a vehicle for sale was a ‘write off’, why he had not paid outstanding county court judgments, and why he had sold a vehicle which an expert said was dangerous and not safe to be on the road. This letter offered him the opportunity to respond by giving an interview or by providing a statement for inclusion in the programme. Ofcom said he had responded through his solicitor on 31 October 2016, but that this response did not specifically address all the concerns raised. The programme makers wrote back to him the same day, asking for a more specific response to the concerns raised, and saying they would need an additional response by noon the following day. After they received no further response, they proceeded with the ‘doorstep’ interview. Ofcom said that as regards the obtaining of that footage, which showed him claiming his solicitor had already ‘answered’ for him, asking the reporter to leave and closing a garage door to shut the programme makers out, Mr John did not have a legitimate expectation of privacy. Ofcom said he was aware he was being filmed; he was filmed in a public accessible area of his business premises; he was not filmed engaged in any conduct or action that could reasonably be regarded as being particularly private; the filming did not capture any information which could reasonably be regarded as being private or sensitive to him; and it did not consider that the reporter had ‘bullied’ him in this approach in order to create drama (*Ofcom Broadcast Bulletin*, No. 330, 5 June 2017).

For other case studies on undercover filming, see 3.4.15, **Secret filming and recording - deception and privacy** in the Additional Material for ch. 3 on [www.mcnaes.com](http://www.mcnaes.com) and, below: **Parental consent for photographs, filming or interviews**.

**4.5 The codes’ protection against harassment**

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

For other Ipso adjudications concerning clause 3 and photography, see *‘*Photography and filming in streets’ and ‘Outside courthouses’, in 4.3 above.

**Clause 3 normally covers behaviour of journalists, not what is published**

In general, Ipso interprets clause 3 as relating to the conduct of journalists during the newsgathering process – that is, it does not normally see the clause’s use of the term ‘harassment’ as applicable to what is published. It has said ‘publication of information would only represent a course of conduct such as to represent harassment under the terms of clause 3 in exceptional circumstances’ (*Representatives of Sophia Murray v Daily Mail*, 28 October 2016, not upheld). It has also said: ‘Clause 3 relates to the behaviour of journalists prior to the publication of an article’ (*Shipsey v Bournemouth Echo*, 5 June 2020, not upheld - for further details of this adjudication, see above at 4.3.3). This means that a complaint from anyone that the number of articles published about them was harassment will not generally be considered under clause 3 (for example, see *Flower v Bournemouth Echo*, 9 December 2015, not upheld as regards what is now clause 3; *Spinks v The Sun*, 28 April 2014, not upheld).

**Clause 3 does not prevent approaches for comment on ‘new, distinct claims’**

Ipso has made clear that even if a person in the news has stated that he or she does not want to be asked questions by reporters, clause 3 does not ban a later approach asking the person for comment on a new development in the story.

**Case study:** In December 2018 a private security company carried out a controversial eviction of tenants in Roscommon, Republic of Ireland. Afterwards the businessman who owned the company and his staff were reportedly attacked by 20 armed persons in an attempt to reclaim the property. This story was widely reported in Northern Ireland and the Republic of Ireland. The businessman then contacted Ipso, telling it he did not want to comment to the media about the incident. Ipso circulated ‘a private advisory notice’ on his behalf to several of its member media organisations, stating that he and his family did not intend to make any comment about the Roscommon eviction, and that he had requested that journalists desist from contacting them or attending at their home. The next day he received an email sent to his business address from a journalist acting on behalf of the *Sunday Life* newspaper. The businessman complained to Ipso that the sending of this email was in breach of his request to desist, and thus amounted to harassment, and so breached clause 3 of the Editors’ Code. Ipso ruled that the code was not breached. It said that the email related to an article which reported that his company had been subcontracted to provide security for several high-profile events in Northern Ireland and the Republic of Ireland, whilst also being involved in controversial evictions. The email asked for his confirmation that he had been subcontracted to work at the events, and whether he had made the companies which employed his firm aware that it was now being investigated by the Republic of Ireland’s Private Security Authority as a result of the Roscommon incident. In response to his complaint, the *Sunday Life* told Ipso that the Roscommon incident had been widely reported and was a matter of public debate. Therefore, the newspaper said, there was a public interest in reporting the fact that his business, which was now also under investigation by authorities in the Republic of Ireland and was the subject of various other serious concerns about its conduct, had also provided security for high-profile public events and had links to other well-known companies. The *Sunday Life* said that these points had not previously been reported on or addressed by the businessman, and so it was appropriate and diligent to give him a right of reply to the claims. It also noted that the private advisory notice only referred to contacts regarding the Roscommon incident, not contacts regarding all future stories about the businessman. Ipso said that in assessing whether there had been a breach of clause 3, it considered the terms of the advisory notice, the nature of the *Sunday Lif*e’s approach to the businessman, and the public interest. The emailed request for comment related to ‘new, distinct’ and serious claims, Ipso said, adding that it was important that the businessman was given the opportunity to respond to these claims, in line with the *Sunday Life*’s obligations to take care over the accuracy of published material under the terms of clause 1(i) of the code. Ipso said that the newspaper had clearly considered the public interest in making the approach, prior to publication, and the justification for the approach was set out in the email seeking comment. Ipso noted that the approach took the form of a polite email about the man’s business, sent to his professional email address. Any intrusion from such an approach was limited, and the approach was justified by the public interest identified by the newspaper, Ipso said (*Gordon v Sunday Life*, 23 March 2019).

**Readers’ postings**

Part of the *Shipsey* complaint, see above, was that the *Bournemouth Echo*’s publication on Facebook of the report of her court conviction had led to negative comments about her being posted there by the public, which she said constituted harassment in breach of clause 3. The newspaper said it had no control over what was posted there as comment, but that the negative third party comments that she was concerned about had been hidden from public view as soon as they were flagged. Ipso’s ruling said clause 3 was not breached: ‘Reader comments only fall in Ipso’s remit if they have been subject to some form of editorial control. For instance, if they have been flagged to the publication and the publication has reviewed them and decided to continue to publish them. In this case, when the comments were flagged, they were hidden from public view so there was no published content for the [Ipso complaints] Committee to consider’.

**Corporate entities and clause 3**

Ipso has said that clause 3 refers specifically to individuals, and that it is not possible for a corporate entity to experience the ‘intrusive harm’ the clause seeks to prevent (*Arcadia Group v The Daily Telegraph,* 1 May 2019). A company could successfully complain on behalf of people it employs.

**4.6 Law against harassment**

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

The police climbdown represented an important victory for investigative journalism. A journalist investigating a person’s conduct needs to approach him or her to try to check what is true, to avoid any libel problem – see the Additional Material for ch. 22 on [www.mcnaes.com](http://www.mcnaes.com): **Test whether your story has a defence**. And regulatory codes of ethics say journalists should take care to be accurate, so this is another reason why it is proper practice to approach the person, to seek a response, and it is necessary for fairness too. See the Additional Material for ch. 2 on [www.mcnaes.com](http://www.mcnaes.com): **Sufficient care to be accurate**? and 2.4.2, 3.4.11 and 3.4.12.2 in *McNae’s*. So, a journalist being professional and ethical by making such approaches should not have to fear being prosecuted for harassment.

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

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

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

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

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

Ms Michalos said that Mr Davies’ contact with the woman did not amount to harassment. The allegations which the woman made about him were denied.

Ms Michalos submitted that police were wrong to issue the PIN to Mr Davies, because:

* it was irrational to conclude that a Prevention of Harassment warning could be issued without considering whether the conduct complained of could amount to harassment;
* the warning was issued contrary to guidance on such matters from the Association of Chief Police Officers (ACPO) and the Metropolitan Police, so the IPCC was wrong to reject Mr Davies’ appeal against the issue of the warning;
* the failure adequately to investigate the woman’s claims about Mr Davies before issuing the warning to him breached the ACPO guidance, and this was another reason why the IPCC was wrong to reject Mr Davies' appeal – the woman’s allegations of harassing contact by telephone or electronically were amenable to proof and should have been properly investigated, and a failure to investigate adequately, particularly when allegations were made by someone who had questionable credibility, breached standards of fairness required by common law;
* issuing harassment warnings to journalists over journalistic activity – in this case, contact with the subject of a story so as to put allegations of fraud to her - breached the right to freedom of expression under Article 10 of the European Convention on Human Rights, and would have a seriously chilling effect across the media, and should only be done in exceptional circumstances.

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

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

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

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

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

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

For further details of Mr Davies’ case, see *Media Lawyer* reports of9 February and 2 June 2016, and the *Croydon Advertiser* website.

**Cases in which courts ruled there was harassment**

If a journalist’s conduct towards a person causes alarm and distress, is repeated and is not deemed to be justified in the public interest, or otherwise covered by the journalist’s rights under Article 10 of the European Convention on Human Rights, he or she may be prosecuted under the 1997 Act, and/or be made subject to an injunction in a civil lawsuit brought under the Act’s provisions.

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

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

**Case study:** In 2002 the Court of Appeal upheld a judge’s finding that a reference in *The Sun* to the colour of a woman embroiled in a dispute with police could constitute harassment. *The Sun* had published a story in 2000 about three police officers who were disciplined and demoted over remarks they made about an asylum seeker. The piece said, in effect, that the policemen were disciplined after a complaint about a private joke was made by ‘a black clerk’, who was named as Esther Thomas. *The Sun* then ran a further story which included extracts from readers’ letters and referred again to ‘the black clerk’. Ms Thomas sued for damages under section 3 of the [Protection From Harassment Act 1997](https://www.lawtel.com/UK/Documents/AF0180150), claiming that the articles had caused her distress and anxiety. A judge found that the reference in the article to Ms Thomas’s colour was not reasonable, and that she had made out an arguable case of racism. The Court of Appeal rejected *The Sun’s* appeal against that finding. It said that it was not the conduct that made up an offence or tort of harassment, but rather the effect of that conduct. In general, press criticism, even if robust, would not amount to unreasonable conduct or fall within the natural meaning of harassment – so a claim which simply alleged that a series of articles in a publication caused distress was liable to be struck out as failing to disclose a claim of harassment. Clear facts which alleged harassment were required, and it was for the newspaper to show that it had a reasonable motive for its conduct. But the judge was right to find that it was arguable that the newspaper’s reference to Ms Thomas’s colour was not reasonable. It was also arguably foreseeable that *Sun* readers would send hate mail after the article – and the newspaper had made no attempt to disassociate itself from the contents of those letters. The Court of Appeal added that the test of whether a series of publications constituted harassment turned on whether the publisher's conduct was reasonable, and required the publisher to consider whether a proposed series of articles that was likely to cause distress to an individual was an abuse of the freedom of the press, needing to be curbed (*Esther Thomas v News Group Newspapers and Simon Hughes* ([2001] EWCA Civ 1233; [2002] EMLR 4).

