

**MINUTES of the COMPLAINTS COMMITTEE MEETING**  
**Tuesday 18 July at 10.30am**  
**Gate House**

**Present**

Lord Edward Faulks  
Andy Brennan  
David Hutton  
Alastair Machray (*remotely*)  
Helyn Mensah (*remotely*)  
Mark Payton  
Andrew Pettie  
Miranda Winram  
Ted Young  
Asmita Naik

**In attendance:**

Charlotte Dewar, Chief Executive  
Emily Houlston-Jones, Head of Complaints  
Alice Gould, Head of Complaints

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

Sarah Colbey  
Tom Glover  
Sebastian Harwood  
Natalie Johnson  
Rebecca Munro  
Marcus Pike  
Hira Shah

**Observers:**

Jonathan Grun, Editors' Code of Practice

1. Apologies for Absence and Welcomes  
Apologies were received from Allan Rennie and Nazir Afzal
2. Declarations of Interest  
Declarations of interest were received from: Ted Young, in relation to Item 10, and Lord Edward Faulks, in relation to Item 6.
3. Minutes of the Previous Meeting  
The Committee approved the minutes of the meeting held on 23 May 2023
4. Matters arising  
There were no matters arising.
5. Update by the Chair – oral  
The chair welcomed new Complaints Officer Rebecca Munro to her first Committee meeting as an observer.
6. Complaint 22227-22 Hancock v Daily Mirror  
The Committee discussed the complaint and ruled that the complaint should be upheld. **A copy of the ruling appears in Appendix A.**
7. Complaint 17845-23 Knight Brown v Sunday Mirror  
The Committee discussed the complaint and ruled that the complaint should be upheld. **A copy of the ruling appears in Appendix B.**
8. Complaint 18355-23 A complainant v nationalword.com  
The Committee discussed the complaint and ruled that the complaint should not be upheld. **A copy of the ruling appears in Appendix C.**
9. Complaint 12029-22/13148-22/14369-23 MacDougall v Mail Online  
The Committee discussed the complaint and ruled that the complaint should be upheld. **A copy of the ruling appears in Appendix D.**
10. Complaint 16958-23/16959-23 A man v mirror.co.uk/express.co.uk  
The Committee discussed the complaint and ruled that the complaint should not be upheld. **A copy of the ruling appears in Appendix E.**

11. Complaints not adjudicated at a Complaints Committee meeting

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

12. Any other business

No matters arising.

13. Date of next meeting

The date of the next meeting was subsequently confirmed as **Tuesday 5 September 2023**.

## APPENDIX A

### Decision of the Complaints Committee – 22227-22 Hancock v Daily Mirror

#### Summary of Complaint

1. Matt Hancock complained to the Independent Press Standards Organisation that the Daily Mirror breached Clause 1 (Accuracy) of the Editors' Code of Practice in articles headlined "DON'T CALL US" and "Matt's finished", both published on 28 December 2022.
2. The first article under complaint appeared on page 4 of the newspaper, with a reference to the story – including a picture of the complainant and the words "Hancock unwanted" – appearing on the front-page of the newspaper. The article reported that "Matt Hancock has called off his search for a celebrity agent as his bid for fame fails to get off the ground", and went on to report that "now he has abandoned his search for an agent amid signs his star power has already faded." The article closed with a statement from the complainant's spokesperson, who was quoted as having said: "Matt has had lots of offers from agents wanting to represent him, but he's turned them all down as he doesn't want or need an agent."
3. The article also appeared online in substantially the same form, under the headline "EXCLUSIVE: Matt Hancock's floundering showbiz career hits speed bump as he dumps agent search". This version of the article was published on 27 December 2022.
4. The second article under complaint was a short leader piece, giving the newspaper's view on the substance of the first article. It reported that, "[d]ropping his search for an agent, camel penis eater Hancock is discovering you sometimes need to have talent to achieve fame."
5. The second article under complaint also appeared online in substantially the same form, under the headline "Out-of-touch Tories forcing NHS staff towards industrial action amid strike chaos". This version of the article was published on 27 December 2022.
6. Five days prior to the article's publication, a journalist acting on behalf of the publication contacted the complainant's spokesperson; the following text conversation ensued:

*Journalist: Hiya. How's it going? We are doing up a story for use over the festive period on how Matt is looking for a showbiz agent. Let me know if you'd like us to include a comment. Thanks [...]*

*Spokesperson: Hi [...] I'll come back to you but just FYI that is not true. He is actively not doing that, so writing it would be untrue.*

*Journalist: thanks. there seems to be a pattern where stuff is claimed to be untrue and then it turns out to be correct. on this one, we are confident that Matt is looking around for an agent and has been actively seeking advice*

*Spokesperson: Really? Like what?!*

*Journalist: it was untrue he was writing a book. and then he did*

*Spokesperson: It was at the time. The book came about from a false story!!*

*Journalist: He had no plans to stand down as an MP. and then he did*

*Spokesperson: Can people not change their minds? Have you not thought you'd do one thing and then end up doing something different?! Look, [...] I'll come back to you*

*[...]*

*Spokesperson: But I know that particular claim is not true as he doesn't want one [...]*

*Spokesperson: A spokesperson for Matt Hancock said: "Matt has had lots of offers from agents wanting to represent him, but he's turned them all down as he doesn't want or need an agent."*

7. On the date of the article's publication, the spokesperson again contacted the journalist via text. He said the following in this conversation:

*Disappointed to read this. As explained, Matt has actively been turning down agents. He doesn't want one. For the Mirror to pretend it cares about the truth and then write this, it undermines credibility. [...] I've just caught up with the physical papers [...] Given the story was on the front I'm going to have to make a formal complaint and will ask for a correction. As explained, Matt's not been searching for an agent. The opposite is actually the case, as my spokes outlined...*

8. The complainant then made a direct complaint to the newspaper. The newspaper responded to this complaint two days after the article's publication, saying that "[t]he information was provided by a trusted source, which the publication had no reason to doubt". In its response, the publication also said that the complainant's reply to the claim was included in the article. Therefore, it did not accept that the article was inaccurate in the manner suggested by the complainant.

9. The complainant responded and indicated he had evidence to support his position that he had not been searching for an agent, as the article claimed.

When the publication requested to have sight of this evidence, he said that he was under no obligation to provide it to the publication – as it was its job to support its reporting, rather than relying on him to disprove it – and asked if the publication’s source could provide any evidence to support their position that he had been looking for an agent.

10. The complainant then contacted IPSO with his concerns, setting out his position that both articles were inaccurate in breach of Clause 1. He said that he had not “abandoned his search for an agent” as he had not been searching for an agent in the first place. He said, therefore, the entire basis of the two articles was inaccurate.

11. The complainant considered that the publication should publish an apology both in print and online, remove the online articles in their entirety, and provide him with a written assurance that the articles’ allegations would not be published again. He also said that any apology should have the same prominence as the original articles; he considered that, as a flag to the original article appeared on the front-page of the print edition, the apology should also appear there.

12. The publication reiterated its position that neither article breached the Code. It said that the source who provided the information on which the article was based was “well-trusted” and had met a journalist from the newspaper to provide the information. The conversation was, the publication said, in-depth and included “specific detail” which assured the publication that the claim was true. The source had known the journalist for a number of years, according to the publication, and had consistently provided the journalist with information which had later been proven accurate – in fact, such a story had been provided during the same conversation in which the source had disclosed the claim about the complainant.

13. The publication could not disclose the identity of its source, where it had a moral obligation to protect their identity under the terms of Clause 14 of the Editors’ Code of Practice. However, it said that the source was “in a position where they know the complainant”.

14. The publication said that it had then gone to the complainant’s spokesperson for comment and included their response in the article – therefore demonstrating that care had been taken over the accuracy of the article. It also said that news reports in other publications from November 2022 – a month prior to the publication of the article under complaint – had reported that the complainant’s partner had contacted a celebrity agent on his behalf. It therefore considered that, where multiple outlets had reported that the complainant was seeking representation, the articles under complaint had not inaccurately reported this claim.

15. While the publication did not accept that either article breached the Code, it noted that the second article under complaint did not include the complainant’s comment. It therefore proposed, on 22 March 2023 and three months after

being contacted by the complainant, to publish the following footnote clarification on the online article to make the complainant's position clear:

*"We would like to make clear that a spokesman for Hancock has advised that 'Matt has had lots of offers from agents wanting to represent him, but he's turned them all down as he doesn't want or need an agent.' We are happy to clarify this."*

It did not consider that it was necessary to include this wording in print, where the second article under complaint appeared in the same edition of the newspaper and further along, so readers would be aware of the full context of the article – including the complainant's denial – when reading the second article under complaint.

### Relevant Clause 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

16. The Code recognises the important role that confidential sources of information play in the newsgathering process and Clause 14 places a high moral obligation on journalists to protect such sources of information. In circumstances where a confidential source is used as the basis of the story, Clause 1 (iv) nevertheless applies; this requires that the press must distinguish clearly between comment, conjecture and fact.

17. The claims that the complainant had dropped his search for an agent were based on a single confidential source. The Committee accepted that the publication had taken some steps to verify the source's claims by going to the complainant for comment, but it had not been able to provide any corroboration for the claim to IPSO. Both articles had nevertheless reported the claims as fact, and without qualification beyond the complainant's denial at the end of one of the articles. By reporting the claims as fact, rather than identifying them as a

claim from a source, both articles failed to distinguish between comment and fact, and there was a breach of Clause 1 (iv).

18. Whilst the article "DON'T CALL US" make clear that the complainant disputed the claim made, the article "Matt's finished" – a short leader piece – did not include the complainant's denial. In relation to the print version of the article, the Committee accepted the publication's position that the fact that the complainant had denied the claims had been made set out earlier in the edition, and that the full context – namely that the complainant denied the claim – would be clear to readers. However, it noted that the online version of the article did not include this context – for instance, by way of a link to an article which contained the complainant's denial. The Committee therefore considered that the online version of the second article was misleading, where it did not make clear that the complainant denied the claims and, as a result of this omission, gave a false impression as to the status of these claims. The article was, therefore, misleading and given that the complainant's comment in response to the claim had been provided prior to publication, care had not been taken to ensure this version of the article was not misleading in breach of Clause 1 (i).

19. The weight given to the claims, as a consequence of the complainant's stringent denial having been omitted from the article, amounted to significantly misleading information. The publication was therefore required to correct the online version of the second article promptly and with due prominence. The publication had offered to publish a correction three months after it was made aware of the complainant's complaint. The lapse of three months did not represent prompt action on the part of the publication, and there was a further breach of Clause 1 (ii).

### Conclusions

20. The complaint was upheld under Clause 1.

### Remedial action required

21. Having upheld the complaint, 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 nature, extent and placement of which is determined by IPSO.

22. The Committee considered that both articles presented claims made by a single source as fact, which was a failure to distinguish between comment and fact.

23. The online version of the second article contained a further instance of misleading information, where it omitted the complainant's denial of the claims against him. However, the Committee also noted that the breach of the Code had arisen from the presentation of the articles, rather than a significant failure



in the newsgathering process. It further noted that, while the correction offered by the publication had been offered too late to satisfy the requirements of Clause 1 (ii), the publication had taken steps to put the correct position on record. Taking all these factors into account, and on balance, the Committee considered that a correction was the appropriate remedy – and it did not consider an apology to be appropriate given these factors.

24. All corrections to be published should acknowledge that the articles presented a claim from a single source as fact, and that this was misleading without attributing the claim to a source. The online version of the second article's correction should also make clear that it omitted the complainant's position from the original version of the article in a manner which rendered it misleading and put the complainant's denial of the claims on record. The wording of all corrections should be agreed with IPSO in advance and should make clear that it has been published following an upheld ruling by the Independent Press Standards Organisation.

25. The Committee then considered the placement of the corrections. Turning first to the print correction, it considered the appropriate location to be the newspaper's Corrections and Clarifications column. In making this decision, the Committee noted the complainant's position that the remedial action should appear on the front-page, as the nib for one of the articles also appeared there. However, it noted that the misleading information did not appear on the front-page – where the term "Hancock unwanted" was clearly the publication's view, rather than a claim of fact – and that front-page remedial action is reserved for the most serious breaches of the Code.

26. Regarding the first online article under complaint, as the misleading information also appeared in the headline to the article, the correction should appear as a standalone correction in the publication's online Corrections and Clarifications column (if they have one) and a link should be published on the homepage for 24 hours before being archived in the usual way. In addition, if the publication intends to continue to publish the online article without amendment, a correction should be added to the article and published beneath the headline. If the article is amended, this correction should be published as a footnote.

27. With regard to the second online article under complaint, If the publication intends to continue to publish the online article without amendment, the correction on the article should be published beneath the headline. If the article is amended, the correction should be published as a footnote.

