



1. Apologies for Absence and Welcomes

Apologies were received from Lord Faulks, Alistair Macharay and Helyn Mensah.

2. Declarations of Interest

There were no declarations of interest received.

3. Minutes of the Previous Meeting

The Committee approved the minutes of the meeting held on 12 October.

4. Matters arising

There were no matters arising.

5. Update by the Chairman – oral

The Deputy Chair welcomed members to their first meeting at the IPSO offices since Covid restrictions had been lifted.

6. Complaints update by the Head of Complaints

The Head of Complaints updated the Committee on the success of the recent recruitment round with a new Complaints Officer scheduled to join in January.

7. Complaint 02643-21 James v Mail Online

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

8. Complaint 08032-21 Dohery v Ardrossan & Saltcoats Herald

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

9. Complaints not adjudicated at a Complaints Committee meeting

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

10. Any other business

There was no other business.

11. Date of next meeting

The date of the next meeting was confirmed as 25<sup>th</sup> January 2022.

## Appendix A

### Decision of the Complaints Committee – 02643-21 James v Mail Online

#### Summary of Complaint

1. Lily James complained to the Independent Press Standards Organisation that Mail Online breached Clause 2 (Privacy) and Clause 3 (Harassment) of the Editors' Code of Practice in a series of 51 articles, published between 12 October 2020 and 2 February 2021.
2. The complainant is a well-known actor, and the articles under complaint reported on various aspects of the complainant's life, including her personal and social life and her work commitments.
3. Of the 51 articles under complaint, seven were published in a single day – 13 October 2020 – and 18 were published in a one-week period, between 12 October 2020 and 19 October 2020. All of the articles published in this period of time either centred around, or contained references to, photographs of the complainant with another actor abroad. The articles speculated on the nature of the relationship between the complainant and the actor, and whether it was romantic in nature. Further articles were published outlining the response of the other actor and his wife to the speculation; including one which featured comments from a friend of the actor's wife. In this one-week period, a set of photographs showing the complainant with the other actor were republished 14 times. After 19 October 2020, this set of photographs was published, in full or in part, in a further 28 articles; in total, the set of photographs appeared in 46 articles published over a 4-month period. Later coverage centred on the complainant cancelling public appearances, and speculation that she was romantically involved with another actor.
4. Additional sets of photographs of the complainant were also published in the articles under complaint. A set of photographs showing the complainant at an airport with the same actor who appeared in the first set of photographs was published in an article on 18 October 2020, and was republished in an additional 9 articles within a week of their first publication. There was no further republication of this set of photographs after this time period.
5. A set of photographs, showing the complainant on a public street and entering a taxi-cab with a second person, also an actor, were published in an article on 4 November 2020. This set of photographs was republished only once, in another article on the following day.
6. A set of photographs, showing the complainant with the second actor and on the same night, showed the complainant seated at a table inside a restaurant, with a third, unnamed, individual. This set of photographs was first published on 5 November 2020, and was republished on the same day in a separate article, and an additional 3 times within one week of first publication. There was no further republication of this set of photographs after this time period.

7. Articles published on 25 October 2020, 15 December 2020, and 24 January 2021 included photographs which showed the complainant on a film set; all these articles included different sets of photographs. The set of photographs in the latter two articles appeared to show the complainant filming on a public street.

8. Prior to making a complaint to IPSO about these articles, the complainant contacted IPSO on three separate occasions to make it aware of what she considered to be persistent and intrusive approaches from the press. On all three occasions, IPSO circulated a privacy notice to the press – including Mail Online – to make the press aware of the complainant’s concerns and to remind the press of its obligations under the Editors’ Code, with particular regard to Clause 2 and Clause 3 of the Code. The three notices were circulated on: 30 March 2020, 6 months prior to the publication of the first of the articles under complaint; 13 October 2020, after the publication of two of the articles under complaint and on the same day that an additional 7 articles were published; and 27 November 2020, after the publication of an additional 35 articles under complaint.

9. The first notice of 30 March 2020 circulated by IPSO made reference to the complainant’s concerns regarding the presence of photographers around her home, and instances where she said she had been pursued by photographers. The notice said that the complainant “is concerned about the constant presence of photographers in the area around her home. In recent weeks she has been pursued by photographers on a number of occasions and has been photographed without her consent. She has found this distressing and intrusive. [The complainant] would like to ask that photographers leave the area around her home and desist from following her.”

10. The second notice, circulated on 13 October 2020, again flagged concerns about the presence of photographers around the complainant’s home, saying that the complainant “would like to make clear that the increased level of media intrusion [at her home] is neither acceptable or welcome. They feel harassed and anxious by this activity. They ask that members of the press leave the areas around their [...] home[...] immediately.” The second notice was accompanied by a top note from IPSO, which stated that the complainant “ask[ed] that reporters and photographers leave the area outside their homes and do not attempt to contact them there”.

11. The final notice, circulated on 27 November 2020, said that the complainant had been pursued by photographers in cars, and that she felt unable to go about her daily life due to press contact and the presence of photographers. Written by a representative of the complainant, the final notice read in part as follows:

M[y] client is currently greatly distressed by the continuous presence of photographers and members of the press as she attempts to go about her daily life. She has been under constant surveillance by the press and this is having a serious impact on her wellbeing, health, and ability to move on with her life. My client would like to draw editors’ attention to the fact that this unprecedented level of attention has been unceasing for over a month. She now considers this conduct to constitute intimidation and harassment. This behaviour by members of the press and photographers has caused her to feel very frightened and anxious at a very vulnerable time in her life.

