

Response to the call for evidence – Open justice: court reporting in the digital age

1. About IPSO

- 1.1 The Independent Press Standards Organisation (IPSO) is the independent regulator of most of the UK's newspaper and magazine industry. IPSO regulates over 2,600 print and online titles, comprising 95% of national daily newspapers (by circulation), most local and regional newspapers, and many magazines, including their online versions.
- 1.2 IPSO investigates complaints about printed and online material that may breach the Editors' Code of Practice and can order redress from newspapers if the Code has been breached. **The Code applies to all editorial content carried by an IPSO-regulated publisher, including court reporting.**
- 1.3 IPSO strongly supports freedom of expression; our vision is for a trusted, thriving, free and responsible press, reinforced by independent, effective regulation. There is a public interest in reporting what happens in courts and tribunals, and public confidence in the justice system relies on transparency. **Open justice is a vital element of our judicial system and a core component of free expression.**
- 1.4 Matters heard in court are of personal importance to the individuals concerned and in many cases to the public at large. Given this, it is particularly important that reporting of court proceedings is done to a high standard and in accordance with the Editors' Code of Practice. Numerous Clauses of the Editors' Code are directly or potentially relevant to court reporting, including **Clause 1 (Accuracy), Clause 2 (Privacy), Clause 5 (Reporting suicide), Clause 7 (Children in sex cases), Clause 9 (Reporting of Crime), Clause 11 (Victims of sexual assault), Clause 15 (Witness payments in criminal trials) and Clause 16 (Payment to criminals).**
- 1.5 The Code upholds the freedom expression necessary for open justice, while offering protections for the privacy of individuals involved in court proceedings. While journalists are generally allowed to print certain information about people who go to court or give evidence, they must also adhere to the rules of the Code. The protections of the Editors' Code work towards the spirit of open justice while offering individuals involved particular protections against harm. For example, Clause 11 requires the press "not identify or publish material likely to lead to the identification of a victim of sexual assault unless there is adequate justification and they are legally free to do so". In its decisions on complaints under Clause 11, IPSO's Complaints Committee has explained that adequate justification for identifying victims of sexual assault will be rare, as the anonymity of victims of sexual assault is of great importance both to victims and to society generally.¹

¹ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01741-20>

- 1.6 The reporting of death by suicide is another example of how the regulated press apply the Editors' Code when reporting on court proceedings. Clause 5 (Reporting suicide) requires care be taken to avoid excessive detail when describing the method of suicide. Although coroners' courts will detail the means of death, such as method(s) of suicide, to prevent simulative acts journalists should not include excessive detail in their write-up of inquests. Though not required by the Code, many IPSO-regulated publishers also signpost to suicide prevention charities such as Samaritans in their reporting of inquests. In these ways, **regulated publishers uphold the principle of open justice while protecting vulnerable individuals.**
- 1.7 Court reporting is a predominant feature of the news content carried in many publications, particularly by local news publishers. IPSO regularly considers complaints about court proceedings, although this does not in itself demonstrate that there is a disproportionate problem with reporting in this area, given the volume of coverage.

2. About IPSO's response

- 2.1 IPSO is not a news publisher and does not obtain information from courts. **Our response will remain within our regulatory remit enforcing the rules of the Editors' Code of Practice and advancing free expression.**
- 2.2 In 2018 IPSO produced information for the public² on what journalists can and cannot report when it comes to court cases. This document details the principle of open justice and helps inform the public on how legal proceedings are covered by the media. Now tailoring guidance for a journalistic audience, **IPSO is currently producing guidance for editors and journalists on court reporting. The information gathered to produce this guidance forms the basis of IPSO's submission to this inquiry.**
- 2.3 **IPSO offers unique sources of evidence to this inquiry: from complaints received about court reporting, from our advisory panel of working journalists, and from our monitoring of trends affecting editorial standards.**

3. How changes in the media landscape have altered court reporting

- 3.1 Court reporting carried in most newspapers, magazines and associated websites is held to the highest professional standards under law and IPSO's independent regulation. However, changes in the media landscape have altered the way in which the courts are reported.
- 3.2 *Digitisation* – The digitisation of news has resulted in a proliferation of news sources and publishers having less control over what happens to news following publication. **This increases the risk of prejudicing court proceedings and spreading misinformation with no recourse to correct inaccuracies.**
- 3.2 *Financial instability* – Many changes to the media landscape are linked to increasing financial instability. Circulation numbers have been falling steadily across the decade, but the increasing share of advertiser revenue captured by technology platforms has been the most significant blow to the industry to date. This decline was accelerated by

² <https://www.ipso.co.uk/media/1511/court-reporting-public.pdf>

the pandemic. As a result, there are fewer news publishers in operation and fewer designated court reporters. **This has major implications for the principle of open justice.**

