



**FINANCIAL  
TIMES**



## **ADJUDICATION**

by

**GREG CALLUS**

**EDITORIAL COMPLAINTS COMMISSIONER**

**Financial Times Limited**

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## ADJUDICATION

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1. This is an Adjudication of a complaint by a person to whom I shall refer only as “the Complainant”. It concerns an article (“the Article”) headlined “*Why disabled people like me give up on careers*” written by a summer intern at the *Financial Times* called Niamh Ní Hoireabhaird (“the Author”) and published by the FT online on 20 June 2018<sup>1</sup>.
2. The Author describes some of the difficulties she has encountered in both the world of education and work, including at her (unnamed) university, where cobblestones are not conducive to wheelchair use.
3. The complaint is made in respect of one paragraph, which reads:

*“Navigating the academic system is also difficult. This year, at the start of my Italian exam, I asked the woman who was acting as my scribe (the physical act of writing itself absorbs all my concentration) about her fluency and she admitted she had never studied Italian but learned French at secondary school. The result was I had to spell out every single word of my essays. It was as annoying as you’d imagine”.*
4. The Complainant first wrote to the *Financial Times* by way of three emails on 11 July 2018. The Complainant self-identified as the ‘scribe’, and sought removal of that paragraph. The complaint was, I infer, made on three bases:
  - a. Clause 1 of the IPSO Code (as incorporated into the FT Editorial Code of Practice) which deals with factual inaccuracy or misleading content;
  - b. Clause 2 of the IPSO Code, which deals with invasion of privacy; and
  - c. Requesting deletion of the paragraph pursuant to the Complainant’s rights under EU data protection law.

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<sup>1</sup> The Article remains available to read online at:  
<https://www.ft.com/content/a11867c4-73d5-11e8-aa31-31da4279a601>

5. The complaint said that the Article at the URL footnoted above was a second version, and that there had been an earlier version of the article published which “*was close to giving an impression of inciting hatred through speech*”.
6. The complaint was sent to Nigel Hanson, the FT’s senior legal counsel, and to the FT Privacy Officer. After a holding response sent on 13 July 2018, the Code complaints were rejected by Nigel Hanson on behalf of the Editor by letter (sent via email) of 18 July 2018.
7. The FT also flatly denied that there had been any editing or alteration of the Article since its original publication. The data protection complaint was rejected on the basis of the journalism exemption by email of 7 August 2018.
8. The Complainant exercised a right of appeal to me by email of 6 October 2018. Her appeal asked me to review the complaints and “*respond with a remedy for damages*”.

## **Jurisdiction & Procedure**

9. My role is an appellate role, handling complaints on appeal where they have been refused (in whole or in part) by the Editor. Those complaints are invariably complaints under the FT Editorial Code of Practice<sup>2</sup>, which incorporates the IPSO Code as an Annex (although the FT is not a member of IPSO, thus the existence of my role and the Committee who oversee my work).
10. In Code complaints, I am unfettered in reaching a decision as to whether or not there has been a breach. However, the subject matter of Code complaints can often overlap with possible legal actions, such as for defamation, or misuse of private information, or breaches of data protection law, where a person can claim financial damages.

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<sup>2</sup> The FT Editorial Code of Practice:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/92/e9/92e922e4-579d-406a-9db2-0e76c232a632/editorial\\_code.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/92/e9/92e922e4-579d-406a-9db2-0e76c232a632/editorial_code.pdf)

11. Resolving such legal claims is not ordinarily within my remit, unless there is such a claim in dispute and both the claimant and the FT ask me to provide (or assist in the provision of) low-cost arbitration of that claim. See para. 2 of my *Guidance on Policy & Process*<sup>3</sup>.
12. I am therefore fully seised of the Code complaints under Clauses 1 and 2, and if I found a breach could order correction, clarification, or removal of the offending editorial content. But, by contrast, I do not have jurisdiction to rule on a data protection or defamation complaint against the FT, let alone award a remedy in damages, unless the FT agrees to arbitrate that legal claim. Arbitration is not mandatory for the FT under the scheme operated by the Committee that oversees my work.
13. The situation is different at other UK press regulators.
  - a. The Press Recognition Panel-approved regulator, IMPRESS requires all its members to agree to its arbitration of legal claims under the Chartered Institute of Arbitrators. Since around 24 July 2018, this arbitration scheme has included claims for data protection as well as more traditional media torts (such as libel and harassment).
  - b. IPSO, to which most national newspapers in the UK belong, also offers low-cost arbitration which is now mandatory for the national newspapers who are members, and voluntary for other IPSO members (such as weekly magazines). IPSO too includes data protection claims in the panoply of media torts it can arbitrate.
14. I agree that if the FT agreed, there is nothing to stop me arbitrating a data protection claim just like a libel claim (or arranging such an arbitration). However, under the system operated at the FT, *both* parties must consent to that arbitration on a case-by-case basis. I therefore wrote to Nigel Hanson on 7 October 2018 to ask whether the FT would consider an English-seated *ad hoc* arbitration of the data protection claim brought by the Complainant.