There have been several very serious recent incidents in particular which have prompted my client's request, including being pursued by car which was extremely intimidating and dangerous. At the moment my client feels she cannot live her life in a normal way without fear of being followed, approached, or photographed.

Given that the unceasing actions of the press have resulted in my client's inability to go about her daily life and potentially put her in danger with regards to being pursued, she requests that press desist from attempting to approach and photograph her. This behaviour up until now has greatly intruded into my client's daily life and has caused her fear. For the avoidance of doubt, this request includes leaving the area outside my clients' home, not to follow my client, and to desist in attempts to photograph or contact my client as she goes about her daily life. She also asks editors not to publish photographs which have been taken in circumstances she considers to constitute harassment.

12. Prior to making the complaint to IPSO, a representative of the complainant contacted the publication directly on several occasions. On 26 October 2020, an email was sent from the representative to the publication stating: "The coverage of [the complainant] by the MailOnline has been absolutely incessant and your harassing behaviour is nothing short of bullying. [...] . Since October 12th (two weeks ago), the Mail Online have published 40 articles about [the complainant]. Please be responsible and desist." On 5 November 2020 the representative emailed a journalist working for the publication who was seeking comment in relation to a story: "I have already written to the Mail [O]nline regarding the excessive harassment and bullying of [the complainant...] Please stop." A further email sent on 19 December 2020 from the representative to a journalist at the publication said, "I am not sure why you are bullying her so much." A final email sent on 12 January 2021 from the representative said that there had been "unnecessary, inaccurate and scrupulous attention" on the complainant from the publication's publisher, and requested "help on this matter". The publication responded to the complainant's email of 12 January 2021 by removing a line from an article "with no admission of liability"; otherwise, the publication did not respond to the representative's concerns.

13. On 11 March 2021, the complainant made a complaint to IPSO that the 51 articles breached Clause 2 and Clause 3 of the Editors' Code of Practice. The complainant said that the articles, and the republication of photographs of her, were harassing in breach of Clause 3, given the number of the articles and the nature of the coverage. The complainant also said that she considered that a further breach of Clause 3 arose from the publication creating a market for photographs of her – given the volume of coverage – which, she said, directly led to harassing behaviour from photographers. She said that in the period complained of: a photographer had pursued her while she was in a removal van, in an attempt to discern the location of her new home; another photographer had approached a driver to ask them where she lived; and she had been photographed in the grounds of a private hotel. While the complainant was not in a position to state that it was photographers working on behalf of the publication who engaged in this behaviour, she said that, at the height of the coverage, she had been unable to return to her home due to the presence of photographers and, as a result, was forced to move address.

14. The complainant said that the set of photographs showing her having dinner in a restaurant had been taken and published in breach of Clause 2. She said she had intentionally sat in a corner towards the back of the restaurant so that she was not readily visible to other diners; therefore, she said, she had a reasonable expectation of a privacy, where she had taken steps to seat herself away from public view. The complainant provided a floorplan of a restaurant, in which she circled the approximate location where she had been sitting when the photographs were taken; this was at the rear corner of the restaurant, against a wall.

15. The complainant also said that Clause 2 had been breached by the large number of articles published by the publication about her in a 4-month period, which she said demonstrated a lack of respect for her private life. She also said that the volume of photographs demonstrated that photographers had engaged in activity which intruded on her private and family life, in breach of Clause 2.

16. The publication did not accept a breach of the Code, in relation to either individual articles and photographs, or the full series of articles. It noted that, while the complainant had alleged specific breaches of the Code in relation to one set of photographs showing her in a restaurant, her complaint appeared to centre on her dissatisfaction with appearing in a large number of articles in a relatively short period of time. It did not accept that the complainant's concerns about the behaviour of the photographers could "be laid solely at the feet of" the publication, noting that the original set of photographs – showing the complainant and her fellow actor abroad – had not been commissioned by the publication and that they appeared in several other publications.

17. Turning to the complainant's Clause 3 concerns, the publication said that it was not possible for the number of published articles to amount to a breach of Clause 3, arguing that an upheld ruling on such grounds would be in contravention of the publication's fundamental right to freedom of expression as protected by Article 10 of the European Convention on Human Rights. It noted that an earlier IPSO ruling, following a complaint brought by an individual in 2014 who complained of the publication of 8 articles about him in an unspecified period of time, had stated that "the publication of a number of articles about the same person would not usually amount to harassment under the terms of the Editors' Code". The publication also noted that the Editors' Codebook states that "[i]t is not usually the case that publishing a number of articles on one issue constitutes harassment".

18. The publication said that, in addition to ensuring that all staff comply with the Editors' Code, all freelance contributors to the publication are required to adhere to the Contributors' Standard Terms and Conditions which include, at clause 5.2, a requirement to abide by the Editors' Code of Practice; it also provided an example of an invoice – such as those provided to photography agencies – which also included a reference to the Editors' Code and an agreement to abide by it. The publication then provided emails demonstrating that the IPSO notices (see paragraphs 9 – 11 above) had been circulated to all staff; in a response to the notice circulated on 27 November 2020, a picture desk editor had replied "not us" to the circulated email which raised concerns about the complainant being pursued in a car by members of the press.