**4.7 Coverage of accidents, major incidents and deaths**

**Case study**: In 2008 the Press Complaints Commission ruled that (what is now) clause 2 of the Editors’ Code of Practice had been breached by the *Wiltshire Gazette & Herald*’s online publication of a photo of a road accident victim receiving emergency medical treatment at the scene. The photo showed part of her face. The PCC said: ‘There is a clear need for newspapers to exercise caution when publishing images that relate to a person’s health and medical treatment, even if they are taken in public places.’ The PCC said there was ‘insufficient public interest in a more routine incident such as a car crash to override the rights to privacy of the victim by publishing a picture of her face and showing her receiving treatment, especially at a time when her condition was uncertain’. A photo published in the newspaper, showing the woman at the crash scene but with her face entirely obscured, and not specifically receiving treatment, was ‘just on the right side of the line’, it said (*Kirkland v Wiltshire Gazette & Herald*, 23 April 2008).

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

After a major incident – for example, a disaster or a terrorist bombing – the public interest in journalists reporting it immediately is so strong that breaches of an individual’s privacy may be justified to show photos or footage of, for example, victims needing or getting medical treatment, even though they had not consented to being depicted. Section 8 of the Ofcom Broadcasting Code says: ‘We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy.’

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

Coverage of accident and major incidents has also led to complaints that clause 4 of the Editors’ Code was breached - see 4.7.1 below. For example, see the case study of the PCC’s adjudication in *Mrs Leigh Blows v The Northern Echo,* in**Images of accidents, their aftermath and accident locations**.

**Cause of death is not private**

Ipso has stated that reporting the cause of someone’s death is not a breach of privacy. It said this when ruling against a complaint made on behalf of a widow that a newspaper feature had included that her husband’s death was suicide: ‘The nature of someone’s death is publicly available; it is of significant public interest to report on deaths within a local community. While the complainant did not wish for people to know that her husband’s death had been suicide, this was not private’ (*A woman v The Visitor (Morecombe)*, 17 August 2018.See also below in 4.7.1,**Publishing speculation on the cause of death may breach the clause 4.**

**4.7.1 Prohibition on intrusion into grief or shock**

The media should not break the news of individual’s death or serious injury until it has been officially confirmed, including to the next of kin.

**Case study**: In 2015 Ipso ruled that the *Lincolnshire Echo* breached clause 4 of the Editors’ Code by reporting that Carly Lovett had been killed earlier that day in a terrorist attack in Tunisia.  Lincolnshire police complained that the *Echo*’s reporting of Ms Lovett’s death as fact before it had been confirmed to her family had caused enormous upset at an already highly distressing time. The article had been published at 8.57 pm, when the family knew only that Ms Lovett had been involved in the attack and had been injured. Shortly after midnight, her fiancé, who was in Tunisia, had been taken to the hospital to see Ms Lovett, who at that stage had been identified as ‘a casualty’. At the hospital he had been asked to identify her body. He had then told the rest of the family of her death. The *Echo* denied that it had breached the code. It said that it had waited several hours to publish the information, until it had received confirmation from multiple sources that it considered to be reliable that Ms Lovett had died, and that the family were aware of this. Reporters had then contacted various family, friends and colleagues of Ms Lovett. The *Echo* said that one source, close to the family, had confirmed that Ms Lovett had been killed. At around 5pm a reporter had visited an address where he had spoken to her step-father, who had declined his request to comment on Ms Lovett’s ‘involvement’ in the attack. The *Echo* added that at 6pm another source, a friend of Ms Lovett’s, confirmed that Ms Lovett had been killed, and that her death was being discussed among friends as fact. Later that evening, the reporter spoke again to the first source, who confirmed that Ms Lovett’s family were fully aware that she had died in the attack. A reporter had also telephoned Lincolnshire Police to make enquiries; they were not aware of any local involvement in the attack. The *Echo* noted that the attacks in Tunisia were of international importance, and that in such cases editors had a responsibility to keep the public informed. Its confidential sources were reliable and close to the family. It said that it could not have known that Ms Lovett’s family had retained some hope at the time of the article’s publication that she had survived the attack. Nonetheless, it apologised for any further distress that the article had caused to the family, and offered to write personal letters of apology to Ms Lovett’s parents, as a means of resolving the complaint. But Ipso ruled that it was foreseeable, in the aftermath of a terrorist attack that had taken place overseas, that there would be uncertainty back in the UK among the families of those involved as to the fates of their relatives for some hours, or potentially days. Contradictory and premature reports were highly likely, given the chaos caused by the attack and the difficulties of communicating with overseas survivors and emergency services. The newspaper was entitled to report on a local connection to the attack, Ipso said. It acknowledged that the *Echo* did not intend to cause distress. But, Ipso said, the *Echo* had a responsibility to ensure that its report was prepared with appropriate regard for the position of those most directly concerned: Ms Lovett’s surviving family. Ipso said that the claims by the *Echo’s* confidential sources that the family had been told, definitely, of Ms Lovett’s death were evidently inaccurate. Neither the death nor the family’s knowledge of it had been confirmed by any official source. Ipso added that, as the *Echo* had relied solely on confidential sources, the newspaper was unable to show that before it took the decision to publish it had taken appropriate care to ensure that Ms Lovett’s family knew she had been killed. It had therefore failed to demonstrate that it had acted with the level of sensitivity required by the code. Ipso said that the publication of the information that Ms Lovett had died, so soon after the attack and before it had been confirmed to her immediate family, was a serious failure to handle publication sensitively (*Lincolnshire Police v Lincolnshire Echo*, 16 October 2015).

**Case study**: In 2018 Ipso ruled that the *Daily Record* had not breached clause 4 of the Editors’ Code of Practice in an article published on a Wednesday about the sudden death of a young child the preceding Saturday. The article named the child and was illustrated with a photo of him. It reported that ‘tributes pour in for tragic seven-year-old’, and said that it was understood that the child and his family had been ‘celebrating his brother’s 10th birthday when the tragedy occurred’. The article included a photo of the child’s mother, and said she was being supported by family members. The article was published in substantially the same form online, under the headline: ‘Tragic seven-year-old collapses and dies just hours after celebrating older brother’s birthday’. The child’s aunt complained that publication had been handled insensitively. She said that the *Record* had published, without parental consent, details concerning the child which had not been formally released by the police. She said the article had caused further distress at a difficult time for the family, and had been intrusive. She said that although close immediate family members had been informed, at the time the article had been published some family members and friends had been unaware of the child’s death, which had occurred three days earlier. Some of these people had found out about the child’s death after seeing the article in print and having been circulated on social media. She also complained that the article had disclosed private details of the child’s older brother, namely his age and the fact that it had been his birthday, without parental consent. The *Record* agreed that it had obtained both photos from the child’s mother’s Facebook page: it said that at the time of publication her profile was open to seen by the public. It provided screenshots taken at the time of publication, which it said demonstrated that her profile was set to a ‘public’ setting. Ipso acknowledged that the aunt and her family had been distressed at the reporting of the child’s death. But it said it wished to explain that journalists have a right to report the fact of a person’s death; a person’s death may have an impact on communities, as well as individuals, and as such constitutes a legitimate subject for reporting. Ipso said that the Editors’ Code of Practice does not prevent journalists from using any photos of the people who have died, but that the code also makes clear that journalists should approach such stories with sensitivity, and give appropriate consideration to the feelings of the recently bereaved. In this instance, immediate family members were aware of the child’s death at the time of the article’s publication. Further, Ipso noted that the article had been published three days after the tragedy had occurred. Ipso said that in those circumstances, and because the article did not contain gratuitous detail of the circumstances surrounding the child’s death, it did not conclude that the *Record*’sreport represented a failure to handle publication sensitively. There was no breach of clause 4. Ipso said that the screenshots provided by the *Record* had demonstrated that the contents of the mother’s social media account were available to be viewed by the newspaper, the *Record* did not disclose any private or personal information about her, and similar photographs remained accessible to be viewed by the public on her Facebook account. Ipso ruled, therefore, that the publication of the two photos did not breach the code’s clause 2, which protects privacy. It said that the reported information relating to the child’s sibling was limited to his age and the fact that he had been celebrating his birthday at the time the tragedy occurred. The article had not revealed his name or other personal details. Ipso said that in those circumstances, publication of the article did not represent a failure to respect the child’s sibling’s private life, and was not unnecessary intrusion into his time at school. It ruled, therefore, that there was no breach of clause 2 or clause 6 (*McGurk v Daily Record*, 7 August 2018). For clause 6, see 4.11 in *McNae’s*, and 4.11 below.

See too, below, **4.15 Material from social media sites** for case studies of Ipsoadjudications that the Editors’ Code was not breached by media use of photos and tributes copied from the internet, including Facebook, after people had died, or been injured or attacked.

