

THE FINANCIAL TIMES LTD – EDITORIAL COMPLAINTS: GUIDANCE on POLICY & PROCESS

Introduction

This document sets out guidance as to the policies and processes which the *Financial Times* (“FT”) and its affiliated publications shall apply to complaints handled by the Editorial Complaints Commissioner, as appointed by the FT Appointments and Oversight Committee (Baroness Wheatcroft, Professor Hargreaves, and FT CEO John Ridding).

Remit & Jurisdiction

1. The Editorial Complaint Commissioner (“the Commissioner”), on behalf of the independent Appointments & Oversight Committee, has a general purview to ensure the highest journalistic standards at FT. However, given the importance of freedom of the press and editorial independence, all regulation and oversight must be both necessary and proportionate. Wide latitude should be given to editors to publish what, and how, they wish, and that discretion should not be unduly fettered.
2. Accordingly the Commissioner’s role will generally be limited to:
 - 2.1 Adjudicating alleged breaches of the FT Editorial Code of Practice, raised by a complainant and not resolved to that complainant’s satisfaction by the relevant FT editorial department;
 - 2.2 Supplying, or assisting in the provision of, low-cost alternative dispute resolution (“ADR”) of legal claims, but only where such claims are referred by editorial legal department at FT with the consent of the complainant;
 - 2.3 Conducting such other investigations and compiling such information as is expressly requested by the Appointments & Oversight Committee.

3. Certain matters shall not be ordinarily classified as being within the remit of the Commissioner, unless the Commissioner (in his or her absolute discretion) or the Appointments & Oversight Committee deem otherwise:
 - 3.1 Moderation decisions, or decisions taken in the management of the FT online community, whilst ‘editorial’ in nature are ordinarily excluded from the Commissioner’s remit. Such matters should be referred to the Community Editor(s).
 - 3.2 Advertising content is not ‘editorial content’ such that the Editorial Code of Practice applies.
4. Decisions of the Appointments & Oversight Committee should be made by consensus, but may be made by any number of them acting unanimously if the full committee cannot be contacted within the time necessary for a decision to be made.

Complaints

5. For the purposes of this Policy Statement, a ‘complaint’ is defined as being:

“any communication to the FT from a third-party which alleges facts from which a breach of the letter or spirit of the Editorial Code of Practice could reasonably be inferred”.
6. This could include mere typographical errors (e.g. the difference between ‘million’ and ‘billion’ can be a significant and material inaccuracy for the purposes of Clause 1), but will more ordinarily be substantive issues of alleged factual inaccuracy, or other ethical or legal breaches.
7. Complaints received from within FT (‘whistleblowers’) may be made directly to the Commissioner, and the whistleblower shall be anonymized. Measures, such as a

Whistleblowers' Hotline, shall be implemented during 2019 to provide a secure means by which such complaints may be made.

8. Legal claims (e.g. defamation, privacy or copyright infringement etc.) should be communicated to Editorial Legal. Unless referred by Editorial Legal to the Commissioner for ADR, such claims should be dealt with as legal matters. However, claims in privacy, or of breaches of the criminal law, or defamation arising out of material inaccuracy may also give rise to breaches of the FT Editorial Code of Practice. The Commissioner shall not act in such a way as to prejudice any extant or impending legal claims against FT, but subject to that rule shall have jurisdiction to adjudicate on complaints notwithstanding that a legal claim could also be inferred from the same facts.
9. There is no duty on complainants to articulate their complaints in terms of the breach of a particular Clause of the FT Editorial Code of Practice. If it could reasonably be inferred (by the objective editor, standing in the shoes of the person receiving the complaint) that the facts if proven might reasonably amount to a breach of the FT Editorial Code of Practice, then that will be a 'complaint'.
10. The Commissioner will (subject to resource restrictions) investigate complaints whomsoever complains, without any prohibition based on lack of standing to bring a complaint. The process will be complainant-blind, subject to the right to dismiss complaints without Adjudication where in the Commissioner's sole discretion there are grounds to consider them vexatious or in bad faith. Failure to pursue an appeal to the Commissioner may result in a complainant losing that right. The Commissioner shall not be under any obligation to rule on any complaint already the subject of an Adjudication. To complaints other than those under Clause 1, the Commissioner may dismiss complaints solely on the basis that more than 3 months has elapsed since the alleged breach, and will ordinarily dismiss complaints under Clause 1 if more than 12 months has elapsed since first publication.

