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**MINUTES of the COMPLAINTS COMMITTEE MEETING**  
**Wednesday 26 April 2017 at 10.30 am**  
Gate House, 1 Farringdon Street, London EC4M 7LG

**Present:** Sir Alan Moses, Chairman  
Richard Best  
Lara Fielden  
Gill Hudson  
David Jessel  
Matthew Lohn  
Neil Watts  
Elisabeth Ribbans  
Peter Wright  
Nina Wrightson

**In attendance:** Charlotte Dewar, Director of Operations  
Ben Gallop, Head of Complaints  
Michelle Kuhler, PA to CEO and minute taker  
Bianca Strohmann, Head of Complaints  
Matt Tee, Chief Executive Officer

**Also present: Members of the Executive:**

Ciaran Cronin  
Niall Duffy  
Alistair Henwood  
Vikki Julian  
Holly Pick  
Lauren Sloan  
Liam Tedds  
Abigail Tuit  
Charlotte Urwin  
Hugo Wallis

**Observers:** Jonathan Grun, Editors' Code of Practice Committee  
Anne Lapping, Board Member

1. Apologies for Absence

Apologies for absence were received from Jill May.

2. Declarations of Interest

Peter Wright declared an interest in items 9 and 10. He left the meeting for these items.

3. Minutes of the Previous Meeting

The Committee approved the minutes of the meeting held on 29 March.

4. Update by the Chairman - oral

The Chairman welcomed Jonathan Grun to the meeting and thanked him for all his hard work on the Editors' Code. He also informed the Committee that Ciaran Cronin would be leaving IPSO at the beginning of the month, and welcomed new Complaints Officer Lauren Sloan.

5. Matters Arising

There were no matters arising.

6. Complaint 13405-16 Allardyce v The Daily Telegraph

The Committee discussed the complaint and asked the Executive to revert to the parties for further information before proceeding.

7. Complaint 00844-17 Moss v The Sun

The Committee discussed the complaint and ruled that the complaints should not be upheld. A copy of its ruling appears in **Appendix A**.

8. Complaint 14070-16 Smyth v Oxford Mail

The Committee discussed the complaint and ruled that the complaint should not be upheld. A copy of its ruling appears in **Appendix B**.

9. Complaint 01722-17 HRH Prince Henry of Wales v Mail Online

The Committee discussed the complaint and ruled that the complaint should be upheld. A copy of its ruling appears in **Appendix C**.

10. Complaint 00294-17 Brown v The Daily Telegraph

The Committee discussed the complaint and ruled that the complaint should be upheld. A copy of its ruling appears in **Appendix D**.

11. Complaint Rejection Sampling Discussion – Oral Update

Nina Wrightson gave the update on this item. The samples for rejections were taken randomly from July to December 2016 files, excluding multiple complaints. She worked with David Jessel and Neil Watts to review the files and no issue came to light at all. The care taken by all staff along with the volume of work undertaken by the team was noted.

Volunteers were request for the next batch of rejection sampling. Committee members were asked to contact Nina directly.

12. Complaints not adjudicated at a Complaints Committee meeting

The Committee confirmed its formal approval of the papers listed in **Appendix E**.

13. Any other business

There was no other business.

14. Date of Next Meeting

The date of the next meeting was confirmed as Wednesday 31 May 2017.

The meeting ended at 11.48am.

Michelle Kuhler  
PA to CEO

## Appendix A

### Decision of the Complaints Committee 00844-17 Moss v The Sun

#### Summary of Complaint

1. Daniel Moss complained to the Independent Press Standards Organisation that The Sun breached Clause 2 (Privacy), Clause 3 (Harassment) and Clause 10 (Clandestine devices and subterfuge) of the Editors' Code of Practice in an article headlined "Sicknote Cop Sells Threesomes", published on 3 December 2016. The article was also published online with the headline: "'We can be as filthy as you want' Shocking secret sideline of sleazy PC selling three-in-a-bed romps for £210 an hour after being signed off work for 'stress'".
2. The article reported that the complainant, a serving police officer, "has been selling threesomes with his girlfriend for £210 an hour" on an adult escorting website. The article included quotes from the advert: "look at us as a couple and we're a young energetic couple who you could pass on the street...get us in the bedroom and we can be as filthy as you want". It said that an undercover reporter from the newspaper had posed as a client and had met the complainant and his girlfriend at their home, after he had booked a "half hour threesome" through their profile on the website.
3. The article reported that "after handing over £120 in cash, our man was led to a bedroom" where he was told by the complainant's girlfriend to "do what you want within reason", before the reporter left the flat.
4. The article reported that this had taken place whilst the complainant had been signed off sick from work, and Sussex police had subsequently launched an investigation into his conduct. The article acknowledged that the activity was not illegal but continued by reporting that "the police code of ethics states that officers must 'avoid any activities (work-related or otherwise) that may bring the police service into disrepute and damage the relationship of trust and confidence between the police and the public'". The article included a statement from the ex-head of Scotland Yard's flying squad: "people have a right to expect the conduct of our police to be beyond reproach. Therefore the behaviour of this officer and his partner demands that the police service acts robustly and quickly to deal with it".
5. The online version of the article included a two-and-a-half minute video of the journalist visiting the complainant's home, obtained with a hidden camera. This video recorded the conversation which the complainant had with the journalist and showed the journalist handing money to the complainant's girlfriend, before being led into the bedroom. Aside from the inclusion of the video, the online article was substantively the same as the print version. The online and print articles included images, taken from the video, of the complainant and his girlfriend.