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<sup>3</sup> Guidance on Policy & Process:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/31/c8/31c8f888-7e54-42f5-88e7-1c06e7a7d12e/editorial-complaints-guidance.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/31/c8/31c8f888-7e54-42f5-88e7-1c06e7a7d12e/editorial-complaints-guidance.pdf)

15. Mr Hanson, on behalf of the Editor, indicated to me by reply that the FT did not consider this an appropriate claim for arbitration. Accordingly, I consider that I have no jurisdiction in respect of the data protection claim. If, following this Adjudication, the Complainant wishes to pursue that claim, she will have to do so by complaining to the Information Commissioner's Office or by making an application to the courts. I cannot award damages for editorial code breaches.
16. I have set out this thinking not only in the interests of this Complainant, but also in the interests of transparency for the sake of future complainants. There are two reviews of data protection at newspapers mandated by ss.178 and 179 of the Data Protection Act 2018, and the latter concerns the use and effectiveness of alternative dispute resolution (ADR) in respect of data protection complaints made to newspapers. It is not for me to determine whether or not there should be mandatory arbitration at the FT, nor whether my role in respect of Code complaints should extend to data protection complaints, but this will need to be a matter for discussion between my Appointments & Oversight Committee and the Editor and others at FT.
17. Accordingly, the data protection element of this complaint and the request for damages are dismissed for want of jurisdiction.

## **Code Complaints**

### *Clause 2: Privacy*

18. The simpler of the complaints under the FT Editorial Code of Practice is the privacy complaint. Clause 2 of the annexed IPSO Code provides that:

*“2.1 Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*

2.2 *Editors will be expected to justify intrusions into any individual's private life without consent. In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.*

2.3 *It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.”*

19. Because the complaint is made under Clause 2 (Privacy), I have applied paragraph 39<sup>4</sup> of my *Guidance on Policy & Process* and not named the Complainant, because to name complainants in privacy matters would be to deter people from raising such complaints for fear of further publicity. I have done this as a matter of policy, rather than because of the specific circumstances of this complaint.

20. There has been no photography of the Complainant at all, and so Clause 2.3 is irrelevant to this adjudication. What requires specificity is the nature of the invasion of privacy under Clauses 2.1 and/or 2.2. Clause 2 is an ‘asterisked’ clause which means that I may consider whether the degree of intrusion into the complainant’s rights is overridden by the public interest. See the discussion in the *Crestani Adjudication*<sup>5</sup> at [24]-[58] for the way in which I approach privacy complaints under Clause 2 of the IPSO Code.

21. The complaint says that there was a discussion of her acting as a scribe at a “*private and confidential meeting between myself, Niamh and the Disability*

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<sup>4</sup> Paragraph 39 refers to a complaint made “*other than under Clauses 1 or 2*”, but the reference to Clauses 1 and 2 is to the now-superseded 2015 version of the IPSO Code, where Inaccuracy was Clause 1, Opportunity to Reply was Clause 2, and Privacy was then Clause 3. I have therefore applied the Guidance as referring to a complaint “*other than under Clause 1*”.

<sup>5</sup> *Crestani Adjudication*: [https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/39/a5/39a58dde-c276-42cc-a919-ab6382985243/libi\\_adjudication.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/39/a5/39a58dde-c276-42cc-a919-ab6382985243/libi_adjudication.pdf)

*manager” and that “The information shared about my Italian and French language skills to leaving cert level is a breach of privacy”.*

22. I have rehearsed in the *Crestani Adjudication* than I will consider two stages of a test: (1) whether or not there is “a reasonable expectation of privacy” on the part of a complainant in respect of the information (whether because of its confidential nature or because publication is such an intrusion into the private and family life); and (2) if so, whether that can be justified by the FT.
23. I have no hesitation in finding that there is no reasonable expectation of privacy in respect of the information conveyed, namely the proficiency of the unnamed complainant in French and Italian. The Article says “*never studied Italian but learned French at secondary school*”. That is not, in my view, “private” information or information capable of having the quality of confidence. It will have been apparent to everyone with whom the Complainant went to school or university, and everyone who has ever received a copy of her CV. Similarly, there is little or no intrusion where an anodyne fact about an unnamed person is mentioned in passing in an article.
24. I am compelled by Clause 2.2 to consider the information which is in the public domain and/or has been made public by the Complainant. I note that the Complainant lists, or has until recently listed, her degree-level qualifications on websites such as Twitter and LinkedIn.
25. Even if I were wrong as to whether the privacy rights of the Complainant were engaged at all (i.e. if I were wrong, and it was information in respect of which she had a reasonable expectation of privacy), I would easily and comfortably find that it was outweighed by the Author’s right to tell her own story of her own experiences as a disabled student (incorporating her right to freedom of expression), but also that the inclusion of this anecdote was manifestly in the public interest as disclosing a university’s purported shortcomings in meeting the needs of disabled students (Clause 1.iv of the Public Interest Clause).
26. Accordingly, the appeal of the privacy complaint under Clause 2 is dismissed.