First Instance Resolution

11. Complaints should ordinarily be directed to the journalist or editor most closely responsible for the editorial content about which the complaint is made. Journalists and Editors should, as a matter of good practice, keep a record of complaints received for the purposes of the monthly/quarterly Complaints Audit.
12. Complaints will ordinarily be received by email, telephone or post. However, journalists and editors should be aware of:
 - 12.1 *the Online Corrections Policy concerning social media, which states that “If FT staff receive complaints addressed to their private emails or Twitter accounts concerning errors or claims of misjudgment in FT articles that are not their own, they should not reply directly. Rather, go through the usual corrections procedure by contacting the relevant news desk to check out the error and then once it has been dealt with, email corrections@ft.com and socialmediadesk@ft.com who will reply to the reader on behalf of the FT”*
 - 12.2 Without prejudice to the Commissioner’s general remit, correction requests sent to Corrections, or via Letters to the Editor, or recorded in comments below articles, may be dealt with according to the particular processes in place, rather than those set out in this Policy Statement.
13. Editors and journalists are under an obligation to treat complainants with respect, and (unless there are strong grounds to believe the complaint is vexatious or in bad faith) to approach complaints with an open mind. This should in no way fetter the right of editors to be robust in their defence of the FT’s journalism, if they honestly believe there has been no breach.

14. Complainants who are not satisfied by the response of editors to their complaint must be alerted to their Right of Appeal to the Commissioner.
15. It shall be in editors' discretion the time 'when' a complainant is alerted to their Right of Appeal, but should ordinarily be no later than the third or fourth communication from the FT in response to the complaint, and should ordinarily be in days rather than weeks (unless the complexity or seriousness requires longer, and the complainant is duly informed).
16. By way of guideline, editors should feel they have the room to offer partial resolution by process of negotiation, but no complainant should be forced to deal with editors on an exhaustive basis before being alerted to their Right of Appeal. Complaints should reach some resolution or impasse, within a month, save for cases of real complexity or seriousness.

Serious Complaints

17. 'Serious complaints' (being complaints involving allegations of illegal or dishonest conduct* within the ambit of the Code, including Article 6(2) and 7(2) and plagiarism) – or suspected breaches of the Code discovered internally which, if received as complaints, would fall within the definition of 'serious complaints' – must be notified to the Commissioner within a week of coming to the attention of Editorial. Unless adjudicating on appeal, the Commissioner shall take no action in relation to such notifications except to report the matter to the Appointments & Oversight Committee.

* *'Illegal' in this paragraph means that there is, or is alleged to be, a prima facie case that an FT journalist or contributor has personally committed a criminal offence, in the context of their FT journalism, contrary to the law of England & Wales; and 'dishonest' has the meaning defined in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67*

18. The Commissioner will not adjudicate any complaint at first instance unless it is a Serious Complaint (or an internally-discovered matter which, if raised as a complaint, would qualify as a 'serious complaint'), AND EITHER:
 - (i) the Commissioner is asked to adjudicate by the Editor; or
 - (ii) the Commissioner is directed to adjudicate by the Appointments & Oversight Committee.

19. The Editor shall further notify the Appointments & Oversight Committee wherever any disciplinary action has been taken as a result of editorial determining any serious breach of the Code. The Appointments & Oversight Committee may, in its discretion, record the fact of such a breach in its Quarterly Summary.