6. The complainant said that he had a reasonable expectation of privacy in relation to the activities he chose to carry out within his own home. He said that he had not been on duty as a police officer when the journalist had entered his home. His position as a serving police officer did not amount to him being a public figure and he had the same expectation of privacy as a member of the public. The website profile was his girlfriend's and any reference to the involvement of a male did not disclose his identity. He said he was present at the flat in order to assist his girlfriend. He said he did not handle the money, and was not running a business from the address.
7. The complainant said that when the journalist entered his home, he had recorded a video of him without his knowledge or permission. He said that given his identity was not disclosed on the escort website, he had not placed his involvement in the activities into the public domain.
8. The complainant did not accept that the newspaper's intrusion into his private life and the use of subterfuge and a hidden camera, to obtain and publish the material, was justified in the public interest. He said that there was no public interest in reporting what a police officer, who was off-duty, did in his private home. He said he had been dismissed by Sussex police on the basis that he had breached force policy. He said the chief constable had considered giving him a final warning, rather than dismissing him, but said he could not due to the public nature of the exposé. He denied that he had been advertising his sexual services online, nevertheless he said it would not have been a criminal offence to do so. Further, given that he had not undertaken any illegal activity, he had not placed himself in a position in which he could be blackmailed, and he was not receiving sick pay from the tax payer.
9. The complainant said that the publication of the article amounted to harassment because of the distress caused to him and his family.
10. The newspaper accepted that it had engaged in subterfuge by posing as a client and using a hidden camera, in order to obtain material about the complainant's activities with his partner. It said that whilst the terms of Clause 10 were engaged, its actions were justified in the public interest.
11. The newspaper said that the reporter had been tipped off by a 'source' that the complainant and his partner were offering services on the adult website, and that he was a police officer on long term sick leave. The source had provided the newspaper with the advertisement posted by the complainant on the website. It said that because the advert did not identify the complainant or his partner it was necessary for the reporter to use a hidden camera in order to verify the complainant's status as a serving police officer.
12. The newspaper provided a summary of the internal correspondence which had passed between the journalist and the newsdesk both prior to the journalistic activity and publication. It said that this correspondence demonstrated that the reporter had considered the terms of the Code and decided that there was a public interest in obtaining the information by subterfuge and use of a hidden camera. The internal memo recorded that the public interest was "exposing this illegal activity as Moss is a

serving officer with Sussex Police. His activities also expose him to potential blackmail by criminals". Prior to publication, the newspaper said its managing editor and legal department had given further careful consideration to the public interest, and decided that it was sufficient to justify publishing the video recording.

13. In response to the complaint, the newspaper said that there was overwhelming public interest in reporting that a serving police officer, on sick leave, was providing sexual services.
14. It said that the complainant was in breach of his duties by falling below the standards expected of serving police officers, and such standards applied to the complainant even when he was off duty. This was reflected by the statement released by Sussex police, released in response to the newspaper's investigation, which said: "police officers must behave in a manner that does not discredit the police service or undermine public confidence, whether on or off duty".
15. The newspaper said that its position that the complainant was undertaking illegal activity, was articulated during internal correspondence and at a time where it was unclear to the journalist whether any illegal activity took place in the complainant's home. The article did not claim the activity was illegal, and this reflected the newspaper's changed position on the matter. However, the newspaper said the activity was immoral and exposed the complainant to blackmail in his role as a police officer.
16. It said that whilst the interaction with the journalist took place within the complainant's home, it did not accept that the complainant had a reasonable expectation of privacy in relation to the activities that took place there. It said that the services which the complainant was offering were advertised on a public website; as such his home formed part of a commercial enterprise. In any case, the newspaper argued that any intrusion into the complainant's private life was justified in the public interest for the reasons already articulated.
17. In response to the complaint, the newspaper said that the decision was taken to publish the video because it provided clear proof and corroboration of the story for its readers. It said that the publication of the video, which showed no sexual activity, was a legitimate editorial decision, taken in order to validate the story.
18. The newspaper said that the journalist did not engage in intimidation, harassment or pursuit when making his enquiries.

### **Relevant Code Provisions**

#### 19. Clause 2 (Privacy)\*

- (i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

(ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.

(iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.