**Case study**: Ipso ruled in 2017 that the *Lincolnshire Echo* had not breached clause 4 of the Editors’ Code by publishing eight seconds of CCTV footage showing a head-on crash between a car and a bus. The *Echo* published this four hours after the crash, with a photo showing the damage to the car (with no-one in it). The car’s driver could not be identified from the footage, and its registration number was not shown in that or the photo. By the time his family saw these images they knew from a paramedic he was being taken to hospital for tests after a road traffic accident. The driver complained to Ipso that publication of the footage was insensitive, because - having seen these images on the *Echo’s* website - his family had come to the ‘reasoned conclusion’ from the make and model of the car that it was his, which caused them further distress because at that stage they had not had confirmation that his injuries were not life-threatening. The *Echo* said that any distress they suffered came about because the driver had not by then given his family further detail about his injuries. He was able to leave hospital later that day. Ipso said that the model, make and colour of the car were not unique, and while the extent of the driver’s injuries had not been confirmed when the images were published, the newspaper’s assessment – based on the fact that police did not close the road after the crash - that there had been no fatality or serious injury was reasonable, and that the material had been published sensitively (*Goldsmith v Lincolnshire Echo,* 17 March 2017). See too, below: **Images of accidents, their aftermath and accident locations**

**Publishing speculation on the cause of death may breach the clauses 1 and 4**

**Case study**: In 2017 Ipso ruled that *The Sun* had breached clause 4 of the Editors’ Code by publishing within three days of the death of prison inmate Shabal Ahmed that he had died after smoking the banned substance ‘spice’ – synthetic cannabis – in his cell. The paper had checked that his family knew of his death. But, Ipso said, given that this cause of death had not yet been confirmed, publication was not handled with the sensitivity required under clause 4. His mother and brother – the complainants – said that a toxicology report had found no trace of synthetic drugs, and that they had been caused anxiety by *The Sun*’s headline text saying he had ‘screamed for help in his cell as he died after smoking outlawed synthetic marihuana’. Ipso ruled that *The Sun* had also breached clause 1(i) by presenting speculation – from allegations made by other prisoners - that ‘spice’ was the cause of his death as fact, when there was no ‘on the record’ confirmation of this. Ipso said this represented a failure by *The Sun* to take care to be accurate (*Ahmed and Begum v The Sun*, 21 June 2017). For context on clause 1, see 2.4.2 in *McNae’s*.

See too, in 4.7.2 Funerals and the bereaved, below, the case study on Ipso’s adjudication in *Matthews & McCann v Sunday World,* in which the newspaper was ruled to have breached clause 1(i) of the Editor’s Code by reporting ‘as fact’ that a man had died from a drug overdose, without corroboration of sources’ claims.

**Clause 4 does not prohibit criticism of the deceased or require ‘sanitisation’ of a death’s circumstances**

Ipso has made clear that clause 4 does not prohibit the publication of criticism of a person who has recently died, or prevent reporting of contentious or controversial aspects of their life (*Murdock v The Irish News,* 12 March 2020, not upheld, which concerned a report which inferred that the deceased had ‘well-publicised links’ to a paramilitary gang which was involved in sectarian murders). Ipso has also said that clause 4 does not require media organisations to ‘sanitise the circumstances of a death’. It said this in a ruling which did not uphold complaints by Sultan bin Muhammad Al Qasimi and the Al Qasimi family that clause 4 had been breached in the content of articles published by *thesun.co.uk* in 2019. These were headlined ‘A father’s grief: Emir of Sharjah stands over his son Prince Khalid Al Qasimi’s body at royal funeral after “sex and drugs orgy” death in London’ and ‘Prince Dies: Who was fashion designer Khalid al Qasimi and what was his cause of death?’ (*Sultan bin Muhammad Al Qasimi and the Al Qasimi family v thesun.co.uk*, 11 February 2020).

**Images of accidents, their aftermath and accident locations**

**Case study:** A newspaper’s publication of Google Maps images to show where a serious road accident took place did not breach clause 4 of the Editors’ Code, Ipso ruled. The accident had left a young woman in a coma. Her father complained that the *Grimsby Telegraph*’s story about the crash had been published without the family’s consent and that this, and the newspaper’s publication of the Google Maps images, which the family had not previously seen, intruded into his and his family’s grief and shock. The newspaper said that the images, which did not show the aftermath of the crash, merely the location, were published after details of the accident, including the location, had come from police press releases appealing for witnesses. Ipso said that the Editors’ Code does not require that consent is obtained from the subject of an article or their family before a newspaper can report on a story. The article had reported on an accident that had been made public by a police press release. Ipso added that the tone of the article was not insensitive: it gave a factual account of the car crash and the subsequent police appeal for witnesses, as well as containing the comments from social media from friends and family. Ipso noted that seeing images of the location of the car crash was distressing for the father and his family, but said that the images simply showed where the accident had taken place, not any graphic images of the accident. The article, including the publication of these images, was not insensitive in breach of clause 4, Ipso ruled (*Wood v Grimsby Telegraph,* 25 May 2020).

**Case study:** Publication of video footage of what happened in the moments before a fatal collision did not breach clause 4 of the Editors’ Code, Ipso ruled in 2019. Tony Carroll, aged 70, died after he was hit by a police car when stepping out into a road. The car was responding to a 999 call. *Mail Online* obtained video footage of the accident from a local shopkeeper. Its report was headlined ‘Seconds from death: Horrific moment man, 70, is mowed down and killed by police car while carrying presents home from the pub on Christmas Day’. The footage used in the report showed Mr Carroll stepping out into the road, and the car approaching. It was faded out a moment before he was hit by the car. The report also included a number of still images from this video, as well as a photograph of Mr Carroll’s shoes and trousers in the road following the incident. Mr Carroll’s family said that the publication of the footage and photograph was insensitive in breach of clause 4, particularly where the footage faded out only a fraction of a second before the police car hit Mr Carroll. *Mail Online* acknowledged that the video had caused distress, but said that it had a responsibility to closely examine the events surrounding Mr Carroll’s death, particularly in circumstances where the vehicle which struck him was a police car responding to an emergency call. It said that it had taken care prior to publication to ensure that the video faded out at a moment before the collision, and that the moment of impact was not published, which represented sensitive handling of the material, in line with the obligations of clause 4. It said that the image of Mr Carroll’s shoes and trousers had been widely published, and was unremarkable in content. *Mail Online* added that ithad removed the footage from the report in response to concerns raised by members of the public, and had no plans to re-publish it. Ipso said that news organisations play an important role in reporting on accidents and fatalities that occur in public, and that even when this is done sensitively, this will often cause great distress to the families of individuals involved. It took into account that the footage had been shot from some distance, in relatively low resolution, so that Mr Carroll’s features and appearance were not clear in the video, which featured no sound. Ipso noted that the footage shown in the report had not included the moment of impact, or footage of him following the accident. Ipso acknowledged the justification for the inclusion of the footage in the report, which allowed readers to better understand the circumstances leading up to the accident. The report was presented as a factual news story; there was no attempt to demean or humiliate Mr Carroll, Ipso said, accepting that *Mail Online* took care tofade the footage prior to the moment of impact. Ipso considered that the publication of the video had been handled sensitively. It ruled that *Mail Online’s* use of the video did not breach clause 4, and that the clause had not been breached by publication of the photo of Mr Carroll’s clothing on the road. Ipso said the photo did not show anything of the circumstances of the accident, or the injuries he had suffered and while this image too would have been distressing for the family to see, Ipso did not consider that its inclusion was insensitive (*Family of Tony Carroll v Mail Online*, 7 March 2019).

**Case study**: In 2012 the PCC ruled that (what is now) clause 4 of the Editors’ Code had been breached by *The Northern Echo*’s publication of a photo of a pilot receiving medical treatment by the emergency services in a field where his glider had crash-landed. His wife complained that the photo of her husband, who suffered significant injuries in the crash, was extremely intrusive. The photo was supplied to the newspaper by a local search and rescue team which had been involved in the search for the pilot after the crash-landing. It had been taken, the wife said, without consent on private land at a time when her husband had been in severe shock and pain. The newspaper said that, before publication, it had made enquiries with the police and received a detailed account of the pilot’s injuries, from which it had determined that they were serious but not life-threatening. The PCC said it had ‘strong regard for the important role of newspapers in informing their readers about significant events in the public interest’ and that this had clearly been the intention of the newspaper, which was reporting on a matter of clear relevance to its readers. But the PCC said it was not persuaded that the publication of ‘a revealing photograph of a person receiving medical treatment’, published so soon after the accident without consent, could be said reasonably to be sensitive. However, the PCC did not uphold a complaint by his wife that publication of the photo had intruded into her husband’s privacy in breach of (what is now) clause 2 of the code. A BBC TV crew had filmed the emergency services work at the scene. Footage from this filming, showing the pilot, had later been broadcast with his consent as part of a television programme. The PCC noted that the clause said that ‘account will be taken of the complainant's own public disclosures of information’, and that in addition, the PCC must have regard for ‘the extent to which material is already in the public domain, or will become so’. The PCC said that it could not avoid the conclusion that - as the pilot had consented to the broadcast of this footage, which was on its face far more intrusive than a single image of the incident - the material in question could not now be said to be private (*Mrs Leigh Blows v The Northern Echo*, 15 February 2012). See too the *Kirkland v Wiltshire Gazette and Herald* case, in 4.6 above.

**Case study:** In 2011 an error led to an image of a dead man being included in a photo of a road accident scene published by *The Daily Record*.The photo was in an article which reported the accident, in which two people died. The photo showed the man still in the vehicle in which he had died, and with his injured face clearly visible. His widow complained that the publication of this graphic image had caused severe shock and upset to her and her family at what was already a very difficult time. The newspaper offered immediate and unreserved apologies to the family. It said its staff had not realised that the image included her husband. It had issued new rules to its picture desk and production staff regarding the use of photos with graphic content to ensure that such an error would not recur. It published an apology on page 2, the wording of which had been agreed with the family. The Press Complaints Commission (PCC) said that the newspaper’s use of this explicit image, published the day after the man’s death, had been a grievous error which had breached (what is now) clause 4 of the Editors’ Code (*Mrs Laura McQueen v The Daily Record,* 24 May 2012).

