Outcomes report:

The ICO's review of the processing of personal data for the purposes of journalism under the Data Protection Act 2018

January 2024



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Executive summary

The Information Commissioner's Office (ICO) has completed the first statutory review of the processing of personal data for the purposes of journalism as outlined under Section 178 of the Data Protection Act 2018 (DPA 2018) (see Appendix 1).

The review did not find evidence of any systemic failure to comply with data protection law. However, we note that engagement from both the journalism sector and from wider academia and civil society groups was more limited than we would have liked. We will continue to monitor developments, and consider how we can ensure more extensive engagement from all relevant parties, in preparation for the next statutory review in 2027.

The review consisted of three parts:

- Analysis of evidence available from complaints and enquiries to the ICO, our enforcement action, Data Protection Impact Assessments (DPIAs), and our intelligence logs, covering the period from February 2020 until March 2022.
- Analysis of complaints raised with and investigated by the UK's communication regulator, Ofcom, and the press monitoring bodies, Impress and the Independent Press Standards Organisation (IPSO), between March 2018 and March 2022.
- Analysis of two separate voluntary and publicly available surveys: one for those engaged in journalism and associated stakeholders such as trade bodies, and a second for parties with an interest in journalism¹. The aim was to gain a broad and holistic view of data protection practices in journalism and to identify any themes alongside potential areas of interest.

The overall findings from the evidence and survey reviews did not identify any trends or themes highlighting poor data protection compliance in journalism. This is supported by low levels of complaints to both the ICO and press and media regulators when compared to other areas. Evidence from each part of the review includes:

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¹ for example, academics, privacy campaign groups, parliamentarians and members of the public.

- Just 0.7% of data protection related complaints to the ICO in the last two years related to journalism, compared with 12.1% relating to land or property services and 11.4% about finance, insurance and credit².
- Between 2018 and 2022 Ofcom received approximately 50 data protection related complaints about the BBC each year. Only three were upheld across this period. For all other broadcasters data protection complaints ranged from 157 to 248 for each year. Only 5 per cent of these complaints were upheld across the period.
- Data protection complaints were less than 1% of the total number of Ofcom complaints received between 2018 to 2022³.
- Between 23 March 2018 and 24 March 2022, press monitoring body, Impress, upheld no accuracy complaints that fell within the bounds of data protection, and only four privacy complaints.
- Between 23 March 2018 and 24 March 2022, press monitoring body, IPSO, upheld or resolved between 40 and 62 accuracy complaints relevant to data protection each year, and between 5 and 21 privacy complaints.
- For both accuracy and privacy categories, the financial year 2021/22 generated the lowest number of complaint numbers across the period.
- ICO received 11 survey responses; eight from the first survey with those engaged in journalism, and three from the second with parties with an interest in journalism.
- With a limited number of responses to the surveys it cannot be concluded that awareness of data protection requirements is high in all areas. Some misconceptions were found in areas including, governance and accountability, training and awareness, lawful bases, DPIAs, data sharing, and individual rights.
- The low number of data protection complaints received by the regulators and press monitoring bodies may suggest individuals have a low awareness of data protection and their rights.

The next review will look at the period from 24 May 2022 until 25 May 2027. In the period leading up to that review, we will continue to grow

³ annual-report-2021-22.pdf (ofcom.org.uk) - The total number of complaints received by Ofcom each year, 2018/19 - 55,801, 2019/20 - 34,545, 2020/21 - 142,660 and 2021/22 - 99,562.



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² ICO Annual report 2022-23

our evidence base and analyse any post implementation work from the embedding of the <u>Data protection and journalism code of practice</u>, including assessing awareness, understanding, and application of some data protection requirements as mentioned above. We will also consider whether the use of our formal powers under Section 178 of DPA 2018 would be appropriate.

Introduction

Background

The way in which journalism gathers, uses and protects people's personal data is a subject of interest and debate within society. In the early 2000s, public concern was raised over whether, on occasion, journalists had acquired personal data through unlawful means. Following evidence of phone hacking by News International and other media organisations, a judicial public inquiry was commissioned. The 2012 Leveson Inquiry⁴ into the culture, practices and ethics of the United Kingdom (UK) press made several recommendations. Some were specific to the press and data protection and were directed to the Information Commissioner's Office (ICO) as the UK's independent data protection regulator. The findings and recommendations of the Leveson Inquiry were considered by Parliamentarians and a decision was made to expressly include journalism as a subject of data protection law.

Data Protection Act 2018 (DPA 2018)

The DPA 2018 introduced new and revised statutory functions and duties for the ICO. This includes Section 178; the requirement to periodically conduct a review of the extent to which the processing of personal data for the purposes of journalism complied with:

- the data protection legislation, and
- good practice in the processing of personal data for the purposes of journalism.

The DPA 2018 also requires the ICO to develop a Data Protection and Journalism Code of Practice (CoP) (in Section 124 of DPA 2018). The CoP was launched in July 2023.

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⁴ The Leveson Inquiry into the culture, practices and ethics of the UK press, published 29 November 2012.

Report Scope

This report considers the period from 23 May 2018 until 24 May 2022 and explains the findings of our first review. We are required to submit the report to the Secretary of State, who must lay the report before Parliament and send a copy of the report to the Scottish Ministers, the Welsh Ministers, and the Executive Office in Northern Ireland. The report informs legislatures, governments of the UK and Parliament of the findings of this review.

The findings cover journalistic activity only, that is, activities likely to be covered by the journalism exemption. The review has not sought to consider wider data protection matters. For example, our review covers the journalism published on a media company's website, but it does not apply to the use of underlying commercial data such as the placing or use of cookies or advertising.