#### Clause 3 (Harassment)\*

(i) Journalists must not engage in intimidation, harassment or persistent pursuit.

(ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.

(iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

#### Clause 10 (Clandestine devices and subterfuge)\*

(i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held information without consent.

(ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

#### The public interest

There may be exceptions to the clauses marked \* where they can be demonstrated to be in the public interest.

The public interest includes, but is not confined to:

- i. Detecting or exposing crime, or the threat of crime, or serious impropriety.
- ii. Protecting public health or safety.
- iii. Protecting the public from being misled by an action or statement of an individual or organisation.
- iv. Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.
- v. Disclosing a miscarriage of justice.
- vi. Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.
- vii. Disclosing concealment, or likely concealment, of any of the above.
- viii. There is a public interest in freedom of expression itself.

- ix. The regulator will consider the extent to which material is already in the public domain or will or will become so.
- x. Editors invoking the public interest will need to demonstrate that they reasonably believed publication - or journalistic activity taken with a view to publication – would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time.

### **Findings of the Complaints Committee**

- 20. The terms of Clause 10 were engaged: the journalist had posed as a client and had filmed the complainant through use of a hidden camera. The newspaper had credible evidence, based upon the information provided by the source and the public advert, that the complainant was engaged in the sale of sexual services to members of the public.
- 21. The public place trust in the police to conduct themselves in accordance with the police code of ethics and there was a clear public interest in verifying the claims of the source, in confirming the complainant's identity as a serving police officer and in establishing the extent of his participation in the alleged activities. There was also a clear public interest in establishing whether the complainant's conduct exposed him to potential blackmail as a result of engaging in the sale of sexual services to strangers.
- 22. The Committee noted that the advert did not identify the complainant; he could therefore have denied the claims made by the newspaper's source, had they been put to him openly. Further, given the sexual nature of the alleged activities, it was reasonable for the newspaper to have concluded that the complainant would not be willing to verify his involvement in the alleged activities, if an open approach had been made. In those circumstances, the newspaper's view that subterfuge would uncover material that could not be obtained by other means, was reasonable. Further steps were therefore justified in order to establish the extent of the complainant's involvement as well as to test the veracity of the source's claims.
- 23. The Committee noted that the journalist had engaged in only a brief interaction with the complainant, in order to substantiate his involvement in the provision of sexual services.. This interaction was limited to a discussion only and did not involve any sexual activity.
- 24. Given that the investigation had the potential to uncover evidence that the complainant was engaging in behaviour which might contravene the police code of ethics, the Committee considered that the newspaper's actions had been proportionate to the clear public interest in undertaking the investigation.
- 25. The newspaper had given further consideration to whether publication of the information would serve, and be proportionate to, the public interest it sought to rely upon. The public interest was served by publishing the outcome of an investigation which confirmed that a serving police officer was engaged in activities which may contravene the police code of ethics. In reporting the outcome of its investigation, the



newspaper had highlighted aspects of the complainant's conduct which had the potential to expose him to blackmail, discredit the police service and raise questions which could seriously undermine public confidence in him. In circumstances where the investigation identified matters of a sexual nature, the Committee scrutinised the newspaper's decision to publish the video and accompanying stills, carefully. The video provided confirmation of the complainant's identity and the extent of his involvement in the activities; given the clear public interest in establishing this information the Committee did not conclude that the publication of this material was disproportionate.

26. In those circumstances, the publication of this information was therefore justified in the public interest the newspaper had sought to rely upon. There was no breach of Clause 10.
27. The journalist had entered the complainant's home and had engaged in a conversation with him, which related to his sexual behaviour and preferences. The Committee acknowledged that such details, as well as an individual's home, are generally considered to be private. It noted, however, that a reasonable expectation of privacy will depend on the circumstances relevant to a particular case.
28. Whilst the Committee noted that the conversation with the journalist took place at the complainant's home and related to matters of a sexual nature, the complainant had used his home as a location to undertake a commercial transaction, having advertised these matters on a public website. There was no reasonable expectation of privacy in those circumstances. There was no breach of Clause 2.
29. There was no suggestion that the journalist had engaged in intimidation, harassment or persistent pursuit in making their enquiries. There was no breach of Clause 3.