19. The publication also provided an email chain in which the picture desk had approached the managing editor's office, to seek pre-publication advice before first publishing the restaurant set of photos. In the email from the picture desk, it confirmed that "there was no follow involved" in the photographs – that is, that the photographs had not been obtained after pursuit. Turning to specific instances in which the publication had engaged freelance journalists to look and watch for the complainant, it provided a table showing that it had made 12 payments to freelancers to watch and look for the complainant: one payment had been made prior to the circulation of the second privacy notice, with 11 further payments being made after its circulation. The publication said that the instructions had been prompted by the breaking story of the complainant being photographed with another actor in Italy; the story 'broke' on 13 October, the same day that the second notice was circulated. Journalists had been commissioned to watch for the complainant: at a residential address in London, in Rome, and in a different London residential area. It confirmed that none of the commissions had resulted in photographs of the complainant being published, and further noted that the journalists did not seem to have been able to locate her and that the number of commissions were relatively small and limited to a period of less than three weeks. Therefore, the publication was satisfied that there could be no compelling suggestions that the complainant was harassed by journalists working on behalf of the publication.

20. It noted that the complainant had not alleged that photographers working for the publication had engaged in behaviour which constituted harassment, and she had not linked specific instances of harassing behaviour on the part of photographers of the photographs which were included in the articles under complaint. Regarding the specific allegation of pursuit in vehicles, it said this had been flagged by the complainant at the time and, subsequently, raised internally at the publication, which was able to confirm that it was not photographers working for the publication who had engaged in such behaviour. It provided IPSO with an email which it said demonstrated this. It was therefore satisfied that it had taken care to ensure that photographs taken by freelance contributors had not been taken in circumstances constituting harassment.

21. Addressing the complainant's concerns regarding the publication of the photographs of her dining inside a restaurant, it noted that the complainant must have been visible from the street, otherwise the photographer – who was an agency photographer, rather than a member of the public – would not have been able to photograph her from there, as he had shot the photographs from a public street and through the windows of the restaurant. Nevertheless, it said that there was a public interest in the publication of photographs showing the complainant at the restaurant, as it considered that they appeared to show the complainant congregating inside a restaurant with a friend, in contravention of the Covid-19 regulations in force at the time, which allowed only for meetings between people from different households for the purposes of business. It said that, while it had contacted the complainant's representative prior to the article's publication, who had said that the picture showed a business meeting between friends who were also colleagues, no evidence existed to demonstrate this was the case. The publication said that it had not been provided with notes from this meeting, and that the complainant's dining companion had left the restaurant holding a bottle of wine.

An internal discussion via email had taken place prior to the article's publication; whether publication of the pictures may be in breach of Clause 2 had been raised in the discussion, but the publication considered that the public interest in reporting a potential breach of Covid-19 regulations was sufficient to justify publication. The emailed discussion took place prior to the publication being informed that the complainant was at a business meeting when she was photographed. The first publication of the photographs was in an article which explicitly centred around the possible breach of Covid-19 regulations; this, it said, made clear the public interest in the reporting.

22. The publication also provided information about the location of the photographer at the time the photographs showing the complainant inside the restaurant were taken: he was standing across the road from the restaurant, and had used a 200mm lens to obtain the photographs which – according to the publication – was not a particularly large focal length.

23. Regarding the subsequent republication of the restaurant photographs, the publication said that it was not necessary to demonstrate a public interest to re-publish the photographs; following their first publication, they were firmly in the public domain and the newspaper was therefore entitled to republish the photographs regardless of whether there was a specific public interest in their republication.

24. The publication said that the wording of Clause 2 made clear that it was designed to prevent specific instances of intrusion into an individual's private life. Therefore, it did not accept that a breach of Clause 2 could be established solely from the number of articles published. Noting the complainant's concerns that the number of articles published by the publication had led to contact from freelance photographers, it said it did not consider that the blame could be laid solely at the door of the publication; it said that the photographs showing the complainant abroad with another actor had not been commissioned by the publication, and had since been republished worldwide in a number of media outlets.

25. While the publication did not accept that the Code had been breached, it said that it regretted any distress felt by the complainant. It further said that it wanted to offer the complainant its assurances that any future photographs of the complainant offered to the publication by freelance photographers would be subject to additional consideration, with the complainant's previous concerns in mind, before any decision is made to publish them.

26. The complainant noted that the residential address where the photographer had been engaged to look for the complainant was her home address at the time of the commissions, though she had been staying with a friend at the time; therefore, she considered that the publication had acted in contravention of her request to desist circulated through IPSO. She also shared concerns that she had been followed in the vicinity of her home to the restaurant.



### Relevant Code Provisions

#### Clause 2 (Privacy)\*

- i) Everyone is entitled to respect for their private and family life, home, physical and mental health, and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.
- 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.

#### The Public Interest

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

(1.) The public interest includes, but is not confined to:

Detecting or exposing crime, or the threat of crime, or serious impropriety.

- Protecting public health or safety.