Terminology

In the DPA 2018 the term 'journalism' is not defined. We have interpreted it broadly in line with its everyday meaning and purpose, using relevant case law as a guide as appropriate (see Appendix 3 - Reference notes). When we use the term 'journalism' in this review it is not limited to media organisations and journalists employed by media organisations, such as the print media, broadcast media and online news outlets. It also includes press agencies, small independent news reporters, freelance journalists, photographers, specialist publications, as well as bloggers and members of the public using personal data for journalism.

In this review we refer to 'traditional' and 'non-traditional' journalism. We consider traditional journalism to be legacy and mainstream media. For example, newspapers, weekly magazines, television, radio, and their associated online presence. Non-traditional journalism is viewed as journalism which falls outside that space and includes citizen journalists such as bloggers, eyewitnesses, social networkers or members of the public. We have distinguished between these groups, so we can review data protection practices we consider relevant to each type of journalism.

This review has also sought to engage with 'interested parties' in data protection and journalism to help better our understanding of the data protection practices in journalism. For example, academics, civil society groups, parliamentarians and members of the public.



Overview

Journalism has a special societal role, built upon freedom of expression and holding the powerful to account. In recognition of the importance of this role, specific lawful exemptions have been created within the DPA 2018, which aim to balance people's rights to privacy and the freedom and independence required by journalism in order to perform its duty. This is done mainly through 'the special purposes' exemption for journalistic, academic, artistic and literary purposes, as set out in DPA 2018, Schedule 2, Part 5, Paragraph 26⁵. We shall refer to this exemption as the 'journalism exemption' throughout this review.

Due to the power, influence, and substantial impact journalism can have on people and society, it is important journalism's data protection practices are given specific consideration. Journalism's role in supporting the free flow of communication and holding the powerful to account is an important one that society relies upon. However, it is also important that the public has assurance that journalism is being done in accordance with data protection legislation and follows good practices in the processing of personal data for the purposes of journalism. This review forms part of the work we are undertaking to provide assurance to the public and to help the journalism sector to build and sustain public trust in the processing of personal data for the purposes of journalism.

Our approach

The approach taken was to:

- Analyse ICO evidence relating to journalism from 1 February 2020 to 24 March 2022.
- Analyse journalism and data protection related complaints raised with the UK's communication regulator Ofcom, between 1 April 2018 and 31 March 2022, as published.
- Analyse data protection-related privacy and accuracy complaints investigated by the press monitoring bodies, Impress and the Independent Press Standards Organisation (IPSO), between 23 March 2018 and 24 March 2022.

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⁵ <u>Data Protection Act 2018 (legislation.gov.uk)</u>

• Run surveys to engage with traditional and non-traditional journalism, as well as a variety of people and groups with an active interest in data protection and information rights in journalism.

We determined that this approach would provide a holistic perspective on data protection practices in journalism.

Our findings

ICO evidence

We reviewed a wide range of evidence available to the ICO, including the existence of:

- enquiries and complaints received, particularly those relating to data protection rights, unlawful processing, security concerns and the Privacy and Electronic Communications Regulations,
- enquiries from media organisations,
- enforcement action, including cyber investigations, civil investigations and criminal investigations,
- Data Protection Impact Assessments (DPIAs), and
- our intelligence logs.

Our analysis found that the number of data protection related journalism enquiries and complaints reported to the ICO is relatively low when the size and range of journalism is taken into consideration (488 complaints in the last two years, out of a total of 70,096 complaints received, which represents just 0.7% of all complaints received over that period). No enforcement action was taken by the ICO in respect of journalism in the period under review.

A review of the 488 data protection complaints received in the last two years, identified the top three reasons for complaints as:

- 39% relate to the right of erasure,
- 20% related to the right of access,
- 14% related to data protection principles, in particular the lawful basis for processing specifically consent and the journalism exception. Of the 14% of complaints, half related to 'lawfulness, fairness and transparency'.



Our view:

The ICO's evidence review did not establish any notable trends or themes, widespread issues or lack of compliance regarding data protection practices in journalism.

Complaints

To further our understanding of data protection practices in journalism, we have reviewed complaint data published by:

- the UK's communication regulator Ofcom, and
- the press monitoring bodies, Impress and IPSO.

As this complaint data is published to help improve transparency in journalism, it is important that we use it to inform our work. By including this data, we hoped to gain a greater understanding of the nature and volume of data protection related complaints Ofcom and the press monitoring bodies receive about journalism and establish any trends.

Each of these bodies has its own code; a set of rules and standards which broadcasters, or members of the press monitoring body, are required to follow. It is when one or more of the sections or clauses of these codes are breached, or there is a perception of a breach, that a complaint may be raised with the appropriate body.

We have only considered complaint data for those sections or clauses that are relevant to data protection – for example, complaints related to accuracy, privacy and fairness. Even when a section or clause relates to data protection, not all complaints raised under that section or clause will fall within the bounds of data protection legislation and therefore out of scope of this review. For example, if a complaint was raised by an organisation regarding a newspaper article, which contained inaccurate data about that organisation, the complaint would not fall under data protection legislation because it is not about personal data. As such, this complaint would not be considered relevant to this review. To ensure we only consider appropriate cases, each complaint was individually checked to ensure it related to data protection legislation and only those found to be relevant are included in our findings.

When considering Ofcom's and the press monitoring bodies' complaint data, it is important to note that complaints are normally first raised with



the journalist/publication. If a complaint is not resolved to the complainant's satisfaction, then they have the option to raise it with Ofcom or the appropriate press monitoring body (where the journalist/publication has one). Therefore, this review only considers complaints raised with Ofcom or complaints investigated by the press monitoring bodies, Impress or IPSO, and not those which were resolved directly with the journalist, publication or media organisation.

Ofcom

Ofcom is the regulator for the broadcasting and communications industry. They are responsible for setting the standards TV and radio broadcasters must follow. News publishers and journalists using TV and radio broadcasting fall under Ofcom's scope.