Date complaint received: 28/12/2022

Date complaint concluded by IPSO: 17/08/2023

## APPENDIX B

### Decision of the Complaints Committee – 17845-23 Knight Brown v Sunday Mail

#### Summary of Complaint

1. Miranda Knight Brown complained to the Independent Press Standards Organisation that the Sunday Mail breached Clause 2 (Privacy) and Clause 3 (Harassment) of the Editors' Code of Practice in the preparation and publication of an article headlined "Wife moves out to be near Rossi's jail", published on 2 April 2023.
  2. The article reported that the complainant – the wife of an "alleged rapist, who is facing extradition" – had moved address after her husband's "latest bail bid was denied"; the article appeared on page 14. It reported that the complainant "was seen carrying bags out of the" property and was accompanied by two photographs showing the complainant outside a building. The pictures were framed in a way that didn't show the detail of the building itself, beyond the colour of its façade, and both showed the complainant carrying objects out of the building – including a bottle of whiskey in one photograph.
  3. The article also appeared online in substantially the same form under the headline "Wife of US fugitive Nicholas Rossi moves out Glasgow home to be nearer his jail". This version of the article only included one of the two photographs included in the print version of the article.
  4. Prior to making a complaint to IPSO, the complainant contacted the regulator to make it aware of "multiple approaches from journalists and photographers at [her] home address". As a result, IPSO circulated a notice to the press, including the Sunday Mail, on 3 January 2023. The notice quoted the complainant as saying:  
  
*"I have been receiving multiple approaches from journalists and photographers at my home address over the last few months who have gained access to my building. I feel harassed in my own home. I do not wish to comment on the matter and request that journalists desist from making further approaches to my home address.*  
  
*I do not wish to make comment to the press or be photographed."*
- The notice was accompanied by a notice from IPSO, which stated that the press "may be aware of recent coverage regarding [the complainant's] husband Arthur Knight (also known as Nicholas Rossi), his extradition hearings and the criminal allegations against him". It went on to say that the complainant had "no comment to make and asks that members of the press do not attempt to contact her and leave the area around her home."

5. The complainant said that the publication had breached the terms of Clause 3 by photographing her outside her home. She said that the images had been taken in April 2023, after a notice had been circulated by IPSO on her behalf which requested that journalists not approach her or photograph her, as well as asking for newspapers to desist from approaching her home address. The newspaper, she said, had ignored this clear request, and in doing so had made her feel harassed and intimidated.

6. The complainant also said that the publication of the photographs breached the terms of Clause 2; she said she had a right to privacy when entering and leaving her home, and the newspaper had intruded upon this right by photographing her. She further said that the publication had chosen to publish a picture of her holding a bottle of whiskey – rather than a more innocuous item – to humiliate her.

7. The publication did not accept that the Code had been breached, and set out the events which led to the photographs being taken. It said that, in May 2022, the complainant had invited a reporter from the publication into her home and had participated in an interview. The complainant again spoke to one of the publication's reporters on August 2022, outside court following legal proceedings against her husband. This was therefore context the publication took into account when it received the notice circulated by IPSO in January 2023 and it said – at this point – the decision was made not to contact the complainant directly, though it would still cover the legal proceedings against the complainant's husband. The publication said that the flat where the complainant had been pictured was a key part of the story in question, as it was the address where her husband had been arrested. It said that this address was also referenced in April 2023 legal proceedings against the complainant's husband.

8. The publication went on to say that it received a tip-off in late March 2023 that the complainant would be moving from the flat. Therefore, the decision was made to send a photographer – but no reporter – to photograph the move on 1 April 2023. The photographer in question said that this commission had been discussed against the terms of the IPSO notice and that – having discussed how to abide by the terms of the notice – a decision was reached to remain some distance away from entrance to the complainant's home. The publication said the photographer did not approach the complainant at any time. It provided a memo from the reporter in question, which said:

*"We received a tip off that she was moving out and decided to send a photographer - no reporter - along to attempt to photograph the move. We discussed this in accordance with the IPSO advisory and decided to keep a long distance from the entrance to the flat. This is how the picture was obtained of Miranda leaving. She was in a public place in a busy part of Glasgow, as was the photographer, who was a long distance from her and did not make any approach."*

9. Turning to Clause 3, it said that IPSO notices are advisory in nature and do not impose an indefinite restriction on reporting. It said that the original notice had been circulated in January in relation to the complainant's wish not to comment on her husband's court case. Therefore, it said, given the time which had elapsed between the notice being circulated and the photographs taken – three months – the fact that the complainant had been photographed in relation to a "separate story", and where the photographer did not engage in intimidating or harassing behaviour, the publication said that the terms of Clause 3 had not been breached. Further, the complainant had – since the notice had been circulated – engaged in contact with various press outlets, having been interviewed by a US television channel (with the interview being broadcast on 21 April) and a further documentary which the complainant had participated in was due to be broadcast in the UK.

10. Regarding the terms of Clause 2, the publication said that the complainant did not have a reasonable expectation of privacy while stood on a public street. It further said that the photograph did not disclose any private or sensitive information about the complainant.

11. While the publication did not accept a breach of the Code, it said that – at any rate – the photography of the complainant was in the public interest. It considered this to be the case where the complainant's husband had been accused of serious crimes, and the complainant had publicly spoken out in his defence and supported him through legal proceedings. It said that, given this context, photographs showing the complainant moving house were in the public interest, as her husband would reside at the property she was moving to if given bail, according to an application from his solicitor. It said that there was no record of any discussions which may have taken place about the public interest in photographing the complainant.

12. The complainant said that the conversation with a reporter outside court in August 2022, separate to being photographed in April 2023, had not been a welcome one. She said she had felt uncomfortable by the approach, and had requested that the reporter leave her alone. She also said that press coverage after the photographs under complaint had been taken was irrelevant to whether the newspaper had breached the Code when taking the photographs in April 2023. She said she had in fact given an interview back in April 2022, and had no control over it not being aired until April 2023, after the IPSO notice had been circulated. She also disputed that her address had been heard in court – she said it was just the area where she lived. The complainant then said that her husband's bail applications had been refused, so there was no public interest in reporting on where he would have lived had they been granted.

## Relevant Clause Provisions

### 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.

### 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.

## 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

13. Clause 3 (ii) makes clear that publications should respect requests to desist from approaching or photographing individuals, regardless of how this request is conveyed.

A renewed approach by a journalist after such a request may represent a breach of this Clause. However, such requests do not prohibit the printing of future stories about an individual, nor act as indefinite bar on all future approaches. The question for the Committee was therefore whether the publication was justified in photographing the complainant despite her earlier request to desist from doing so.

14. The complainant's request was that she not be approached or photographed. The publication had said that it considered that there had been sufficient developments in the story to outweigh the complainant's request that she not be photographed – namely, that she had decided to move from her home. It had also said that sufficient time had passed, which meant that the complainant's request was outdated, and that the complainant had engaged in media appearances which showed that she was content to engage with the media.

15. The Committee acknowledged that a request to desist does not apply indefinitely; this would be disproportionate and could infringe on legitimate journalism. In general, its position is that a request to desist can be displaced by subsequent developments in a story that justify renewed attention. What constitutes a development in a story must be judged based on the individual circumstances of the case. While the move may have represented a change in the complainant's personal circumstances, in the view of the Committee this did not constitute a development in the story of the criminal proceedings involving

her husband – which the publication had made clear was the basis for its journalistic activity – especially given that he was in custody and would not live at the address. In addition, while three months had passed since the original notice, this did not mean that the conditions which led to her making the request – the arrest of her husband, and her attitude toward the press interest in her that followed – had materially changed. With regard to the complainant’s media appearances, these all appeared to have been filmed prior to the complainant having made a request to desist. The Committee did not accept that once an individual has engaged with the press or media that they cannot later request that journalists desist from photographing or approaching them.

16. The publication had said that photographing the complainant was in the public interest, as her husband had committed serious crimes and would reside in the same property as her if she were given bail. The publication had provided a memo from the reporter, setting out the discussions which had occurred prior to the decision to photograph the complainant, to demonstrate it had considered the public interest. However, the memo did not refer to any discussion about the public interest, or whether publishing photographs of the complainant would serve the public interest in a proportionate way. The Committee did not therefore consider that the publication had demonstrated that it had considered the public interest prior to publication, or that it had explained how it made the decision that photographing the complainant was in the public interest prior to publication. In addition to this consideration, the Committee did not consider that there was a sufficient public interest in the publication of images of the complainant outside her home to justify publication despite the request to desist.

17. On balance, where the publication had photographed the complainant despite the fact that she had made a request that journalists desist from photographing her, there was a breach of Clause 3 (ii).

18. The Committee separately considered the question of whether the act of photographing the complainant and the subsequent publication of the photographs represented an intrusion into the complainant’s private life. The Committee noted that the Code only prohibits the photography of individual in locations where there is a reasonable expectation of privacy. While the Committee understood that the complainant had found the publication of the photographs intrusive, in particular the one of her holding a bottle of alcohol, she had been standing on a public street in view of passers-by when the photographs were taken. The photographs in question were taken on a public street, and did not disclose anything private about the complainant; they simply showed her holding various items under a headline saying that she was moving home. In such circumstances, there was no breach of Clause 2.

### Conclusions

19. The complaint was upheld under Clause 3.

### Remedial action required

20. Having upheld the complaint, 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 nature, extent and placement of which is determined by IPSO. Given the nature of the breach, the appropriate remedial action was the publication of an upheld adjudication.

21. The Committee considered the placement of this adjudication. The print article had featured on page 14. The Committee therefore required that the adjudication should be published on page 14 or further forward in the newspaper. The headline to the adjudication should make clear that IPSO has upheld the complaint, reference the title of the newspaper and refer to the complaint's subject matter. The headline must be agreed with IPSO in advance.

22. The adjudication should also be published online, with a link to this adjudication (including the headline) being published on the top half of the publication's homepage for 24 hours; it should then be archived in the usual way.

23. If the newspaper intends to continue to publish the online article without removing the photographs of the complainant, a link to the adjudication should also be published on the article, beneath the headline. If the article is amended to remove the photographs, a link to the adjudication should be published as a footnote correction with an explanation that the article had been amended following the IPSO ruling. The publication should contact IPSO to confirm these amendments it intends to make to the online material.

24. The terms of the adjudication are as follows:

Miranda Knight Brown complained to the Independent Press Standards Organisation that the Sunday Mail breached Clause 3 (Harassment) of the Editors' Code of Practice in the preparation and publication of an article headlined "Wife moves out to be near Rossi's jail", published on 2 April 2023.

The complaint was upheld, and IPSO required the Sunday Mail to publish this adjudication to remedy the breach of the Code.

The article reported that the complainant – the wife of an "alleged rapist, who is facing extradition" – had moved address after her husband's "latest bail bid was denied". It reported that the complainant "was seen carrying bags out of the" property, and was accompanied by two photographs showing the complainant outside a building.

The complainant said that the publication had breached the terms of Clause 3 by photographing her outside her home. She said that the images had been taken in April 2023, after a notice had been circulated by IPSO on her behalf in



January 2023. This notice requested that journalists not approach her or photograph her, as well as asking for newspapers to desist from approaching her home address. The newspaper, she said, had ignored this clear request, and in doing so had made her feel harassed and intimidated.

IPSO found that, while notices do not prohibit the printing of future stories about an individual, nor act as indefinite bar on all future approaches, the complainant's move did not constitute a development in the story of the criminal proceedings involving her husband. In addition, while three months had passed since the original notice, this did not mean that the conditions which led to her making the request – the arrest of her husband, and the press interest that followed – had materially changed, or that the complainant's request no longer applied.

On balance, where the publication had photographed the complainant despite the fact that she had made a request that journalists desist from photographing her, there was a breach of Clause 3 (ii) of the Editors' Code of Practice.

Date complaint received: 03/04/2023

Date complaint concluded by IPSO: 03/08/2023

## APPENDIX C

### Decision of the Complaints Committee – 18355-23 A complainant v nationalworld.com

#### Summary of Complaint

1. A complainant complained to the Independent Press Standards Organisation that nationalworld.com breached Clause 14 (Confidential sources) of the Editors' Code of Practice in an article headlined "Dominic Raab report 'barely breaks surface' of bullying in government, ex-civil servant claims", published on 21 April 2023.

2. The complainant had also complained about a tweet which said: "Exclusive: The Dominic Raab report 'barely breaks the surface' of bullying, a civil servant who contributed to the inquiry has said. They have claimed that a political aide swore and threatened them with Raab metres away, 'who didn't bat an eyelid'," published on 21 April 2023.

3. The article – which appeared online only – reported on comments made by an unnamed individual, the complainant, who had given evidence in the inquiry into the former deputy Prime Minister's conduct. It included direct quotes from the individual, and various details about their employment – including the time which they had spent in the role in question, and what prompted them to leave the job. It also included details about an incident involving the complainant and at least two other individuals: one of whom was named, and one of whom was identified by job title.

4. The complainant said that the article had breached Clause 14 – they said that they had spoken to the publication on the basis that their contribution was "off-the-record" and had made this clear at the beginning of the interview. They said the article had quoted them directly and had published several details about them, including the detail of a specific incident involving a small number of individuals. The complainant believed these details would identify them, and that they would be easily identifiable as only a small number of people had spoken to the inquiry. However, they were unaware if anyone had successfully identified them as a result of the article and accompanying tweet – though they considered that it was likely the case. The complainant was concerned that the article had also revealed their location – as they believed that only readers from a specific location would read the article. They said no steps had been taken to protect their anonymity and that this could have serious repercussions on their future employment.

5. The complainant speculated that there had been some confusion over whether the interview was "off-the-record" or "anonymous" as the article quoted them directly, despite the reporter accepting that they had spoken "anonymously / off-

the-record" in text messages after the article was published. The complainant said that as they had disclosed that they had spoken to other media outlets anonymously, the publication may have interpreted this as counteracting the request to be off-the-record. The complainant said that the publication should have clarified what the complainant meant if there was any confusion about any contradictory instructions.