Appeals to the Commissioner

20. Subject to paragraphs 17 to 19 above, the Commissioner has a purely appellate function in respect of complaints under paragraph 2.1, and should deal with complaints only once editorial have had the opportunity to resolve them at first instance.

21. If the Commissioner receives a complaint which has not been dealt with by editorial, that complaint shall be referred to the appropriate editor, journalist or lawyer to be dealt with at first instance. The complainant should be informed of as much.

22. Complaints received on appeal by the Commissioner should usually result in an Adjudication within three months of receipt. However, complaints about multiple articles or issues, or matters of greater complexity or seriousness may take longer to resolve. If this is obvious upon receipt of the complaint, or soon thereafter, the complainant should be informed that the usual expectations of adjudication within three months shall not apply.

23. On receipt of a complaint on appeal, and thus the beginning of the process of looking into a complaint and adjudicating, the Commissioner shall alert the Editor, the Managing Editor and Editorial Legal that such complaint has been received on appeal.
24. Upon finding a breach of the Code, but only upon finding a breach of the Code, the Commissioner has the power to direct (a) any clarification; and/or (b) any correction; and/or (c) or publication of his decision. He may recommend a form of apology or other remedy. Such a direction, though not the finding of breach, may be appealed by the Editor to the Appointments & Oversight Committee, whose decision shall be final and binding. The refusal by the Commissioner to direct a remedy, or the failure to find a breach of the Code, shall not be appealable by any complainant.
25. Subject to the above, the Commissioner may refer a complaint to the Appointments & Oversight Committee for their preliminary view, or for such advice and guidance on the investigation and/or handling of a complaint as they and the Commissioner see as appropriate. The provision of such advice to the Commissioner shall have no effect on their appellate function on appeal against remedy by the Editor.
26. Should the Commissioner be asked (or of his/her initiative consider whether or not) to recuse himself or herself from a particular complaint, the decision shall be for the Commissioner to take, but he or she shall first report his or her decision to the Appointments & Oversight Committee. If the ultimate decision is to recuse, the Appointments & Oversight Committee shall either determine the outcome and remedy of the Commissioner's Adjudication, or appoint independent counsel to adjudicate on behalf of the Commissioner. Recusal shall be only for reasons of conflict of interest, confidentiality, professional embarrassment, or the substantial risk of actual or perceived bias.

Investigations

27. Article 3 of the FT Editorial Code of Practice provides that: *“In the event of a complaint being referred to the FT’s Complaints Commissioner about an alleged breach of the standards set out in this Code, FT editorial employees and freelance contributors must cooperate and comply with the lawful enquiries and requirements of the Commissioner.”*
28. The Commissioner shall at all times be aware of the sensitivity of investigating journalistic activity, and the paramount moral obligation of journalists to protect confidential sources of information (Clause 14, Code). The Commissioner shall not seek information that is unnecessary or disproportionate to the investigation.
29. The Commissioner shall, subject to the direction of the Appointments & Oversight Committee, have discretion as to the form, substance, and scope of any investigation. The Editor or Managing Editor, or their nominated deputies, may object to the Appointments & Oversight Committee if they disagree with the Commissioner’s approach, and the Commissioner shall not act contrary to an objection by the Editor and/or Managing Editor until the Appointments & Oversight Committee (or, if necessary, any of them) have determined the issue.
30. Without prejudice to Article 3 as set out above, where an in-person meeting with a journalist or junior editor is required, the Commissioner shall inform the Editor, Managing Editor or other senior editors in advance. The Managing Editor shall be permitted to attend any such interview on request.

31. The Commissioner has no disciplinary function whatsoever as regards employment issues. No other person besides the Managing Editor has a right to attend any meeting which is part of the Commissioner's investigation.

