

FINAL ADJUDICATION

██████████ and The Stray Ferret

Clause 3: Children

- 3.2. Except where there is an exceptional public interest, publishers must not identify a child under the age of 16 years without the consent of the child or a responsible adult unless this is relevant to the story and not detrimental to the safety and wellbeing of the child.**

Clause 6: Justice

- 6.2. Publishers must not directly or indirectly identify persons under the age of 18 who are or have been involved in criminal or family proceedings, except as permitted by law.**

Complaint Upheld

Breach of Clauses 3.2 and 6.2

Before Impress Regulatory Committee A

Andrea Wills, Claire De Than, Rachel Matthews, Shelina Janmohamed, and Richard Ayre (Chair)

April 2023

1. Summary of Complaint

- 1.1. The Complainant is a lawyer (“the Complainant”) seeking either the removal of a video featured in a published article or the article in full, alleging a breach of Impress Standards Code Clauses 3 (Children) and 6 (Justice). The Complainant legally represents one of the subjects of the article, a young person involved in an incident occurring at a [REDACTED] in Harrogate on [REDACTED]. The Complainant has confirmed to Impress that he is acting as an agent on behalf of the affected party and has been instructed by the young person’s parent to submit a complaint to Impress.
- 1.2. The Respondent is The Stray Ferret (“the Publisher”), a news website covering topics such as politics, business, health, and crime, which has been regulated by Impress since 17 March 2020.
- 1.3. The complaint concerns an article that first appeared in The Stray Ferret on 9 February 2023 with the headline *Shocking video shows teenagers attacking police in Harrogate* [REDACTED]. A link to the article is also featured in a post published on the Publisher’s Facebook page on 10 February 2023.
- 1.4. The complaint is assessed against the 2020 version of the Impress Standards Code, which was the current version at the time the article appeared. The relevant clauses are:

Clause 3.2 - Except where there is an exceptional public interest, publishers must not identify a child under the age of 16 years without the consent of the child or a responsible adult unless this is relevant to the story and not detrimental to the safety and wellbeing of the child.

Clause 6.2 - Publishers must not directly or indirectly identify persons under the age of 18 who are or have been involved in criminal or family proceedings, except as permitted by law.

2. Background

- 2.1. The article concerns video footage which captures a group of young persons attacking two police community support officers (PCSOs) in a [REDACTED] in Harrogate. The article describes the footage as showing ‘punches being thrown at the officers on the first floor of the fast-food restaurant’. It goes on to say that ‘The Stray Ferret has waited to publish it [the video] until legal proceedings against all young persons had concluded’.
- 2.2. The article provides further details of the attack which occurred at around [REDACTED] on [REDACTED] last year. It reports that the young persons involved were aged [REDACTED], [REDACTED] and [REDACTED] at the time of the attack, and that they cannot be named because of their ages. The article then explains that the officers ‘had arrived on the scene to ask the young persons to leave because they had breached an exclusion order preventing them from entering the building’. It describes two of the young persons having been dealt with by police and courts last year, while the other had been due to appear at [REDACTED] Magistrates’ Court at the end of [REDACTED] before the case was dropped by [REDACTED] when a witness failed to appear.
- 2.3. Additionally, the article reports that the PCSOs required hospital treatment for their facial injuries following the attack, with a court hearing in October revealing that one PCSO had required many months of treatment and was still waiting to find out if they would need an operation.
- 2.4. The Publisher then quotes a statement from a North Yorkshire Police spokesperson, who describes the ‘unacceptable number [of] officers assaulted while carrying out their jobs’, before concluding that North Yorkshire Police would ensure cases of this nature are thoroughly investigated.
- 2.5. The final section of the article explores crime in Harrogate, describing the [REDACTED] incident as one of many that have led Harrogate BID (Business Improvement District) to begin the ‘Report a Crime’ campaign, calling for business owners and shoppers to report all anti-social behaviour and crime to North Yorkshire Police. This is followed by a statement from Harrogate BID manager [REDACTED], who explains the message behind the campaign and also describes the [REDACTED] incident as ‘appalling’ and a ‘rare occurrence’ in Harrogate town centre.