6. The complainant contacted the publication the day after the article and tweet were published to make it aware of their concerns and request the removal of the article. On the same day, the publication apologised and confirmed the article and tweet had been removed.

7. The publication did not accept a breach of Clause 14. It said that protecting confidential sources was of prime importance and it believed it had done so on this occasion. It accepted that the complainant had requested the interview be off-the-record. However, it said that after they had made this request, they said during the interview that they were happy to speak on the matter anonymously. The publication said it had not revealed the complainant's name, age, gender, job position, department, nor did it give a time frame or any other details concerning the complainant's working circumstances – this, it said, demonstrated that it had protected the complainant in line with its obligations under Clause 14. The publication further said that National World operated across the UK, and therefore did not link the complainant to a specific location.

8. The publication said it had recorded the interview to ensure accuracy and provided the recording and transcript. In the interview, when questioned about a previous interview, the complainant said: "I'm generally happy to speak anonymously... others have reached out to me, and I've got no problem speaking anonymously".

9. The publication expanded on the specifics of the interview, and its aftermath. It said that the reporter had interviewed the complainant and had passed on the transcript to a senior member of staff – the reporter had requested the copy was checked with him before it was published as he was concerned about the "specificity" of some of the information. According to the publication, during a telephone call to the senior member of staff, the reporter said the complainant had previously requested to be off-the-record, but had then said they were happy to be quoted anonymously. The senior member of staff did not make any further checks regarding the complainant's request to be off-the-record.

10. The publication said these two journalists had discussed the potential article in a message and discussed removing the complainant's job role as it was too specific. Once the article was ready, the senior staff member did a final check with the reporter, who advised they remove the complainant's gender and department from the article. The publication provided screenshots of these conversations to support its position; these showed that, on 21 April, the senior staff member said: "I'm guessing this person wants to stay anon? I can write that

up quickly if needed". He later said "able to knock something quickly up?" The article was then sent to the editor for a final check, according to the publication.

11. The publication said as soon as the complainant raised their concerns about the published material it removed the article and tweet on the same day.

12. The complainant reiterated that they were confident that there was no ambiguity in their request to remain off-the-record, which they had communicated at the beginning of the interview. The complainant said the reporter had agreed to this request, and therefore the complainant had continued the interview on the understanding that any reference to speaking anonymously was in reference to past interviews, and had no bearing on their request to be off-the-record.

### Relevant Clause Provisions

#### Clause 14 (Confidential sources)

Journalists have a moral obligation to protect confidential sources of information.

### Findings of the Committee

13. Firstly, the Committee considered whether the complainant acted as a confidential source of information. It recognised there was an agreement between the complainant and the publication: they had agreed to speak on the condition that they remain off-the-record and/or anonymous. As such the Committee considered that the complainant was a confidential source, and that the terms of Clause 14 were engaged. The Committee noted the distinction raised by the complainant between the terms "off-the-record" and "anonymous" and noted that there are multiple interpretations of the term "off the record". However, neither party disputed that the complainant had been acting as a confidential source, regardless of the publication and complainant's respective definitions of the phrase "off-the-record".

14. Having established that the complainant was a confidential source, the Committee next sought to establish whether the publication had protected them, in line with the terms of the Code. It noted that staff at the publication had clearly shown concern prior to publication of the article regarding the possible identification of the source as demonstrated by their internal correspondence – which showed the request being conveyed among staff, and the request that certain information be removed from the article to protect the complainant's identity – such as their gender and the department they worked for.

15. The complainant believed that the article had revealed information which could lead to their identification. However, the complainant had not said that anyone had, in fact, identified them as a result of the article. The Committee noted that the complainant had not been named in the article and considered

the information about the complainant which had been included. The information was general in nature, beyond the reference to a specific incident. However, it did not follow that the incident described would necessarily be unique to the complainant, or that they were the only individual who had personal experience of the incident or a similar one. In these circumstances, the Committee was satisfied that the publication had protected the complainant as a confidential source. There was no breach of Clause 14.

16. Taking the above into account, the Committee considered clear steps had been taken to meet the moral threshold of protection required by the Code. There was no breach of Clause 14.

17. While the Committee did not consider that the terms of Clause 14 had been breached in this instance, it noted that – generally speaking – should there be any confusion or ambiguity over a complainant’s request to remain off-the-record, it would be expected that a publication would clarify the nature of this request in order for it to comply with its obligation under Clause 14. However, in this case, although the nature of the request was not clarified, the Committee was satisfied that the other steps taken by the publication satisfied its obligations under this Clause.

#### Conclusions

18. The complaint was not upheld.

#### Remedial action required

19. N/A

Date complaint received: 08/05/2023

Date complaint concluded by IPSO: 14/08/2023

## APPENDIX D

### Decision of the Complaints Committee – 12029-22/13148-22/14369-23

#### MacDougall v Mail Online

#### Summary of Complaint – 12029-22

1. James MacDougall, acting on his own behalf and on behalf of his parents, complained to the Independent Press Standards Organisation that Mail Online breached Clause 1 (Accuracy), Clause 2 (Privacy), Clause 3 (Harassment), Clause 10 (Clandestine devices and subterfuge) and Clause 12 (Discrimination) of the Editors' Code of Practice in the following articles:

- Article 1: "EXCLUSIVE 'He just wanted to help these women fulfill their dreams' Family of sperm donor who fathered 15 children with lesbian mothers despite incurable genetic condition claim he did it because he's 'kind hearted' and 'would do anything for anybody'", published on 31 May 2022;
- Article 2: "EXCLUSIVE: Sperm donor with incurable condition that leads to low IQ who fathered 15 children to lesbian mothers and then fought them for parental access is unmasked by judge to stop more women responding to his online ads", published on 30 May 2022;
- Article 3: "EXCLUSIVE Sperm donor, 37, who fathered 15 children to lesbian mothers despite having incurable condition that leads to low IQ is banned by judge from contacting one woman he impregnated twice", published on 12 October 2022;
- Article 4: "EXCLUSIVE: Lesbian mother says sperm donor with Fragile X syndrome never told her about incurable genetic condition before he fathered TWO of her children - and she now fears at least one of them may have inherited it", published on 1 June 2022;
- Article 5: "How could they all be so reckless? Mother who had two daughters with an unregulated sperm donor she found on social media tells FRANCES HARDY she failed to read the small print which warned of his incurable genetic condition", published on 10 June 2022;
- Article 6: "'I did a good thing by helping these women have children': Sperm donor who fathered 15 children with lesbian mothers despite incurable genetic condition insists he has done 'nothing wrong' as his parents claim he 'would do anything for anybody'", published on 31 June 2022.

2. All of the articles under complaint concerned a family court case involving the complainant – who has autism and is a carrier for a genetic condition called fragile x syndrome. The complainant had acted as a private sperm donor for multiple women. He had subsequently applied to the court for parental

responsibility orders in relation to some of the children, and some of the women had sought to prevent him from contacting the children they had conceived using his sperm. During the case, these women had claimed the complainant had not made them aware that he was a carrier of the gene for fragile x syndrome, though the complainant disputed this. At the end of the court case the judge had made the complainant's identity public.

3. Article 1 reported that, "the family of a Facebook sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition that can be inherited have claimed that he was offering his services because he's 'kindhearted'."

4. Article 2 reported that the complainant "advertised as sperm donor without revealing his incurable genetic condition" and that he was a "sperm donor who offered his services via social media [and had] fathered fifteen children to lesbian women without telling them about his inheritable condition, a court today heard".

5. Article 3 reported that the complainant "went ahead with private sperm donations to a number of lesbian women after advertising himself on social media without fully revealing his condition" and that the "judge found that MacDougall showed 'fundamental irresponsibility' by not being upfront about his condition".

6. Article 4 contained quotes from women who had conceived children using the complainant's donor sperm. It reported that a "lesbian mother says sperm donor with fragile x syndrome never told her about incurable genetic condition before he fathered TWO of her children". It also contained the following direct quote from the woman: "I feel angry that [the complainant] may have passed this on to my daughter. He never mentioned it. He should have told me about his condition but he didn't and I blame him." It also reported that one of the women "told MailOnline that she had no idea he had the condition when she spoke to him about helping her and her female partner to conceive" and that she "now realise[d] that a reference to his genetic condition was in the paperwork, but says [the complainant] never flagged it and she did not have the life skills to identify the issue."

7. Article 5 said that one woman – who had conceived a child using the complainant's sperm – had, "when considering the credentials of a father to her children, barely scanned the closely-typed three page document he presented her with — in which was buried the fact that he has fragile x — before agreeing to pay him £5 travelling expenses for supplying his sperm", and that another had "failed to read the small print which warned of his incurable genetic condition". The article also alleged that "he had fathered 15 children to lesbian women without making clear to them that he has an incurable genetic condition."

8. Article 6 contained quotes from an interview with the complainant. The complainant was quoted as having said that he "did a good thing by helping

these women have children” and that he hadn’t “done anything wrong”. He had reportedly said that “the full truth will come out” and that he was “very angry and upset”. It also reported a “sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition”.

9. All of the articles under complaint also contained quotes from an interview with the complainant’s parents. They described the complainant as “‘kind-hearted’ but ‘gullible’” and were reported as having said that he “just wanted to help those people, help those women in a gay relationship fulfil their dreams and become parents.”

10. The complainant said that the articles were inaccurate in breach of Clause 1, as they each said that he had not told the women that he was a carrier for fragile x syndrome. He said that he had told the women, as it was in the contract the women who used his sperm all signed. He supplied a copy of this contract to IPSO to support his complaint. The contract was three pages long with 23 numbered paragraphs. Paragraph 18 of the contract stated: “The RECIPIENT of and the PARTNER of the RECIPIENT understand that the donor is a carrier for fragile X”; there were no other references to fragile x syndrome within the document.

11. The complainant also said the articles breached Clause 1 because they were biased against him and did not tell his side of the story.

12. The complainant also said that article 6 included a further breach of Clause 1, as the article included quotes from an interview with him. He said that he had misspoken during this interview, and not said what he actually meant – therefore, the inclusion of these quotes was inaccurate, though he did not dispute that he had said them.

13. The complainant also said the publication had breached Clause 3 and Clause 10 by obtaining the quotes from the interview with his parents in circumstances of harassment, and through the use of subterfuge. In support of these complaints, the complainant’s parents provided two statements to IPSO which outlined their version of events.

14. The complainant’s parents said a journalist had come to their door and said she was there to “help” their son. She asked whether the complainant was at home and was told he was not. She went on to say that the judge had released the complainant’s name. She told the parents not to worry about this as she was there to help them and the complainant, as it was unusual for a judge to release a person’s name. The parents said this interaction gave the impression that the journalist was from the court. There was a discrepancy between the two statements provided by the parents as to whether the parents had assumed that the journalist was from the court, or whether the journalist had explicitly said that this was the case. The parents then told her some more information about the complainant. She showed them two pictures, and they identified one as showing the complainant. At this point, as the journalist was writing, she asked for the



complainant's phone number - she said she would talk to her editor. It was at this point that the parents said they realised she was a journalist; the parents asked her who she worked for, and she said the Daily Mail. She asked for pictures of the children and a more recent picture of the complainant. The parents declined to provide this and said that they did not want anything published. They said that they repeated this "a couple of times". The parents said, "they should finish now", and the journalist left.

15. The parents alleged in their first statement that the journalist then phoned at least three to four times in the week following this interaction; though they did not specify what had been said during these calls, and in their later statement this allegation was removed, and it was alleged that another publication had called the parents.

16. The complainant also said that the contents of article 6 breached Clause 3, because he said the quotes from him included in the article had been obtained during a phone call which he felt harassed by. He described the phone call as follows: he told the journalist to leave him alone, but they kept asking questions; he said he did not want to speak to the journalist and that he did not want anything published. The complainant said that he was not aware that the contents of this phone call would be published.

17. The complainant also said that all six articles were in breach of Clause 2 because they contained photographs from his Facebook account, which he considered private.

18. The complainant also said article 6 was in breach of Clause 2 because it contained details about his thoughts and feelings regarding his court case – that he was angry and upset – which he considered private.

19. The complainant also said article 6 was in breach of Clause 12 because the publication did not consider he was a vulnerable adult with autism when it interviewed him.

20. The publication did not accept a breach of the Code in relation to any of the articles under complaint, or any of the alleged behaviour complained of.

21. Turning first to the alleged breach of Clause 1, the publication said it was not inaccurate to report that the complainant had not told the women he was a carrier for fragile x syndrome. While it accepted that the complainant had included reference to the condition in the contract, it said he had not offered even a basic definition of the syndrome, or explained the implications of him being a carrier and what that might mean to the prospective mothers. It also said judgment referred to one woman, KE, who had connected with the complainant through social media and had never entered a written agreement with the complainant. It said the crux of the judge's reasoning for making public the complainant's identity – which is not normal practice in family courts – was that he had not fully explained the implications of his condition. The publication

referred to the case's public judgment where the judge had said: "I [...] have no confidence in him fully explaining to any woman the true implications of his fragile x syndrome."