### **Conclusions**

30. The complaint was not upheld.

### **Remedial Action Required**

N/A

## Appendix B

### Decision of the Complaints Committee 14070-16 Smyth v Oxford Mail

#### Summary of complaint

1. Eugene Smyth, acting on behalf of his daughter Kathryn Puncher, complained to the Independent Press Standards Organisation that the Oxford Mail breached Clause 4 (Intrusion into grief or shock) and Clause 5 (Reporting Suicide) of the Editors' Code of Practice in an article headlined "Scientist stabbed himself to death after work error", published on 24 November 2016.
2. The article reported that an inquest had concluded that Dr Matthew Puncher, the complainant's late husband, had taken his own life. It said that Dr Puncher, a scientist responsible for measuring radiation in workers involved with the former USSR nuclear weapons programme, who had discovered the amount of polonium inside murdered Russian spy Alexander Litvinenko, had been found dead in his home with "wounds from two kitchen knives". The article reported the location of his wounds, and noted that a pathologist had stated that while he could not "entirely exclude" third party involvement, he was satisfied that the wounds were self-inflicted. It also quoted the detective investigating the death who had said that the injuries were "so extensive" that she had initially questioned how Dr Puncher could have remained conscious to inflict them, but that there was "no evidence of a disturbance or a struggle, and no evidence of anyone else's blood".
3. The article was published in the same form online.
4. The complainant's father emphasised that the family accepted the publication's right to report on the inquest: their objection was to the inclusion of details of Dr Puncher's injuries, which they considered to be graphic and excessive, and therefore an intrusion into the family's grief. He said that the family had sought to protect Dr Puncher's children from the details of their father's death, but the report had made this impossible. He said that the newspaper had not approached the family before proceeding with publication, and that the article represented a failure to act with any sympathy or discretion at a time of grief. He also contended that the details included could encourage simulative acts of suicide.
5. The newspaper was sorry that its coverage had been distressing for Dr Puncher's family, but explained that the media is entitled to report proceedings from the Coroner's Court. There was no requirement to contact families before publishing reports of inquests, but in this case a reporter had approached a member of the family at the inquest, to let them know that a story would be published.
6. The newspaper said that it carefully considered the level of detail it had reported regarding the method of suicide, and was not of the view that it had been excessive. The Home Office pathologist was quoted in his evidence as saying that third party involvement "could not be ruled out". The nature of Dr Puncher's wounds, and where they appeared on his body, were important factors for the coroner in deciding whether he could have inflicted them on himself, or whether someone else was involved. The details given in the article were necessary, given the need to accurately explain the unusual circumstances of Dr Puncher's death,

and the reasons for the coroner's eventual conclusion that Dr Puncher had taken his own life.

### Relevant Code provisions

7. Clause 4 (Intrusion into grief or shock)

In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. These provisions should not restrict the right to report legal proceedings.

Clause 5 (Reporting suicide)

When reporting suicide, to prevent simulative acts care should be taken to avoid excessive detail of the method used, while taking into account the media's right to report legal proceedings.

### Findings of the Committee

8. The Committee first wished to express its condolences to the complainant and her family for their loss, and to acknowledge their wish to shield Dr Puncher's children from unnecessary further pain following their father's death.
9. Inquests are public hearings, and newspapers play an important role in informing readers about evidence heard during proceedings, which is expressly recognised within the Code. Nonetheless, the Committee made clear that the publication of gratuitous detail in reporting on the circumstances surrounding a death could constitute an intrusion into grief and therefore breach Clause 4, as a failure to deal with publication sensitively.
10. However, in this instance, while the Committee understood the complainant's concern, it noted that the details, heard at the inquest, had been presented in a factual and non-sensational way. In addition, there was a justification for the inclusion of the details in the article, which explained why some evidence appeared to raise a question about whether a third party had been involved in Dr Puncher's death. It concluded that publication had not been handled insensitively, and there was no breach of Clause 4.
11. The complainant's father had also expressed concern that the newspaper had not attempted to contact his family prior to publication. The Committee noted that families in circumstances of bereavement vary in their wishes; some families object to being contacted for their comment in such tragic circumstances. In this instance, there was a dispute about whether such a contact had been made at the inquest. In any case, the Code does not impose a general requirement that such an approach be made, and there were no grounds to establish that an approach was necessary here. There was no breach of Clause 4 on this point.
12. Clause 5 places an important obligation on publications to balance the prevention of simulative acts of suicide with the public's right to be informed. The question of whether particular details are excessive will depend on the circumstances of each case. The evidence heard at the inquest was complex and unusual. For reasons explained in paragraph 10, and particularly in circumstances where there had been a discussion of the possibility of third party involvement, the Committee

did not consider that the detail reported was excessive. There was no breach of Clause 5.