- Protecting the public from being misled by an action or statement of an individual or organisation.

- Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.

- Disclosing a miscarriage of justice.
- Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.
- Disclosing concealment, or likely concealment, of any of the above.

(2.) There is a public interest in freedom of expression itself.

(3.) The regulator will consider the extent to which material is already in the public domain or will become so.

(4.) 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.

(5.) An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16.

#### Findings of the Committee

27. Clause 3 (ii) of the Editors' Code makes clear that journalists must not persist in pursuing individuals once a request to desist has been made, while Clause 3 (iii) that publications must ensure that the principles of Clause 3 are observed by those working for them. The complainant had made repeated requests to desist to the publication, both directly to the publication through her representative and via IPSO privacy notices, advising publications of her concerns. The notices and direct contacts from the representative made clear that coverage of the complainant was having an impact on her, and included references to the complainant feeling "harassed and anxious". When assessing whether the publication had breached the terms of Clause 3, the Committee was mindful of both the wording and timing of these requests to the publication, and what steps the publication had taken in response to these concerns.

28. The Committee noted that the publication had measures in place to make contributors aware of the Editors' Code, where both the Contributors' Standard Terms and Conditions and the invoices given to freelancers include a reference to the Editors' Code, and the publication was able to demonstrate that the IPSO privacy notices had been circulated internally. However, the Committee considered that these generic measures were not sufficient in circumstances where the complainant had, several times both directly and through IPSO notices, flagged concerns that she was facing an undue amount of press contact which she found to be distressing and intrusive and made requests for this to cease, in accordance with Clause 3.

29. The Committee then noted that an IPSO notice, circulated on 13 October 2020, made a specific request for members of the press to leave the area around the complainant's home and refrain from attempting to contact and photograph her. After the circulation of this notice, the publication had made further payments to a journalist, who was commissioned to look for the complainant in the vicinity of her home; it was clear that the payments related to the period after the notice was circulated because the publication's account was that they related to attempts to follow up on a story which broke on the same day that the second notice was circulated. In the view of the Committee, in directing a journalist to attend the area around the complainant's house to "watch" for her in the immediate aftermath of the circulation of the notice, the publication had ignored the terms of a request to desist from attempting to contact and approach the complainant in the vicinity of her home, and the request for members of the press to disperse from the area around her home. The publication had not sought to argue that there was a public interest in persisting with its approaches or that there had been an interval of time such that the request could no longer be considered to reasonably apply. While the publication had argued that the approach was motivated by fresh developments in the story – namely, the photographs of the complainant with a colleague in Italy – this consideration did not outweigh the clear request to desist. Where the publication had disregarded the terms of a clear request to desist, there was a breach of Clause 3.

30. The Committee turned next to the question of whether the number of published articles and the nature of the coverage represented harassment in breach of Clause 3. The complaint related to a significant number of articles, 51 in total over a period of 4 months, with 7 being published in a single day.

31. The Committee acknowledged that the publication of a large number of articles would not ordinarily constitute harassment in breach of Clause 3 of the Code. In reaching its decision in this case, the Committee therefore considered several factors: the number of published articles; the time period over which the articles were published; the extent to which the complainant might be considered a public figure and the extent to which her activities might arguably have prompted the coverage; the extent to which the articles might reasonably be said to have solely targeted the complainant; whether the published information could reasonably be said to be intrusive or offensive; whether the subject matter of the articles was a matter of legitimate interest for readers; the extent to which republication of the photographs or the publication of the further articles could be said to be prompted by a fresh newsworthy event; whether a reasonable editor could regard the repetition of earlier content and images as relevant; the extent to which the coverage could be expected to cause alarm or distress to a reasonable person in the complainant's position; and whether publication could be regarded as an abuse of media freedom in light of the right to freedom of expression.

32. The Committee noted that 51 articles had been published over a period of three months and three weeks. The Committee understood that the number of articles, and the frequency with which they had been published, had caused the complainant a great deal of distress, and that this distress had been flagged directly with the publication. The coverage had begun after the complainant, a well-known actor, had been pictured in the company of another well-known, married actor and the coverage had initially speculated upon the nature of the relationship between the two. The coverage continued by reporting on comments made by an individual described as a “friend” of the other actor’s wife in response to the photographs. Further articles were published following a public statement made by the actor and his wife. A number of articles reported on the complainant’s TV and film roles, with one commenting on a video interview which had been given by the complainant to an international magazine to promote the release of a programme on a well-known streaming service. Some of the further coverage returned to the speculation about the nature of the relationship between the complainant and the actor when photographs emerged of them together at an airport.

33. The coverage in the second half of October 2020 appeared to be prompted by the fact that the complainant had cancelled a scheduled performance to promote one of her forthcoming projects or by statements she had made about her projects, or which had been made by her co-stars. The complainant also featured in coverage about the relationship of another actor with whom the complainant had previously worked. In November 2020, a number of articles reported on the complainant having dinner with another actor inside a restaurant were published with accompanying speculation as to whether Covid rules had been broken. Later that month, further articles were published reporting on the marriage of the first actor with whom the complainant had been pictured, in which the complainant was featured. The articles published in December 2020 reported on the complainant’s return to work and the professional work with which she was engaged. In each of these articles, one or more photographs from the various photosets were published.