22. The publication cited other parts of the court judgment to support its position that the complainant had not made the women aware that he was a carrier for fragile x syndrome. This included the following passages:

"I also take into account the fundamental irresponsibility of [the complainant] acting as a sperm donor whilst knowing that he had fragile x syndrome, an inheritable condition, without at the very least making it entirely clear to the mothers concerned the implications of Fragile X. [The complainant] knew that he could not be a sperm donor through a clinic because of his condition. He told the [court-appointed] Guardian that he thought fragile x syndrome was not serious and it was for the mothers to do the research. Even if [the complainant] does not understand the true implications of Fragile X, he does know it prevents him acting through a donor clinic.

"On page 3 of the agreement it is recorded that JM has fragile x syndrome, however there is no explanation of what this means. [One of the women] said that she has difficulty reading, which was clear from her oral evidence. She said that she did not read that far into the agreement and therefore did not read the part about fragile x. [A second woman] said that she did read more of the agreement but either did not see or did not appreciate the significance of the reference to fragile x syndrome.

"Although the agreement does refer to fragile x, [the complainant] took no steps to explain the condition to [either woman] and no steps to ensure they understood. [The complainant] took advantage of these young women's vulnerability and their strong desire to have children.

The position in respect of KE is rather different. I will not set this out in any detail given that I cannot reach any conclusions on the facts of her case or make final orders at this stage of the proceedings. However, the undisputed evidence is of some relevance to the determination in the other two cases. KE contacted JM as a sperm donor via the social media page. There was no written agreement between KE and JM. B was born in July 2018. In September 2018 JM and KE commenced a relationship. JM had contact with B throughout 2019'.

23. The publication also did not accept that article 6 had breached Clause 1 by reporting the comments made by the complainant – regardless of his intentions when speaking to the journalist, it was not in dispute that he had said what the article reported.

24. The publication did not accept that the journalist had harassed the complainant's parents in breach of Clause 3. It said that it was not the case that the reporter had not told the parents that she was a journalist – it said the reporter introduced herself as a "Midlands based freelancer making inquiries on

behalf of the MailOnline,” and the parents had subsequently volunteered positive comments about their son in the hopes they would be published. The publication said at no point did the parents ask for their comments to be off-the-record, and that the parents gave the reporter her son’s mobile telephone number so that the journalist could contact him. It also said that the complainant’s mother offered to assist the reporter in finding the names of the mothers of the complainant’s children. The publication provided the reporter’s shorthand notes of the encounter which were fourteen pages long and handwritten. The notes included the son’s name and phone number.

25. The publication then said that, following the visit to the parents’ home, the reporter had called “a few times” the following week to see if the complainant was home and available to speak. The publication noted that the parents had not said that they felt harassed or intimidated by these phone calls, or by the in-person conversation, and had not requested that she desist from contacting them.

26. The publication also did not accept that the journalist’s interaction with the parents breached Clause 10, as the journalist had misrepresented herself or who she worked with – she had introduced herself and made clear she was working on behalf of the publication.

27. The publication did not accept a breach of Clause 2. It said the images included in the articles came from the complainant’s publicly accessible Facebook profile pictures and were therefore in the public domain. The publication also did not accept that article 6 intruded into the complainant’s private life by publishing his thoughts and feelings about the case against him. It noted that it was entirely expected that someone would be upset by a court ruling against them and that it failed to see how his feelings in the matter – freely given to the publication as part of an interview – could be regarded as information over which the complainant had a reasonable expectation of privacy.

28. The publication did not accept a breach of Clause 3 regarding the additional phone calls made to the parents in the week following the meeting. It said the reporter called a few times the following week to see if the complainant was home as she had been told by his parents that he sometimes stayed with friends who lived nearer his place of work. She was also hoping to get contact details of the mothers of the babies from the sperm donations, that had been promised by the complainant’s mother. The publication said the reporter was not asked to desist contact.

29. The publication did not accept that the complainant’s concerns about the articles being biased against him engaged the Code.

30. The publication did not accept that article 6 was discriminatory in breach of Clause 12. It said if the complainant’s intention was to suggest that the story should not have been reported at all in respect of his autism, this did not engage the Clause.

## Relevant Clause 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.

### 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.

#### 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.

#### Committee Findings

31. The Committee first considered whether the articles had – as alleged by the complainant – inaccurately reported that he had not told the women about his carrier status. It was not in dispute that the complainant had provided a number of the women who used his sperm with a contract that disclosed that he had fragile x, although there was one woman who had not received any written agreement. The complainant's position was that this showed he had told the women of his status; the publication's position was that he had not informed one woman at all, and the other women, who had received the contract, had not had the condition explained to them, or been made fully aware of its implications. It considered its position was supported by the Family Court judgment. The Committee therefore took the judgment provided by the publication into account.

32. The judgment made clear that, while the contract had included the name of the condition, this was not enough to ensure the women fully understood its implications. In addition, while the judgment made clear that at least one woman had not received the contract, it did not appear to be in dispute that the majority of the women referred to in the articles had received a copy of the contract which included a reference to his condition. As such, the Committee considered that some of the articles had gone too far by reporting in absolute terms that the complainant had not told any of the women about his status as a carrier, where this had been disclosed in the contract. These articles were: article 1, which described the complainant as "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition"; article 2, which said the complainant "advertised as sperm donor without revealing his incurable genetic condition"; and article 6, which similarly described the complainant as "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition". Where the publication had access to a court judgment that made clear the complainant had shared a contract with at least some of these women, this represented a failure to take care not to print inaccurate information. These articles therefore breached the terms of Clause 1 (i).

33. Where the inaccuracies pertained to the serious matter of whether the complainant had deceived the women he had donated sperm to, and also related to a legal judgment, the Committee considered the inaccuracies to be significant and in need of correction under the terms of Clause 1 (ii). No correction had been offered and so there was a breach of Clause 1 (ii) on this point.

34. Articles 3 and 5 did not state explicitly that the complainant had not told the woman about his condition. Article 3 reported the complainant donated sperm “without fully revealing his condition” and that he’d not “be[en] upfront about his condition”. Article 5 referenced the “small print which warned of his incurable genetic condition” and that the complainant “had fathered 15 children to lesbian women without making clear to them that he has an incurable genetic condition.” It also referred to “the closely-typed three page document he presented her with — in which was buried the fact that he has Fragile X”. The articles either made clear that the contract existed or qualified its claims by noting the complainant had not “fully” revealed his condition. These articles were not inaccurate, and did not breach Clause 1.

35. Article 4 focused on one of the women who had used the complainant’s sperm. The article was an interview where the woman gave a first-person account of her experiences, which she was entitled to do. While the article did report that the woman said the complainant “never told her about incurable genetic condition before he fathered TWO of her children”, it mentioned the contract and made clear why the complainant felt she had not been told about the condition by reporting “the mother now realises that a reference to his genetic condition was in the paperwork, but says MacDougall never flagged it and she did not have the life skills to identify the issue.” As such, the article made clear that there had been some disclosure of the complainant’s condition and did not breach Clause 1.

36. The Committee then turned to the question of whether Clause 3 or Clause 10 had been breached during the journalist’s interactions with the family. The crux of the parents’ complaint appeared to be that the journalist had not identified herself to them before they had shared the information that appeared in the articles under complaint – though they acknowledged that she had identified herself at a later point during her visit to the property. The journalist denied she had withheld the fact she was a reporter. The Committee was not in a position to know exactly what happened during the interaction, and whether the reporter had identified herself on entry to the property. However, in any event, the terms of Clause 3 make clear journalists must identify themselves and whom they represented when asked. It was not in dispute that at some point during the visit, the reporter had willingly volunteered that she had an editor and who she worked for. In terms of Clause 10, as it was not in dispute that at some point during the interaction the reporter had explained she was a journalist, the Committee did not consider that she had engaged in misrepresentation as defined by the terms of Clause 10. As such, this interaction did not raise a breach of Clause 3 or Clause 10.

37. The Committee also considered whether the publication had breached the Code by phoning the parents three or four times in the week following the interaction with the journalist. Clause 3 stipulates that publications must not persist in contacting individuals after being asked to desist, but it does not prevent journalists from calling individuals to seek their comment or asking further questions. It was not in dispute between the parties that the journalist had called the parents a number of times in the week following their initial interaction. However, the parents did not state that they had asked the reporter to stop contacting them; the reporter also denied she'd ever been asked to desist contact. On this basis, there was no breach of Clause 3.

38. The Committee then considered whether Clause 3 had been breached by the journalist's phone interview with the complainant, where the complainant shared information included in article 6. The complainant had alleged that when he answered the phone he had told the reporter to leave him alone, but she had kept on asking him questions. He did not dispute that he had shared information with the reporter at this point. He also said he specified he did not want anything he said published. The reporter denied the complainant said he did not want information published and once the complainant made it clear that he was not interested in a detailed interview, said she made no further contact. As the accounts of the complainant and the reporter differed, it was not possible for the Committee to establish exactly what had happened during the call. However, it was not in dispute between the complainant and the publication that only one phone call had taken place, and the complainant did not allege that any further attempts to contact him had been made after that phone call. The complainant did not hang up the phone, but stayed on the line to the reporter and shared information with her, implying that he was, at least to an extent, willing to speak to the reporter. Clause 3 is designed to protect individuals who do not wish to engage with the press from being repeatedly contacted. Where there was evidence that the complainant had been willing to speak to a journalist and share information about his feelings with her, the Committee did not consider there to be enough to suggest the complainant had been harassed by the reporter. There was no breach of Clause 3 on this point. Additionally, Clause 3 does not make any stipulations about subjects giving their permission for information to be published, and so the complainant's concerns on that point did not engage the Clause.

39. The Committee considered the complainant's concerns that the articles were inaccurate because they were biased against him. Biased articles do not, in and of themselves, represent a breach of the Code; the Code does not prohibit the publication of biased or one-sided information. There was no breach of Clause 1 on this point.

40. The Committee then turned to the complainant's concerns that the articles' inclusion of his photographs breached the terms of Clause 2. The Committee first noted that it was not in dispute that the pictures were publicly available Facebook profile pictures. Given that the images of the complainant had been publicly accessible on social media, the Committee considered the images to be

in the public domain and that the complainant therefore did not have a reasonable expectation of privacy over them. The Committee further noted that the images simply showed the complainant's likeness; they did not reveal anything private about him. There was no breach of Clause 2 on this point.

41. The Committee considered the complainant's concern that article 6 breached Clause 1 because he had misspoken during his interview. The complainant did not allege that the article had inaccurately reported on what he had said, just that the words themselves were not what he had intended to say. The publication's obligation under Clause 1 of the Code was to report the complainant's words accurately, and it was not in dispute that it had done so. There was no breach of Clause 1 on this point.

42. The Committee then turned to the complainant's concern that article 6 breached Clause 2 because it contained details about his thoughts and feelings about the court case, which he considered private. In circumstances where the complainant had willingly shared information about his feelings about the court case with the journalist, the Committee did not consider that the publication's decision to publish the comments constituted a failure to respect the complainant's private life or represented an intrusion into his privacy. There was no breach of Clause 2.

43. The Committee considered whether article 6 breached Clause 12. Clause 12 stipulates the press must avoid prejudicial or pejorative reference an individual's disability and details should avoided unless they are genuinely relevant to the story. The complainant had not said that any of the articles under complaint included any such reference to a protected characteristic, and as such there was no breach of the Clause.

## Conclusions

43. The complaint was upheld under Clause 1.

## Remedial action required

44. Having upheld the complaint under Clause 1(i) and Clause 1 (ii), 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, with the terms and placement determined by IPSO.

45. The individual breaches of Clause 1 in articles 1, 2, and 6 occurred in the text of the article rather than the headline. As such, the Committee considered a correction to each article to be the appropriate remedy to this breach. The corrections should set out the inaccuracy and make the correct position clear, stating the complainant had mentioned he had fragile X syndrome in the contract he had shared with the women who used his sperm. Each article found



to have breached the Code should be individually corrected as each one contained slightly different inaccuracies.

46. The Committee then considered the placement of these corrections. If the publication intends to continue to publish the online articles without amendment, the corrections to the article should be published beneath the headline. If the articles are amended, the correction should be published as a footnote.

47. The wording should be agreed with IPSO in advance and should make clear that it has been published following an upheld ruling by the Independent Press Standards Organisation.

Date complaint received: 22/10/2022

Date complaint concluded by IPSO: 11/08/2023

Decision of the Complaints Committee –12029-22/13148-22/14369-23  
MacDougall v Mail Online

Summary of Complaint -13148-22

1. James MacDougall, acting on his own behalf and on behalf of his parents, complained to the Independent Press Standards Organisation that Mail Online breached Clause 1 (Accuracy), Clause 2 (Privacy), Clause 3 (Harassment), Clause 10 (Clandestine devices and subterfuge) and Clause 12 (Discrimination) of the Editors' Code of Practice in the following articles:

- Article 1: "EXCLUSIVE 'He just wanted to help these women fulfill their dreams' Family of sperm donor who fathered 15 children with lesbian mothers despite incurable genetic condition claim he did it because he's 'kind hearted' and 'would do anything for anybody'", published on 31 May 2022;
- Article 2: "EXCLUSIVE: Sperm donor with incurable condition that leads to low IQ who fathered 15 children to lesbian mothers and then fought them for parental access is unmasked by judge to stop more women responding to his online ads", published on 30 May 2022;
- Article 3: "EXCLUSIVE Sperm donor, 37, who fathered 15 children to lesbian mothers despite having incurable condition that leads to low IQ is banned by judge from contacting one woman he impregnated twice", published on 12 October 2022;
- Article 4: "EXCLUSIVE: Lesbian mother says sperm donor with Fragile X syndrome never told her about incurable genetic condition before he fathered TWO of her children - and she now fears at least one of them may have inherited it", published on 1 June 2022;
- Article 5: "How could they all be so reckless? Mother who had two daughters with an unregulated sperm donor she found on social media tells FRANCES HARDY she failed to read the small print which warned of his incurable genetic condition", published on 10 June 2022;
- Article 6: "'I did a good thing by helping these women have children': Sperm donor who fathered 15 children with lesbian mothers despite incurable genetic condition insists he has done 'nothing wrong' as his parents claim he 'would do anything for anybody'", published on 31 June 2022.