3. The Complaint

- 3.1. The Complainant contacted the Publisher on 13 February 2023 and made a complaint on grounds of Clause 3.2 (Children) and Clause 6.2 (Justice). The Publisher acknowledged the Complainant's comments, but rejected the complaint as it did not consider that the article breached the Standards Code.
- 3.2. A full copy of correspondence between the parties was provided to the Regulatory Committee.
- 3.3. The Complainant was not satisfied with the Publisher's response and subsequently escalated the complaint to Impress on 17 February 2023. After seeking clarification of the basis for the complaint, Impress confirmed the substance of the complaint as follows, a full copy of which was provided to the Committee.
- 3.4. With reference to Clause 3.2 of the Standards Code, the Complainant claims that the child he represents has been identified by the Publisher without consent. The Complainant says that the mobile phone footage, which was part of the prosecution evidence, risks identifying his client.
- 3.5. The Complainant states that the child's family are distressed by the publication of the article due to the likelihood of their child being identified from the video.
- 3.6. The Complainant elaborates that the child's parent specifically stated that they were fearful that somebody who felt particularly aggrieved about their child's behaviour might seek them out and potentially find out where they live and attend the property. The child's parent was also worried that identification through the video could affect their child's ability to progress in education or employment.
- 3.7. With reference to guidance note 3.18 of the Code, the Complainant argues that the Publisher did not take sufficient or appropriate action to prevent identification. The Complainant says that the footage has not been pixellated and that the child's family believe identification could occur if the video were either frozen or enlarged.
- 3.8. The Complainant adds that while the Publisher indicated it had gone to 'considerable lengths' to ensure the young persons in the video were not identifiable, the Publisher did not explain what steps had been undertaken to do so.

- 3.9. The Complainant argues that inclusion of the video in the article could cause harm to the child's safety and wellbeing (guidance note 3.17 of the Code), outweighing any argument by the Publisher of an exceptional public interest justification. In light of this, the Complainant submits that the Publisher has breached Clause 3.2 by identifying the affected party without their consent as required under the Code because of their status as a child.
- 3.10. Regarding Clause 6.2 of the Standards Code, the Complainant says that the usual court reporting restrictions for Youth Court proceedings were in place at the time of publication on 9 February 2023 under section 49 Children and Young Persons Act (CYPA) 1933. The Complainant adds that there has yet to be any application for lifting of these restrictions.
- 3.11. The Complainant says that s.49 CYPA prevents publication of any matter that is likely to lead members of the public to identify a child as someone concerned in the proceedings and that it specifically refers to the use of 'any still or moving picture' of the child. Therefore, the Complainant suggests that the Publisher could be in breach of court reporting restrictions by refusing to remove the video or article in its entirety. In turn, the Complainant submits that by identifying the child, who is under the age of 18 and was involved in criminal proceedings, the Publisher has breached Clause 6.2.

4. Response of the Publisher

- 4.1. Impress invited the Publisher to provide additional information in response to the Complainant. The Publisher's response is summarised below, and a full copy was provided to the Committee.
- 4.2. Regarding Clause 3.2, the Publisher does not accept that the mobile phone footage identifies the young persons involved in the assault. The Publisher says that it did not require consent, parental or otherwise, to publish the content, as identification was avoided.
- 4.3. The Publisher says that it took the necessary and appropriate steps to avoid identification of the young persons. The Publisher says that the mobile phone footage itself is of poor quality and grainy, and the very short excerpt shows the young persons at a considerable distance from the phone. The Publisher therefore says that there was no need to obscure or pixelate faces, adding that the film quality is so degraded that the viewer cannot detect any facial features.
- 4.4. The Publisher adds that freezing the footage would not lead to identification of the young persons, and any attempt to enlarge the images would have

led to a further reduction in quality. Therefore, the Publisher says that it has discharged its obligations under guidance note 3.18 of the Code in relation to sufficiently obscuring the face of the child to avoid identification, and a breach of Clause 3.2 has not occurred.

