

## Elizabeth Archer

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**From:** [REDACTED]  
**Sent:** 05 January 2022 19:17  
**To:** journalismcode  
**Cc:** Adam Rose; Alexandra Whiston-Dew; Leyla Linton  
**Subject:** Feedback on the draft journalism code of practice

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Thank you for inviting feedback on the draft journalism code of practice about processing personal data for the purposes of journalism (the "Draft Code"), proposed to be issued under section 124 of the Data Protection Act 2018 ("DPA").

We note that you have invited comments by way of an online survey. Please indulge us when, instead, we send this short comment by email.

On page 23 of the Draft Code, under the heading "What is journalism", you say *"In line with key case law, you may interpret 'journalism' to mean 'the disclosure to the public of information, opinions or ideas by any means' (see Satamedia case C-73/07)."*

We draw attention to the actual judgment of the Grand Chamber of the Court of Justice, in *Satamedia*, which held that Article 9 of Directive 95/46 should be interpreted as meaning that "the activities [at issue], relating to data from documents which are in the public domain under national legislation, must be considered as activities involving the processing of personal data carried out 'solely for journalistic purposes', within the meaning of that provision, if the **sole object** of those activities is the disclosure to the public of information, opinions or ideas. Whether that is the case is a matter for the national court to determine" (emphasis added).

This was approved by the Second Chamber of the Court in *Buivids* (Case C-345/17). As the Draft Code acknowledges, the Court in *Buivids* also stressed that *"the view cannot be taken that all information published on the internet, involving personal data, comes under the concept of 'journalistic activities' and thus benefits from the exemptions or derogations provided for in Article 9 of Directive 95/46"*.

We fear that if the Draft Code fails to acknowledge that, when determining whether an activity involves processing of personal data carried out solely for journalistic purposes, regard must be had to whether the **sole object** of those activities is the disclosure to the public of information, opinions or ideas, the term "journalism" might be given an impermissibly broad interpretation, leading to a view being taken (which would be inimical to the fundamental right to the protection of personal data, and at odds with the authoritative statements of the Court) that all information published on the internet (or possibly anywhere), involving personal data, would come under the concept of 'journalistic activities'.

Recognising this "sole object" test would also tend to lead to the term "journalism" more likely being ascribed to activities conducted with a certain level of professionalism.

We would be very happy to provide further information or comment on these points if asked.

With best wishes

**Jon Baines**  
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Mishcon de Reya LLP

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