## *Clause 1: Inaccuracy*

27. Inaccuracy complaints fall under Clause 1 of the IPSO Code, which is annexed to the FT Editorial Code of Practice:

### ***“1. Accuracy***

- 1.1 *The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.*
- 1.2 *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.*
- 1.3 *A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.*
- 1.4 *The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.*
- 1.5 *A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.”*

28. In the *Berkley Adjudication*<sup>6</sup>, I explained the difference between inaccuracy breaches under Clause 1.1 as distinguished from those under Clause 1.2:

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<sup>6</sup> Berkley Adjudication, 29 March 2015, at paragraph [8]:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/aa/27/aa27c09e-86e3-45f6-b063-ed809df43f00/2015-01-28\\_matt-berkley-adjudication.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/aa/27/aa27c09e-86e3-45f6-b063-ed809df43f00/2015-01-28_matt-berkley-adjudication.pdf)

*“However, it is important to understand what exactly constitutes a breach of Clause 1 (Accuracy):*

*[...] Clause 1.1 will only be breached if the Press has not taken care to avoid publishing inaccurate information. It is a rule against slapdash journalism that is negligent about setting out the facts. It is not a rule which is breached by the mere presence of any inaccuracy however minor. It is breached only by such inaccuracies that a careful newsroom could and should have avoided publishing.*

*[...] Clause 1.2 will only be breached if the Press has refused to properly correct, clarify or apologise for a ‘significant inaccuracy, misleading statement or distortion’. Clause 1.2 is therefore different to Clause 1.1 in two material respects: first, the inaccuracy must be ‘significant’; and second, the breach is not one of negligent omission, but intentional refusal to amend”*

29. In the *Portes Adjudication*<sup>7</sup>, I went on to construe the three forms of error which Clause 1 is designed to prohibit:

*“24. Whether a statement is ‘inaccurate’ (in the narrow sense of factually wrong, and requiring a correction) can be judged by comparing the published information to a provably true version of the information. If they differ, and the difference is ‘significant’, a correction will be directed.*

*25. A statement will be ‘misleading’ where the objective reasonable reader of the FT would take away an erroneous belief about the subject of that statement, even though the statement was true. The*

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<sup>7</sup> Portes Adjudication, 29 May 2015, at paragraphs [23]-[26]:  
[https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer\\_public/60/9f/609fb246-1319-4841-8d2f-a7a9b2c5ee2f/2015-05-11\\_ferguson-adjudication-with-ps.pdf](https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/60/9f/609fb246-1319-4841-8d2f-a7a9b2c5ee2f/2015-05-11_ferguson-adjudication-with-ps.pdf)

*words “John Doe has been caught in bed with woman who isn’t his wife” may be perfectly true because John Doe has never married, but if a reasonable reader would take away that John Doe is both married and having an extra-marital affair, the statement is misleading. Significant misleading statements will require clarification, not correction, given that the information is not intrinsically inaccurate.*

*26. What then of ‘distorted’? It clearly is intended to mean something distinct from ‘misleading’. My provisional view is that whereas a misleading statement misinforms the reasonable reader about the factual content of that statement, a ‘distortion’ is an assembly of statements that are neither inaccurate, nor misleading, but collectively give an impression that a reasonable and fair-minded person in possession of all the facts would not have. To say of Adolf Hitler that he was a vegetarian, liked dogs, painted watercolours, and never cheated on his wife might not be inaccurate or misleading in any of the specifics, but would give the most grossly distorted view of his character.”*

30. The Complainant in the present case wrote to me to appeal on the basis of *“false statements made about me in the Financial Times referring to me and my work competency at [the University]”*.
31. Much of the factual basis for this complaint is not in dispute. The Complainant did act for the Author as both Scribe and Chief Invigilator in a number of English-language exams on 14, 16 and 17 May 2018, even where there were foreign-language terms of art involved. There is not, and never has been, any suggestion that the Complainant did not fulfil her role with all requisite care and skill.
32. I have also seen documentary evidence that the Complainant acted as Chief Invigilator (but not Scribe) for two of the Author’s written Italian examinations on 4 and 11 May 2018. The Author told me that she chose to self-scribe those examinations.