- 4.5. The Publisher adds that, prior to publication, it consulted via email with its lawyer who viewed the whole footage for identification purposes. These email exchanges have been shared with Impress confidentially, and a copy was provided to the Committee. Following their lawyer's advice, the Publisher took the decision to cut out 4 seconds at the beginning of the footage to remove any risk of two young people who were initially in the foreground being identified by their clothing.
- 4.6. The Publisher states that it is not arguing for an exceptional public interest justification in identifying the young persons, as the footage does not identify them. Nevertheless, the Publisher contends that it was clearly in the public interest to include the mobile phone footage involving the children once the cases against them had concluded. The Publisher adds that the article clearly contextualises the event to ensure the reader understands the reason for publication and inclusion of the footage.
- 4.7. The Publisher explains, for background and context on the matter, that it has been covering a persistent problem of anti-social behaviour in Harrogate town centre. The Publisher explains that, before the attack took place in [REDACTED], it was told (off the record by a reliable source) that the two PCSOs involved in the [REDACTED] incident were very unhappy about the level of anti-social behaviour they had to tackle and that they felt they did not have enough police back-up.
- 4.8. The Publisher describes how, following the attack and in light of the wider problem of anti-social behaviour, Harrogate's Business Investment District met with North Yorkshire Police and Crime Commissioner to request more officers in the town centre. It then launched a campaign urging businesses to report any crime, however small, so they could prove the problem and gain more police support. The Publisher also states that Harrogate Borough Council has highlighted the [REDACTED] as a crime hotspot.
- 4.9. Regarding Clause 6.2, the Publisher is satisfied that none of its published articles, including the mobile phone footage, identifies the young persons involved. Therefore, the Publisher does not believe there has been a breach of Clause 6.2 or the Children and Young Persons Act (CYPA) 1933.
- 4.10. The Publisher argues that it was constantly mindful of the legal issues surrounding reporting and identifying minors when covering the legal

proceedings against the young persons. The Publisher acknowledges the legal position that a minor involved in criminal proceedings must not be identified unless reporting restrictions are lifted by the court. However, the Publisher does not accept that identification has taken place and affirms that the case has been handled in accordance with its legal obligations.

5. Compliance

- 5.1. The Stray Ferret fully complied with the requirements of the Impress Regulatory Scheme (Paragraph 3.2.) by acknowledging the complaint within 7 calendar days and issuing a final decision letter within 21 calendar days.

6. Analysis and Findings

- 6.1. The Committee first addressed Clause 3.2 (Children) and assessed whether the young persons featured in the video are identifiable. To determine this, the Committee referred to Section 49(1) Children and Young Persons Act (CYPA) 1933, which states that no matter relating to a child under the age of 18 concerned in proceedings shall be included in any publication 'if it is likely to lead members of the public to identify them'.
- 6.2. The Committee acknowledged that the Publisher had considered its responsibilities under the Act and under the Code, and had taken steps to mitigate any risk by seeking legal advice regarding the video. Following that advice, the Publisher had edited the video prior to publication of the article. Having repeatedly viewed the published video, including freezing it, the Committee agreed that none of the young persons were directly identifiable from their facial features alone.
- 6.3. Nevertheless, the Committee cited certain factors which they determined would increase the risk of one or more of the young persons featured being identifiable by members of the public. For example, the Committee noted that the careful study of the video revealed some details of the clothing, hair colours, hair styles, body sizes and movements of one or more of the young persons. The Committee also considered contextual elements and other accompanying details described in the article to be relevant. For instance, the article made reference to the ages and genders of the young persons, the number involved and the precise time, date and place where the incident occurred. Additionally, the Committee considered that as the children had already been the subject of an exclusion order from the [REDACTED]

██████████ following an earlier incident involving the three, and that Harrogate is a relatively small town, there was an increased risk that some members of the local community would be able to identify them from the totality of the information the Publisher had included in the article.

- 6.4. In light of this information and with reference to guidance note 3.19 of the Code, which states that Publishers must take care not to indirectly identify children where the public can piece together someone's identity because of the number and type of details supplied, the Committee found that it is likely that members of the public, particularly someone from the children's school or the local community, would be able to identify the children.
- 6.5. Therefore, the Committee found that the Publisher had breached Clause 3.2 (Children), and in turn Clause 6.2 (Justice) as court reporting restrictions were in place at the time of the article's publication.