- 3.3 *Coronavirus* – Restrictions imposed by the courts to minimise the spread of coronavirus have impacted court reporting. Social distancing requirements meant that court attendance was limited, with fewer journalists allowed to observe proceedings in-person. Access issues were sometimes addressed using live streams and other broadcasting technology to ensure open justice. However, the utilisation of these measures was patchy³ and more **work remains to ensure court is accessible to journalists.**
- 3.4 *Reliance on police press releases* – The two preceding points may have contributed to another trend IPSO has observed in its editorial standards monitoring and in the outcomes of upheld complaints under the Editors’ Code. IPSO has considered increasing numbers of complaints in the last several years relating to the republication of inaccurate or misleading claims that originated in police press releases, which suggests an increasing reliance on police press releases as the sole source of information about court proceedings. In a series of cases,⁴ the IPSO Complaints Committee ruled that although publications can utilise **police press releases as a reliable source of information, where uncertainties exist about the facts of the case, they should seek corroboration from alternate sources. Regardless of how the material is sourced, publications are still required under the Editors’ Code to correct significant inaccuracies if they are identified after publication. Nonetheless, this pattern is seriously concerning.**

4. The impact of social media on court reporting and open justice

- 4.1 *Contempt of court* – Anyone posting on social media reporting on active or ongoing criminal proceedings has a legal duty to take reasonable care under the Contempt of Court Act 1980. This includes members of the press. This requirement is widely followed by professional journalists. However, in some cases social media posts and comments by the public have prejudiced trials.^{5 6}
- 4.3 Although some social media platforms have addressed this by implementing controls for publishers over user-generated comments⁷, these incidents speak to the growing frequency and ease of unmoderated, unaccountable social media on the press’s ability to uphold their proper functions in a free and democratic society.

³ <https://www.holdthefrontpage.co.uk/2021/news/journalists-excluded-from-murder-trial-after-judge-severs-video-link/>

⁴ <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00665-20>

⁵ <https://www.holdthefrontpage.co.uk/2020/news/journalists-tweet-almost-caused-salmond-trials-collapse/>

⁶ <https://www.holdthefrontpage.co.uk/2021/news/weekly-slams-facebook-comments-policy-after-trial-collapses/>

⁷ <https://www.holdthefrontpage.co.uk/2021/news/facebook-to-give-journalists-and-publishers-greater-control-on-comments/>

4.4 *Harassment* – social media has been used in attempts to dissuade and/or silence journalists covering court proceedings.⁸ Social media offers tools used to deter journalists scrutinising and reporting on certain kinds of activities and proceedings. In evidence given to IPSO by our advisory group of working journalists, panellists shared how online harassment can have detrimental effects on their ability to express freely and report on contentious topics, including court reporting. Anecdotal evidence shared with IPSO includes incidents where journalists were personally targeted online owing to their reportage. The anonymity of social media users makes it difficult to respond to online abuse, which can include serious threats of physical abuse. **The ability of online actors to target journalists in order to dissuade reporting is extremely concerning given the vital role of journalism to justice and democracy.**

5. The effect of court reform and remote hearings on open justice

5.1 Remote hearings conducted using Cloud Video Platforming are now in place in all open magistrates' and Crown Courts, except where existing equipment needs to be replaced. This allows reporters to follow court cases remotely, increasing access by allowing different court proceedings to be followed on the same day. It is not clear whether remote access will remain if and when the pandemic is over but **for transparency and accountability, it is beneficial that journalists and media outlets have access to remote hearings where possible.**

6. Conclusions

6.1 From this evidence, IPSO concludes that:

- The increased use of remote hearings has potential benefits for journalist accessibility for reporting court proceedings. Efforts should be made to continue and institute greater levels of access for journalists to increase transparency.
- Most news publishers and professional journalists are accountable to independent regulation on court reporting and uphold the principle of open justice, unlike social media platforms and users.
- Social media as it currently operates increases the risk of collapsing and prejudicing court proceedings.
- Social media currently provides bad faith actors an easy tool with which to harass and deter journalists engaged in open justice reporting.

6.2 Open justice is vital for transparency and free speech. We welcome the attention focussed on this issue by this call for evidence.

6.3 The digitisation and democratisation of information has great potential for open justice and free expression. Principles and protections like those already in effect for IPSO-regulated news publishers should be extended throughout the online space, particularly on the social technology platforms, to protect the integrity of court proceedings and the privacy of the individual.

⁸ <https://www.holdthefrontpage.co.uk/2020/news/reporter-forced-to-flee-home-after-gang-threaten-journalists-at-dailys-office/>

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7. **Contact**

- 7.1 Please direct any questions about this submission to IPSO's Senior Policy & Communications Officer Hanno Fenech at hanno.fenech@ipso.co.uk