33. Beyond the privacy aspect, in respect of which I have rejected the complaint under Clause 2, there is no inaccuracy alleged as to the nature of the Complainant's qualifications being misstated, although she does say she has successfully acted as a scribe for other Italian exams. Similarly, it is said to be perfectly usual for a student to have to spell out words in a language examination, to avoid unfairness. The ambit of the inaccuracy is different.

34. On the Complainant's account, from her complaint email of 11 July 2018:

*"In good faith, I volunteered assistance as her scribe in the Italian exams. The Disability Manager and Niamh agreed and accepted this offer of assistance, well in-advance of the exam. I was employed as her scribe for the Italian exam at that point. The information shared about my Italian and French language skills to leaving cert level is a breach of privacy. Furthermore, this information was provided in order to reassure and console the student that I could transcribe the language paper, if required at any point. The remark was made during the offer of assistance at this private meeting. I made this statement to the Disability Manager in Niamh's presence and not to Niamh, one to two weeks in advance of her exams in this private meeting and training session. It is a misleading statement for Niamh to inaccurately state out of context that it was only stated during or just before the exam, as stated in the Financial Times."*

35. The Author's account, conveyed by Nigel Hanson in his letter of 18 July 2018 is that:

*"We have discussed with her your contentions. She is adamant that her conversation with you about the level of your Italian language skills did not take place until the start of her relevant Italian exam, and that she was surprised by your reply at that stage. She is certain that the standard of your Italian had not been explained to her previously in the meeting with the Disability Manager. She was therefore disappointed when she found out on the day of the exam."*

36. The Complainant had wanted to adduce the tapes of the relevant examination, but could not obtain them. When I spoke to the Author – who was adamant in her account as Nigel Hanson had recorded – she offered to procure the tapes under data protection legislation from the University. I conveyed what I hoped was good news to the Complainant, and gave her the option of my immediate Adjudication, or waiting until the tapes were available to me.

37. However, the Complainant was concerned about the risk of delay which might have the effect of frustrating her from suing for defamation within the primary one-year limitation period. I do not accept that contention, but in the circumstances, I have taken her response to mean that an immediate Adjudication – without waiting for the tapes - is preferred. For my part, I do not think the tapes have any significant bearing on the decision before me, and I would probably not have asked the Author to procure them had their importance not been asserted in the Complainant’s correspondence.
38. The question of fact as to inaccuracy is whether the Author learnt of the Complainant’s qualifications at the start of her exam (as the Author insists) or earlier, at the meeting with the Disability Manager (as the Complainant says).
39. The Complainant’s own email says: ***“I made this statement to the Disability Manager in Niamh's presence and not to Niamh, one to two weeks in advance of her exams in this private meeting and training session. It is a misleading statement for Niamh to inaccurately state out of context that it was only stated during or just before the exam, as stated in the Financial Times.”*** (emphasis added)
40. Assuming (and I have no reason to doubt it) that this was said by the Complainant to the Disability Manager at that meeting, that does not mean that it was either heard or understood by the Author, especially where the Complainant herself says it was not said *to* the Author, only in her presence.
41. Given the Author has made very clear both to Nigel Hanson and to me that she did not learn of the Complainant’s qualifications until the exam, I would have to find that she was being either highly forgetful or outright dishonest in order to find that the Article was inaccurate about the state and timing of her knowledge. I simply do not have any such evidence available to me.

42. If and when the tapes become available, and if they happen to indicate that the Complainant's account is somehow false, then I will re-open this Adjudication. However, in the absence of those tapes, and with the Complainant concerned about the passage of time, I have decided to produce this Adjudication subject to that caveat. On the basis of the evidence I actually have before me, there is nothing that causes me to think the Author is being dishonest at all. The Complainant is, in my view, simply mistaken that the Author was aware of what had been said at the earlier meeting.
43. On the evidence as it stands, and applying Clause 1 of the IPSO Code, I am not satisfied that there is any proven inaccuracy. Even if I had found that the Complainant was correct in her assertions as to the time of the Author's knowledge, I do not think that this error could possibly have been picked up by Editorial in advance of publication (the test under Clause 1.1).
44. Nor, I'm afraid to say, do I think that the error – even if it had been factually proven – would come close to being “significant” for the purposes of Clauses 1.2 or 1.3. The Complainant is not named, or even generally identifiable, from the information. In any event, even if the inaccuracy were proven, it is not an inaccuracy *about* the Complainant at all – it might be an inaccuracy about the Author's state of knowledge, and what that says about the University's provision of examination scribes, but not about the Complainant.
45. In the circumstances, I reject the Complaint under Clause 1 of the IPSO Code.

**GREG CALLUS**  
**Editorial Complaints Commissioner**  
***Financial Times***  
**12 February 2019**