**4.7.2 Funerals and the bereaved**

**Case study**: In 2020 Ipso ruled on various complaints made against the *Sunday World’s* coverage of the death and funeral of a Belfast man. This had the front page headline ‘In the shame of the father’, with the sub-headline ‘double tragedy rocks East Belfast UVF as Mackers' nephew dies of overdose just like his son’. The article referred to, on inside pages, had the headline: ‘Mob brothers bury heroin binge relative’. The article said that two ‘paramilitary boss brothers’ had ‘buried a second family member poisoned by the drugs their own terror groups flooded onto the streets’. Ipso ruled that the newspaper had inaccurately reported as fact claims that the man’s death had been caused by drugs, without corroboration of sources’ claims. Ipso said this represented a failure to take care not to publish inaccurate information, and so had breached clause 1(i) of the Editor’s Code (for context on clause 1, see 2.4.2 in *McNae’s*). The article included photos of the man’s funeral, including one of five family members removing his coffin from the hearse; the corner of the coffin was visible. Among complaints made by two women in the family – one of whom was the dead man’s mother - were that the photographer's presence at the funeral and this photo represented both an intrusion into the family's privacy and into their grief and shock, in breach of clauses 2 and 4 of the code. They said that the family had an expectation of privacy when mourning the loss of a relative, and that publishing the photo showing part of the coffin was insensitive. The *Sunday World* said that the photographs were taken unobtrusively with a long lens from the roadside at a distance of approximately 130-150 metres away, and that at no point had any member of its staff intruded into the ceremony itself. It said that the photographs did not portray any information that could not have been seen by the public that day; it had only reported and published publicly-visible elements of the proceedings. It said that the main focus of the image showing the coffin was on the father and uncle of the deceased; the ‘paramilitary boss brothers’ referenced in the article. Ipso agreed that the published images of the funeral depicted scenes that could have been seen by passers-by, and that the main focus was on high profile attendees from the loyalist community. It noted that there was no suggestion that the photographer had encroached upon or entered the ceremony. Ipso acknowledged that the complainants had been distressed by the publication of the image of the coffin, but said it was only partially visible in the photo, and that this image and the accompanying caption were not insensitive. Ipso did not consider that the photographer's presence or the photographs of the funeral represented an intrusion into the complainants' privacy or their grief and shock, and so ruled there was no breach of clause 2 and clause 4 (*Matthews & McCann v Sunday World*, 16 January 2020).

**Inquest coverage**

**Case study:** In 2020 Ipso ruled that the *Oxford Mail* had not breached clause 4 of the Editors’ Code by publishing a school photo of a 13-year-old boy in report of the opening of an inquest into his death, or by the rest of the report. It was headlined ‘Schoolboy, 13 found hanging’. It began on page one and continued on page two. The boy’s mother complained about the photo being used. It had been taken in coverage of a sports event at his school. She said that the prominent headline and photo of her child were inappropriate and unnecessary, and had been published without her knowledge or consent. The *Mail* did not accept that the article’s publication had been handled insensitively. It said that it was entitled to report on inquest proceedings and that there was a significant public interest in the case. It had not made any direct approaches to the family, but instead had contacted the police and the school to inform them that the report would be published, and to ask whether the parents would like to speak. It said that it had contacted the school about the planned use of the photo of the boy. The school did not respond to say that it, or the family, did not want the photo to be published. Ipso said in its ruling: ‘Deaths affect whole communities as well as the immediate family, and there is often widespread interest in the circumstances of a death, particularly in the sudden death of a child.’ Ipso recognised that the mother had found the article’s publication distressing. But Ipso said that the terms of clause 4 specify that its provisions should not restrict the right to report legal proceedings. The article had been a report of the inquest, and did not mock or ridicule her son, or go beyond what was heard at the inquest proceedings. Ipso added that the *Mail* had also had permission to use the photo from its reporting of the sports event, and had informed both the school and police liaison that the photo would be used in order for them to tell the family, so they would not be surprised when it was published. However, Ipso ruled there had been a breach of clause 1(i) of the code because the *Mail’s* report wrongly suggested that the boy had a history of mental health problems, because the *Mail’s* reporter misheard part of what was said at the inquest. After it was provided with a recording of the inquest during Ipso’s investigation, the *Mail* acknowledged the inaccuracy and published an apology (*Storey v Oxford Mail*, 28 February 2020). NB: On the availability of recordings of inquests, see ch. 17 in *McNae’s.*

**Programmes covering past traumatic events**

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

**4.9 Health information generally**

**Speculation about someone’s health can be intrusive**

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

See also **Children’s medical conditions** in 4.11, below.

**4.10 Relationships, correspondence, communications**

**Case study**: Ipso ruled in 2018 that *The Belfast* *Telegraph’s* news coverage of a civil partnership wedding ceremony had not breached clause 2 of the Editors’ Code, as regards the couple’s sexual orientation. Ipso said that a marriage or civil partnership is a public declaration of a relationship. The fact of their civil partnership was in the public domain and was not information about which they had a reasonable expectation of privacy, it said (*Beattie and Atkinson v The Belfast Telegraph*, 3 August 2018).

For context about this adjudication, see the relevant case study in **Photography and filming in and around hotels**, above in 4.3.

**Sexual lifestyle disclosed by that person**

In 2016 Ipso did not uphold a complaint from a woman that a newspaper’s publication of details from a ‘swingers’ website - including her ‘profile’ photo - revealed to family members that she was a swinger. Ipso said that anyone with an email address could access, on that site, detail ‘which most people would consider to be highly private’ but which she had disclosed about herself, so she had no reasonable expectation of privacy in respect of the details (*Pearce v Daily Star Sunday*, 19 September 2016).

**4.11 Protecting children’s welfare and privacy**

**Parental consent needed for photographs, filming or interviews when a child’s welfare or privacy is involved**

**Case study:** In 2020 the *Hull Daily Mail* was ruled by Ipso to have breached clause 6 of the Editors’ Code of Practice, because a report of the conviction of a man for sexual offences included a photo of him with two children. The children were recognised from it despite their faces being pixelated. He had been convicted of 10 historic child sex offences, including raping a child. The victim of the offences was an adult woman at the time of his conviction. He was well known in the local area as children’s entertainer ‘Bobby Bubbles’, and regularly came into contact with children in his work. The newspaper’s online coverage of his conviction included a photo showing him as a clown posing with two children. The children’s faces were pixelated, but their bodies and hair were not. Their mother complained that her children had no connection to the man or his convictions. She said her children were identifiable from the photo because it had been taken in 2017 to advertise the opening of a local venue, and was widely circulated at that time. She said that she had been contacted by many people who were familiar with the photo and recognised her children. She said that it was taken at a fun day, and she did not consent to its use in the context of a court report. When she contacted the newspaper, it cropped her children from the image. But she said that the image had been widely shared on social media by then. She said her children had been distressed and confused by the photo being used to illustrate the court report of a convicted paedophile, an issue which she said involved their welfare. She also said that children at school and extra-curricular clubs had been able to identify her children, and had asked them about the report. The newspaper denied that the use of the photo breached the code. It said that her children were only identifiable from the photo to those who had known they had been photographed for the opening of the local venue. The newspaper argued that the photo did not relate to an issue involving their welfare, and said that parental consent had been given to publish the image when it was for the purposes of advertising the local venue. It said that in relation to whether the children’s time at school had been intruded upon, any child who had been able to identify the children must also have read the full article, and in doing so would understand that the victim in the criminal case was now an adult and so could not be the girl pictured in the photograph. Ipso said that it did not consider that the purposes for which parental consent had been provided covered the use of the photo in the context of the report of the man’s conviction. Ipso added that this was a highly sensitive subject, and that regardless of the extent to which the children were identifiable in the image, it constituted an issue involving the children’s welfare. Ipso said the image had been published in this context without parental consent, and as such, there was a breach of the code’s clause 6 (iii). Ipso said that the report, when read as a whole, did not suggest that the children in the photo were victims of the man. But Ipso noted that the children had been contacted by their peers in relation to the report, some of whom had asked whether they had any connection to the convicted man or his crimes. Ipso said that, given the sensitive nature of the article and the presentation of the image in which the children were identifiable, publication of the photo had represented an unnecessary intrusion into their time at school in breach of clause 6 (i) (*A woman v Hull Daily Mail*, 24 April 2020).

 **Case study:** In 2018 Ipso ruled that the Editors’ Code had been breached by *The Daily Telegraph’s* publication of a photo of a child in a report of how a British woman had been shot when her family attacked by ‘bandits’ when on holiday in Brazil. The report included a photo from the woman’s Facebook page which showed her, her husband and one of their children. The woman later complained that this had been a private photo, and that the newspaper had not pixelated the child’s face when using the photo in the report. She said that her child had been disturbed by the publication of the photo, and by the fact that friends at school had sent her messages about what had happened to her, because of the report. Ipso said the coverage was on a subject which involved the welfare of the woman’s children: they had been involved in a shooting while on holiday with their family, and they had witnessed their mother being shot and seriously injured. Ipso ruled that publishing the unedited image of the child in the context of this story, without the consent of a parent or a similarly responsible adult, breached clause 6 (iii). It said there was no specific public interest in publishing this image, particularly as in the code an exceptional public interest justification is required in the case of a child. But Ipso said that while it understood that the child had been upset by the coverage, the fact that the mother had three children who were involved in the Brazil incident was relevant information about it. The coverage had given the children’s ages, but not named them. The fact that the children’s friends were informed of what had happened in Brazil to the family did not represent an intrusion into the children’s time at school, so there was no breach of clause 6 (i). Ipso also said that images copied by the newspaperfrom the woman’s social media account showing her (the mother’s) face were publicly available there, and did not show her in any private activity, and so Ipso ruled that their publication by the newspaper had not breached of the code’s clause 2 (*Dixon v The Daily Telegraph*, 29 March 2018).