Ofcom has created the Broadcasting Code⁶ which consists of 10 sections that set out standards of good practice in TV and radio broadcasting. Not all sections are relevant to data protection regulation and therefore, to this review. As such, we focused on:

- section five due impartiality and due accuracy,
- section seven fairness, and
- section eight privacy.

Due impartiality does not directly intersect with data protection regulation, but due accuracy does. Therefore, as due impartiality and due accuracy complaints are reported by Ofcom as one, we have not included the total complaint numbers for section five complaints as this may be misleading. Where appropriate, we have included relevant due accuracy information.

Ofcom is also responsible for holding the BBC to account on behalf of audiences. This includes securing content standards in BBC programming⁷.

The Ofcom annual report on the BBC and the Ofcom annual report and accounts both consider due accuracy, fairness and privacy complaints made by people and organisations⁸ who were involved in, or directly

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⁶ The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules) - Ofcom

⁷ Content standards - Ofcom

⁸ The fairness and privacy complaint data does not distinguish between the complaints made by people and organisations. The DPA 2018 applies to the use of personal data and not organisational data, therefore not all complaints will be relevant to this review.

impacted by, the making of TV and radio programmes⁹. When considering a due accuracy, fairness or privacy complaint Ofcom will determine if:

- due accuracy was applied to news or other programmes,
- a complainant was unfairly treated in a programme, or
- if the complainant's privacy was unwarrantably infringed.

It is important to note that a breach of the due accuracy, fairness and privacy sections of the Broadcasting Code will not always signify a breach of data protection legislation or poor data protection practices, as the breach may not involve personal data. For example, a television news broadcast which was found to have contained inaccurate national statistics would not fall within the bounds of the data protection regulation.

The Ofcom annual report on the BBC and the Ofcom annual report and accounts cover the period from 1 April until 31 March of the following year. As this period is similar to that of this review, we have looked at complaint information reported in each annual report, between 1 April 2018 and 31 March 2022.

Ofcom annual report on the BBC

The table below provides a yearly breakdown of the fairness and privacy complaints received by Ofcom about the BBC.

	Period			
Fairness and privacy complaints (BBC)	2018/19	2019/20	2020/21	2021/22
Total number of				
complaints ¹⁰	42	50	48	39
Investigations	8	10	5	1
Upheld	1	0	2	0

Over the four-year period the number of fairness and privacy complaints received has been consistently low, especially when the size and scope of the BBC is taken into consideration.

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⁹ The BBC's online material is considered separately, as Ofcom has no enforcement powers in relation to the BBC's online material. Ofcom and the BBC have made a separate arrangement, whereby Ofcom considers online material complaints under the BBC Editorial Guidelines.

¹⁰ People and organisations wishing to make a fairness and privacy complaint regarding the BBC are not required to raise it with the BBC first and can raise it with the BBC or Ofcom in the first instance.

Ofcom assess each complaint to determine whether to 'entertain' the complaint and if it requires further investigation. Of the complaints received 24 were referred for investigation between 1 April 2018 and 31 March 2022. Only three of the cases were upheld. Of these three cases two were related to data protection regulation - one in 2018/19 and one in 2020/21.

It was frequently reported by Ofcom in the annual reports on the BBC that their News Consumption UK research found that "most audiences think the BBC's news is trustworthy and accurate".

Ofcom's annual reports on the BBC reported:

- In the years 2018/19 and 2019/20 Ofcom did not find the BBC to have breached the due accuracy requirements of the Broadcasting Code.
- In 2020/21 the annual report on the BBC did not explain if there had been any due accuracy breaches of the Broadcasting Code.
- In 2021/22 Ofcom reported three breaches of section five of the Broadcasting Code, however the breaches were not relevant to data protection regulation.

Ofcom annual report and accounts

For the period of 1 April 2018 until 31 March 2022, Ofcom reported that in general, broadcasters' compliance with the due accuracy standard of the Broadcasting Code was high. However, in the 2021/22 Ofcom annual report and accounts, Ofcom explained that they received, "a relatively high number of complaints about due accuracy, in particular, of content broadcast on GB News". Ofcom confirmed that notwithstanding this, compliance regarding due accuracy remained high in 2021/22.

The table below provides a yearly breakdown of the fairness and privacy complaints received by Ofcom about broadcasters, except the BBC which is reported separately (and described in the table above).

	Period			
Fairness and privacy complaints (non-BBC)	2018/19	2019/20	2020/21	2021/22
Total number of complaints	180	174	248	157
Investigations	44	32	51	26
Partially upheld	0	1	1	1
Not upheld	21	22	25	19
Appropriately resolved	3	6	1	1

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Discontinued	0	0	15	2
Upheld	20	3	9	3

Most of the fairness and privacy complaints upheld by Ofcom, and all of the partially upheld complaints, fell within the bounds of data protection regulation. However, the number of fairness and privacy complaints upheld, or partially upheld, by Ofcom is relatively low when the size and range of the broadcast sector is taken into consideration.

By reviewing the aforementioned fairness and privacy complaint data we identified three broadcasters who had three or more upheld fairness and privacy complaints in the period 1 April 2018 until 31 March 2022. These were:

- Channel 5 Broadcasting Limited
- New Vision TV
- Star China Media Limited

Ofcom identified a few areas of concern and where appropriate, imposed statutory sanctions on the broadcaster. In the 2020/21 Ofcom annual report and accounts, Ofcom explained that it imposed a financial penalty of £100,000 against Star China Media Limited 11 and two financial penalties of £125,000 against Abu Dhabi Media Company PJSC 12 . The stated reasons for the sanctions include, "that the programmes resulted in serious unfairness to the complainants" and "represented a significant interference with the complainants' right to privacy". In the 2021/22 Ofcom annual report and accounts, Ofcom confirmed a second financial penalty of £100,000 had been imposed against Star China Media Limited 13 for serious breaches of the fairness and privacy rules.

