



IPSO Consultation on Guidelines on Reporting of Gender and Sex:

Briefing Note from Trans Media Watch

Background

IPSO has issued what it calls final draft guidance, intended to support editorial decision-making on reporting of sex and gender identity. It includes relevant case studies.

<https://www.ipso.co.uk/media/2302/ipso-draft-guidance-on-reporting-of-sex-and-gender-identity.pdf>

In other words, they already have a view on how they wish to advise editors, and that, in turn, suggests that changing what is here – for better or ill - is likely to be harder than just leaving well alone. That said, there will be fierce lobbying from the usual suspects.

Individuals and organisations are invited to respond by the deadline of Friday 10th March 2023.

Interacting with the Consultation

This is a largely tick-box driven exercise.

<https://www.ipso.co.uk/what-we-do/consultations/public-consultation-on-guidance-on-reporting-of-sex-and-gender-identity/>

It asks those taking part to respond to each of the following questions, on a five-point scale. For each question, there is opportunity to add additional comment. There is then a sixth question asking for wider comment on the whole.

The questions are:

1. Do you agree or disagree that: The guidance has struck the right balance between upholding the principle of freedom of expression with the ability to provide redress for people who believe they have been treated unfairly. *
2. Do you agree or disagree that: The guidance accurately summarises the application of Editors' Code to the reporting of sex and gender identity. *
3. Do you agree or disagree that: The guidance is well-structured to support journalists in their reporting and editorial work. *
4. Do you agree or disagree that: The guidance is accessible and usable for all audiences. *
5. Do you agree or disagree that: The language used in this guidance is clear and fair. *
6. Please use this space for any other comments about this guidance.

Because the guidance is set out according to major categories within the IPSO Code, these questions do not map to the Code document, and are intended primarily to highlight questions about the guidance as a whole.

Therefore, much comment will belong in the free text boxes linked to questions (5.) and (6.).

On the guidance as a whole, we welcome clarity that commentary should be subject to accuracy tests, in the same way as news. We are concerned at the red line drawn under giving any sort of group right to object (because that enables a continuation of pieces that slate unnamed “Trans Rights Activists”).

Overall, we are concerned not to be too negative. We welcome the effort of the IPSO guidelines, and are happy to acknowledge that there is much good content in here, if applied even-handedly, as opposed to through the prism of transphobia.

However, we are concerned that “the proof of the pudding is in the eating”. Engagement with the code is like wrestling with jelly, as:

- the time taken to deal with complaints remains ludicrously long; and
- any complaint is argued in the narrowest, nit-picking way rather than dealt with in the “spirit” of fairness

Below, we set out the code sections dealt with, together with some commentary on them.

Commentary on individual Code Sections:

1. Accuracy

In general, the press should report accurately (no shit, Sherlock!)

Issues highlighted in the document include:

- Accurate presentation of policy or guidance: e.g., the Time reporting on “chest-feeding”;
- Negotiating different views describing gender identity: report what the interviewee said accurately, but make clear who said it. Beware describing claims of “transphobia as fact when there is no accepted definition of same;
- Comment pieces: there is no provision in the IPSO code for objecting to claims about groups. In general, commenters should not publish inaccuracy.

Questions relating to Accuracy:

- Is the terminology being used likely to create a misleading or inaccurate impression?
- Has any comment, conjecture or characterisation been clearly identified and distinguished?
- Is the basis for any characterisation included within the article?
- If there are claims of fact in an opinion piece, has the publication ensured that care has been taken over the accuracy of these claims?

Points to consider in responding

- On definitions of transphobia, IPSO could use the definition provided by the definition of trans hate crime according to Scots law
- The IPSO guidelines suggest that when wordings such as ‘trans-identified man’ are used as a quote, that should be reported. We have some sympathy with that view, as have some pro-trans journalists. It is accurate; and in some quarters, accurate reporting of what anti-trans campaigners say might help allies to understand what we face.

However, we would question whether such a view would be applied consistently. If IPSO are to allow slur words within anti-trans quotes, would they do the same for other minorities. If not, then this is clear discrimination; if yes, then it could become open season for the return of a range of slurs on grounds of “anti-woke”

- We welcome the guidance that opinions expressed in comment pieces should be subject to an Accuracy test, but would like to see how it is applied.
- We are concerned that some media will claim deadnaming to be an issue of accuracy. The real question should be whether it is relevant, and unless it has specific relevance to a story (a crime report, for instance, where past acquaintances are being actively sought), it is irrelevant.
- We are also concerned that IPSO is still happy to attack “unascertained groups”: that is, it remains OK to cite anonymous groups, or even, as we have been told by IPSO, to have little difficulty with made-up quotes attributed to groups.

2. Intrusion

Privacy is a fundamental right – but it is modified by considerations of public interest, material in the public domain, and what an individual has disclosed.

Factors to take into account:

- Did the individual make their gender identity or sex known
- Is the information in the article already in the public domain? Has it been disclosed by the subject of the article?
- Does the individual have a reasonable expectation of privacy in relation to the information or photographs?