**Case study**: In 2017 Ipso criticised the publication by the *Daily Star* of a photograph of a child in coverage which said she was missing after the terrorist attack on Manchester Arena in May that year. In that attack a suicide bomber killed 22 people, including children. Pauline Gorman complained to Ipso that the photo used by the newspaper on its front page and on an inside page - which had the caption ‘MISSING: Lucy Cross’ – was of her 13-year-old daughter, whose name was not Lucy Cross and who was not missing because she had been at home at the time of the attack. Pauline Gorman said that the publication of her daughter’s photograph alongside those of individuals who were missing or dead had been traumatic and had intruded into her daughter’s private and family life, as well as her time at school, and so had breached clauses 2, 4 and 6 of the Editors’ Code of Practice, as well as clause 1. The *Daily Star* accepted that clauses 2 and 6 were breached. It said that when told of the inaccuracy it had immediately offered a prominent apology, which was published the following day on the paper’s page 2, with a front page reference to it. It said the error occurred because the complainant’s daughter’s details had been ‘appropriated’ (by someone else) and used to make a fake social media account. It told Ipso that at the time the photo was published there was no consideration of Code issues at editorial level because the story had been filed by a freelance agency, with whom it had a longstanding and trusted relationship. The *Daily Star* said it had had no reason to believe that the information was false. Ipso said that while there was no reason to doubt that the newspaper had acted in good faith, it was ultimately responsible for the inaccuracy. The newspaper had taken no further steps to establish the accuracy of the claims that had been circulated on the Twitter account. Ipso said that the *Daily Star* did not, for example, attempt to contact the Twitter account holder or the family of the child pictured. This represented a failure to take care over the accuracy of the article, in breach of clause 1(i). Ipso said that by publishing this photo, without consent, alongside photographs of those who were missing or dead in the attack, the newspaper had published false information related to the welfare of the complainant’s daughter, and intruded into her private life and into her time at school, breaching clauses 2 and 6. The publication of the photo had caused the complainant and her family significant upset, but - as her daughter was not missing - this was not a case which involved the personal grief or shock of the complainant, or her daughter, and so the terms of clause 4 were not engaged, Ipso said *(Gorman v Daily Star*, 10 August 2018)

**Make sure the relevant consent is from a parent**

**Case study:** In 2019 Ipso ruled that a *Daily Mirror* report headlined ‘Scandal of 50,000 kids going hungry in summer holiday’ breached clauses 1 and 6 of the Editors’ Code. The report concerned the financial difficulties faced by some families to feed children in the summer during the school holiday, and referred to a Government-funded scheme to provide free meals and activities for children at some schools during that time. At the invitation of a council, the *Mirror* sent a journalist to a holiday club hosted by a school in Tower Hamlets, and included in the report a photograph of three children eating a meal there, under the sub-heading ‘Schools need to feed children during break’. The mother of two of them complained to Ipso that the report gave the misleading impression that her children were poor and hungry, whereas they attended the club for recreational not financial reasons. She pointed out that attendance was not means-tested, and said that the misleading impression had affected the children’s time at the school, as it had caused them distress and could lead to bullying. She said that although she had signed a consent form giving permission for photographs of her children to be taken and used for the purpose of promoting the holiday club, or for use on the school's web channels, the consent did not extend to the publication of photographs in a national newspaper. *The Mirror* denied breaching the code. It said that the council and the school had given permission for the children to be photographed, and that a member of the school staff had been present. *The Mirror* said that the club was specifically described to it as a ‘club which alleviates some of the pressures families face during the school holiday period when free school meals are unavailable’. Further, the council press release for the club provided details about child poverty rates in Tower Hamlets, and the statistics for eligibility for receiving free school meals. *The Mirror* noted that the club may have been portrayed in a different way to parents than it had been to the newspaper, but said that it was entitled to rely on the council's description. But Ipso said that *The Mirror* had not taken any steps to verify that the children appearing in the photo were attending because they were in poverty and in need of free meals. Ipso said that given the sensitivity of the subject matter of the article and that the children were clearly identifiable, publishing the photo in the context of an article which focussed on child poverty represented a failure to take care not to publish misleading information in breach of clause 1(i). Ipso said there was no breach of clause 6 (ii), because the photo was taken with the school’s permission. However, the article centred on child poverty and the need for some children to receive free meals, both sensitive issues involving the welfare of children, and the terms of clause 6 (iii) were engaged, Ipso added. It said that in situations involving a child’s welfare, a publication relying on a third party to obtain consent from a custodial parent should ensure that it represents informed consent for the purpose intended. The consent form, which the parents had signed, gave permission for their children to be photographed for ‘promotional purposes’ relating to the holiday club. Ipso considered that the limited purposes for which consent had been provided did not cover the taking of a photograph to illustrate an article which focussed on child poverty. The consent of a custodial parent had not, therefore, been obtained to photograph the complainant’s children for the purpose for which the image was used, Ipso said. It therefore ruled there was a breach of clause 6 (iii) (*Begum v The Daily Mirror,* 20 December 2019). For other Ipso adjudications that clause 6 was breached because consent to publish material concerning a child’s welfare was not obtained from a parent, see **Children’s Medical Conditions**, below.

**Case study:** In 2015 Ofcom ruled that the BBC News Channel documentary *Britons Living Behind the Veil* had unwarrantably infringed the privacy of two brothers, aged 10 and 13, both in the actual filming for the programme and in what was broadcast. The documentary focussed on attacks on Muslim women who wore a niqab (veil) or hijab (headscarf). It included interviews with Muslims who had been physically or emotionally abused because of their religion. One interviewee’s face was obscured for legal reasons by the BBC, and others wore face veils. One part featured Finsbury Park Mosque, showing that having banished radical extremists from its congregation, it was engaging with the wider, local community to weaken the influence both of those extremists and ‘right wing’ elements who committed hate crimes against Muslims. The footage included an interview with the mosque’s chairman about its ‘open door’ policy. To illustrate this, the footage included shots of children using the mosque’s youth club, playing video games, table tennis and pool. Children’s faces were shown, including – fleetingly - those of the brothers as they watched and talked to other children. Their mother - referred to as Mrs D in the Ofcom adjudication - complained that she had not been asked if they could appear in the programme, and that because their faces had not been obscured, the programme had put them at risk of ‘hate crime’ abuse. The BBC said that the producer had agreed with the mosque chairman that the chairman would speak to parents of children who attended the mosque, to explain the nature of the programme and get their consent for their children to be filmed. The chairman had warned that many of the parents did not speak English, and so the BBC had decided not ask the parents to sign forms consenting to the filming because cultural and linguistic barriers made standard paperwork impractical. It did not believe that any child shown incidentally would be under threat from hate attacks as a result. The chairman had confirmed, before filming began that evening, that he had obtained verbal consent from the parents of all 50 children there. As an additional precaution, the producer had told these young people to let him know if they or their parents did not wish them to appear in the programme. Only one – a girl – said her parents objected, and was not filmed. The BBC said that after Mrs D complained, the mosque chairman explained that because her two boys were not regular attendees he had not spoken to Mr and Mrs D about the planned filming, and had apologised for the oversight. Mrs D said her sons had been going to the youth club since 2014 and had only been absent when they were unwell or when it was closed. She said they were not old enough to fully understand the impact the filming would have on them, pointing out that the mosque had been attacked recently after terrorism in Paris. She said that the mosque chairman did not know her or her husband personally, and therefore was not the right person to speak on her behalf. She said it was unacceptable for the BBC not to have sought consent directly from parents, by using an interpreter if necessary. Ofcom said her sons had not been filmed doing anything of a particularly private or sensitive nature, but because they were under 16, they had ‘a higher expectation of privacy’, particularly because the environment in which the filming took place was ‘potentially sensitive’ because the mosque and its congregation had been the focus of increasing hate attacks. Ofcom also said that the children’s attendance formed part of ‘private recreational time.’ It ruled that the matter being investigated by the programme was not trivial or uncontroversial but serious – the increase of verbal and physical attacks on UK Muslims – and therefore Mrs D’s individual consent to her sons being filmed was necessary. It was not sufficient, Ofcom said, for the BBC to have relied on the mosque chairman to have given consent for any of the children to be filmed in these circumstances (*Ofcom Broadcast Bulletin*, No. 303, 25 April 2016).

**Scope of the term ‘interview’**

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

**Public interest justification may over-ride the usual rule**

**Case study**: In 2018 an article published by the *Daily Star on Sunday* revealed that a 17-year-old youth, who it identified and described as a ‘gun nut’, had ‘threatened to kill Muslims in a series of vile Facebook rants’. The article published a selection of these Facebook posts, as well as his photograph. The article said that his ‘shocking comments’ had been posted on social media with pictures of guns he owned. It pointed out that the previous week a 19-year-old had killed 17 people in Florida during a high school shooting. A woman who was the 17-year-old’s custodial guardian was quoted in the article as telling the reporter that the youth had ‘complex needs’, and ‘when he says he is going to shoot Muslims he isn’t really going to do that – how many people say that but actually do it?’. After its publication she complained that the article breached clause 6 (i) of the Editors’ Code, which says that all pupils should be free to complete their time at school without unnecessary intrusion. She said that the article had led to a college withdrawing an offer of a place it had made to him, and that the *Daily Star* *on Sunday* had intruded into his privacy because it had not obtained his consent to publish the photograph and the posts from his Facebook account. Ipso said that as the article had resulted in the teenager losing his place at college, it had intruded into his time at school. But Ipso agreed with the *Daily Star on Sunday* that there was ‘an exceptional public interest’ which justified this intrusion. Ipso said that the comments he had made on a social media platform were alongside photographs which indicated that he had readily available access to an array of weapons. Ipso said too that the newspaper’s coverage had revealed behaviour by him which had raised safeguarding concerns, and requests for assurances that he posed no, or limited, risk. Ipso ruled there was an exceptional public interest, which the newspaper had considered before publication, in revealing those potential safeguarding concerns for his future classmates, and in disclosing the identity of the source of these concerns. It said that the exceptional public interest identified by the newspaper was proportionate to the intrusion into his time at school. Therefore was no breach of clause 6, Ipso ruled. It noted that the youth’s Facebook accounts had privacy settings which demonstrated that only those people who he had accepted as a ‘friend’ would be able to see his posts. But he had had 595 ‘friends’ on Facebook, one of whom had approached the newspaper to complain about his social media activity. Ipso said that the posts did not reveal any private information about the youth: they were expressions of opinions which could not be considered private in circumstances where they were shared with almost 600 individuals. It ruled he did not have a reasonable expectation of privacy in relation to this information, so there was no breach of the code’s clause 2 (*A woman v Daily Star on Sunday,* 20 July 2018). For context about the code’s public interest provision, see 2.4.1 in *McNae’s*.