Our view

The volume of complaints raised and investigated by Ofcom relating to data protection and journalism, does not suggest poor data protection practices by the broadcasters regulated by Ofcom.

Ofcom has identified some areas of concern within broadcast journalism, it has also fined some organisations and addressed a small number of serious breaches of fairness and privacy rules. However, our

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¹¹ Decision – Star China Media Limited 144 (21) (ofcom.org.uk)

¹² Al-Jaidah Sanction Decision (ofcom.org.uk)

¹³ Decision – Star China Media Limited 145 (21) (ofcom.org.uk)

view is that the data published by Ofcom does not suggest widespread data protection malpractice in broadcast journalism or highlight areas of significant or habitual concern.

Press monitoring bodies

Each of the press monitoring bodies, Impress and IPSO, have a code of practice. The code of each press monitoring body is made up of various clauses, only some of which relate to data protection regulation. Both press monitoring codes include clauses about accuracy and privacy, both of which relate to data protection. We have reviewed the accuracy and privacy complaints investigated by the press monitoring bodies, between 23 March 2018 and 24 March 2022. Where appropriate, we have broken it down into UK nations' data. It is important to note that the figures included in this report relate to complaints that have been:

- assessed by the press monitoring body and were found to fall within their remit and raised a possible breach of their code, and
- reviewed by the ICO and were found to fall within the bounds of data protection regulation.

Impress

Impress oversees compliance with the Impress Standards Code¹⁴, which sets out the rules and standards the Impress regulated journalists and publishers have contractually agreed to follow.

In the Impress annual report 2021/22, Impress confirmed it regulates 113 publishers, which equates to 209 publications across the UK.

The table below provides a yearly total of the accuracy and privacy complaints investigated by Impress about its members, which were upheld and fell within the bounds of data protection regulation.

	Period			
Impress Code clause	2018/19 2019/20 2020/21 2021/22			
Clause 1 – accuracy	2	1	0	1
Clause 7 – privacy	0	0	0	0

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¹⁴ Our standards code - Impress

The number of accuracy and privacy complaints upheld by Impress, which also fall within the bounds of data protection regulation, is relatively low when the number of Impress members and publications is taken into consideration, representing between 0.8 and 1.8 complaints per 100 members per year.

IPSO

IPSO is the largest press monitoring body, overseeing approximately 2,100 UK publications, including newspapers, magazines and their websites.

IPSO has adopted the Editors' Code of Practice¹⁵, which sets out the rules and standards its members must follow. IPSO's Editors' CoP consists of 16 clauses, but as previously stated, not all clauses are relevant to data protection legislation, so we focused on complaints made in relation to clause 1 – accuracy and clause 2 - privacy.

The table below provides a yearly total of accuracy complaints investigated by Impress about its members and the total number of complaint investigations by outcome.

	Period			
Accuracy complaints	2018/19	2019/20	2020/21	2021/22
Total number of complaints				
investigated	102	128	100	97
No breach - after				
investigation	50	70	38	57
Resolved - IPSO mediation.				
	35	30	26	10
Resolved - satisfactory				
remedy	0	0	0	1
Breach - sanction:				
publication of correction	2	4	21	7
Breach - sanction: action				
as offered by publication	13	21	11	18
Breach - sanction:				
publication of adjudication	2	3	4	4

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¹⁵ Editors' Code of Practice (ipso.co.uk)

During the four-year period the number of accuracy complaints investigated by IPSO about its members has been reasonably consistent, representing between four and six complaints per 100 members per year. Approximately 50% of the investigations found 'no breach' of the IPSO Editors' Code of Practice.

The table below provides a yearly total of privacy complaints investigated by IPSO about its members and the total number of complaints by outcome.

	Period			
Privacy complaints	2018/19	2019/20	2020/21	2021/22
Total number of complaints	80	66	61	49
No breach - after investigation	59	53	43	44
Resolved - IPSO mediation.	19	12	12	3
Resolved – directly with publication	0	0	1	0
Breach - sanction: publication of adjudication	2	1	5	2

There has been a year-on-year reduction in the number of privacy complaints investigated by IPSO about its members. For the four-year period, approximately 78% of complaint investigations established 'no breach' of the IPSO Editors' Code of Practice.

The table below provides an annual total number of complaint investigations that have been upheld ('breach') or resolved, by clause.

	Period			
IPSO Editors' Code of Practice Clause	2018/19	2019/20	2020/21	2021/22
Clause 1 – accuracy	52	58	62	40
Clause 2 – privacy	21	13	18	5

The number of complaints that have been upheld or resolved is relatively low when the number of publications IPSO regulates is taken into consideration.



The table below provides an annual total of accuracy complaint investigations by UK and UK nations.

	Period			
Publication's Nation	2018/19	2019/20	2020/21	2021/22
England	21	32	27	30
Northern Ireland	1	6	2	7
Scotland	13	23	13	11
Wales	3	4	0	4
All of United Kingdom	64	61	58	45

The national publications, those which publish across the whole of the UK, have the highest number of accuracy complaints investigated by IPSO. Of the individual nations:

- English publications had the highest number of accuracy complaints investigated a total of 100 in the four-year period.
- Welsh publications had the lowest number of accuracy complaints investigated – a total of 11 in the four-year period.
- Closely followed by Northern Ireland publications, where a total of 16 accuracy complaint investigations were conducted in the fouryear period.
- Finally, Scottish publications had a total of 60 accuracy complaints investigated for the same four-year period.

The table below provides an annual total of privacy complaint investigations by UK and UK nations.