**Conclusion**

13. The complaint was not upheld.

**Remedial Action Required**

14. N/A

## Appendix C

### Decision of the Complaints Committee 01722-17 HRH Prince Henry of Wales v Mail Online

#### Summary of complaint

1. HRH Prince Henry of Wales complained to the Independent Press Standards Organisation that Mail Online breached Clause 1 (Accuracy) and Clause 2 (Privacy) of the Editors' Code of Practice in an article headlined "Time to cool off! Happy (and hunky) Prince Harry enjoys a dip in the ocean as he and Meghan relax on the beach in Jamaica after his 'wingman's' sun-drenched wedding", published on 4 March 2017.
2. The article reported that the complainant and his girlfriend had attended a friend's wedding in Jamaica. It was accompanied by a number of photographs, including several showing the complainant wearing swimming shorts on the beach, at a beachside bar and in the sea.
3. The complainant said that these images had been taken in circumstances in which he had a reasonable expectation of privacy, and while he was engaged in private activities unconnected to his public role, and unaware that he was being photographed. He had been on a private beach where paparazzi photography was not permitted, and where the nearest public place was more than 500 metres away. He considered that the grainy quality of the pictures demonstrated that they had been taken surreptitiously using a long lens camera.
4. The complainant said that the publication had made no attempt to seek his consent or to establish the circumstances in which the photographs had been taken before publication. He said that when he requested the removal of the images from the website, the publication had failed to act promptly. His representatives had complained about the images in writing the day after publication, and numerous calls had been made to the publication's office, but had received no response for more than 24 hours. The complainant considered that no public interest was served by publishing the images.
5. The complainant said, in addition, that by publishing the images, the publication had given the misleading impression that they were Code compliant, and that he would not object to their disclosure. The publication's response to his complaint had represented a failure to correct a distortion promptly.
6. The publication said that it had been provided with credible information that the complainant had been on a public beach at the time the photographs were taken; it had relied on that information and had published the images in good faith. The photographer had been 700 to 800 yards away from the complainant when he had taken the photographs, and he had used a 500mm lens.
7. The publication said that the images themselves appeared to confirm that the complainant had been in a public place, given that there were other holidaymakers on the beach engaged in normal holiday activities. There was also no visible security on the beach or signs indicating that it was not public property, and there was no branding visible on the beach furniture. As the photographs had not revealed intrinsically private information and had seemed innocuous, it had no reason to doubt the information it had been given. Furthermore, given that the complainant's attendance at the wedding had been widely documented, it had not considered that there were any wider indications that the photographs would raise any concerns. It also noted that the images under complaint had been published widely in the US and in one UK magazine.

8. The publication said that it was unfortunate and regrettable that it had been misinformed about the circumstances in which the images had been taken; it had not been its intention to cause distress to the complainant, and it would take additional steps to verify such information in future. It had chosen not to publish other photographs which had been taken at the wedding, in which it had considered that the complainant had a reasonable expectation of privacy.
9. The publication denied that it had failed to respond promptly to the complaint. As the complaint was made at the weekend, it had taken some time to establish the facts with the photographer who was based in the US. Once it had properly understood the position, it had promptly offered to remove the images from its website, it had apologised, and it had given its assurances that the images would not be republished.

#### **Relevant Code provisions**

##### 10. Clause 1 (Accuracy)

- i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
- ii) A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.

##### Clause 2 (Privacy)\*

- i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.
- iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.

#### **Findings of the Committee**

11. The complainant had been photographed during his leisure time on a private beach at a private resort. Indeed, the article itself stated that the complainant was staying at a private resort. While other guests may have been present at the time, the complainant was not carrying out official duties, and he was unaware that he was being photographed by the photographer who was positioned between 700 and 800 yards away, and had used a long lens camera. The Committee did not accept that the complainant could have been seen by members of the public outside the resort at this distance.
12. The images, which had been taken without consent, showed the complainant wearing swimwear and engaging in private leisure activities in circumstances in which he had a reasonable expectation of privacy. Photographing an individual in such circumstances is unacceptable, unless it can be justified in the public interest. The publication had not sought to justify the publication of the images in the public interest. Publishing photographs of the complainant engaged in private activities, without his knowledge and consent, represented a significant and unjustified intrusion. The complaint under Clause 2 was upheld.
13. The publication of the images had not given the significantly misleading impression that they were compliant with the Code. The complaint did not engage the terms of Clause 1 (Accuracy).

#### **Conclusion**

The complaint was upheld.

### Remedial action required

14. Having upheld the complaint, the Committee considered what remedial action should be required.
15. Where the Committee has upheld a complaint as a breach of Clause 2, the appropriate remedial action is the publication of an adjudication.
16. The adjudication should be published on the publication's website, with a link to it (including the headline) being published on the homepage for 24 hours. It should then be archived in the usual way. The headline of the adjudication must make clear that IPSO has upheld the complaint, and refer to its subject matter; it must be agreed in advance.
17. The terms of the adjudication to be published are as follows:

*Following an article published on Mail Online on 4 March 2017, headlined "Time to cool off! Happy (and hunky) Prince Harry enjoys a dip in the ocean as he and Meghan relax on the beach in Jamaica after his 'wingman's' sun-drenched wedding", HRH Prince Henry of Wales complained to the Independent Press Standards Organisation that Mail Online breached Clause 2 (Privacy) of the Editors' Code of Practice. IPSO upheld the complaint and has required Mail Online to publish this decision as a remedy to the breach.*

*The article reported that the complainant had recently attended a friend's wedding in Jamaica. It was accompanied by photographs of the complainant wearing swimming shorts on a beach, at a beachside bar and in the sea.*