**Case study**: In 2008 Ofcom rejected complaints by several parents whose children were filmed by the BBC during an undercover investigation into standards at a nursery as part of an inquiry into how nurseries were regulated. These parents complained that their children’s privacy was infringed by the filming and by what was broadcast in the programme *Whistleblower: Childcare*, in which the children’s faces were blurred. The BBC said its decision to film undercover had been taken only after serious consideration of pre-existing evidence of poor practices at the nursery. This evidence came from a senior member of its staff who had worked there for around a year, and who had told the BBC that some staff were paid below the minimum wage, there had been a time when a shortage of staff had impacted on the care of the babies, and that the toddlers’ area of the nursery was dirty. The BBC said that based on this evidence it was decided that a reporter would, undercover, get a job at the nursery, but that she would not initially secretly film. The BBC said that the permission to film secretly was granted only after further consideration of the reporter’s own discoveries; on her first day the nursery had not checked whether she had a criminal record and had left her unsupervised in sole charge of five children. This, the BBC said, completely contravened the Ofsted regulations, which have the force of the law. The BBC also said that no-one had checked the reporter’s references. The programme showed the nursery had broken glass in the garden, and that power tools were left unattended near children, and the reporter raised concern about children being allowed to play with metal garden tools and long sticks. Ofcom said that it was satisfied that, before the BBC’s decision to film covertly at the nursery, there was *prima facie* evidence of a story in the public interest and that the programme makers had reasonable grounds to believe that further evidence could be obtained, on the basis of the material gathered on the reporter’s first day of employment. Also, Ofcom said, the surreptitious nature of the investigation was essential for its authenticity and credibility. Therefore, the BBC had complied with what practice 8.13 of the Ofcom Broadcasting Code says about the justifications for covert filming – for that part the code, see 3.4.15 in *McNae’s*. Ofcom said that the surreptitious filming of the children without parents’ consent was an infringement of the children’s privacy, but was warranted by the strong public interest served by the investigation into the care of very young children. Ofcom said there was a difference between the ‘public face’ of the nursery and the actual care it provided. As regards what was broadcast, Ofcom said that only people who knew the children very well and were already aware that they attended the nursery would have been able to identify the children, because their faces had been heavily blurred. Ofcom considered that for the small group of those who were capable of identifying the children, the footage would not have revealed information that was of a private or sensitive nature. Therefore, the broadcast of the programme did not infringe the privacy of the children (*Complaint by Ms M on behalf of her child (a minor); Complaint by Ms A on behalf of her son (a minor); Complaint by Ms B on behalf of her son (a minor); Complaint by Ms C on behalf of her son (a minor);* Ofcom Broadcast Bulletin, No, 116, 1 September 2008).

**Children’s medical conditions**

**Case study:** In 2020 Ipso ruled that the *South Shropshire Journal* breached clauses 2 and 6 of the Editors’ Code in an article about fundraising for a child. This reported that a two-year-old girl, which it named, had recently been diagnosed with leukaemia and was due to have treatment at a hospital, also named. The article included a photo of the girl and gave detail about what her treatment would be. It quoted a family member who explained that the girl’s mother and sisters, who were also named in the article, would visit her in hospital and would have to stay away from home overnight. It reported that a crowdfunding campaign had been set up to support the family, and provided details for people who wished to donate to it. The mother complained that she had not consented to the article being published. She said that it contained medical information about the girl, her youngest child, in breach of clauses 2 and 6. She said that she had taken steps to keep her daughter’s illness private, and that the fundraising page had been set up by a relative without her knowledge, was intended for friends and family only, and that she had since asked for it to be deleted. She also complained that the article named her two older children, and gave details of them visiting their younger sister and staying away from home. She said that the publication of the article was very distressing to her and her family at an extremely difficult time. She said that the relative who was quoted in the article was not acting with her consent. She said the photo of her daughter which was published was not otherwise in the public domain, and had been provided by the relative without her consent. *The Journal* apologised for any distress caused, but said that it had published the article in good faith. It said that the reporter had learned of the story after speaking with the relative quoted in it. The newspaper provided to Ipso copies of correspondence between the reporter and the relative in which the reporter asked several times to speak with the mother in relation to the story about her daughter. The reporter was told by the relative that the mother had ‘said yes to the story’, that the relative did not think that the mother was ‘up for speaking’, but that the relative was ‘happy to answer’ the reporter’s queries about the child. The newspaper said too that, at the time, the mother was in hospital with her youngest daughter, and the reporter wished to avoid contacting her unnecessarily. It argued that reporting details of the child’s medical condition and treatment was not an intrusion into her privacy, as this information was already in the public domain via the public fundraising page. *The Journal* accepted that the page had not been set up by the mother, but said that it was clear that she was aware and had consented to it, as she had commented on, liked, and shared posts asking for donations on social media. Ipso noted that the newspaper had intended to publish a positive article, to raise awareness of the child’s bravery and the crowdfunding campaign. But the article was about the child’s diagnosis and medical treatment she would be receiving, which were matters which related to her welfare, and so to comply with the requirements of clause 6 (iii), it was necessary for the reporter to establish that a custodial parent or similarly responsible adult had explicitly consented to the publication of the photo of the girl, Ipso said. It recognised that some information about the child’s illness was already in the public domain. However, no direct enquiries to the mother or another custodial parent had been made to obtain their explicit consent for publication. As such, publishing the photograph as part of an article which included sensitive, medical information about a child, without parental consent, breached clause 6. Ipso noted that the mother had knowledge of, and interacted with and on a publicly available crowdfunding page. However, the article also included details which had not been in the public domain, such as her child’s medical history and treatment prior to diagnosis. Ipso said that the publication of information which related to the child’s health which was not already in the public domain could not be justified in the public interest, and so, because there had been no express consent from a custodial parent or similarly responsible adult for publication of that information, there had been breach of clause 2. Ipso ruled there had been no breaches of clauses 2 or 6 as regards what the article included about the older children, because of the nature of the information – the mention of their travel and living arrangements whilst their sister was receiving treatment – and because this information was already in the public domain via social media posts. In these circumstances, the inclusion of this information in the article did not constitute an intrusion into these children’s time at school, or into their private lives (*Bradley v South Shropshire Journal*, 9 January 2020).

**Case study**: In 2017 Ipso ruled that clauses 2 and 6 of the Editors’ Code were breached by a *South Wales Evening Post* report which included a reference to a medical condition suffered by a teenage boy. It gave an account by a lifeboat crew member of how the boy had been involved in an incident when a life-ring had been taken away from a lifeboat station. This meant the life-ring was not available for rescues, until a member of the public returned it. The crew member said he had later been made aware by the parent of the boy responsible that the boy had a medical condition, which was named in the *Post’s* report. It related how after the incident the boy and his family had been invited to the lifeboat station to learn about its work. The report was illustrated with a still taken from CCTV footage, which showed the boy with the life-ring, with his face obscured. The boy’s father complained that the report had intruded into his son’s privacy. He said his son was well known in the local community, and that his son’s distinctive physical appearance and clothing meant he could be easily identified from the image, despite the pixilation of his face. The father said he had provided information about his son’s medical condition in strictest confidence to the lifeboat volunteer, and that the newspaper’s report, and specifically the reference to the condition, had had a detrimental effect on his son’s health. Ipso noted the *Post’s* position that it could not have known that the image included features specific to the boy which meant that he could be identified. Also the *Post’s* editorial team had decided to publish the reference to his medical condition as they believed it explained to the reader that the taking of the life-ring was not a deliberate act of vandalism, but a genuine misunderstanding. But Ipso said that the *Post* should have considered carefully whether there was sufficient justification under the code to include details about the boy’s medical condition in the event that he was identifiable from the information published. Ipso said the boy had a reasonable expectation of privacy regarding his medical information, which was sensitive in nature, and this expectation was heightened due to his age. In publishing this information, without consent, the newspaper had intruded into the child’s private life and into his time at school. Ipso acknowledged that there was a public interest in reporting the serious dangers posed by the removal of life saving equipment, such as the life-ring, from the lifeboat station. But Ipso said that this public interest did not outweigh the boy’s reasonable expectation that details of his medical condition, which is a particularly private class of information, would not be published without consent (*A man v South Wales Evening Post*, 17 October 2017).

**Case study:** In 2012 the Press Complaints Commission ruled that a newspaper had breached clauses 2 and 6 of the Editors’ Code by publishing the fact that a child had ME (myalgic encephalomyelitis). The *Camberley News and Mail* article had reported that a 13-year-old girl was selling cakes at a farmers' market to raise funds for ME Research UK because her friend had the condition. It was published after a photographer spoke to the 13-year-old at the market, and took a photo there of her and her friend, at the stall. The article included the photo, named the friend and made clear she had ME. The friend’s parents complained that they had not been asked to consent to her illness being mentioned. They said that publication of the article had caused their daughter great distress as the family had tried to avoid labelling her as having ME, and so told people of her condition only when necessary. The newspaper said it had intended to support the fund-raising, and it apologised for the distress caused. It said that at the market the photographer had spoken briefly to a woman he took to be the mother of the girl with ME. However, her parents told the PCC that the photographer had not spoken to them. The PCC said it was concerned to note that the photographer had apparently acted on an assumption that the child's condition was not confidential, without verifying this. Had he taken steps to gain the express consent of one of the child's parents for the publication of her name and medical information, it was likely that this confusion would have been rectified, it added (*A married couple v Camberley News and Mail*, 13 July 2012).

**If payment made to parents**

**Case study:** Clause 6 (iv) of the Editors’ Code warns that parents or guardians should not be paid for material about their children or wards, unless it is clearly in the child's interest. In 2014 *The Sun* published a front page article with photos about what was described as a ‘devil mark’ which had appeared on a four-year-old boy’s torso. His parents had approached the newspaper through an agency, and had been paid by *The Sun* for the story. Dr Sarah Wollaston MP complained to Ipso about the possible impact on the boy of such a story, and that it might encourage others to come forward with similar stories. She did not believe that the story was in the boy’s best interests, and felt that *The Sun* should have been more careful in its presentation of the story, in particular the references to the devil and the occult in relation to the clearly identified boy. As a consequence of her complaint, *The Sun* met her and the Children’s Commissioner for England. It accepted there were legitimate concerns about the tone and prominence of the story, which it said had been intended to be light-hearted and fanciful, but which had ‘clearly been received by many in a different spirit’. It said it was grateful for the manner in which Dr Wollaston and the Children’s Commissioner had raised the relevant issues, and for the opportunity for it to learn valuable lessons for the future. Consequently, a statement published on page 2 of *The Sun* said of the story ‘we didn’t get it right’. It said that, as a result, it had tightened internal procedures on all stories involving children, including the issue of paying parents (*Ipso press release*, 20 October 2014).