7. Publisher's Further Reply

- 7.1. Upon receipt of the proposed adjudication, the Publisher requested to make further representations in response to the Regulatory Committee's findings, specifically in relation to the issue of Clause 3.2 and the definition of identifiable.
- 7.2. The Publisher argues that the Committee had not taken the correct approach in relation to the issue of identification when reaching its proposed determination. The Publisher argues that the existence of a risk of identification does not constitute a breach of Clauses 3.2 or 6.2, and that actual identification has to be proved to establish non-compliance with the Code.
- 7.3. The Publisher refers to the common law test for defamation and specifically the second limb of the test (i.e. the published content needs to be understood by the reasonable person to refer to the claimant). The Publisher's interpretation of the common law test is that where it is unclear that a claimant has been identified directly (e.g. by name), reference to the claimant can be intrinsic (i.e. from the words themselves) and/or established by the proof of intrinsic facts which could result in the reasonable reader identifying the claimant. If there is insufficient information in the article that could lead to identification of the claimant by the reasonable reader, the claimant would have to rely upon extrinsic facts that certain readers knew in order to prove that they have been identified (the 'reference innuendo' principle).

- 7.4. It is the Publisher's interpretation that, in light of the poor quality of the video footage, the Committee could only justifiably and reasonably conclude that the Complainant's client was identifiable by the reasonable reader if it were provided with proof of extrinsic facts that would lead to identification or proof that certain readers had special knowledge concerning the Complainant's client.
- 7.5. The Publisher states that the Complainant only cites a risk of identification and that he did not provide any evidence to prove that his client has been identified. Therefore, the Publisher concludes that this should not have been taken into account by the Committee.
- 7.6. The Publisher disputes the relevance of the various details and contextual factors cited by the Committee as increasing the risk of identification. The Publisher argues that these factors cannot be considered in this case, as there is no evidence that particular readers had special knowledge concerning the Complainant's client. The Publisher also questions the relevance of 'movements' as a unique characteristic, arguing that the only noticeable movement in the short clip is the attack taking place against a PCSO. The Publisher further disputes the contextual relevance of 'the precise time, date and place where the incident occurred', claiming that the incident would have been forgotten by readers other than those with special knowledge as it had occurred approximately 8 months before publication.
- 7.7. The Publisher concludes that the Committee's interpretation of the Code would be wrong as a matter of principle in the way in which complaints should be adjudicated and represent a serious blow to open justice.
- 7.8. In accordance with part 5.2 of the Regulatory Scheme, the Committee was reconvened to consider these further points raised by the Publisher. The Committee did not view the common law test for the tort of defamation as the appropriate legal starting point for approaching the issue of identification of a child under the age of 16 who had been involved in criminal proceedings. The Committee deferred to Section 49(1) Children and Young Persons Act (CYPA) 1933. The Committee noted that actual identification is not a requirement under this Act, and maintained that it was likely that certain people could have special knowledge about the young persons in the video footage which could increase the risk of identification. Additionally, the Committee clarified that physical movements represent a potentially recognisable feature for each of the young persons which, together with the other factors cited by the Committee, could increase the risk of identification. The Committee therefore upheld its initial finding that the Publisher had breached Clauses 3.2 and 6.2.

8. Sanctions and Remedies

8.1. The Committee considered that a proportionate remedy for the breach would be for the Publisher to remove the video from the article and from the associated Facebook Post, and to also remove the original video source from public view on YouTube. The Publisher should then insert a short clarifying statement, positioned where the video was previously embedded.

8.2. The clarifying statement should read as follows:

Please note that an earlier version of this article contained a video which has since been removed at the request of our regulator, Impress, to avoid any risk of identifying children under the age of 18 that had been involved in criminal proceedings and/or had not consented to being identified.

8.3. There is no requirement for the Publisher to display a link to the adjudication. However, Impress will publish the decision on its website, with appropriate redactions, to ensure that the identities of young persons under the age of 18 are fully protected.