2. All of the articles under complaint concerned a family court case involving the complainant – who has autism and is a carrier for a genetic condition called fragile x syndrome. The complainant had acted as a private sperm donor for multiple women. He had subsequently applied to the court for parental responsibility orders in relation to some of the children, and some of the women

had sought to prevent him from contacting the children they had conceived using his sperm. During the case, these women had claimed the complainant had not made them aware that he was a carrier of the gene for fragile x syndrome, though the complainant disputed this. At the end of the court case the judge had made the complainant's identity public.

3. Article 1 reported that, "the family of a Facebook sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition that can be inherited have claimed that he was offering his services because he's 'kindhearted'."

4. Article 2 reported that the complainant "advertised as sperm donor without revealing his incurable genetic condition" and that he was a "sperm donor who offered his services via social media [and had] fathered fifteen children to lesbian women without telling them about his inheritable condition, a court today heard".

5. Article 3 reported that the complainant "went ahead with private sperm donations to a number of lesbian women after advertising himself on social media without fully revealing his condition" and that the "judge found that MacDougall showed 'fundamental irresponsibility' by not being upfront about his condition".

6. Article 4 contained quotes from women who had conceived children using the complainant's donor sperm. It reported that a "lesbian mother says sperm donor with fragile x syndrome never told her about incurable genetic condition before he fathered TWO of her children". It also contained the following direct quote from the woman: "I feel angry that [the complainant] may have passed this on to my daughter. He never mentioned it. He should have told me about his condition but he didn't and I blame him." It also reported that one of the women "told MailOnline that she had no idea he had the condition when she spoke to him about helping her and her female partner to conceive" and that she "now realise[d] that a reference to his genetic condition was in the paperwork, but says [the complainant] never flagged it and she did not have the life skills to identify the issue."

7. Article 5 said that one woman – who had conceived a child using the complainant's sperm – had, "when considering the credentials of a father to her children, barely scanned the closely-typed three page document he presented her with — in which was buried the fact that he has fragile x — before agreeing to pay him £5 travelling expenses for supplying his sperm", and that another had "failed to read the small print which warned of his incurable genetic condition". The article also alleged that "he had fathered 15 children to lesbian women without making clear to them that he has an incurable genetic condition."

8. Article 6 contained quotes from an interview with the complainant. The complainant was quoted as having said that he "did a good thing by helping these women have children" and that he hadn't "done anything wrong". He had

reportedly said that “the full truth will come out” and that he was “very angry and upset”. It also reported a “sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition”.

9. All of the articles under complaint also contained quotes from an interview with the complainant’s parents. They described the complainant as “‘kind-hearted’ but ‘gullible’” and were reported as having said that he “just wanted to help those people, help those women in a gay relationship fulfil their dreams and become parents.”

10. The complainant said that the articles were inaccurate in breach of Clause 1, as they each said that he had not told the women that he was a carrier for fragile x syndrome. He said that he had told the women, as it was in the contract the women who used his sperm all signed. He supplied a copy of this contract to IPSO to support his complaint. The contract was three pages long with 23 numbered paragraphs. Paragraph 18 of the contract stated: “The RECIPIENT of and the PARTNER of the RECIPIENT understand that the donor is a carrier for fragile X”; there were no other references to fragile x syndrome within the document.

11. The complainant also said the articles breached Clause 1 because they were biased against him and did not tell his side of the story.

12. The complainant also said that article 6 included a further breach of Clause 1, as the article included quotes from an interview with him. He said that he had misspoken during this interview, and not said what he actually meant – therefore, the inclusion of these quotes was inaccurate, though he did not dispute that he had said them.

13. The complainant also said the publication had breached Clause 3 and Clause 10 by obtaining the quotes from the interview with his parents in circumstances of harassment, and through the use of subterfuge. In support of these complaints, the complainant’s parents provided two statements to IPSO which outlined their version of events.

14. The complainant’s parents said a journalist had come to their door and said she was there to “help” their son. She asked whether the complainant was at home and was told he was not. She went on to say that the judge had released the complainant’s name. She told the parents not to worry about this as she was there to help them and the complainant, as it was unusual for a judge to release a person’s name. The parents said this interaction gave the impression that the journalist was from the court. There was a discrepancy between the two statements provided by the parents as to whether the parents had assumed that the journalist was from the court, or whether the journalist had explicitly said that this was the case. The parents then told her some more information about the complainant. She showed them two pictures, and they identified one as showing the complainant. At this point, as the journalist was writing, she asked for the complainant’s phone number - she said she would talk to her editor. It was at

this point that the parents said they realised she was a journalist; the parents asked her who she worked for, and she said the Daily Mail. She asked for pictures of the children and a more recent picture of the complainant. The parents declined to provide this and said that they did not want anything published. They said that they repeated this “a couple of times”. The parents said, “they should finish now”, and the journalist left.

15. The parents alleged in their first statement that the journalist then phoned at least three to four times in the week following this interaction; though they did not specify what had been said during these calls, and in their later statement this allegation was removed, and it was alleged that another publication had called the parents.

16. The complainant also said that the contents of article 6 breached Clause 3, because he said the quotes from him included in the article had been obtained during a phone call which he felt harassed by. He described the phone call as follows: he told the journalist to leave him alone, but they kept asking questions; he said he did not want to speak to the journalist and that he did not want anything published. The complainant said that he was not aware that the contents of this phone call would be published.

17. The complainant also said that all six articles were in breach of Clause 2 because they contained photographs from his Facebook account, which he considered private.

18. The complainant also said article 6 was in breach of Clause 2 because it contained details about his thoughts and feelings regarding his court case – that he was angry and upset – which he considered private.

19. The complainant also said article 6 was in breach of Clause 12 because the publication did not consider he was a vulnerable adult with autism when it interviewed him.

20. The publication did not accept a breach of the Code in relation to any of the articles under complaint, or any of the alleged behaviour complained of.

21. Turning first to the alleged breach of Clause 1, the publication said it was not inaccurate to report that the complainant had not told the women he was a carrier for fragile x syndrome. While it accepted that the complainant had included reference to the condition in the contract, it said he had not offered even a basic definition of the syndrome, or explained the implications of him being a carrier and what that might mean to the prospective mothers. It also said judgment referred to one woman, KE, who had connected with the complainant through social media and had never entered a written agreement with the complainant. It said the crux of the judge’s reasoning for making public the complainant’s identity – which is not normal practice in family courts – was that he had not fully explained the implications of his condition. The publication referred to the case’s public judgment where the judge had said: “I [...] have no

confidence in him fully explaining to any woman the true implications of his fragile x syndrome.”

22. The publication cited other parts of the court judgment to support its position that the complainant had not made the women aware that he was a carrier for fragile x syndrome. This included the following passages:

“I also take into account the fundamental irresponsibility of [the complainant] acting as a sperm donor whilst knowing that he had fragile x syndrome, an inheritable condition, without at the very least making it entirely clear to the mothers concerned the implications of Fragile X. [The complainant] knew that he could not be a sperm donor through a clinic because of his condition. He told the [court-appointed] Guardian that he thought fragile x syndrome was not serious and it was for the mothers to do the research. Even if [the complainant] does not understand the true implications of Fragile X, he does know it prevents him acting through a donor clinic.

“On page 3 of the agreement it is recorded that JM has fragile x syndrome, however there is no explanation of what this means. [One of the women] said that she has difficulty reading, which was clear from her oral evidence. She said that she did not read that far into the agreement and therefore did not read the part about fragile x. [A second woman] said that she did read more of the agreement but either did not see or did not appreciate the significance of the reference to fragile x syndrome.

“Although the agreement does refer to fragile x, [the complainant] took no steps to explain the condition to [either woman] and no steps to ensure they understood. [The complainant] took advantage of these young women’s vulnerability and their strong desire to have children.

The position in respect of KE is rather different. I will not set this out in any detail given that I cannot reach any conclusions on the facts of her case or make final orders at this stage of the proceedings. However, the undisputed evidence is of some relevance to the determination in the other two cases. KE contacted JM as a sperm donor via the social media page. There was no written agreement between KE and JM. B was born in July 2018. In September 2018 JM and KE commenced a relationship. JM had contact with B throughout 2019’.

23. The publication also did not accept that article 6 had breached Clause 1 by reporting the comments made by the complainant – regardless of his intentions when speaking to the journalist, it was not in dispute that he had said what the article reported.

24. The publication did not accept that the journalist had harassed the complainant’s parents in breach of Clause 3. It said that it was not the case that the reporter had not told the parents that she was a journalist – it said the reporter introduced herself as a “Midlands based freelancer making inquiries on behalf of the MailOnline,” and the parents had subsequently volunteered positive

comments about their son in the hopes they would be published. The publication said at no point did the parents ask for their comments to be off-the-record, and that the parents gave the reporter her son's mobile telephone number so that the journalist could contact him. It also said that the complainant's mother offered to assist the reporter in finding the names of the mothers of the complainant's children. The publication provided the reporter's shorthand notes of the encounter which were fourteen pages long and handwritten. The notes included the son's name and phone number.

25. The publication then said that, following the visit to the parents' home, the reporter had called "a few times" the following week to see if the complainant was home and available to speak. The publication noted that the parents had not said that they felt harassed or intimidated by these phone calls, or by the in-person conversation, and had not requested that she desist from contacting them.

26. The publication also did not accept that the journalist's interaction with the parents breached Clause 10, as the journalist had misrepresented herself or who she worked with – she had introduced herself and made clear she was working on behalf of the publication.

27. The publication did not accept a breach of Clause 2. It said the images included in the articles came from the complainant's publicly accessible Facebook profile pictures and were therefore in the public domain. The publication also did not accept that article 6 intruded into the complainant's private life by publishing his thoughts and feelings about the case against him. It noted that it was entirely expected that someone would be upset by a court ruling against them and that it failed to see how his feelings in the matter – freely given to the publication as part of an interview – could be regarded as information over which the complainant had a reasonable expectation of privacy.

28. The publication did not accept a breach of Clause 3 regarding the additional phone calls made to the parents in the week following the meeting. It said the reporter called a few times the following week to see if the complainant was home as she had been told by his parents that he sometimes stayed with friends who lived nearer his place of work. She was also hoping to get contact details of the mothers of the babies from the sperm donations, that had been promised by the complainant's mother. The publication said the reporter was not asked to desist contact.

29. The publication did not accept that the complainant's concerns about the articles being biased against him engaged the Code.

30. The publication did not accept that article 6 was discriminatory in breach of Clause 12. It said if the complainant's intention was to suggest that the story

should not have been reported at all in respect of his autism, this did not engage the Clause.

### **Relevant Clause 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.

#### 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.



#### 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.

#### Committee Findings

31. The Committee first considered whether the articles had – as alleged by the complainant – inaccurately reported that he had not told the women about his carrier status. It was not in dispute that the complainant had provided a number of the women who used his sperm with a contract that disclosed that he had fragile x, although there was one woman who had not received any written agreement. The complainant's position was that this showed he had told the women of his status; the publication's position was that he had not informed one woman at all, and the other women, who had received the contract, had not had the condition explained to them, or been made fully aware of its implications. It considered its position was supported by the Family Court judgment. The Committee therefore took the judgment provided by the publication into account.

32. The judgment made clear that, while the contract had included the name of the condition, this was not enough to ensure the women fully understood its implications. In addition, while the judgment made clear that at least one woman had not received the contract, it did not appear to be in dispute that the majority of the women referred to in the articles had received a copy of the contract which included a reference to his condition. As such, the Committee considered that some of the articles had gone too far by reporting in absolute terms that the complainant had not told any of the women about his status as a carrier, where this had been disclosed in the contract. These articles were: article 1, which described the complainant as "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition"; article 2, which said the complainant "advertised as sperm donor without revealing his incurable genetic condition"; and article 6, which similarly described the complainant as "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition". Where the publication had access to a court judgment that made clear the complainant had shared a contract with at least some of these women, this represented a failure to take care not to print inaccurate information. These articles therefore breached the terms of Clause 1 (i).

33. Where the inaccuracies pertained to the serious matter of whether the complainant had deceived the women he had donated sperm to, and also related to a legal judgment, the Committee considered the inaccuracies to be significant and in need of correction under the terms of Clause 1 (ii). No correction had been offered and so there was a breach of Clause 1 (ii) on this point.

34. Articles 3 and 5 did not state explicitly that the complainant had not told the woman about his condition. Article 3 reported the complainant donated sperm “without fully revealing his condition” and that he’d not “be[en] upfront about his condition”. Article 5 referenced the “small print which warned of his incurable genetic condition” and that the complainant “had fathered 15 children to lesbian women without making clear to them that he has an incurable genetic condition.” It also referred to “the closely-typed three page document he presented her with — in which was buried the fact that he has Fragile X”. The articles either made clear that the contract existed or qualified its claims by noting the complainant had not “fully” revealed his condition. These articles were not inaccurate, and did not breach Clause 1.