**4.11.1 Children in crowds and at public occasions**

**Case study:** In 2016 Ipso considered a complaint that the *Daily Mail*’s taking and publication of photos of Sophia Murray, the four-month-old daughter of tennis player Andy Murray, breached clauses 2 and 6 (iii) and 6 (v) of the Editors’ Code. The photos showed Sophia in a pram being pushed by her mother Kim Murray arriving at the gate at the All England Club, Wimbledon, used by the media, players and officials. Kim was taking Sophia to the tournament’s crèche during The Championships tournament. One of the photos was cropped to show only Sophia lying in the pram, and her forehead, nose and one eye were visible. Ipso said that because this was a major sporting event, there would inevitably be a large number of photographers at the gate, which was a public location, and it appeared that photographers were allowed to stand in a position looking over it. Kim had been photographed entering the gate in previous years. That morning the *Mail*’s photographer had also taken photos of other people entering the gate, and there was no suggestion that the photographer had been there to target Sophia. Ipso did not consider that Sophia was recognisable from either photo published, and said that although the photos showed family activity related to her care, that activity was relatively unremarkable. Taking these factors into account, Ipso ruled that Sophia did not have a reasonable expectation of privacy when the photos were taken, and therefore that neither the taking nor publication of the photos had breached clause 2. It ruled too that clause 6 had not been breached, saying that the information which the photos contained about Sophia, her arrival at Wimbledon, or being pushed in a pram on her way to the crèche were not issues involving her welfare, and so consent from a parent was not required under clause 6 (iii) for the photos to be taken or published. The *Mail* had not published details of Sophia’s private life, and therefore there was no breach of clause 6 (v), Ipso said (*Representatives of Sophia Murray v Daily Mail*, 28 October 2016).

**Case study:** In 2016 a mother complained to Ipso that the *Sunday Mirror* had breached clauses 2 and 6 of the Editors’ Code because her son’s face and those of other children were shown in a photo of part of the crowd at a Manchester City football game. The photo illustrated a report of how Burnley fans had singled out City player Raheem Sterling for criticism. It showed some fans - adults and children - making offensive hand gestures in the footballer’s direction. The mother said that that the newspaper did not know anything about her son – a child who was not making gestures. She said her son could have been adopted, or under child protection, and in such circumstances, the photograph should not have been published. She also said that because of the behaviour of the other children, their faces should have been pixelated. She said that she and her son were upset by people’s remarks about the photo after it was published on a number of internet forums. The *Sunday Mirror* said that the photograph did not single out her son as being involved in bad behaviour, and that it would be disproportionate to pick out individual members of a crowd to pixelate where others had been involved in ‘disrespectful’ behaviour. Ipso noted that her son was not named in the report. Ipso said that although the mother did not provide her express consent to her son being photographed, he was present at a high-profile sporting event where he would have been seen by a large number of people, and in circumstances where she would have been aware of the possibility that her son might be photographed by press photographers, or appear on television. In these circumstances, her son had no reasonable expectation of privacy, so there was no breach of clause 2. Ipso said her son’s inclusion in the photo was incidental. In such circumstances, it did not consider that the photo involved an issue involving his welfare. Ipso noted the mother’s position that the comments made on internet forums following republication of the photo caused an intrusion into her son’s life, but Ipso did not consider that the publication of the photo by the newspaper caused any intrusion such as to breach clause 6 (*Lloyd v Sunday Mirror*, 31 March 2017).

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

There is a case study in the Additional Material for ch. 5 on [www.mcnaes.com](http://www.mcnaes.com) about an Ipso adjudication concerning a teenager whose image from CCTV footage was published, at the request of police, after crowd disorder at a football match.

See too, above, **4.7.1 Prohibition on intrusion into grief and shock,** and below, **4.13 Relatives and friends of those accused or convicted of crime,** and **4.15 Material from social media sites** for other adjudications concerning clause 6 of the Editors’ Code.

**4.13 Relatives and friends of those accused or convicted of crime**

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

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

**Not ‘genuinely relevant’**

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

**Case study:** In 2017 Ipso ruled that the *Jewish Chronicle* had breached clause 9 in a report that a man had been convicted of fraud. The newspaper reported that the court had heard that the defendant’s friends and family had compensated the victim. The article then identified the defendant’s brother and parents, and reported biographical details about each. The brother complained to Ipso that neither he nor his parents were relevant to the story of the man’s conviction, and that they should not have been identified in the report. He said that while the court heard that the defendant’s family and friends had compensated the fraud victim, no further detail about who had done this given to the court. The brother said that he was not one of the individuals who had helped compensate the victim. He could not confirm whether his mother and father had done so, but said that this was not relevant, as they had not been referred to in court. Ipso said that the defendant’s family and friends had been referred to by the judge in the court proceedings as having helped compensate his victim. However, it did not appear that during the proceedings, anybody had referred either to any individual friend or family member, or specified their relationship with the defendant.  Ipso decided that ‘the limited nature of the reference’ in court to the defendant’s family, ‘which could apply to a broad class of individuals’, did not mean the defendant’s brother and parents were ‘genuinely relevant’ to the story. It said the newspaper was unable to demonstrate that the brother and parents were genuinely relevant to the story, or that there was a sufficient public interest to justify their identification regardless. Ipso added that the reference to the brother and parents in the article associated them with a criminal act for which they were not responsible, without an adequate justification. The complaint was therefore upheld (*A man v Jewish Chronicle*, 7 July 2017).

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

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

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

**‘Genuinely relevant’ if named in court proceedings**

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

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

**Case study**: In 2015 Ipso did not uphold a complaint made against the *Grimsby Telegraph* by the grandmother of a baby whose father had been jailed for 12 years for inflicting grievous bodily harm on him. The attack left the baby severely disabled and dependent on 24-hour care. The baby’s mother, the complainant’s daughter, was given an 18-month suspended prison sentence for cruelty to him for failing to protect him from his father. The grandmother, now the baby’s legal guardian, said that the *Telegraph’s* coverage of the Crown court case should not have included the baby’s surname and details of his condition. She complained that this had breached clauses 2, 6 and 9 of the Editors’ Code. She said that it was insensitive of the newspaper to detail her grandson’s injuries and the struggles he may face in future. The article failed too to respect his right to privacy and medical confidentiality, she said. She also complained that - as her grandson attended nurseries, play groups and specialist sessions - the *Telegraph*’s report of the court case had drawn unwanted and unnecessary attention to him, his disabilities, and the cause of his injuries. The *Telegraph* said that the judge had asked the barristers if they objected to there being no reporting restriction concerning the child, and no objection was raised. The judge had acted in line with his clear policy to allow the newspaper to name very young victims in cases where their age meant that they could not be adversely affected by newspaper reports. The *Telegraph* added that it believed that a further factor taken into account was that the nature of the child’s injuries meant that he would not be inconvenienced or embarrassed by publicity. Ipso said that while clause 9 makes clear that particular regard should be paid to children who are the victims of crime, the clause also states that this should not restrict a newspaper’s right to report on court proceedings. Ipso ruled that clause 9 had not been breached, because the child was genuinely relevant to the coverage, and the judge had not imposed any reporting restrictions. Ipso said that while it understood the grandmother’s position that the newspaper could have chosen not to identify the child by name, he was clearly identifiable through his relationship to his parents who were identified legitimately as the defendants in the case. Ipso expressed sympathy for the grandmother, and said it understood her concern to protect both of her grandchildren from unwanted attention. But, Ipso said, there is a strong public interest in open justice and, furthermore, while reports on court cases involving child cruelty may be extremely distressing for family members and others to read, newspapers play an important role in informing the public about the nature of such offences, the identity of those responsible and the consequences of their actions. Ipso ruled too that clauses 2 and 6 of the code had not been breached, saying that the information reported by the *Telegraph* had been aired in open court, and it was in the public interest to detail the baby’s injuries in order to inform the public about the impact that ‘shaking’ a baby can have on a child (*Mooney v Grimsby Telegraph*, 26 October 2015)

**Circumstances made high-profile relative ‘genuinely relevant’**

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

**‘Genuinely relevant’ if supporting defendant at court**

If an adult friend or partner or relative of a defendant goes to court, in a show of support for the defendant, and there is a complaint that the reporting of the case should not have identified such a person as showing that support, Ipso is likely to rule they are ‘genuinely relevant’ to the case, and therefore that clause 9 of the Editors’ Code was not breached, provided there was no other focus on them in the reporting.

**Case study:** In 2019 Ipso ruled that publication by *Mail Online* of a photo showing a close relative of a defendant with him outside a Crown courthouse had not breached clause 9. The photo was published when the defendant was on trial for manslaughter. The caption named the relative and said what his relationship to the defendant was. The relative complained that he had asked Ipso to circulate a private advisory notice on his behalf when the defendant was charged, making clear that he (the relative) did not want to speak to the press. In this, he had also said that he did not consent to being identified in relation to the defendant’s case. *Mail Online* said that the relative had been photographed in a public place, outside a Crown court, accompanying the defendant. It said that the relative’s attendance at court with the defendant represented ‘a public and voluntary show of support’ for a member of the family on trial for a serious crime. The relative was relevant to the story because he had accompanied the defendant to court. *Mail Online* added that private advisory notices issued by Ipso do not last indefinitely and, regardless, the relative had attended court after the notice had been circulated. Ipso said that in the notice the relative had made clear that he did not consent to being identified in any news story. The story, in this case, was the trial of the accused. Ipso said that the fact of the relative’s attendance at court, seemingly in support of the defendant, was relevant to a report of the court case. It ruled that identifying the relative in these circumstances did not breach the terms of clause 9. Ipso also ruled that publication of the photo had not breached clause 2 of the code, saying that it was taken in a public place outside a court building at a time when the relative was not engaged in private activity. Ipso said that in these circumstances the relative did not have a reasonable expectation of privacy in relation to the information contained in the photograph. It also said that clause 2 had not been breached by publication of the relative’s name, which was ‘not private information’ (*A man v* *Mail Online*, 1 May 2019). The defendant was convicted of manslaughter, but that conviction was overturned on appeal.