*The complainant said that these images had been taken in circumstances in which he had a reasonable expectation of privacy, and while he was engaged in private activities unconnected to his public role. The photographs showed him wearing swimwear on a private beach; he had been unaware that he was being photographed; and he had not consented the images' publication. The complainant considered that no public interest was served by the article.*

*Mail Online said that it had been provided with credible information that the complainant had been on a public beach at the time the photographs were taken, and it had published them in good faith. While it regretted that it had been misinformed, it did not consider that the photographs had revealed intrinsically private information. It also noted that they had been published widely in the US and in one UK magazine.*

*The Committee found that the complainant had been photographed in circumstances in which he had a reasonable expectation of privacy. He had not consented to the images' publication, and Mail Online had not sought to justify their publication in the public interest. Publishing photographs of the complainant engaged in private activities, without his knowledge and consent, represented a significant and unjustified intrusion in breach of Clause 2. The Committee upheld the complaint.*

## Appendix D

### Decision of the Complaints Committee 00294-17 Brown v The Daily Telegraph

#### Summary of complaint

1. Gordon Brown complained to the Independent Press Standards Organisation that the Daily Telegraph breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined "'For hundreds of years, Britain's commitment to a free press has helped make this country a beacon of freedom for the world...But all this is now under threat from MPs and Lords'", published on 24 December 2016 and republished on 27 December 2016.
2. The article said that the freedom of the press was under threat from the possible enforcement of Section 40 of the Crime and Courts Act 2013. It said that Section 40 would mean that newspapers that refused to subscribe to an officially recognised regulator would have to pay the costs of anyone who brought legal action against them, even if they won the case. It said this legislation would "make it impossible to conduct serious investigative journalism, since people whose wrongdoing was exposed would be able to bring ruinously expensive legal actions against newspapers". It said that it was "only because of the Telegraph that voters learned how MPs were abusing their expenses", and it appealed to readers to respond to the government's consultation on the implementation of Section 40.
3. The piece was illustrated by three small images of front-page stories: the Daily Telegraph's first front page relating to the expenses scandal, which was headlined "The truth about the Cabinet's expenses" and included an image of the complainant and his brother, and two further front pages, from other newspapers, as illustrations of public interest journalism.
4. The article was also published online on 23 December 2016, but the image of the Daily Telegraph's front page was cropped to omit the lower section of the story.
5. The complainant expressed concern that the newspaper had published an image of an article, which had originally been published in 2009, that included his and his brother's photographs and stated "Brown paid his brother more than £6,000 for 'cleaning expenses'". He said the article had failed to make clear that following the original publication of this story, the newspaper had accepted that it had inaccurately reported that he and his brother had abused the MPs' expenses system, and it had agreed to publish this correction:

*For the avoidance of doubt, The Daily Telegraph does not allege that the Prime Minister's brother, Andrew Brown, received any improper benefit from the Prime Minister's expense claim for cleaning services. The Daily Telegraph accepts that the sums received by him from the Prime Minister were duly paid to their shared cleaner for services rendered to the Prime Minister and his wife.*

6. The complainant said that the newspaper had also agreed that the story would not be published again without an accompanying correction.
7. The complainant said that the republication of the front page in the context of this article about public interest journalism had given the significantly misleading impression that he was an example of someone "whose wrongdoing was exposed". He noted that the opening of the article had asked "why would those in power want to constrain the press unless they are doing something that they do not want the public to know?". He also noted that the newspaper had asserted that its "revelations about MPs expenses" had been accurately reported, and he argued that readers would not have considered that the examples of public interest journalism, which had been used to illustrate the piece, had included journalistic mistakes. He said it was deeply upsetting to be used as an example alongside



stories about alleged murderers and disgraced Lord Sewel when he had been found guilty of no wrongdoing whatsoever.

8. The complainant also expressed concern that when he raised his concern with the newspaper directly, it had failed to correct the inaccuracy promptly, and had merely offered to republish the 2009 correction. He considered that the online article should have been taken down immediately, and a new correction acknowledging the newspaper's error and including a generous apology should have been published in print and online. He also expressed serious concern that the newspaper had failed to make clear that the article under complaint had appeared in print on two separate occasions until the end of IPSO's investigation.
9. The complainant suggested the following wording for publication in print, with a similar form to be appended to the online article:

*Gordon Brown and Andrew Brown*

*In two recent advertisements we used an image of our front page published on the first day of our coverage of the MPs expenses scandal which featured pictures of Gordon Brown and his brother. We are happy to confirm that there is no suggestion of wrongdoing on Mr Brown's part or that of his brother. A few days after the first article in May, 2009 we published the following statement: 'For the avoidance of doubt, The Daily Telegraph does not allege that the Prime Minister's brother, Andrew Brown, received any improper benefit from the Prime Minister's expense claim for cleaning services. The Daily Telegraph accepts that the sums received by him from the Prime Minister were duly paid to their shared cleaner for services rendered to the Prime Minister and his wife'. We are happy to do so again. We also accept that in our website coverage of the expenses issues we should have made clear in every article referring to Mr Brown's claims for cleaning services that there was no wrongdoing on the part of Gordon Brown or his brother. We apologise to Mr Brown and his brother for not making this clear in all the relevant articles.*