35. Article 4 focused on one of the women who had used the complainant’s sperm. The article was an interview where the woman gave a first-person account of her experiences, which she was entitled to do. While the article did report that the woman said the complainant “never told her about incurable genetic condition before he fathered TWO of her children”, it mentioned the contract and made clear why the complainant felt she had not been told about the condition by reporting “the mother now realises that a reference to his genetic condition was in the paperwork, but says MacDougall never flagged it and she did not have the life skills to identify the issue.” As such, the article made clear that there had been some disclosure of the complainant’s condition and did not breach Clause 1.

36. The Committee then turned to the question of whether Clause 3 or Clause 10 had been breached during the journalist’s interactions with the family. The crux of the parents’ complaint appeared to be that the journalist had not identified herself to them before they had shared the information that appeared in the articles under complaint – though they acknowledged that she had identified herself at a later point during her visit to the property. The journalist denied she had withheld the fact she was a reporter. The Committee was not in a position to know exactly what happened during the interaction, and whether the reporter had identified herself on entry to the property. However, in any event, the terms of Clause 3 make clear journalists must identify themselves and whom they represented when asked. It was not in dispute that at some point during the visit, the reporter had willingly volunteered that she had an editor and who she worked for. In terms of Clause 10, as it was not in dispute that at some point during the interaction the reporter had explained she was a journalist, the Committee did not consider that she had engaged in misrepresentation as defined by the terms of Clause 10. As such, this interaction did not raise a breach of Clause 3 or Clause 10.

37. The Committee also considered whether the publication had breached the Code by phoning the parents three or four times in the week following the interaction with the journalist. Clause 3 stipulates that publications must not persist in contacting individuals after being asked to desist, but it does not prevent journalists from calling individuals to seek their comment or asking further questions. It was not in dispute between the parties that the journalist had called the parents a number of times in the week following their initial interaction. However, the parents did not state that they had asked the reporter to stop contacting them; the reporter also denied she'd ever been asked to desist contact. On this basis, there was no breach of Clause 3.

38. The Committee then considered whether Clause 3 had been breached by the journalist's phone interview with the complainant, where the complainant shared information included in article 6. The complainant had alleged that when he answered the phone he had told the reporter to leave him alone, but she had kept on asking him questions. He did not dispute that he had shared information with the reporter at this point. He also said he specified he did not want anything he said published. The reporter denied the complainant said he did not want information published and once the complainant made it clear that he was not interested in a detailed interview, said she made no further contact. As the accounts of the complainant and the reporter differed, it was not possible for the Committee to establish exactly what had happened during the call. However, it was not in dispute between the complainant and the publication that only one phone call had taken place, and the complainant did not allege that any further attempts to contact him had been made after that phone call. The complainant did not hang up the phone, but stayed on the line to the reporter and shared information with her, implying that he was, at least to an extent, willing to speak to the reporter. Clause 3 is designed to protect individuals who do not wish to engage with the press from being repeatedly contacted. Where there was evidence that the complainant had been willing to speak to a journalist and share information about his feelings with her, the Committee did not consider there to be enough to suggest the complainant had been harassed by the reporter. There was no breach of Clause 3 on this point. Additionally, Clause 3 does not make any stipulations about subjects giving their permission for information to be published, and so the complainant's concerns on that point did not engage the Clause.

39. The Committee considered the complainant's concerns that the articles were inaccurate because they were biased against him. Biased articles do not, in and of themselves, represent a breach of the Code; the Code does not prohibit the publication of biased or one-sided information. There was no breach of Clause 1 on this point.

40. The Committee then turned to the complainant's concerns that the articles' inclusion of his photographs breached the terms of Clause 2. The Committee first noted that it was not in dispute that the pictures were publicly available Facebook profile pictures. Given that the images of the complainant had been publicly accessible on social media, the Committee considered the images to be

in the public domain and that the complainant therefore did not have a reasonable expectation of privacy over them. The Committee further noted that the images simply showed the complainant's likeness; they did not reveal anything private about him. There was no breach of Clause 2 on this point.

41. The Committee considered the complainant's concern that article 6 breached Clause 1 because he had misspoken during his interview. The complainant did not allege that the article had inaccurately reported on what he had said, just that the words themselves were not what he had intended to say. The publication's obligation under Clause 1 of the Code was to report the complainant's words accurately, and it was not in dispute that it had done so. There was no breach of Clause 1 on this point.

42. The Committee then turned to the complainant's concern that article 6 breached Clause 2 because it contained details about his thoughts and feelings about the court case, which he considered private. In circumstances where the complainant had willingly shared information about his feelings about the court case with the journalist, the Committee did not consider that the publication's decision to publish the comments constituted a failure to respect the complainant's private life or represented an intrusion into his privacy. There was no breach of Clause 2.

43. The Committee considered whether article 6 breached Clause 12. Clause 12 stipulates the press must avoid prejudicial or pejorative reference an individual's disability and details should avoided unless they are genuinely relevant to the story. The complainant had not said that any of the articles under complaint included any such reference to a protected characteristic, and as such there was no breach of the Clause.

## Conclusions

43. The complaint was upheld under Clause 1.

## Remedial action required

44. Having upheld the complaint under Clause 1(i) and Clause 1 (ii), 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, with the terms and placement determined by IPSO.

45. The individual breaches of Clause 1 in articles 1, 2, and 6 occurred in the text of the article rather than the headline. As such, the Committee considered a correction to each article to be the appropriate remedy to this breach. The corrections should set out the inaccuracy and make the correct position clear, stating the complainant had mentioned he had fragile X syndrome in the contract he had shared with the women who used his sperm. Each article found

to have breached the Code should be individually corrected as each one contained slightly different inaccuracies.

46. The Committee then considered the placement of these corrections. If the publication intends to continue to publish the online articles without amendment, the corrections to the article should be published beneath the headline. If the articles are amended, the correction should be published as a footnote.

47. The wording should be agreed with IPSO in advance and should make clear that it has been published following an upheld ruling by the Independent Press Standards Organisation.

Date complaint received: 22/10/2022

Date complaint concluded by IPSO: 11/08/2023

Independent Complaints Reviewer

The publication complained to the Independent Complaints Reviewer about the process followed by IPSO in handling this complaint. The Reviewer found there was a procedural flaw in the Committee's ruling as it did not appear to have taken the full judgment on the complainant's court case into account. The complaint was therefore returned to the Committee to reconsider. The Committee reconsidered the complaint, but did not alter its findings.

Decision of the Complaints Committee –12029-22/13148-22/14369-23  
MacDougall v Mail Online

Summary of Complaint – 14369-23

1. James MacDougall, acting on his own behalf and on behalf of his parents, complained to the Independent Press Standards Organisation that Mail Online breached Clause 1 (Accuracy), Clause 2 (Privacy), Clause 3 (Harassment), Clause 10 (Clandestine devices and subterfuge) and Clause 12 (Discrimination) of the Editors' Code of Practice in the following articles:

- Article 1: "EXCLUSIVE 'He just wanted to help these women fulfill their dreams' Family of sperm donor who fathered 15 children with lesbian mothers despite incurable genetic condition claim he did it because he's 'kind hearted' and 'would do anything for anybody'", published on 31 May 2022;
- Article 2: "EXCLUSIVE: Sperm donor with incurable condition that leads to low IQ who fathered 15 children to lesbian mothers and then fought them for parental access is unmasked by judge to stop more women responding to his online ads", published on 30 May 2022;
- Article 3: "EXCLUSIVE Sperm donor, 37, who fathered 15 children to lesbian mothers despite having incurable condition that leads to low IQ is banned by judge from contacting one woman he impregnated twice", published on 12 October 2022;
- Article 4: "EXCLUSIVE: Lesbian mother says sperm donor with Fragile X syndrome never told her about incurable genetic condition before he fathered TWO of her children - and she now fears at least one of them may have inherited it", published on 1 June 2022;
- Article 5: "How could they all be so reckless? Mother who had two daughters with an unregulated sperm donor she found on social media tells FRANCES HARDY she failed to read the small print which warned of his incurable genetic condition", published on 10 June 2022;
- Article 6: "'I did a good thing by helping these women have children': Sperm donor who fathered 15 children with lesbian mothers despite incurable genetic condition insists he has done 'nothing wrong' as his parents claim he 'would do anything for anybody'", published on 31 June 2022.

2. All of the articles under complaint concerned a family court case involving the complainant – who has autism and is a carrier for a genetic condition called fragile x syndrome. The complainant had acted as a private sperm donor for multiple women. He had subsequently applied to the court for parental responsibility orders in relation to some of the children, and some of the women had sought to prevent him from contacting the children they had conceived using his sperm. During the case, these women had claimed the complainant had not

made them aware that he was a carrier of the gene for fragile x syndrome, though the complainant disputed this. At the end of the court case the judge had made the complainant's identity public.

3. Article 1 reported that, "the family of a Facebook sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition that can be inherited have claimed that he was offering his services because he's 'kindhearted'."

4. Article 2 reported that the complainant "advertised as sperm donor without revealing his incurable genetic condition" and that he was a "sperm donor who offered his services via social media [and had] fathered fifteen children to lesbian women without telling them about his inheritable condition, a court today heard".

5. Article 3 reported that the complainant "went ahead with private sperm donations to a number of lesbian women after advertising himself on social media without fully revealing his condition" and that the "judge found that MacDougall showed 'fundamental irresponsibility' by not being upfront about his condition".

6. Article 4 contained quotes from women who had conceived children using the complainant's donor sperm. It reported that a "lesbian mother says sperm donor with fragile x syndrome never told her about incurable genetic condition before he fathered TWO of her children". It also contained the following direct quote from the woman: "I feel angry that [the complainant] may have passed this on to my daughter. He never mentioned it. He should have told me about his condition but he didn't and I blame him." It also reported that one of the women "told MailOnline that she had no idea he had the condition when she spoke to him about helping her and her female partner to conceive" and that she "now realise[d] that a reference to his genetic condition was in the paperwork, but says [the complainant] never flagged it and she did not have the life skills to identify the issue."

7. Article 5 said that one woman – who had conceived a child using the complainant's sperm – had, "when considering the credentials of a father to her children, barely scanned the closely-typed three page document he presented her with — in which was buried the fact that he has fragile x — before agreeing to pay him £5 travelling expenses for supplying his sperm", and that another had "failed to read the small print which warned of his incurable genetic condition". The article also alleged that "he had fathered 15 children to lesbian women without making clear to them that he has an incurable genetic condition."

8. Article 6 contained quotes from an interview with the complainant. The complainant was quoted as having said that he "did a good thing by helping these women have children" and that he hadn't "done anything wrong". He had reportedly said that "the full truth will come out" and that he was "very angry and

upset". It also reported a "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition".

9. All of the articles under complaint also contained quotes from an interview with the complainant's parents. They described the complainant as "'kind-hearted' but 'gullible'" and were reported as having said that he "just wanted to help those people, help those women in a gay relationship fulfil their dreams and become parents."

10. The complainant said that the articles were inaccurate in breach of Clause 1, as they each said that he had not told the women that he was a carrier for fragile x syndrome. He said that he had told the women, as it was in the contract the women who used his sperm all signed. He supplied a copy of this contract to IPSO to support his complaint. The contract was three pages long with 23 numbered paragraphs. Paragraph 18 of the contract stated: "The RECIPIENT of and the PARTNER of the RECIPIENT understand that the donor is a carrier for fragile X"; there were no other references to fragile x syndrome within the document.

11. The complainant also said the articles breached Clause 1 because they were biased against him and did not tell his side of the story.

12. The complainant also said that article 6 included a further breach of Clause 1, as the article included quotes from an interview with him. He said that he had misspoken during this interview, and not said what he actually meant – therefore, the inclusion of these quotes was inaccurate, though he did not dispute that he had said them.

13. The complainant also said the publication had breached Clause 3 and Clause 10 by obtaining the quotes from the interview with his parents in circumstances of harassment, and through the use of subterfuge. In support of these complaints, the complainant's parents provided two statements to IPSO which outlined their version of events.

14. The complainant's parents said a journalist had come to their door and said she was there to "help" their son. She asked whether the complainant was at home and was told he was not. She went on to say that the judge had released the complainant's name. She told the parents not to worry about this as she was there to help them and the complainant, as it was unusual for a judge to release a person's name. The parents said this interaction gave the impression that the journalist was from the court. There was a discrepancy between the two statements provided by the parents as to whether the parents had assumed that the journalist was from the court, or whether the journalist had explicitly said that this was the case. The parents then told her some more information about the complainant. She showed them two pictures, and they identified one as showing the complainant. At this point, as the journalist was writing, she asked for the complainant's phone number - she said she would talk to her editor. It was at this point that the parents said they realised she was a journalist; the parents



asked her who she worked for, and she said the Daily Mail. She asked for pictures of the children and a more recent picture of the complainant. The parents declined to provide this and said that they did not want anything published. They said that they repeated this “a couple of times”. The parents said, “they should finish now”, and the journalist left.

