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04770-18 Bee v The Sunday Times

**Decision: Breach - sanction: action as offered by
publication**

**Relevant code
provisions**

1 Accuracy (2018)

Publication

The Sunday Times
(News UK)

Conclusion

Breach - sanction:
action as offered
by publication



[Decision of the Complaints Committee – 04770-18 Bee v The Sunday Times](#)

[Summary of complaint](#)

1. Amelia Bee complained to the Independent Press Standards Organisation that The Sunday Times breached Clause 1 (Accuracy) of the Editors' Code of Practice in an article headlined "Ladies' loos at City landmarks may open to trans women", published on 29 July 2018.
2. The article reported that women's toilets at landmarks in the City of London "could be opened to transgender people in the most radical move yet to promote their rights". It said that the City Corporation "was proposing to open all its women's facilities and services to anyone who 'self-identifies' as woman or girl, whether or not they have transitioned". The article went on to report reactions to the alleged proposal from "feminists" and others. It said that, as part of a consultation on the matter, the City Corporation had said that it proposed that "where access to services or facilities are restricted by gender....the restriction should relate to the gender with which the service user consistently identifies now." The article reported that the City Corporation "proposes not asking service user to provide 'proof' of their gender identity, but would instead rely on each service user to self-identify their gender."

3. The article appeared in the same format online, under the same headline.

4. The complainant said that the article's headline was misleading, in breach of Clause 1 (Accuracy), because it suggested that transgender women were, at the time of writing, not legally allowed to use the women's toilets. She said that, in fact, their right to do so was protected under the Equality Act through the protected characteristic of gender reassignment – which applies from the moment a person has the intent to undergo gender reassignment. She said that any proposal or consultation by the City Corporation could not affect the legal status quo, and that therefore the suggestion made by individuals quoted in the article, that the proposal was "dangerous" or an "erosion of women's spaces", was misleading. She noted that a representative of the Corporation, who had been quoted in the article, had since publicly stated that transgender women had long been able to use the facilities of their choosing.

5. Initially, the publication denied any breach of Clause 1 (Accuracy). It provided the text of the consultation document, which set out the City Corporation's intention to "develop an over-arching policy on gender identity...in relation to the provision of services", and referred to the admissions policy at the bathing ponds operated by the Corporation as stating that "anyone who self-identifies as a woman may use the Ladies' Pond". Its journalist had asked the Corporation whether it proposed that a similar change was envisaged for the City's public toilets, such that 'self-identifying' trans women should be allowed to use the women's facilities. The corporation had responded as quoted in the article, to state that any restriction should relate "to the gender with which the service user consistently identifies now". The journalist therefore took it that the Corporation's proposal was 'to allow self-identifying transgender people to use the facilities of their choice, whether or not they fulfil the Act's definition of gender reassignment'. The journalist understood that the Act's existing provisions would not apply to solely 'self-identifying' trans women; if it did, the Corporation would not need to consult on the matter of extending the use of facilities to them. However, the publication argued that, as the Corporation had not indicated that trans women could already use the toilets of their choice, there was no failure to take care over the article.

6. Following receipt of the complaint, the publication contacted the Corporation to clarify its position; however, it refused to do so. Nevertheless, the publication offered to amend the article to make clear that the headline and body text referred to "self-identifying trans women", and to clarify the current position under the Equality Act by stating "Under the Equality Act, providers of services such as public lavatories must not discriminate against people who have undergone – or are planning – gender reassignment but can exclude them from single-sex facilities if doing so is a "proportionate means of achieving a legitimate aim". It subsequently removed the

article from its website altogether, and offered to publish the following, as a standalone online clarification, and on its letters page:

Our report 'Ladies loos at City landmarks may open to trans women' (News, July 29) was misleading because it did not accurately explain the current rights of transgender women under the Equality Act. Service providers can allow transgender people to use single sex spaces such as toilets but can exclude them if this can be justified as a proportionate way to achieve a legitimate aim.

7. The complainant said that this offer was inadequate, as it did not contain an apology to the transgender community, or indicate that transgender access to single sex spaces does not correlate with increased criminal activity. She was also concerned that the proposed clarification did not make clear that the Corporation's consultation cannot affect rights bestowed by the Equality Act. In addition, she said that the term 'self-identifying transgender women' was unhelpful because all transgender people 'self-identify'.

Relevant Code provisions

Clause 1 (Accuracy)

- i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
- ii) A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.
- iii) A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.
- iv) The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.

Findings of the Committee

8. The article's headline and standfirst had stated that the City's toilets were not currently open to trans people. The publication had accepted that it had no basis for this claim; there had been a failure to take care over the accuracy of this information, in breach of Clause 1(i). While the Committee was not in a position to know the Corporation's position in relation to the application of the Act prior to the article's publication, it was accepted that, under the Equality Act, service providers can allow transgender individuals to use the facilities aligned with their gender identity, unless an exception is in force. By failing to record the position under the existing legislation, and in the absence of contrary evidence indicating that this Act was

not being applied in the City, the article gave rise to a misleading impression that required clarification in order to avoid a breach of Clause 1(ii). The publication's offered clarification explained the position of the Equality Act with respect to single-sex facilities. As the Committee was not in a position to know the Corporation's position with respect to its application of the Act, this clarification was sufficient to address the misleading impression in the article. The publication had offered this clarification with sufficient promptness and prominence: its Letters page is the established location for corrections and clarifications within the publication. There was no further breach of Clause 1 (ii).

Conclusion

9. The complaint was upheld under Clause 1(i).

Remedial action required

10. The publication had offered to print a clarification on its Letters page and as a standalone online item. This offer had been made with sufficient promptness and prominence, and the offered wording was sufficient to correct the misleading impression the article had given of existing rights for trans people under the Equality Act.

Date complaint received: 30 July 2018

Date decision issued: 11 December 2018

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