34. The Committee reviewed each article and gave consideration to the extent to which the complainant was the principal focus of the coverage, the newsworthiness of each and the nature of the articles. The Committee did not consider that, individually, the articles were intrusive or intimidating, noting that the articles reported on photographs which had been taken whilst the complainant was in a public place, reported on her professional life or featured the complainant because she was incidental to the principal focus of an article. The Committee also took into account that the coverage was generally prompted either by new developments in the story speculating upon the relationship of the complainant with the actor with whom she had been photographed, or by stories about the complainant’s professional activities which, for editorial reasons, the publication considered would be of interest to its readers. The Committee also considered the tone of the articles which was not dissimilar to the tone adopted by coverage of such matters by other publications and was not gratuitously offensive.

35. On balance, and having taken into account all of the factors noted above, the Committee concluded that the publication of the articles, taken as a whole, did not constitute harassment, and did not breach Clause 3. The Committee also did not find that a breach of Clause 3 arose from the publication creating a market for photographs of the complainant, where the publication could not be reasonably held responsible, under the terms of the Code, for the actions of journalists or photographers working on behalf of other publications.

36. Clause 2 of the Editors' Code makes clear that it is unacceptable to photograph individuals in public places where there is a reasonable expectation of privacy without their consent. The complainant had been sitting to the rear of the restaurant when the photographs were taken, which were obtained using a camera with a focal length of 200mm – longer than the standard focal length of 35mm. A question for the Committee was, therefore, whether the complainant had a reasonable expectation of privacy in these circumstances.

37. The complainant said that she had taken a clear step to protect her privacy by seating herself away from the window of the restaurant, and away from public view. The Committee noted that she was therefore not readily visible to passers-by, to the extent which the restaurant lay-out appear to allow. In addition, while the publication said that the complainant would have been visible from the street and therefore she did not have a reasonable expectation of privacy, it was not in dispute that a 200mm camera-lens had been used when obtaining the photograph. It was also not in dispute that it was an agency photographer who had taken the photos, rather than a member of the public; the photographs had not, therefore, been taken by chance by an individual who had happened to spot the complainant in a public place, though the Committee was satisfied that the complainant had not been followed to the restaurant nor that they had been "tipped-off" to the complainant's presence. The Committee was also mindful of what the photographs showed; she was having dinner with two other individuals, away from the front of a restaurant. Whilst the complainant accepted that it was a working dinner, she was not engaged in 'public-facing' work and there was no suggestion that she was engaged in a public activity. The photograph had been taken surreptitiously from outside the restaurant and with the aid of a 200mm camera-lens. Taking these factors into account, the Committee considered that the complainant did have a reasonable expectation of privacy in these circumstances.

38. The next question for the Committee was whether the public interest in publishing the photographs of the complainant was sufficient to outweigh the complainant's reasonable expectation of privacy. The publication had argued that there was a public interest, as it considered that they appeared to show the complainant meeting others inside a restaurant, in contravention of the Covid-19 regulations in force at the time, which allowed only for meetings between people from different households for the purposes of business.

39. When assessing whether there was a public interest in the publication of the photographs, the Committee was mindful that, under the Code, Editors are required to demonstrate that they reasonably believed publication will both serve, and be proportionate to, the public interest. The terms of the public interest exemption further make clear that publication invoking the public interest will need to demonstrate how they reached that decision at the time; the publication must therefore demonstrate that it considered the public interest at the time that the journalistic activity which raises an alleged breach of the Code occurred. In this instance, the publication therefore had to demonstrate that it had considered the public interest – and how it reasonably believed that publication would both serve, and be proportionate, to the public interest – prior to the initial publication of the photographs.

40. While the publication said that it had considered the public interest prior to publication, the complainant's representative had confirmed that the dinner was a business meeting and it was not in dispute that such meetings were permissible according to the regulations at the time. The publication had not challenged this explanation with the complainant's representative and it appeared that it did not have any grounds to do so. There was no indication that any further discussions around the public interest had taken place after the publication had been made aware of the complainant's position. The Committee accepted that, in certain circumstances, there may be a public interest in reporting on breaches of Covid regulations. However, it did not consider that the public interest had been satisfactorily established in this case where, prior to publication, the complainant's position that the meeting complied with the rules in place at the time had not been challenged and where there were no other matters upon which the publication sought to rely. The Committee, therefore, did not consider that the publication had demonstrated that it had considered the public interest – and to what extent it could be said to have been proportionate to publish several photographs of the complainant sat inside the restaurant – having taken into account the fact that it had not challenged the complainant's position that the gathering was allowed by Covid guidelines prior to publication. Taking all these factors into account, the Committee did not accept that there was a sufficient public interest in the publication of the photographs of the complainant in the restaurant, and there was therefore a breach of Clause 2 arising from their use in five articles under complaint.

41. The Committee acknowledged the complainant's position that the sheer number of published articles was intrusive. However, the Committee did not consider that the fact that a significant number of articles had been published represented an intrusion into the complainant's private life and a breach of Clause 2. This concern fell for consideration more appropriately under Clause 3, which the Committee had found had not been breached for the reasons explained above. The Committee further noted that the complainant's concerns over the behaviour of photographers during the period complained of were addressed by the terms of Clause 3, which relates to intrusive behaviour on the part of journalists which occurs during the newsgathering process. There was, therefore, no breach of Clause 2 on these points.