15. The parents alleged in their first statement that the journalist then phoned at least three to four times in the week following this interaction; though they did not specify what had been said during these calls, and in their later statement this allegation was removed, and it was alleged that another publication had called the parents.

16. The complainant also said that the contents of article 6 breached Clause 3, because he said the quotes from him included in the article had been obtained during a phone call which he felt harassed by. He described the phone call as follows: he told the journalist to leave him alone, but they kept asking questions; he said he did not want to speak to the journalist and that he did not want anything published. The complainant said that he was not aware that the contents of this phone call would be published.

17. The complainant also said that all six articles were in breach of Clause 2 because they contained photographs from his Facebook account, which he considered private.

18. The complainant also said article 6 was in breach of Clause 2 because it contained details about his thoughts and feelings regarding his court case – that he was angry and upset – which he considered private.

19. The complainant also said article 6 was in breach of Clause 12 because the publication did not consider he was a vulnerable adult with autism when it interviewed him.

20. The publication did not accept a breach of the Code in relation to any of the articles under complaint, or any of the alleged behaviour complained of.

21. Turning first to the alleged breach of Clause 1, the publication said it was not inaccurate to report that the complainant had not told the women he was a carrier for fragile x syndrome. While it accepted that the complainant had included reference to the condition in the contract, it said he had not offered even a basic definition of the syndrome, or explained the implications of him being a carrier and what that might mean to the prospective mothers. It also said judgment referred to one woman, KE, who had connected with the complainant through social media and had never entered a written agreement with the complainant. It said the crux of the judge’s reasoning for making public the complainant’s identity – which is not normal practice in family courts – was that he had not fully explained the implications of his condition. The publication referred to the case’s public judgment where the judge had said: “I [...] have no

confidence in him fully explaining to any woman the true implications of his fragile x syndrome.”

22. The publication cited other parts of the court judgment to support its position that the complainant had not made the women aware that he was a carrier for fragile x syndrome. This included the following passages:

“I also take into account the fundamental irresponsibility of [the complainant] acting as a sperm donor whilst knowing that he had fragile x syndrome, an inheritable condition, without at the very least making it entirely clear to the mothers concerned the implications of Fragile X. [The complainant] knew that he could not be a sperm donor through a clinic because of his condition. He told the [court-appointed] Guardian that he thought fragile x syndrome was not serious and it was for the mothers to do the research. Even if [the complainant] does not understand the true implications of Fragile X, he does know it prevents him acting through a donor clinic.

“On page 3 of the agreement it is recorded that JM has fragile x syndrome, however there is no explanation of what this means. [One of the women] said that she has difficulty reading, which was clear from her oral evidence. She said that she did not read that far into the agreement and therefore did not read the part about fragile x. [A second woman] said that she did read more of the agreement but either did not see or did not appreciate the significance of the reference to fragile x syndrome.

“Although the agreement does refer to fragile x, [the complainant] took no steps to explain the condition to [either woman] and no steps to ensure they understood. [The complainant] took advantage of these young women’s vulnerability and their strong desire to have children.

“The position in respect of KE is rather different. I will not set this out in any detail given that I cannot reach any conclusions on the facts of her case or make final orders at this stage of the proceedings. However, the undisputed evidence is of some relevance to the determination in the other two cases. KE contacted JM as a sperm donor via the social media page. There was no written agreement between KE and JM. B was born in July 2018. In September 2018 JM and KE commenced a relationship. JM had contact with B throughout 2019’.”

23. The publication also did not accept that article 6 had breached Clause 1 by reporting the comments made by the complainant – regardless of his intentions when speaking to the journalist, it was not in dispute that he had said what the article reported.

24. The publication did not accept that the journalist had harassed the complainant’s parents in breach of Clause 3. It said that it was not the case that the reporter had not told the parents that she was a journalist – it said the reporter introduced herself as a “Midlands based freelancer making inquiries on behalf of the MailOnline,” and the parents had subsequently volunteered positive

comments about their son in the hopes they would be published. The publication said at no point did the parents ask for their comments to be off-the-record, and that the parents gave the reporter her son's mobile telephone number so that the journalist could contact him. It also said that the complainant's mother offered to assist the reporter in finding the names of the mothers of the complainant's children. The publication provided the reporter's shorthand notes of the encounter which were fourteen pages long and handwritten. The notes included the son's name and phone number.

25. The publication then said that, following the visit to the parents' home, the reporter had called "a few times" the following week to see if the complainant was home and available to speak. The publication noted that the parents had not said that they felt harassed or intimidated by these phone calls, or by the in-person conversation, and had not requested that she desist from contacting them.

26. The publication also did not accept that the journalist's interaction with the parents breached Clause 10, as the journalist had misrepresented herself or who she worked with – she had introduced herself and made clear she was working on behalf of the publication.

27. The publication did not accept a breach of Clause 2. It said the images included in the articles came from the complainant's publicly accessible Facebook profile pictures and were therefore in the public domain. The publication also did not accept that article 6 intruded into the complainant's private life by publishing his thoughts and feelings about the case against him. It noted that it was entirely expected that someone would be upset by a court ruling against them and that it failed to see how his feelings in the matter – freely given to the publication as part of an interview – could be regarded as information over which the complainant had a reasonable expectation of privacy.

28. The publication did not accept a breach of Clause 3 regarding the additional phone calls made to the parents in the week following the meeting. It said the reporter called a few times the following week to see if the complainant was home as she had been told by his parents that he sometimes stayed with friends who lived nearer his place of work. She was also hoping to get contact details of the mothers of the babies from the sperm donations, that had been promised by the complainant's mother. The publication said the reporter was not asked to desist contact.

29. The publication did not accept that the complainant's concerns about the articles being biased against him engaged the Code.

30. The publication did not accept that article 6 was discriminatory in breach of Clause 12. It said if the complainant's intention was to suggest that the story should not have been reported at all in respect of his autism, this did not engage the Clause.

## Relevant Clause 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.

### 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.

### 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.

### Committee Findings

31. The Committee first considered whether the articles had – as alleged by the complainant – inaccurately reported that he had not told the women about his carrier status. It was not in dispute that the complainant had provided a number of the women who used his sperm with a contract that disclosed that he had fragile x, although there was one woman who had not received any written agreement. The complainant's position was that this showed he had told the women of his status; the publication's position was that he had not informed one woman at all, and the other women, who had received the contract, had not had the condition explained to them, or been made fully aware of its implications. It considered its position was supported by the Family Court judgment. The Committee therefore took the judgment provided by the publication into account.

32. The judgment made clear that, while the contract had included the name of the condition, this was not enough to ensure the women fully understood its implications. In addition, while the judgment made clear that at least one woman had not received the contract, it did not appear to be in dispute that the majority of the women referred to in the articles had received a copy of the contract which included a reference to his condition. As such, the Committee considered that some of the articles had gone too far by reporting in absolute terms that the complainant had not told any of the women about his status as a carrier, where this had been disclosed in the contract. These articles were: article 1, which described the complainant as "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition"; article 2, which said the complainant "advertised as sperm donor without revealing his incurable genetic condition"; and article 6, which similarly described the complainant as "sperm donor who has fathered fifteen children to lesbian women without telling them he has a genetic condition". Where the publication had access to a court judgment that made clear the complainant had shared a contract with at least some of these women, this represented a failure to take care not to print inaccurate information. These articles therefore breached the terms of Clause 1 (i).

33. Where the inaccuracies pertained to the serious matter of whether the complainant had deceived the women he had donated sperm to, and also related to a legal judgment, the Committee considered the inaccuracies to be significant and in need of correction under the terms of Clause 1 (ii). No correction had been offered and so there was a breach of Clause 1 (ii) on this point.

34. Articles 3 and 5 did not state explicitly that the complainant had not told the woman about his condition. Article 3 reported the complainant donated sperm “without fully revealing his condition” and that he’d not “be[en] upfront about his condition”. Article 5 referenced the “small print which warned of his incurable genetic condition” and that the complainant “had fathered 15 children to lesbian women without making clear to them that he has an incurable genetic condition.” It also referred to “the closely-typed three page document he presented her with — in which was buried the fact that he has Fragile X”. The articles either made clear that the contract existed or qualified its claims by noting the complainant had not “fully” revealed his condition. These articles were not inaccurate, and did not breach Clause 1.

35. Article 4 focused on one of the women who had used the complainant’s sperm. The article was an interview where the woman gave a first-person account of her experiences, which she was entitled to do. While the article did report that the woman said the complainant “never told her about incurable genetic condition before he fathered TWO of her children”, it mentioned the contract and made clear why the complainant felt she had not been told about the condition by reporting “the mother now realises that a reference to his genetic condition was in the paperwork, but says MacDougall never flagged it and she did not have the life skills to identify the issue.” As such, the article made clear that there had been some disclosure of the complainant’s condition and did not breach Clause 1.

36. The Committee then turned to the question of whether Clause 3 or Clause 10 had been breached during the journalist’s interactions with the family. The crux of the parents’ complaint appeared to be that the journalist had not identified herself to them before they had shared the information that appeared in the articles under complaint – though they acknowledged that she had identified herself at a later point during her visit to the property. The journalist denied she had withheld the fact she was a reporter. The Committee was not in a position to know exactly what happened during the interaction, and whether the reporter had identified herself on entry to the property. However, in any event, the terms of Clause 3 make clear journalists must identify themselves and whom they represented when asked. It was not in dispute that at some point during the visit, the reporter had willingly volunteered that she had an editor and who she worked for. In terms of Clause 10, as it was not in dispute that at some point during the interaction the reporter had explained she was a journalist, the Committee did not consider that she had engaged in misrepresentation as defined by the terms of Clause 10. As such, this interaction did not raise a breach of Clause 3 or Clause 10.

37. The Committee also considered whether the publication had breached the Code by phoning the parents three or four times in the week following the interaction with the journalist. Clause 3 stipulates that publications must not persist in contacting individuals after being asked to desist, but it does not prevent journalists from calling individuals to seek their comment or asking further questions. It was not in dispute between the parties that the journalist had

called the parents a number of times in the week following their initial interaction. However, the parents did not state that they had asked the reporter to stop contacting them; the reporter also denied she'd ever been asked to desist contact. On this basis, there was no breach of Clause 3.

38. The Committee then considered whether Clause 3 had been breached by the journalist's phone interview with the complainant, where the complainant shared information included in article 6. The complainant had alleged that when he answered the phone he had told the reporter to leave him alone, but she had kept on asking him questions. He did not dispute that he had shared information with the reporter at this point. He also said he specified he did not want anything he said published. The reporter denied the complainant said he did not want information published and once the complainant made it clear that he was not interested in a detailed interview, said she made no further contact. As the accounts of the complainant and the reporter differed, it was not possible for the Committee to establish exactly what had happened during the call. However, it was not in dispute between the complainant and the publication that only one phone call had taken place, and the complainant did not allege that any further attempts to contact him had been made after that phone call. The complainant did not hang up the phone, but stayed on the line to the reporter and shared information with her, implying that he was, at least to an extent, willing to speak to the reporter. Clause 3 is designed to protect individuals who do not wish to engage with the press from being repeatedly contacted. Where there was evidence that the complainant had been willing to speak to a journalist and share information about his feelings with her, the Committee did not consider there to be enough to suggest the complainant had been harassed by the reporter. There was no breach of Clause 3 on this point. Additionally, Clause 3 does not make any stipulations about subjects giving their permission for information to be published, and so the complainant's concerns on that point did not engage the Clause.

39. The Committee considered the complainant's concerns that the articles were inaccurate because they were biased against him. Biased articles do not, in and of themselves, represent a breach of the Code; the Code does not prohibit the publication of biased or one-sided information. There was no breach of Clause 1 on this point.

40. The Committee then turned to the complainant's concerns that the articles' inclusion of his photographs breached the terms of Clause 2. The Committee first noted that it was not in dispute that the pictures were publicly available Facebook profile pictures. Given that the images of the complainant had been publicly accessible on social media, the Committee considered the images to be in the public domain and that the complainant therefore did not have a reasonable expectation of privacy over them. The Committee further noted that the images simply showed the complainant's likeness; they did not reveal anything private about him. There was no breach of Clause 2 on this point.

41. The Committee considered the complainant's concern that article 6 breached Clause 1 because he had misspoken during his interview. The complainant did not allege that the article had inaccurately reported on what he had said, just that the words themselves were not what he had intended to say. The publication's obligation under Clause 1 of the Code was to report the complainant's words accurately, and it was not in dispute that it had done so. There was no breach of Clause 1 on this point.

42. The Committee then turned to the complainant's concern that article 6 breached Clause 2 because it contained details about his thoughts and feelings about the court case, which he considered private. In circumstances where the complainant had willingly shared information about his feelings about the court case with the journalist, the Committee did not consider that the publication's decision to publish the comments constituted a failure to respect the complainant's private life or represented an intrusion into his privacy. There was no breach of Clause 2.

43. The Committee considered whether article 6 breached Clause 12. Clause 12 stipulates the press must avoid prejudicial or pejorative reference an individual's disability and details should avoided unless they are genuinely relevant to the story. The complainant had not said that any of the articles under complaint included any such reference to a protected characteristic, and as such there was no breach of the Clause.

### Conclusions

43. The complaint was upheld under Clause 1.

### Remedial action required

44. Having upheld the complaint under Clause 1(i) and Clause 1 (ii), 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, with the terms and placement determined by IPSO.

