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From: [REDACTED]
Sent: 10 January 2022 15:05
To: journalismcode
Cc: Sayra Tekin
Subject: ICO consultation on the draft journalism code of practice
Attachments: 2022.01.10 NMA Response to ICO Journalism Code Consultation.pdf

External: This email originated outside the ICO.

Dear all,

Please find **attached** the NMA's response to the ICO's consultation on the draft journalism code of practice.

We would be grateful if you could please confirm safe receipt.

Best wishes,

Harvey

Harvey Shaw

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NMA response to the ICO consultation on the draft journalism code of practice

1. We write on behalf of the News Media Association (the “**NMA**”), the voice of UK national, regional and local newspapers in all their print and digital forms - a £4 billion sector read by more than 46 million adults every month in print and online. Our members publish over 900 news media titles - from The Times, The Guardian, The Daily Telegraph and the Daily Mirror to the Manchester Evening News, Kent Messenger, and the Monmouthshire Beacon.
2. Freedom of expression rights and press freedom must not be overridden by adverse interpretation of the data protection regime, or by imposition of impractical procedural requirements. This is particularly pertinent to the Information Commissioner’s journalism code of practice (the “**Code**”). The Information Commissioner has a potentially broad discretion in drawing up the statutory code on data protection and journalism. The Code is taken into consideration by the courts and tribunals in deciding media liability in civil and criminal cases. It is, therefore, imperative that the Code is fit for purpose and is a help rather than a hindrance to journalists seeking to apply the data protection regime correctly.
3. To that end, the NMA has worked together with the Media Lawyer’s Association (the “**MLA**”), of which it is a member, to provide the ICO with: (i) a comprehensive analysis of the draft Code; as well as (ii) suggested amendments to the Code drafted by specialist counsel (together the “**MLA Submission**”). The NMA, therefore, writes in full support of the MLA Submission.
4. Further to the ICO workshops on the draft journalism code consultation in November 2021, in which the NMA and its members took an active role, the NMA would be pleased to meet with the ICO to discuss these proposals in further detail. To avoid duplication, we shall not reproduce the contents of the MLA Submission here. Instead, we summarise the key points for ease of reference and refer the ICO to the detail of the MLA Submission.
 - a. **Clarify and shorten the draft Code** – the Code is too long and prolix. It must be streamlined and re-drafted so that it is fit for use by journalists making decisions at pace and under pressure, ideally on a principles-led basis.
 - b. **Explain “personal data”** – greater precision is required to ensure that the description of ‘personal data’ reflects the legal position.
 - c. **Give proper recognition to the principle of editorial discretion** - deference to editorial decision making must be respected when considering both limbs of the journalism exemption. Failure to do so will likely result in: (i) courts and regulators

impermissibly substituting their own views; which will in turn likely (ii) damage media pluralism - a public good in itself.

- d. **Give greater recognition to the public interest in freedom of expression itself** – it is necessary to redress the misleading impression that the journalism exemption is only available in cases of serious investigative journalism. It must be made clear that a publication may be in the public interest simply because it involves the lawful exercise of the right to freedom of expression. The draft Code rightly recognises that there is an inherent “*general public interest in freedom of expression and information*”. However, this must be expressly recognised as a general public interest argument; otherwise, there is real risk of a chilling effect on journalism.
 - e. **Reduce the recommendations for policies and record-keeping** – frequent references and suggestions in the draft Code to policies and record-keeping are counter-productive and must be removed.
 - f. **Remove the citation of first instance decisions** – it is both inappropriate and impractical for the draft code to refer to and rely so heavily on first instance decisions. It elevates and distorts the status of those decisions and ensures that the draft Code will likely become outdated within a short amount of time.
 - g. **State the law correctly** – the MLA has rightly identified statements of law in the draft Code which are wrong. We refer the ICO the MLA Submission for further detail.
 - h. **Manage the expectations of data subjects** – the current draft needs to be strengthened to ensure that GDPR rights are not exercised abusively by data subjects. The MLA Submission helpfully identifies areas of the draft Code that could usefully be strengthened.
 - i. **Give greater clarity about the relationship between the ICO and other media regulators** – the NMA welcomes the ICO’s statement that the draft Code does not concern press conduct or standards in general. Nevertheless, we support the MLA Submission which identifies scope for further clarity in this area.
5. For the reasons outlined here, the NMA agrees with the MLA that the draft Code needs to be fundamentally rethought rather than simply being adjusted here or there. The NMA would, therefore, welcome the opportunity to provide further comments on any revised draft Code.
 6. We note that it is the ICO intends to supplement the Code with further guidance (without statutory effect) in due course. The NMA would welcome the opportunity to comment on any such guidance prior to it being issued.

7. The NMA welcomes the appointment of John Edwards as the new Information Commissioner. We would be pleased to brief the Information Commissioner on the range of issues currently affecting the news media sector.

10 January 2022

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