	Period			
Publication's Nation	2018/19	2019/20	2020/21	2021/22
England	17	23	23	16
Northern Ireland	1	2	0	3
Scotland	8	14	9	5
Wales	2	2	0	3
All of United Kingdom	52	25	29	22

This table shows that again the national publications have the highest number of privacy complaints investigated by IPSO – 128 privacy complaints investigated during the four-year period. We also found that of the individual nations:



- English publications had the highest number of privacy complaints investigated a total of 79 in the four-year period.
- Northern Ireland publications had the lowest number of privacy complaints investigated - a total of six during the four-year period.
- Closely followed by Welsh publications, which had a total of seven privacy complaints investigated in the four-year period.
- Scottish publications were investigated in relation to 36 privacy complaints during the same four-year period.

Our view

Between 23 March 2018 and 24 March 2022, neither press monitoring body, Impress or IPSO, published a notable number of annual complaint investigations relating to the accuracy or privacy of personal data. For the substantial majority of these complaints no breach of the code was found.

Complaints were raised by people, suggesting there is some awareness of Impress and IPSO and the role they play, although the extent of this awareness is unknown.

The UK nation's complaint investigation data showed that most of the publications where an accuracy or privacy complaint had been investigated were in England. As England is the larger of the nations it has more publications than the other nations, so this is to be expected. No significant UK nation variables were established.

Surveys

Our aim through our survey was to reach and encourage our target audience to engage with us in an open and candid way. This would provide us with an accurate and holistic view of data protection practices in journalism.

Two distinct target groups were identified:

- those engaged in journalism both traditional and non-traditional journalism, as well as associated stakeholders such as trade bodies; and
- those interested in data protection and journalism more broadly, such as academics, parliamentarians, privacy campaign groups,



or members of the public with an interest in data protection and information rights in journalism.

We created two publicly accessible surveys, one for each target group. Each survey included questions on key data protection requirements and topics specifically relevant to the processing of personal data for the purposes of journalism.

We published the surveys on the ICO website as well as sending them to relevant parties to encourage engagement. We sent the first survey, targeted at those engaged in journalism and journalism stakeholders, to various media organisations¹⁶, regulators, press monitoring bodies¹⁷, as well as journalist umbrella bodies¹⁸ for onward transmission to their members.

We sent the second survey, directed at those interested in data protection and journalism more broadly, to those considered as interested parties, for example relevant academics, parliamentarians and privacy campaign groups¹⁹.

We hoped that by publicising the surveys we would receive a greater number of responses from a wide and varied audience. This would help us to gain a greater understanding of the ways in which data protection requirements are implemented and adhered to across journalism.

In the first survey, released in July 2022, we asked broad ranging general questions on how data protection was understood, applied in practice and managed. These questions were across key data protection areas, such as:

- governance and accountability,
- training and awareness,
- lawful basis for processing personal data,
- individual rights,
- transparency,
- accuracy,
- records management,
- data sharing,
- remote working and security, and

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¹⁶ For example, BBC and ITN.

¹⁷ For example, OFCOM, Impress, and IPSO.

¹⁸ For example, Society of Editors, and the National Union of Journalists.

¹⁹ For example, Hacked Off, Index on Censorship, and Global Witness.

the journalism exemption.

In the second survey, released in November 2022, we asked for information and opinions on particular areas of data protection in journalism; specifically, what they believed was done well, or not, or if they believed organisations needed to do better, and if so, where?

The first survey received eight individual responses. Six of the survey respondents were freelance journalists, the seventh was from the National Union of Journalists (NUJ) and the eighth a response from the Media Lawyer's Association (MLA) representing a number of UK based media organisations of varied size, exposure and reach. The names of the organisations it represented were not disclosed. We will refer to this collective response as 'the MLA response'. The MLA response touched on many of the topics covered in the first survey but lacked clarity and detail in some areas.

The second survey received three responses. The first response was from a UK parliamentarian, the second response was from an academic and a campaigner for greater accountability for press malpractice, and the final response was from an academic with a special interest in data protection who states "... I have studied and written extensively on the relationship between journalism and data protection...".

We have reflected upon all responses and how they relate to the processing of personal data for the purposes of journalism and good data protection practices in journalism. Due to the small sample size, we are limited in the extent to which we can draw any firm conclusions, analyse, interpret and use the responses.

We have separated the responses into key areas of data protection to assist with the reporting of the responses.

Governance and accountability

Having robust governance and accountability processes in place is essential to ensure that an organisation can demonstrate sufficient oversight, accountability, and consistency in its data sharing processes.

With less robust governance and accountability processes for evaluating the effectiveness of information governance, there is a risk that



personal data may not be processed in compliance with the regulations, which could result in regulatory action and reputational damage.

The MLA response:

- Did not describe the data protection accountability frameworks²⁰ of media organisations or if media organisations had implemented such a framework which allowed senior management to have oversight.
- Explained that some larger media organisations have appointed a Data Protection Officer (DPO).
- Described how most media organisations provide regular data protection training to all employees, freelance journalists and contract staff, but it stated that data protection training was not mandatory in all media organisations. The MLA response did not state which media organisations they were referring to.
- Explained that most media organisations provide regular training updates and/or bespoke job specific data protection training for journalist and editorial teams, including how the journalism exemption works.
- Described that data protection training is provided in various formats, with many organisations making data protection resources available on their intranet systems.

Other responses to survey one:

- The NUJ confirmed they have a data protection accountability framework.
- The NUJ has appointed a DPO who is tasked with monitoring compliance with the UK General Data Protection Regulation (UK GDPR) and other data protection policies, training, raising awareness and audits.
- The NUJ provides mandatory data protection training to staff, as well as refresher data protection training.
- The six freelance journalist respondents used various sources to inform their data privacy legislation knowledge. Three respondents were self-taught, two respondents used the ICO website, and one used their professional body, the News Media Association.