10. The complainant also expressed concern that the article had been tweeted by the newspaper, and an image of the article, including his image, remained on the newspaper's Facebook page even at the end of IPSO's investigation. He considered that the newspaper had made him a poster boy for press exposure of very serious and appalling wrongdoing.
11. The newspaper said it was sorry if its article had caused the complainant upset. This had not been its intention.
12. It said that the image under complaint was one of three partial front covers used as generic examples of public interest journalism. It considered that each of the front covers had become iconic, including its own which had been the first to launch its investigation into MPs' expenses and had become emblematic of the whole of its expenses coverage.
13. The newspaper did not consider that its use of this front page had given the impression that it had exposed the complainant engaging in wrongdoing. It considered that the article was not about the complainant; it was about the threat to freedom of expression and the free press.
14. The newspaper considered that the only visible words in the print article had been "The truth about the Cabinet's expenses", and in the online version, as well as the headline, the sub-headline "The Prime Minister. Brown paid his brother more than £6,000 for cleaning 'expenses'", could be read.
15. The newspaper said that the 2009 coverage of the complainant's cleaning expenses claim had been both fair and accurate. It had never accepted that there was any need for a

correction or an apology; rather, it had offered to publish some additional wording as a clarification.

16. The newspaper rejected the complainant's contention that it had failed to respond to his complaint appropriately. It said that it had received the complaint on 29 December 2016, and the online article had been amended the following day. It said that it could not agree to publishing the complainant's suggested wording for a correction as it had not accurately reflected the events of 2009. Instead, on 31 December 2016, the newspaper offered the following wording for publication on page two in print, with a similar form for publication online

*Gordon Brown and Andrew Brown*

*In two recent advertisements we used an image of our front page published on the first day of our coverage of the MPs expenses scandal which featured pictures of Gordon Brown and his brother. We are happy to confirm that there is no suggestion of wrongdoing on Mr Brown's part or that of his brother. A few days after the first article in May 2009 we published the following statement: For the avoidance of doubt, The Daily Telegraph does not allege that the Prime Minister's brother, Andrew Brown, received any improper benefit from the Prime Minister's expense claim for cleaning services. The Daily Telegraph accepts that the sums received by him from the Prime Minister were duly paid to their shared cleaner for services rendered to the Prime Minister and his wife. We are happy to do so again.*

17. *The newspaper considered that this remedial action was sufficient; an apology was not required.*
18. The newspaper said that its investigation into MPs' expenses had not – in the main – related to criminality; the scandal was that the expenses system had been so generous that it had become commonplace for MPs to receive payments for items or services that a normal working person would consider unethical given that it was public money. It noted that an investigation carried out by Sir Thomas Legg had concluded that the system was “deeply flawed”, and following Sir Thomas's report, the complainant had repaid £12,000 of the cleaning expenses he had claimed, and had made further repayments including one for the repainting of a summer house at his constituency home.
19. The newspaper said that it had not intentionally misled IPSO regarding the number of occasions the article had been published, and it noted that the correction it had offered to print had referred to “two recent advertisements”. When alerted to the Facebook posting, it removed it.
20. The complainant said that Sir Thomas Legg had made an assessment that a London cleaner should only be paid minimum wage, whereas he had paid the living wage including a London supplement. He had therefore made a voluntary repayment of £12,000. He said there was never any suggestion by Sir Thomas of impropriety on his part, and his record on expenses and on refusing to accept public money offered to him had been beyond reproach.

#### **Relevant Code provisions**

21. Clause 1 (Accuracy)
  - i. The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
  - ii. A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.
  - iii. A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.

- iv. The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.

#### **Findings of the Committee**

22. There was disagreement between the parties as to whether the newspaper had agreed in 2009 that its front page story was inaccurate and that any future publication of it would be accompanied by a particular form of wording. However, in 2009, the newspaper had accepted that the complainant's claim for cleaning expenses had not been improperly paid to his brother, and it had therefore agreed to publish a clarification.
23. The article under complaint argued that Section 40 represented a threat to the free press, and it said that it was only because of the newspaper's investigation that the public had learned how "MPs were abusing their expenses". The Committee considered that the use of the complainant's image under the heading "The truth about the cabinet's expenses" in this context had given the significantly misleading impression that he was one of those MPs who had been found to have abused the expenses system. The use of inverted commas in the sub-headline to the 2009 article had suggested that he had paid his brother for cleaning services improperly.
24. Given that it had been accepted in 2009 that the complainant had not been guilty of any wrongdoing in relation to the payment to his brother for cleaning expenses, the repeated use of his image in this context represented a serious failure to take care over the accuracy of the article in breach of Clause 1 (i). A correction was required in order to avoid a breach of Clause 1 (ii).
25. Two days after the complainant contacted the newspaper to express his concerns, it had offered to publish a correction in print, 16 pages further forward than the original article had appeared, and the online article had been amended. While the newspaper had acted promptly, the wording merely repeated the clarification published in 2009 and failed to acknowledge that it had effectively made a fresh allegation of "abuse" against the complainant. This was a serious, unjustified, allegation, and an apology was required under the terms of 1 (ii). The newspaper's refusal to apologise constituted a further breach of the Code.