## Conclusion(s)

42. The complaint was upheld under Clause 2 and Clause 3.

## Remedial Action Required

43. Having upheld the complaint under Clause 2 and Clause 3, the Committee considered what remedial action should be required. In circumstances where the Committee establishes a breach of the Editors' Code, it can require the publication of a correction and/or adjudication. Given the nature of the breach, the appropriate remedial action was the publication of an upheld adjudication.

44. With regard to the placement of the adjudication, the Committee considered the nature of the breaches of the Code which had been established. In relation to the breach of Clause 3, the Committee had found that the publication had commissioned journalists to engage in behaviour that went against the terms of a clear request to desist, and had not ensured that the principles of Clause 3 were observed by those working on its behalf. In relation to the breach of Clause 2, the publication had intruded into the complainant's privacy by publishing a set of photographs in five separate articles. The Committee therefore decided that a link to the full adjudication should be linked on the top half of the homepage of the publication's website for at least 24 hours, and 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 with IPSO in advance.

45. The terms of the adjudication are as follows:

Lily James complained to the Independent Press Standards Organisation that Mail Online breached Clause 2 (Privacy) and Clause 3 (Harassment) of the Editors' Code of Practice in a series of 51 articles, published between 12 October 2020 and 2 February 2021.

The complainant said that the publication had harassed her by continuing to approach her after she had made it aware of her concerns on several occasions about what she considered to be persistent and intrusive approaches from the press and her request that these approaches should cease.

The complainant also said that the publication had breached her privacy by taking and publishing a set of photographs showing her eating dinner in a restaurant with two colleagues. She said she had been sitting towards the back of the restaurant and was not readily visible to passers-by; therefore, she said, she had a reasonable expectation of privacy, which was not overridden by any public interest.

IPSO found that Mail Online had breached Clause 3 of the Editors' Code of Practice. An IPSO privacy notice, circulated on 13 October 2020, made a specific request for members of the press to leave the area around the complainant's home and refrain from attempting to contact and photograph her. After this request had been made, a public interest was required under the terms of Clause 3 to justify persisting in attempts to contact and photograph the complainant. The publication had then commissioned a journalist to look for the complainant in the vicinity of her home. The decision to direct a journalist to attend the area around the complainant's house to "watch" for her in the immediate aftermath of the circulation of the notice broke the terms of the request to desist from attempting to contact and approach the complainant in the vicinity of her home, and the request for members of the press to disperse from the area around her home. There was, therefore, a breach of Clause 3 in relation to the repeated approaches to the area of the complainant's home. A separate complaint under Clause 3 about the volume of the coverage relating to the complainant was not upheld.

IPSO also found that the publication had breached Clause 2 of the Editors' Code, by publishing a set of photographs showing the complainant seated and eating in the back of a restaurant. Clause 2 of the Editors' Code makes clear that it is unacceptable to photograph individuals in public places where there is a reasonable expectation of privacy without their consent, and the Committee concluded that the complainant did have a reasonable expectation of privacy at the time that the photographs were taken, with a 200mm camera-lens. The complainant had taken clear steps to seat herself away from public view, and the photographs had been obtained surreptitiously from outside the restaurant using professional equipment.

Mail Online had said that there was a public interest in publishing the photographs, which outweighed any reasonable expectation of privacy which the complainant might have had – because in its view they appeared to show the complainant engaged in an activity which contravened the Covid-19 guidance which was in place at the time. However, the complainant had told Mail Online prior to publication that the photographs showed her engaged in a business meeting – which was allowed, according to guidance at the time, which Mail Online was not in a position to dispute. It did not appear to have given further consideration as to whether there was a public interest in the photographs' publication, having been made aware of this information. There was, therefore, a breach of Clause 2.

IPSO upheld the complaints under Clause 2 (Privacy) and Clause 3 (Harassment) and required publication of this adjudication as a remedy.

Date complaint received: 11/03/2021

Date complaint concluded by IPSO: 28/01/2022

### **Independent Complaints Reviewer**

The publication complained to the Independent Complaints Reviewer about the process followed by IPSO in handling this complaint. The Independent Complaints Reviewer decided that the process was not flawed and did not uphold the request for review.