²⁰ Introduction to the Accountability Framework | ICO

Responses to survey two:

- Some respondents believe governance and accountability provisions vary greatly across journalism. These respondents consider broadcast journalism to have a higher quality of governance and accountability provisions. One respondent highlighted that generally, "... public sector broadcasters have a more systematic approach to legal and regulatory requirements."
- Some respondents raised concerns about non-traditional journalists; that they often lacked data protection training and had limited awareness of data protection legislation. This increases the risk of non-compliance with legislation and/or the misapplication of it.

Transparency

Organisations must have appropriate controls in place to ensure that people are informed about how their personal data is processed, as required by UK GDPR Article 5(1)(a).

If requirements are not met, then people may not be properly informed of how their information is being processed and of their individual rights. This could result in a breach of legislation.

The MLA response:

- Explained that media organisations have privacy statements²¹ setting out how they process personal data in relation to readers and for commercial purposes. The MLA response provided links to media organisations' privacy statements²² to evidence this claim.
- Explained that where personal data is processed under the legitimate interest basis or the journalism exemption, a privacy notice would not be provided.
- Described that some personal data, "for example when an interview is conducted on the record for a magazine feature", may on occasion be processed using the lawful basis of consent. The MLA response did not explain if media organisations have an appropriate

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²¹ Right to be informed | ICO

²² Examples include, <u>Privacy | The Guardian</u>, <u>ITV Privacy & Cookie Information | Terms</u> and <u>Keeping your info</u> <u>safe and sound - Using the BBC</u>

privacy notice when relying upon the lawful basis of consent, or how such a privacy notice would be communicated to the person concerned.

Other responses to survey one:

- The NUJ confirmed and provided evidence²³ that they have a privacy statement available on their website.
- Three of the six freelance journalists confirmed they had privacy statements setting out how they will process personal data.

Responses to survey two:

- One respondent raised concerns over the availability of publicly accessible privacy notices relating to the processing of personal data for journalistic purposes.
- One respondent explained there had been a notable improvement in mainstream media in respecting the privacy of the children of public figures, which is one area that has been of great public concern.
- Views were expressed stating that people have little to no awareness of how their personal data is used in journalism or the data protection parameters journalism is meant to work in.
- Concerns were also raised about undue privacy invasion in the 'public interest' which is then linked to inaccurate 'clickbait' stories. They believe that the privacy of public figures, or those who have a role in public life, is seriously intruded upon in order to create 'clickbait' stories which are unlikely to satisfy the reasonable public interest requirement.
- One respondent raised concerns over how special category data²⁴ is used and processed in journalism "when the public interest rationale is extremely weak". Furthermore, they raised questions as to whether due consideration is given to the context when determining if special category data should be published.

Contracts and data sharing

Appropriate data sharing controls must be in place to ensure the sharing of personal data complies with the principles of all data protection legislation. The Data sharing code of practice guides people, businesses



²³ National Union of Journalists (NUJ): Privacy

²⁴ Special category data | ICO

and organisations through the controls and measures which should be considered and, where appropriate, implemented so personal data is shared in a fair, safe and transparent way.

Failure to design and operate appropriate data sharing controls could breach data protection legislation, which may result in regulatory action, reputational damage and/or damage to the people the information relates to.

The MLA response:

 Described how the sharing of personal data with third parties plays an important role in journalism, but limited information was provided in the MLA response about how media organisations are meeting their obligations in relation to contracts and data sharing.

There were no notable comments made by survey one or two respondents regarding contracts and data sharing.

Data quality and retention

Appropriate data quality, retention and records management processes must be in place to ensure compliance with UK GDPR Articles 5(1)(c) (data minimisation), (d)(accuracy) and (e) (storage limitation).

If data quality and retention are not assured there is a risk that information may be retained when it is no longer accurate, relevant, or required, which may result in a breach of data protection legislation.

The MLA response:

 Provided limited information about the policies and processes media organisations have in relation to establishing and maintaining personal data accuracy, or records management.

Other responses to survey one:

- The NUJ stated they have the appropriate policies and procedures in place regarding data quality and retention.
- Only one of the six freelance journalists stated they have a process for assessing and regularly reviewing the accuracy of the personal data they process.



• Similarly, only one of the six freelance journalists has a process to determine how long data should be retained for, when it should be disposed of or archived.

Responses to survey two:

 Survey two respondents commented on data quality and retention practices in journalism, but these views were based on their perception of practice, rather than first-hand knowledge.

Data Protection Impact Assessments (DPIA)

Completing a DPIA in line with the requirements of UK GDPR Article 35 is necessary to ensure that no high-risk processing takes place without considering and implementing mitigating controls. If DPIAs are not effectively carried out and implemented, it may result in a breach of UK GDPR, which could result in enforcement action, including a fine.

The MLA response:

 Explained that media organisations conduct DPIAs, or a form of DPIA, whereby it is completed through a "similar" process.

Other responses to survey one:

The NUJ stated they have a DPIA process in place.

There were no other notable comments made by survey one or two respondents regarding DPIAs.

Security

Appropriate technical and organisational security measures help to ensure confidentiality, integrity and availability of manually and electronically processed personal data.

Having appropriate security measures in place is essential to prevent data breaches such as unlawful access to information, and the damage and/or distress for people who are the subject of the impacted data.

The MLA response:



- Explained that information security is a priority in media organisations. They stated that technical security measures and controls are in place with accompanying organisational controls including policies, procedures, training and awareness.
- Described how media organisations have security incident management policies and procedures that provide guidance around identifying, reporting and responding to incidents.
- Explained that media organisations have processes and systems in place to manage personal data breaches. These include the circumstances in which a person must be notified of a breach involving their personal data and when a breach must be reported to the ICO.

Other responses to survey one:

- The NUJ confirmed they have a documented process to manage device security. This includes the security measures in place for staff working remotely. The NUJ also have an incident management process in place that provides guidance around identifying, reporting and responding to incidents and near misses.
- Two of the six freelance journalists confirmed they have processes and systems in place to managed personal data breaches, including the circumstances in which a breach must be reported to the ICO.