Resolution of Complaints

32. The Editorial Code of Practice gives complainants a means of resolving their complaints about the editorial content and activity of FT without recourse to legal means, and provides a mechanism of ensuring journalistic standards so that FT always acts consistently with the general civil and criminal law of England & Wales.
33. Adjudication of complaints by the Commissioner shall be according to the wording of the Editorial Code of Practice. The Commissioner may have regard to previous decisions made by the Commissioner and by the Appointments & Oversight Committee, and shall strive for consistency without treating such prior decisions as binding precedent.
34. The Commissioner may have regard, where appropriate, to the decisions of the Press Complaints Commission and to the decisions of IPSO and similar press regulators, where such standards are commensurate with those expected of FT.
35. The Commissioner may have regard to the general civil and criminal law and jurisprudence of England & Wales and (during such time as the UK is part of the European Union) of the European Union and the European Court of Human Rights. The FT Editorial Code of Practice, in its efforts to provide a practical means of balancing the rights of individuals and the press in the context of journalism, is intended in parts to reflect such principles of law, and as that law changes, so

should the Editorial Code of Practice and the framework in which journalism is practised.

36. Should the complaint raise a legal complaint, the Commissioner shall have the discretion to stay the complaints process unless and until resolution of the legal complaint by Editorial Legal.
37. The Editor and the Appointments & Oversight Committee shall by consensus be the custodians of the FT Editorial Code of Practice, and all rules and guidelines as to its operation and effect. They shall issue such directions and guidance or modifications, to be communicated by the Commissioner, whenever they see fit.
38. The rules of natural justice shall apply, and the Commissioner shall at all times seek to ensure that the process of adjudicating on complaints is fair and non-discriminatory. The Commissioner shall be independent of editorial and commercial influence, just as editorial decisions shall be independent of the Commissioner and of commercial influence.
39. Save for vexatious complaints, or those made in bad faith, the Commissioner shall not find against a party, whether complainant or editor or journalist, without giving them an opportunity to respond to such criticism. The Commissioner will normally approach editorial for full details of their handling of the complaint at first instance, but shall adjudicate on the complaint de novo, without being bound by the position advocated for by either the complainant or editorial. The Commissioner reserves the right to rule in favour of a party without them having articulated their position in the appeal.

Publication & Transparency

40. Following the approval by the Appointments & Oversight Committee of the Commissioner's draft Quarterly Report at the Quarterly Meeting, a short Public

Précis of that quarter's complaints shall be published on the Financial Times website in such form as the Commissioner thinks fit.

41. All Adjudications shall be published openly on the FT.com website, unless the Appointments & Oversight Committee determine that it would be appropriate having regard to the public interest or any private rights for any redactions to be made.
42. Where a complainant complains other than under Clause 1, the complainant may be granted anonymity or redaction of particular information in the published adjudication, such questions to be determined exclusively by the Appointments and Oversight Committee, but that the Editor and the Commissioner shall be entitled to make submissions to the Committee on that question.
43. Where the Appointments & Oversight Committee considers to report in its Quarterly Summary a breach of the Code which has not been the subject of an Adjudication by the Commissioner, such as under paragraph 19 above, the general rule shall be that no redactions or anonymity shall be granted, but that any person directly concerned in the publication shall have the right to seek redactions or anonymity prior to publication. The Commissioner shall ensure that any person directly concerned is aware of the pre-publication deadline to make any such application in writing. Any such application shall be determined by the Appointments & Oversight Committee.

Interpretation

43. This Guidance as to the general Policies and Processes to be operated by the Editorial Complaints Commissioner is non-binding, and intended only to assist readers and those involved in complaints handling in the efficient, efficacious, and consistent handling of complaints, with the express reservation of the right to

handle individual circumstances differently as the Editorial Complaints Commissioner sees fit. This document does not give rise to any obligations or rights independent of the FT Editorial Code of Practice, nor will the Editorial Complaints Commissioner consider complaints for breach of this Guidance, or the Policies or Processes herein.