#### **Conclusion**

26. The complaint was upheld.

#### **Remedial action required**

27. Having upheld the complaint, the Committee considered what remedial action should be required.
28. The newspaper had offered to publish a correction, but given the seriousness of the breach of Clause 1 (i) and the newspaper's failure to offer a published apology, the publication of an adjudication was an appropriate remedy.
29. The headline of the adjudication must make clear that IPSO has upheld the complaint, and refer to its subject matter; it must be agreed in advance. The article had been published on page 18 on 24 December 2016, and on page 19 on 27 December 2016. As such, the adjudication should appear on page 18 or further forward.
30. It should also be published on the newspaper's website, with a link to the full adjudication appearing on the homepage for 24 hours; it should then be archived in the usual way. The terms of the adjudication for publication are as follows:

Following an article published in the Daily Telegraph on 24 and 27 December 2016, headlined “‘For hundreds of years, Britain’s commitment to a free press has helped make this country a beacon of freedom for the world...But all this is now under threat from MPs and Lords’”, Gordon Brown complained to the Independent Press Standards Organisation that the Daily Telegraph breached Clause 1 (Accuracy) of the Editors’ Code of Practice. IPSO upheld the complaint and has required the Daily Telegraph to publish this decision as a remedy to the breach.

The article said that the freedom of the press was under threat from the possible enforcement of Section 40 of the Crime and Courts Act 2013. It said that Section 40 would “make it impossible to conduct serious investigative journalism, since people whose wrongdoing was exposed would be able to bring ruinously expensive legal actions against newspapers”. It said that it was “only because of the Telegraph that voters learned how MPs were abusing their expenses”. The piece was illustrated by three small images of front-page stories, including the Daily Telegraph’s first front page relating to the expenses scandal, which was headlined “The truth about the Cabinet’s expenses” and included an image of the complainant and his brother.

The complainant said that the publication of the image of the 2009 article, which included his and his brother’s photographs and stated “Brown paid his brother more than £6,000 for ‘cleaning expenses’” had given the significantly misleading impression that he was an example of someone “whose wrongdoing was exposed”. The article had failed to make clear that following the original publication of this story, the newspaper had accepted that it had inaccurately reported that he and his brother had abused the MPs’ expenses system, and it had agreed to publish a correction. The newspaper had failed to correct this further inaccuracy promptly, and the correction it had offered to publish had failed to include an apology.

The newspaper said that the image under complaint was one of three partial front covers used as generic examples of public interest journalism. Its use of this front page had not given the impression that it had exposed the complainant engaging in wrongdoing; the article was not about the complainant; it was about the threat to freedom of expression and the free press. The newspaper said that the 2009 coverage of the complainant’s cleaning expenses claim had been both fair and accurate. It had never accepted that there was any need for a correction or an apology; rather, it had offered to publish some additional wording as a clarification.

The Committee considered that the use of the complainant’s image to illustrate a piece which referred to MPs “abusing their expenses” had given the significantly misleading impression that he was one of those MPs who had been found to have abused the expenses system.

While the newspaper had offered to publish a correction promptly, it had failed to acknowledge that it had effectively made a fresh allegation of “abuse” against the complainant. This was a serious, unjustified allegation, and an apology was required under the terms of the Code. The complaint was upheld.

## Appendix E

Paper No.	File Number	Name v Publication
957	01041-17/01120-17	Note to Committee – Muslim Council of Britain v Daily Mail
959	09240-16	McGarry v Croydon Advertiser Series
960	14253-17	Salih v The Sunday Times
961	09899-16	Turner v Sunday Mercury
967	00217-17	Versi v express.co.uk
968	13416-17	Versi v express.co.uk
969		Request for review
971	13762-16	Dobell v The Sun (Sunday)
972	13299-16	Ford v Grimsby Telegraph
974		Request for review
978		Request for review
980	13821-16	Lloyd v Sunday Mirror
982	13380-16	Townsend v express.co.uk
984	14124-16	Ford v Lincolnshire Live
986		Request for review
987	12297-16	Miles v Isle of Thanet Gazette
988	00280-17	Note to Committee – LaCapria v Daily Mail