There were no other notable comments made by survey one or two respondents regarding data security.

Lawful basis for processing personal data

A data controller must have a valid lawful basis in order to process personal data.

The special purposes exemption in data protection law, protects freedom of expression and information in journalism, academic activities, art and literature (DPA 2018, Schedule 2, Part 5(26)).

Without properly identifying and documenting the choice of lawful basis, or exemption, the data controller may make inappropriate choices and may not satisfy their data protection obligations.

The MLA response:



- Explained that media organisations use a variety of lawful bases, as well as the journalism exemption, for processing personal data. They explained that legitimate interest is routinely used as the basis of publishing personal data, and consent is used occasionally in specific circumstances. It is unclear from the response how frequently the journalism exemption is applied.
- Stated that whilst there was "a general thought process" around the application of the journalism exemption, that "... the reality is that the majority of day-to-day editorial decision-making, is not subject to documented processes." The MLA response did explain that where editorial decisions are deemed to require supporting documentation, and where the editorial staff have time to do it, they may complete written documentation.
- Explained that the person who makes the decision to publish under the journalism exemption, be it journalist or editor, can demonstrate their thought process if needed. This may be in the form of a "pre-existing audit trail, diary entry or personal testimony".

Other responses to survey one:

- The NUJ confirmed that when processing personal data for journalistic purposes they use the journalism exemption and document the decision.
- The NUJ have a documented process for assessing which lawful basis, or exemption, should be relied upon when processing personal data. It includes the use of the journalism exemption and how special category, and criminal offence data should be handled.
- Only one of the six freelance journalists has used the journalism exemption in their work.
- Two of the six freelance journalists have a documented process for the use of the journalism exemption, and three of the six freelance journalists have a process for determining the appropriate lawful basis to use in relation to the processing of personal data.

Other responses to survey two:

 Two respondents raised concerns about the application of the lawful basis of consent in journalism. For example, when consent is relied upon in release forms for visual and audio-visual journalistic productions. The respondent's concern stems from the requirement for the individual's consent to be freely given and their right to



- withdraw their consent at any time (Article 7 of UK GDPR²⁵). The respondent believes there is a low awareness of these requirements in journalism.
- The application of the journalism exemption was the focus of some concern by all survey two respondents. One respondent commented that non-traditional journalists are thought to have little understanding of the exemption, or how it must be applied. Whilst some respondents believed professional journalists and media organisations have a greater understanding of the exemption, they were still concerned about the application of the journalism exemption and whether professional journalists and media organisations fully consider and satisfy their obligations when seeking to rely upon it. For example, where the journalism exemption is applied in the publication of leaked data or 'clickbait' stories.

Individual rights

Under data protection law, people have specific rights about their personal data, although if an exemption applies the data controller may not have to comply with all the usual rights and obligations.

Compliance with individual rights minimises the privacy risks to people whose data is processed as well as to data controllers.

The MLA response:

 Explained that media organisations have processes for handling and responding to subject access requests, the right to rectification and erasure, but did not include if media organisations have processes regarding the right to object and to restrict processing.

Other responses to survey one:

- The NUJ response stated that documented processes are in place for handling and responding to the following requests:
 - subject access,
 - right to rectification,
 - right to erasure requests,

²⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation) (Text with EEA relevance) (legislation.gov.uk)



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- right to objection, and
- right to restrict processing.
- The NUJ also confirmed that children's personal data is given extra protection.
- Four of the six freelance journalists have a process for handling and responding to subject access requests.

Responses to survey two:

 Some respondents felt that in journalism there is a common belief that a blanket exemption applies, whereby any requirements under 'individual rights' legislation, don't apply to this field. However, one respondent explained that in some areas of journalism the right to rectification is recognised, although in practice only significant inaccuracies are rectified, and the value of the rectification varied. For example, online material is annotated with the correction, but what value is this to the person this relates to?

Our view:

On the basis of the information received we are unable for a form a view that 'journalism' is meeting its legal data protection obligations or have established good data protection practices across journalism.

The Data protection and journalism CoP provides practical guidance on how media organisations and journalists can comply with the data protection legal requirements and establish good practices when using personal data for journalism. The Data protection and journalism CoP should also help address some of the concerns raised by the 'survey two' respondents.

We have developed a range of guidance and tools, available on the ICO website, to help people and organisations understand what is required of them to ensure compliance with data protection legislation. The survey responses suggest that these resources are not reaching all areas of journalism, particularly freelance journalists. Our small to medium sized enterprises (SMEs) web hub²⁶ offers accessible and helpful resource and guidance tools, which freelance journalists may find useful when ensuring they have data protection processes in place

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²⁶ <u>SME web hub – advice for all small organisations | ICO</u>

that are proportionate and reasonable for the nature of their processing activities.

On the ICO website, we have released data protection training materials²⁷ and published checklists and document templates to help organisations comply with data protection legislation. As part of our ICO25 strategic plan²⁸ we will continue to expand the resources available on our website.

Conclusion

- The purpose of this review is to consider the extent to which the processing of personal data for the purposes of journalism has complied with:
 - data protection legislation, and
 - good practice in the processing of personal data for the purposes of journalism.

In the conclusion of the Leveson Inquiry 'Part F: The culture, practices and ethics of the press: the press and the public'²⁹, Lord Justice Leveson took care to explain that he did not believe unlawful press practices were widespread across the industry or necessarily within an organisation or department. The unlawful actions established in the Leveson Inquiry could be attributed to a number of bad actors, rather than these practices being widespread. This did not diminish the significance of the malpractice but put it into context. Reviewing the findings of the Leveson Inquiry gives rise to the question of whether this could still apply today.