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

**Incidental inclusion in photo did not breach clause 9**

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

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

**4.15 Material from social media sites**

**Case study:** Sian Moses, a children home’s official, complained to Ipso that the *Metro* published two photos of her copied from her Facebook site. The *Metro* published these in coverage of proceedings of the Fitness to Practice Committee of the Education Workforce Council which considered allegations of unacceptable professional conduct made against her, which she denied. She told Ipso that her Facebook profile was set so it could only be seen by friends and friends of friends, and could not be seen by journalists. She said that the *Metro* had therefore breached clause 2 of the Editors’ Code by publishing these photos. The *Metro* said that the two photos did not intrude into her privacy. It said that the photos were openly available on Facebook, and it provided screenshots to support this assertion. Ipso ruled that the photos were openly available on her Facebook profile and did not disclose anything private her, and so there was no breach of clause 2. The outcome of the Fitness to Practice Committee hearing, which the *Metro’s* coverage included, was that the Committee ruled that her behaviour in the alleged work incidents did not amount to unacceptable professional conduct (*Moses v Metro.co.uk*, 5 June 2020).

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

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

**Case study:** In 2017 Ipso ruled that the *Bootle Champion’s* publication of details taken from Paul Moran’s Facebook page after his family suffered an arson attack had not breached the Editors’ Code. The article said Mr Moran and his family had been forced to leave their home after two men set fire to it in a case of ‘mistaken identity’. The article reported his appeal for information from the public about the attack, which he had made on Facebook. Mr Moran complained that the article had included his name, those of his partner and his young daughter, and his daughter’s age, a picture of their home and its partial address. He said that this represented an intrusion into their private life, and that as they were victims of crime their safety had been put at risk. He said this breached the code’s clause 2. He also said the inclusion of these details infringed on his daughter’s privacy and affected her safety in breach of clause 6.  He also expressed concern that the newspaper had handled the details of the arson attack insensitively by including information about him and his family, and that this had added to their distress, in breach of clause 4. The *Champion* said it knew about the attack because Merseyside police had made a public statement that appealed for information on this serious crime. The *Champion* told Ipso it had published the article to help Mr Moran with his appeal for information, and to generate financial support for the family via a Just Giving appeal which had been set up for this. Ipso agreed with the *Champion’s* point that when the article was published, the identifying details it included about the family were already in the public domain, placed there in the Facebook post made public by Mr Moran. Consequently, Ipso ruled that clause 2 had not been breached. It also said that Mr Moran’s Facebook post contained a photo caption which included his daughter’s name. That post had gone ‘viral’, being ‘shared’ thousands of times. Ipso noted that the *Champion* had not published any information about his daughter apart from her first name and the fact she was his daughter. Ipso said this did not represent a failure to respect her private life, or an unnecessary intrusion into her time at school, so there was no breach of clause 6. Ipso said that given the serious nature of the arson crime, and the public appeal for information by the police and by the *Champion,* and that Mr Moran had made a public comment via Facebook, the *Champion’s* publication of the names of Mr Moran and his family did not represent a failure to handle publication sensitively, so clause 4 was not breached. Ipso added that the *Champion* was also not obliged to obtain Mr Moran’s consent for publication of such detail (*Moran v Bootle Champion*, 26 June 2017).

**Case study:** In 2009 the Press Complaints Commission (PCC) did not uphold a complaint made on behalf of police officer John Hayter that his privacy was breached when *The People* published an apparently flippant message he posted on Facebook. It referred to the death of a member of the public, Ian Tomlinson, during the G20 protest in London. Mr Hayter’s message said: ‘I see my lot have murdered someone again. Oh well, shit happens.’ The complainant Phyllis Goble, Mr Hayter’s mother in law, said that *The People’s* publication of this comment, along with two others from his profiles on Facebook and Friends Reunited, which were not publicly accessible, showed a lack of respect for his privacy. *The People* said that Mr Hayter's comments had been brought to its attention by someone with whom he was acquainted, who had legitimate access to Mr Hayter's online profiles. Also, Mr Hayter had accepted the newspaper's journalist as an online ‘friend' for a period of around an hour, before deleting her. She too, therefore, had legitimate access to the information. *The People* said that it was reasonable for it to publish his comments because there was a public interest in showing how serving police officers regarded incidents such as the death of Mr Tomlinson. The PCC said that it can be acceptable in some circumstances for the press to publish information taken from social networking websites, even when the material is originally intended for a small group of acquaintances and not publicly accessible. It added that this will generally be only in cases where the public interest overrides the individual's right to privacy, but that it was persuaded that this was such a case. It said that Mr Hayter was a serving police officer who commented on a matter that was the subject of considerable media and public scrutiny, and that he had done so in a way that made light of a person's death and the role apparently played by the police. There was a clear public interest in knowing about police attitudes (whether publicly or privately expressed) towards the incident. In any case, posting such controversial comments to people who were not obliged to keep the information secret was likely to involve an element of risk on the officer’s part, given his job, the PCC added. The PCC said it considered that any intrusion into privacy was justified by the public interest, and there was therefore no breach of (what is now) clause 2 of the code (*Phyllis Goble v The People*, September 29, 2009).

**Case study:** In 2011 the PCC ruled that publication by the *Daily Mail* and *Independent on Sunday* of remarks which a civil servant had ‘tweeted’ in her Twitter account did not breach (what is now) clause 2 of the code. She had complained that the tweets featured by the newspapers should have been deemed private under the clause. Her Twitter account had 700 followers. In the featured tweets, she had described aspects of her Department of Transport job and her feelings towards work. For example, the tweets described the leader of a course she was doing (as part of her job) as ‘mental’; said that she was ‘struggling with a wine-induced hangover’ at work; and, again at work, told how she was ‘feeling rather tired - would much prefer going home’. The PCC said that the tweets were ‘publicly-accessible information’ and ‘not of an intimate nature’. A number of the tweets featured were political in nature, such as a complaining reference to a Conservative MP who was a prominent critic of Whitehall waste. *The Mail*, whose article was headlined ‘Oh please, stop this twit from Tweeting, someone’, pointed out to the PCC that since the civil service code requires that public servants should not, by their personal statements, call into doubt the impartiality of the civil service, it was quite legitimate for the newspaper to highlight this particular case, The PCC noted that the material published related directly to the complainant's professional life as a public servant. It said that what the *Mail* had published from her tweets did not constitute an unjustifiable intrusion into her privacy, and made a similar ruling in respect of the *Independent on Sunday’s* article (*Sarah Baskerville v Daily Mail, Sarah Baskerville v Independent on Sunday*, both 8 February 2011).

See 4.11 above for case studies on *Dixon v The Daily Telegraph*, *Lightfoot v Leicester Mercury* and *A woman v Daily Star on Sunday* which partly concern use in news articles of social media content.

**Photographs, tributes and comments taken from the internet after people have died, been injured or attacked.**

**Case study:** A young woman was in a coma because she was injured in a road accident. Her father complained that the *Grimsby Telegraph’s* report of it had included photos of her taken from social media, and comments he had made on his Facebook page. He said this breached the protection of privacy in clause 2 of the Editors’ Code. But Ipso ruled that the factual report had not breached the code. The report quoted the father’s Facebook comments giving brief details on his daughter’s condition, and expressing thanks for the concern and messages that had been given by family and friends. Ipso acknowledged the distressing circumstances, but said that by sharing information about his daughter in comments he had made on a social media post which was open to public view, the father had put his comments in the public domain, and they contained no information about which he had a reasonable expectation of privacy. The report did not disclose private information about the father in breach of clause 2, Ipso added (*Wood v Grimsby Telegraph,* 25 May 2020 – see further details of this adjudication in 4.7.1, above).

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

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

**Case study:** In 2015 Ipso did not uphold a complaint made by the fiancé of a man who died while on a friend’s stag weekend in Budapest. She complained that tribute messages posted on his open Facebook profile and a photo of him taken from it had been used by the *Dorset Echo* in a report of his death. Ipso expressed sympathy for her bereavement, but said that the material could be viewed by members of the public on the Facebook profile. Ipso ruled that the material had been in the public domain, and therefore that the *Echo’s* inclusion of it in the coverage did not represent a breach of clause 2 of the Editors’ Code (*Hodder v Dorset Echo*, 16 April 2015).

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

**Case study**: In 2005 the Press Complaints Commission ruled that publication of an ‘innocuous photo’ – obtained from a publicly-accessible website - showing in earlier circumstances someone who had died in the 2004 tsunami disaster was not insensitive in coverage of that disaster, and so did not breach (what is now) clause 4 of the Editors’ Code. The PCC said that where a picture is concerned, it might rule that publication would be insensitive to the relatives if the dead person was shown ‘as engaged in an obviously private, or perhaps embarrassing, activity’, but that had not been the case in this instance (*The family of Alice Claypoole v Daily Mirror*: Report 71, 2005).

See too in 4.7.1, above, the case study on Ipso’s ruling in *McGurk v Daily Record*, which concerned in part a newspaper’s publication of a photo of a child who had died, taken from his mother’s Facebook account.

Also, the case study on *Dixon v The Daily Telegraph* in 4.11, above, concerns in part the newspaper’s use of a photo copied from Facebook of a woman who had been a crime victim.

**Useful websites**

[**http://www.editorscode.org.uk/**](http://www.editorscode.org.uk/)Editors’ Codebook

[**http://www.editorscode.org.uk/guidance\_notes\_10.php**](http://www.editorscode.org.uk/guidance_notes_10.php)

Press Complaints Commission guidance on the reporting of cases involving paedophiles

[**http://www.editorscode.org.uk/guidance\_notes\_6.php**](http://www.editorscode.org.uk/guidance_notes_6.php)

Press Complaints Commission guidance on the reporting of people accused of crime