45. The individual breaches of Clause 1 in articles 1, 2, and 6 occurred in the text of the article rather than the headline. As such, the Committee considered a correction to each article to be the appropriate remedy to this breach. The corrections should set out the inaccuracy and make the correct position clear, stating the complainant had mentioned he had fragile X syndrome in the contract he had shared with the women who used his sperm. Each article found to have breached the Code should be individually corrected as each one contained slightly different inaccuracies.

46. The Committee then considered the placement of these corrections. If the publication intends to continue to publish the online articles without amendment,



the corrections to the article should be published beneath the headline. If the articles are amended, the correction should be published as a footnote.

47. The wording should be agreed with IPSO in advance and should make clear that it has been published following an upheld ruling by the Independent Press Standards Organisation.

Date complaint received: 22/10/2022

Date complaint concluded by IPSO: 11/08/2023

#### Independent Complaints Reviewer

The publication complained to the Independent Complaints Reviewer about the process followed by IPSO in handling this complaint. The Reviewer found there was a procedural flaw in the Committee's ruling as it did not appear to have taken the full judgment on the complainant's court case into account. The complaint was therefore returned to the Committee to reconsider. The Committee reconsidered the complaint, but did not alter its findings.

## APPENDIX E

### Decision of the Complaints Committee – 16958-23 A man v mirror.co.uk

#### Summary of Complaint

1. A man complained to the Independent Press Standards Organisation that mirror.co.uk breached Clause 1 (Accuracy), Clause 2 (Privacy), and Clause 4 (Intrusion into grief or shock) of the Editors' Code of Practice in an article headlined "Brit tourist plummets 130ft from waterfall during terrifying hike with friends", published on 26 December 2022.
2. The article, which appeared online only, reported that the complainant had "narrowly avoided death after plummeting 130ft from a waterfall" after he "lost his footing". The sub-headline reported that: "A British man narrowly escaped death in Koh Samui, Thailand as he slipped off a 130ft high waterfall he was hiking up with a group of friends". The article stated he "reportedly broke his hip" and continued by describing the "rescue operation" undertaken to transfer the complainant to the bottom of a cliff which "took around four hours".
3. The article also included four images. The first image showed a group of people, including a rescue team, and was captioned: "A British tourist who ignored warning signs on a waterfall"; the second showed the "waterfall which the group hiked up"; the third image showed the complainant on a stretcher with a rescue team and was captioned, "[t]he rescue operation underway"; and the fourth showed the rescue operation from a further away and was captioned, "[a] rescue team of around 30 people winched the man to safety".
4. The complainant said that the article was inaccurate in breach of Clause 1 because he had not fallen 130 feet. Rather, he had fallen approximately 10 feet. He also said that he had not broken his hip in the accident but had instead fractured his coccyx and skull.
5. The complainant said the article also breached Clause 2 and Clause 4 because it contained graphic pictures of him immediately after his accident. He said that, when these pictures were taken, he was clearly in pain and that the images had been published without his consent. He said the article had been publicised at a time of trauma when he and his family were already distressed and included private information including medical details, and clear facial images.
6. The complainant also said that he had received a message two days after the accident, when he was still in hospital, from a reporter acting on behalf of the publication asking for more information. The complainant said this added to his upset and was a breach of Clause 4.

7. The publication did not accept that the article breached the Code. In relation to the distance fallen by the complainant, it stated that the sub-headline immediately made clear that it was the waterfall that was 130 feet tall by stating, "...he slipped off a 130ft waterfall". Regardless of the fact it did not think this was a breach of Clause 1, the publication said it amended the headline and body of the article to clarify that the reference to "130ft" was to describe the height of the waterfall, rather than the distance of the fall.

8. Regarding the injuries sustained by the complainant, the publication did not accept that the article was inaccurate on this point. It provided the reporter's notes that it said showed at the time of the incident, paramedics at the location believed he had likely broken his hip. It also provided other reports by the Thai press that predated the article under complaint; these reports referred to the complainant's hip when describing the injuries he had suffered. The publication said, in any event, it was not significantly inaccurate, as the coccyx was in the same general region of the body as the hip.

9. Notwithstanding the above, the publication published the following footnote correction on 28 February, 11 days after being made aware of the complainant's concerns:

"A previous version of this article stated that a British tourist fell 130ft from a waterfall in Thailand. In fact, while the waterfall is 130ft tall, the tourist fell a much shorter distance. The article also said that he reportedly broke his hip. We have since learned that although he was suspected to have suffered an injury to his hip in the immediate aftermath of the fall, the tourist actually suffered an injury to his coccyx. We are happy to clarify this."

10. The publication also did not accept a breach of Clause 2. It said unpixellated and unobstructed footage of the rescue operation had been widely available via Thai media outlets, including on national television, prior to the article being published. It shared a YouTube video from a Thai news source, which was available to view in the UK, that appeared to be the source of the images of the rescue operation. The publication's position was that pictures and videos of the incident had been widely reported in Thailand and had therefore entered the public domain prior to the publication of the article. It provided three examples of articles in Thai which had been translated into English. It said that it had decided to include photographs but to omit the video. The publication also said that most of the pictures included in the article simply showed the rescue operation more generally, rather than the complainant specifically. It added that the complainant had referred to the accident on social media and provided a video from the complainant's Instagram account in which he had spoken about his experience. It said that, while the video was later removed, it had previously been available to the public. As such, the publication asserted that there was a significant level of material available in the public domain regarding the accident.

11. Turning to Clause 4, the publication said the reporter had made a considered and sympathetic approach to the complainant. It stated the reporter had expressed their sympathies to the complainant and his family and provided a copy of the email the reporter had sent. The email said:

“Hey [Complainant’s name], How are you? There are reports that you may have fallen off a waterfall in Koh Samui and injured your hip? I am reporting on this potential incident, and I just wanted to check in with you and see how you were doing and verify it was you involved in the accident? It must have been terrifying to happen, but I am so glad you are safe. I would hate to report anything incorrect so please do let me know whether this is right or not. Thanks so much and I hope you managed to have a merry Christmas despite this horrible accident. I hope your hip is not causing you too much pain. Thanks, [Reporter’s name]”

12. The publication also said the article was in the public interest because it informed its readers of the dangers of trips of this nature, especially in relation to this specific waterfall which was well-known for similar accidents. It also said the article served to stress the warning signs that exist on these excursions. It said this had been considered by the relevant editors before the article was published and the decision to publish the photograph was made.

13. While the complainant acknowledged that the accident was reported in Thai media, he said such coverage would have had limited exposure in the UK – particularly where the articles were written in Thai and had needed to be translated by the publication. The complainant said the publication of the article had significantly increased the reach and impact of the story. Regarding whether the article was in the public interest, he said that the location was already known for such accidents and so would have been a factor for consideration for tourists before the article.

### Relevant Clause 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.

## 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 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.

## 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

14. The Committee first considered whether it was significantly inaccurate to report the man fell 130ft instead of 10ft. The publication did not dispute that this information was inaccurate though they disputed it was in breach of the Code. However, the Committee found a breach Clause 1 (i) on this point, where the information was inaccurate and the publication were not able to demonstrate that they had verified the accuracy of this claim prior to publication.

15. Where the inaccuracy appeared in the headline and exaggerated the level of danger and severity of the fall, the Committee considered it to be significant, and therefore in need of a prompt and prominent correction under the terms of Clause 1 (ii).

16. The headline was amended to remove the inaccuracy and a footnote correction was offered within 11 days of the publication being made aware of the complainant's concerns. Allowing for the time the publication needed to ensure its correction was accurate, the Committee considered the correction to have been offered sufficiently promptly. It also considered a footnote correction to be sufficiently prominent, taking into account the fact that the publication had taken prompt steps to resolve the complaint and had amended the article to remove the inaccuracy. The footnote also put the correct position on record, which was that he had not fallen 130ft, and had in fact fallen a much shorter distance. There was no further breach of Clause 1(ii).

17. The Committee then considered whether it was inaccurate to report the man had fractured his hip when it was actually his coccyx and skull that were fractured in the accident. The Committee noted that the article did not state as fact that the man had broken his hip, it said he had "reportedly" broken his hip. Where it was not in dispute that at the time of publication this had been reported in other outlets, the Committee did not consider this inaccurate. There was no breach of Clause 1 on this point.

18. The Committee then turned to the complainant's concern that the article had breached his privacy by publishing photographs of him during the rescue operation without his consent. While the Committee had sympathy for the complaint's concerns on this point, the Committee was required to consider the complaint by reference to the terms of Clause 2. The Committee took into account the nature of the photographs in which the complainant appeared. Two of the photographs were group shots in which the complainant was almost completely obscured from view. In the third, whilst the complainant was visible, his head and the side of his face were heavily bandaged. The Committee noted that the photograph illustrated the rescue operation which had taken place and the means by which the rescue team had taken the complainant down the hillside. Furthermore, the images were taken in a public place and everything

they showed would have been visible to the naked eye. The Committee also accounted for the fact the complainant, post-publication, made public disclosures of information about the incident through his social media. The fact that the complainant had willingly put information about the incident into the public domain – albeit post-publication – indicated that he was willing to put certain elements pertaining to the incident into the public domain, and did not consider it completely private. Taking these factors into consideration, the Committee did not consider the images represented an intrusion into the complainant's private life in a manner the publication would be expected to justify. Additionally, the Committee noted that the publication had taken steps to protect the complainant's privacy by not naming him in the article. Taking all these considerations into account, the publication of the photographs did not amount to a breach of Clause 2.

19. Although Clause 2 was not ultimately breached, the Committee noted that the publication had not demonstrated that it had considered whether the publication of information about the complainant served, and was proportionate to, the public interest. It had only said that the relevant editors had considered that the article itself was in the public interest prior to publication, which was not a sufficient defence under the public interest portion of the Code – as there was no reference to whether the publication had considered whether public interest served was proportionate to the alleged breach of the Code. The Committee also noted there is no public interest exception for possible breaches of Clause 1 or Clause 4.

20. The Committee next considered whether the publication of photographs showing the man being rescued had breached Clause 4. While the Committee acknowledged that the articles' publication had caused the complainant and his family distress, it did not consider the images of the complainant made light of the incident or minimised its importance. The images, taken in conjunction with the article as a whole, conveyed the seriousness of the incident, but did not go as far as to show any graphic details of his injuries. Additionally, while the Committee acknowledged the severe distress the incident had caused, it did not consider that the seriousness of the incident reached the high bar set by the terms of Clause 4, which generally relates to serious and fatal incidents. Taking this into account, the Committee did not consider the reporting of the incident to be in breach of Clause 4.

21. Finally, the Committee considered whether the pre-publication approach by the journalist had been made with sympathy and discretion, in line with the requirements of Clause 4. While the Committee appreciated that the complainant was distressed by being contacted by the journalist, the terms of the Clause do not prohibit journalists from approaching individuals for comment after distressing incidents. The Committee noted the tone of the email was polite and professional; the reporter had sent the complainant well wishes and said she was glad he was safe. There have been no further approaches, and the email did not demonstrate that the journalist had not acted with sympathy or discretion. There was no breach of Clause 4 on this point.

Conclusion(s)

22. The complaint was partly upheld under Clause 1.

Remedial Action Required

23. The published corrections clearly put the correct position on record and were offered promptly and with due prominence. No further action was required.

Date complaint received: 26/01/2023

Date complaint concluded by IPSO: 26/10/2023



**APPENDIX F**

<u>Paper no.</u>	<u>File number</u>	<u>Name v publication</u>
2840	10744-22	Gannon v Basildon Echo
2624	10284-22	Hodgson v The Times
2877	13041-22/13042-22	Muir v The Renfrewshire Gazette/barrheadnews.com
2878	12513-22	Muir v Paisley Daily Express
2879	12259-22	Esslemont v The Daily Telegraph
2881	12648-22	Grandon v hadleigh.nub.news
2908	08316-23	Webb v metro.co.uk
2922	09816-23	Extinction Rebellion v The Times
2923	16843-23	Meacham v The Sunday Telegraph
2935	16946-23	Meacham v kentonline.co.uk
2902	00740-23	A woman v birminghammail.co.uk
2914	00721-23	Hammond v The Daily Telegraph
2917	14697-23	Friel v thejc.com
2910	14301-22	Clews v Daily Mail
2874	13122-22	Parkinson v Doncaster Free Press
2905	12126-22	Chris Nash/Paul Waugh/The Lighthouse Group v Daily Mail
2939	10016-23	The Islamic Centre for England v The Jewish Chronicle
2943	17365-23	Smith v The Times
2946	17972-23/17973-23	Welford v mirror.co.uk/dailystar.co.uk
2904	09772-23	Peet v Sunday People
2915	16940-23	Reeson v Sunday Mirror
2928	09808-23	Boyle v The Times
2938	17370-23	Vardy v The Sun
2909	14506-23	Queen Elizabeth's Grammar School v lancashiretelegraph.co.uk
2933	23874-22	Hancock v Daily Mirror
2934	23698-22	Hancock v Sunday Mirror
2940	16942-23	Hood v dailyrecord.co.uk
2941	17771-23	Nassiri v falmouthpacket.co.uk
2970	12013-22	Moss v Surrey Comet

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2931	16626- 23/16787- 23	Busby v Leicester Mercury/Loughborough Echo
2951 2955	15588-23 17284-23	Palin v liverpoolecho.co.uk MacMillan v spectator.co.uk