- This review has found no evidence of widespread poor data protection practices or non-compliance with data protection legislation in journalism, but this doesn't mean there aren't areas of concern in journalism, as highlighted by the Ofcom sanctions.
- The surveys used to investigate the extent to which good data protection practices and data protection legislation is complied with

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²⁷ Training videos | ICO

²⁸ ICO25 strategic plan | ICO

²⁹ An inquiry into the culture, practices and ethics of the press: report [Leveson] Volume 2 HC 780, Session 2012-2013 (publishing.service.gov.uk)

in journalism produced some useful information, however the low number of respondents was disappointing and meant we could not form any firm conclusions based on the survey results alone. We will review our approach to gathering this kind of evidence in advance of the next statutory review and consider what we can do differently to improve engagement levels.

- Some freelance journalist respondents raised concerns about the challenges they face as sole traders in attempting to satisfy data protection legislation requirements. We envisage that the SME web hub³⁰ can help freelance journalists, and other small or mediumsized journalism enterprises, with these challenges. This resource is available on the ICO website and provides advice and guidance for all small organisations and sole traders. The Data Protection and Journalism CoP also provides practical guidance about how journalism, including freelance journalists, can comply with data protection legal requirements and good practice when using personal data in journalism.
- Non-traditional journalism was an area of journalism highlighted by two survey respondents. Concerns included:
 - the application of the journalism exemption and whether data is processed lawfully,
 - the accuracy of the data,
 - the accountability of non-traditional journalism,
 - a lack of training and awareness of data protection requirements in non-traditional journalism, coupled with the nature of this type of journalism, which were seen as contributing factors to the perceived poor data protection practices in this area of journalism.
- Our internal evidence review did not highlight any trends or themes identifying particular areas of concern or significance. The relatively low numbers of complaints received by the ICO may indicate that affected individuals are more likely to raise concerns with other regulators in this space.
- Our external research, which analysed data protection related complaint investigations raised with the UK's communication



³⁰ SME web hub – advice for all small organisations | ICO

regulator Ofcom and the press monitoring bodies, Impress and IPSO, did not establish any areas of particular concern or significance.

 The ICO considered using our formal powers under s178 to provide evidence for the review. However, use of these powers is challenging and resource intensive given the prescribed timelines and resource required. A decision was made to use a combination of voluntary engagement and existing internal and external evidence to inform this review. We will consider whether the use of our statutory powers is appropriate as part of our preparation for the next statutory review.

Next steps

The next review will look at the period from 24 May 2022 until 25 May 2027. In the period leading up to that review our intention is to:

- Maintain visibility of the sector using ongoing internal analysis and available regulatory tools to grow our evidence base.
- Ensure we have up to date information on the awareness and adoption of the Data protection and journalism code of practice to support the next review period. Now that the code is published the sector should be clear on what is expected/required of it.
- In addition to and recognising the important role of press monitoring bodies, we plan to support initiatives to raise awareness of how to complain to the ICO where concerns relating to the processing of personal data for the purposes of journalism occur.
- Continue to monitor reported litigation cases where it is relevant to the processing of personal data for the purposes of journalism.



Appendices

Appendix 1: Section 178 of the Data Protection Act 2018

- Under Section 178³¹ of the Data Protection Act 2018 (DPA 2018) the Information Commissioner has a statutory duty to periodically undertake a review of the extent to which the processing of personal data for the purposes of journalism has complied with:
 - data protection legislation, and
 - good practice in the processing of personal data for the purposes of journalism.
- The Information Commissioner has a statutory duty to:
 - review the four-year period starting from when Chapter 2 of Part 2 of DPA 2018 came into force,
 - start the review within six months of the end of the four-year period,
 - prepare a report of the review, and
 - submit the report to the Secretary of State within 18 months of when the review started.

Therefore, this review considers the period from 23 May 2018 until 24 May 2022. We began the review in July 2022, so we are required to submit the report to the Secretary of State by January 2024.

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³¹ <u>Data Protection Act 2018 (legislation.gov.uk)</u>

Appendix 2: Reference materials

- Section 178 of DPA 2018 <u>Data Protection Act 2018</u> (legislation.gov.uk)
- "The special purposes" exemption, Paragraph 26, Part 5, Schedule 2 of DPA 2018 - <u>Data Protection Act 2018 (legislation.gov.uk)</u>
- "Offences relating to personal data", Section 170, Part 6 of DPA
 2018 <u>Data Protection Act 2018 (legislation.gov.uk)</u>
- Data protection and journalism code of practice <u>Data protection</u> and journalism code of practice | <u>ICO</u>
- ICO guidance for small to medium sized enterprises <u>SME web hub</u>
 advice for all small organisations | ICO
- Data sharing code of practice <u>Data sharing: a code of practice</u> |
 ICO
- ICO: Data Protection and journalism: how to complain about media organisations - <u>Data protection and journalism: how to complain</u> about media organisations | ICO
- Ofcom Broadcasting Code <u>The Ofcom Broadcasting Code (with the Cross-promotion Code and the On Demand Programme Service Rules) Ofcom</u>
- Ofcom annual report and accounts <u>Annual reports and plans</u> -Ofcom
- Ofcom annual report on the BBC <u>Ofcom's annual report on the</u> BBC - <u>Ofcom</u>
- Impress Standards Code <u>Our standards code Impress</u>
- Impress complaints decisions <u>Complaint decisions Impress</u>
- IPSO Editors' Code of Practice Editors' Code of Practice (ipso.co.uk)
- IPSO rulings Rulings and resolution statements (ipso.co.uk)
- ICO guidance for organisations For organisations | ICO
- Leveson Inquiry report into the culture, practices and ethics of the press - <u>Leveson Inquiry - Report into the culture, practices and ethics of the press - GOV.UK (www.gov.uk)</u>

Appendix 3: Reference notes

• <u>data-protection-and-journalism-code-reference-notes-202307.pdf</u> (ico.org.uk) Pages 38 to 40.