## Appendix B

### Decision of the Complaints Committee – 08032-21 Doherty v Ardrossan & Saltcoats Herald

#### Summary of Complaint

1. Gary James Doherty complained to the Independent Press Standards Organisation that the Ardrossan and Saltcoats Herald breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined "Legal battle win with car dealer - but Claire is still waiting for cash", published on 14 July 2021.
2. The article, which appeared on page 11 of the newspaper, reported that a woman had "won a legal battle against a Saltcoats car dealer after the motor she bought from him was plagued with problems"; the man had, according to the article, subsequently claimed to be bankrupt. The car dealer was named in the article as "Gary Doherty, who is connected to several businesses in Saltcoats including [...] GJD Garages" and it was reported he had "claim[ed] he was bankrupt and out of money". The article then reported that "[t]here are no public records of Doherty's bankruptcy, and the Herald called GJD garages on July 13 and was able to book an MOT for this week.
3. The article also included quotes from the woman who had won the court case, in which she said that after discovering that there were issues with the car, she "phoned [Gary Doherty] immediately, he said take it to GJD garage. [...she] would ring them every week to see when it was going to get fixed. He eventually fixed the brakes...".
4. The complainant was the owner of GJD Garages, and had the same first and last name as the individual who had sold the woman the car. He said that the article was inaccurate in breach of Clause 1, as it misleadingly conflated him with the other Gary Doherty, whose business he was entirely unconnected to, and therefore inaccurately reported that he was bankrupt. He considered that the statement in the article that "[t]here are no public records of Doherty's bankruptcy, and the Herald called GJD garages on July 13 and was able to book an MOT for this week" inaccurately implied that the car dealer Gary Doherty was the owner of GJD Garages, rather than the complainant. The complainant further noted that he often worked with the newspaper for advertising purposes, and therefore it would have been aware of his contact details to check the accuracy of the article prior to publication
5. Prior to contacting IPSO, the complainant contacted the newspaper – on the same day the article was published – to make it aware of his concerns.
6. The newspaper said that it did not accept a breach of the Code. It said that it had been aware before publication that there were two Gary Dohertys, one the car dealer and one the owner of the garage, but it maintained that there was justification for linking to the complainant to the garage. It noted that the article had only reported that the car dealer was "connected" to the business, not that he was its owner or an employee, which it did not consider to be inaccurate. Gary Doherty the car dealer had recommended to the woman that she take her car to the complainant's garage, and the two Gary Dohertys were Facebook friends. The newspaper also said that it had not reported that either the complainant or the car dealer was bankrupt, where the article made clear that "[t]here are no public records of Doherty's bankruptcy".

7. While the newspaper did not consider that the Code had been breached, it said it thought it was best to clear up any unnecessary confusion caused by the article. For this reason, after being contacted by the complainant, it published the following correction page 6 of the following edition of the newspaper, which was published on 21 July 2021:

Last week, we reported how a woman won a small claims court against Gary Doherty over a car sale. We have been asked to point out that Mr Gary James Doherty owner of GJD Auto Care, has no connection with the Gary Doherty who sold her the vehicle. The garage owner asked us to point out that the other Mr Doherty is not an employee, but an occasional customer. We are happy to set the record straight.

8. The newspaper considered the above wording to be sufficient to address any potential confusion arising for the article, saying that where the situation was complex it considered it best to be succinct.

9. The newspaper provided emails from the woman who had been sold the car, as well as recordings of phone calls and text messages with the woman and the Gary Doherty who had sold her the car. In the text messages, the woman – while speaking to the car dealer – referred to an individual named Gary who worked at a garage. In the emails, the woman had named two addresses from where she said the car dealer operated. She also said that the car dealer was still trading, as he was responding to enquiries relating to his business – though the business was not GJD Garages. The reporter had contacted what they said was the only publicly available phone number for one of the addresses, which connected to GJD Garages. This was when an MOT had been booked by the reporter, and which – it said – confirmed to the reporter that GJD Garages was connected to the car dealer. It said that it had also approached the court for more information prior to publication, and that it had sought legal advice on the story prior to publication.

10. After the complainant raised his concerns with the newspaper, it had contacted the woman who bought the car from the car dealer, who had confirmed that there was another Gary Doherty, who owned GJD Garages.

11. The complainant said that, regardless of whether the car dealer took his cars to the complainant's garage for repair and whether or not they were Facebook friends, the article should not have conflated them. He also said that the address which the woman said the car dealer operated from was no longer the address for GJD Garages, which had moved to a new address six months prior to the article's publication and prior to the newspaper phoning it to book an MOT. The complainant provided a newspaper advert, printed on the front page of the Ardrossan & Saltcoats Herald at the time of the move, which showed both that he was no longer located at the address flagged by the woman and that the newspaper was aware of this fact.

## Relevant Code Provisions

### 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

12. The article clearly implied that the Gary Doherty who sold the woman the car and had subsequently been ordered to pay her money by a small claims court was the same Gary Doherty who owned the garage, the complainant. The article stated that the car dealer was “connected to several businesses [...] including GJD Garages”; that after the car dealer told the woman to take the car to the garage, “[h]e eventually fixed the brakes”, without any suggestion that it was not the car dealer who had fixed the brakes at the garage; and, in investigating the car dealer’s claims of bankruptcy, the newspaper “called GJD garages on July 13 and was able to book an MOT for this week”. The article was therefore misleading; GJD Garages and the complainant was not involved in selling the car and the complainant was not and had not claimed to be bankrupt. The newspaper was not able to demonstrate that it had taken care over the accuracy of the article, where the woman who was the source of the story had not claimed that the car dealer owned the garage, text messages sent to the car dealer had explicitly referenced another individual called Gary who owned a garage, and the address she gave the newspaper as being associated with the car dealer had not been the business address of the complainant for six months prior to the article’s publication – a fact that was clear from advertisements within the newspaper itself. In addition, the publication had said that it was aware prior to publication that there were two individuals called Gary Doherty. Where the newspaper had not taken care over the accuracy of the article, there was a breach of 1 (i).