Also important is the nature of the information:

- Might the publication of this information, in context, be intrusive into the individual's sex or gender identity?
- Is there a genuine public interest in the publication of the information?
- What is the trade-off of intrusion vs. public interest?

Points to consider in responding

Commentary here focused again on deadnaming. Key points, where an individual is alive:

- Is it 'reasonable' to refer to a trans person by their deadname? And if they consider deadname required on grounds of accuracy, would they apply the same principle to maiden name. Or birth name for actors (e.g., the individual named "Marion Morrison" is likely better known to most people as "John Wayne");
- Is there a risk to the person's safety? Deadnaming is relevant here. A risk-assessment is necessary – and it should be treated with the same sense of seriousness as a person who has changed their name to avoid an abusive ex, or to separate themselves from an abusive past.

In respect of an individual who has died:

- There is no formal right to be known by any specific name. However, to deadname someone in death is a mark of ultimate disrespect. Where those closest to the individual use a mix of names, there may be some "wobble room". However, the general principle should be that the wishes of the deceased should be respected;
- There is a major difference between those close to an individual using a range of different names. This is a world away from the intrusion represented by news media speaking to work colleagues in order to extract sensitive name information, as appears to have happened in respect of Brianna Ghey.

3. Children

Pupils should be free to complete their time at school without unnecessary intrusion.

The Committee has acknowledged there is significant public interest in the reporting of children's gender identity. However, sensitivity must be observed when reporting on the welfare of a specific child or children.

Example of bad reporting given: use of a child's social media posting as a de facto interview with that child.

Factors to take into account:

- Does information relate to a child's welfare?
- Would publishing the information intrude unnecessarily into a child's time at school?
- Has consent been obtained by the parent or guardian to publish the information or photographs?
- If publishing the material does appear to raise a breach of the Code, is there an exceptional overriding public interest for publishing it?
- Can you show that the public interest was considered before publication and by whom?

Points to consider in responding

We are broadly supportive of this

- We cannot say there is no public interest in questions around trans kids generally;
- However, this should *not* supersede the interests of the child. There needs to be an exceptional/over-riding reason to divulge confidential information about individual children.
- We agree that passing off a blog or other social media post as an interview is wrong. However, this should not then be used as reason for silencing the views of children.

4. Reporting of gender diverse defendants

The reporting of transgender and gender diverse defendants is currently a contentious topic. Nonetheless, code principles regarding accuracy, privacy, and discrimination are unchanged.

Factors to take into account:

- How is the defendant identified in court, including the name and pronouns used by court officials and/or any witnesses
- Any guidance provided by the court about a defendant's gender identity
- The nature of the alleged offence and whether the individual's gender identity was relevant to the allegations;
- The defendant's gender identity at the time of the alleged criminal activity
- Any relevant public interest, including the public interest in protecting public health or safety in the face of a major incident

Points to consider in responding

This is possibly one of the most difficult areas dealt with by IPSO/the media, and we offer the following as thinking aloud, as much as anything else:

- This is a highly sensitive area;
- we should acknowledge the trauma endured by the victim of a serious crime such as rape or domestic violence, and not be adding to that trauma by demanding that they conform to a rigid position around gendering;
- however, if coverage ignores the gender approach taken by the court and adopts the same terminology as the victim, that would be problematic.

We expect that coverage in this area will take account of many issues, and will adapt on a case by case basis. Our concern, always, would be that what begins as exceptional in court reporting could become a more widely adopted rule.

In addition, it is fair to point out, as was pointed out in a parliamentary briefing in 2018, that when it comes to dealing with serious offenders, not all are the same and not all present the same level of risk by any measure. They write: "policy for the majority should not be founded upon the highly complex considerations raised by a minority".

<https://researchbriefings.files.parliament.uk/documents/CBP-7420/CBP-7420.pdf>

In other words, a "one-size-fits-all" policy is unlikely to be appropriate in this area.

5. Discrimination

Prejudicial or pejorative reference to an individual's sex and gender is prohibited (clause 12). This may be explicit – or implied. Editors should consider the relevance and presentation of information relating to an individual's sex or gender identity.

Care should be taken when discussing the characteristics of an individual as the meaning could be perceived as pejorative in relation to protected characteristics.

(Example cited of a complaint brought by Trans Media Watch vs. The Sun relating to a comment piece mocking an individual's gender identity and disability, even though it did not explicitly do so).

Factors to take into account:

- Is reference to a protected characteristic — for instance, someone's gender identity or sex — genuinely relevant to the story?
- Could any of the references to a protected characteristic be considered pejorative or prejudicial?

Points to consider in responding

Broadly in agreement with this. We would ask, however, that prejudicial/pejorative descriptions of sex/gender reject a simplistic, binary-based understanding of sex (unlikely!). In addition, the UK media should take intersex people and issues into account without resorting to a highly stereotypical playlist of intersex-related narratives.