13. The inaccuracy arising from the newspaper’s failure to take care was significant, where it had the potential to have serious and adverse effects on both the complainant’s reputation and his business, by associating his business with an individual who had been ordered to pay back money after selling a woman a car “that was plagued with problems”. Where the article was significantly misleading on this point, there was a requirement to correct it, under the terms of Clause 1 (ii).

14. The Committee turned next to whether the action taken by the newspaper was sufficient to avoid a further breach of Clause 1 (ii). For corrective action to address the terms of Clause 1 (ii), the misleading statement must be corrected promptly and with due prominence and – where appropriate – include an apology.

15. The Committee was satisfied with the promptness and prominence of the correction published by the newspaper, where it appeared further forward in the newspaper than the original article – on page 6, as opposed to page 11 – and had been published in the next edition of the newspaper. However, the Committee did not consider that the published wording corrected the original misleading statements, where it did not clearly identify the way in which the article was misleading: namely, that the article had misleadingly implied that the car dealer was the owner of and operated out of the complainant's garage.

16. In addition, the Committee considered that an apology would have been appropriate in the circumstances where – as the article clearly implied that the Gary Doherty who sold the woman the car and had subsequently been ordered to pay her money by a small claims court was the same Gary Doherty who owned the garage, the complainant – the original misleading statements had the potential to have a damaging effect on the reputation of the complainant and his business. For these reasons, there was a further breach of Clause 1 (ii).

#### Conclusions

17. The complaint was upheld.

#### Remedial Action Required

18. Having upheld a breach of Clause 1, the Committee considered what remedial action should be required. In circumstances where the Committee establishes a breach of the Editors' Code, it can require the publication of a correction and/or an adjudication, the terms and placement of which is determined by IPSO.

19. The Committee considered that, where a breach of Clause 1 (ii) arose both from the wording of the correction itself, and the publication's failure to apologise to the complainant, a published adjudication was necessary to remedy the breach of the Clause. The headline of the adjudication must make clear that IPSO has upheld the complaint against the Ardrossan and Saltcoats Herald and must refer to its subject matter; the wording of the headline should also be agreed with IPSO in advance.

20. The Committee then considered the placement of the adjudication. It noted that the article appeared in print only, on page 11 of the newspaper; as such, the Committee found that the adjudication should appear on this page of the newspaper or further forward. The terms of the adjudication for publication are as follows Gary James Doherty, the owner of GJD Garages, complained to the Independent Press Standards Organisation that the Ardrossan and Saltcoats Herald breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined "Legal battle win with car dealer - but Claire is still waiting for cash", published on 14 July 2021. The complaint was upheld, and IPSO required the Ardrossan and Saltcoats Herald to publish this adjudication to remedy the breach of the Code. The article reported that a woman had "won a legal battle against a Saltcoats car dealer after the motor she bought from him was plagued with problems"; the man had, according to the article, subsequently claimed to be bankrupt. The car dealer was named in the article as "Gary Doherty, who is connected to several businesses in Saltcoats including [...] GJD Garages" and it was reported he had "claim[ed] he was bankrupt and out of money". The article then reported that "[t]here are no public records of Doherty's bankruptcy, and the Herald called GJD garages on July 13 and was able to book an MOT for this week." The complainant said that the article was inaccurate, as it misleadingly conflated him with another man who had the same name as him and implied he was bankrupt.

IPSO found that the article clearly and misleadingly implied that the Gary Doherty who sold the woman the car and had subsequently been ordered to pay her money by a small claims court was the same Gary Doherty who owned the garage, the complainant. In fact, the publication was aware before it published the article that, the complainant was not involved in selling the car and had not claimed to be bankrupt. The newspaper was not able to demonstrate that it had taken care over the accuracy of the article, and the inaccuracy was significant, where it had the potential to have serious and adverse effects on both the complainant's reputation and his business.

In addition, while the newspaper had published a correction, IPSO did not consider that the published wording sufficiently corrected the original misleading statements; it did not acknowledge that the article had misleadingly implied that the car dealer was the owner of and operated out of the complainant's garage. In addition, the Committee considered that the newspaper should have apologised given that the original misleading statements had the potential to have a damaging effect on the reputation of the complainant and his business. IPSO upheld the complaint.

Date complaint received: 21/07/2021

Date complaint concluded by IPSO: 21/12/2021

Appendix C

Paper No.	File Number	Name v Publication
2271	03296-21	Carr v Southend Echo
2288	05855-21	Duah v metro.co.uk
2298	07938-21	Various v express.co.uk
2300	04631-21	Brewis v Mail Online
2306	04515-21	Brassington v stokesentinel.co.uk
2326		Request for review
2277	04780-21	Jacobson v Liverpool Echo
2287	06034-21	Versi v The Daily Telegraph
2329		Request for review
2334		Request for review
2259	29183-21/29184-21/29209-21	Abassi v Daily Mirror/Manchester Evening News/lancs.live
2284	02758-21	The Society of Homeopaths v The Sunday Telegraph
2339		Request for review
2273	03072-21	Agbetu v thejc.com
2292	04642-21	Robinson v walesonline.co.uk
2321	04366-21	Ali v Lancashire Telegraph
2324	06339-21	Extinction Rebellion v Telegraph.co.uk
2340		Request for Review
2344		Request for Review
2348		Request for Review
2357		Request for Review
2360		Request for Review
2365		Request for Review
2373		Request for Review