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The Law

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18.1 Introduction

BBC Legal handles legal issues affecting the BBC, with different departments dealing with different issues.

The Programme Legal Advice department gives pre-transmission advice on the main content-related issues including defamation, privacy, contempt of court, legal rights of anonymity and all other types of reporting restrictions. Programme Legal Advice has a duty lawyer on call 24 hours a day for urgent enquiries. In addition, Programme Legal Advice keeps a list of lawyers in other jurisdictions and may be able to assist with advice on foreign law.

Advice on copyright (including fair dealing) and trade marks can be obtained from Intellectual Property.

Specialist data protection advice can be obtained from Information Rights.

There are some significant differences between the legal systems of England and Wales and Scotland and Northern Ireland which, if not observed, can cause serious problems. For advice on Scottish media law, consult the BBC Legal Director, Scotland.

While following the Editorial Guidelines will often ensure that BBC content will be legally defensible, there are situations where the law imposes specific obligations, or requires standards, that are not addressed fully in these Guidelines. It is important, therefore, that referrals to Programme Legal Advice and other legal departments are adhered to. As the law is subject to interpretation and change by the courts and by statute, content producers should, in any event, consider whether taking legal advice would be appropriate.

Other common legal considerations are set out in this section.

18.2 Mandatory Referrals— must be referred in advance

Mandatory referrals are an essential part of the BBC's editorial and compliance process and must be observed.

There are a number of them to Programme Legal Advice in the previous sections. The ones listed below are those which arise from this section alone.

- 18.2.1 If, during the course of making programmes or content, it is believed laws may be broken by someone working for the BBC, it must be referred to a senior editorial figure, or for independent production companies to the commissioning editor, who should normally consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards.
See 18.3.1
- 18.2.2 Where there may have been a data breach, a data breach form on Gateway must be completed or the matter must be referred to Information Rights, who will assess if the breach meets the legal threshold for reporting to the Information Commissioner.
See 18.4.8

18.3 General

18.3.1 There may be occasions where providing accurate, impartial and fair coverage in the public interest involves possible conflict with the law. Where such cases arise, the following must be considered:

- what effect laws that have not been complied with might have on the BBC and any people concerned
- internationally, the effect on the BBC's future coverage of the region.

Where it is believed that the making of a programme or content will involve possible conflict with the law, it must be referred to a senior editorial figure, or for independent production companies to the commissioning editor, who should normally consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards.

18.4 Principal Legal Considerations

Defamation and Privacy

18.4.1 An individual or corporation can sue for damage to their reputation over material that is published about them. This area of law is called defamation or libel and can have serious financial consequences if the BBC gets it wrong. Whilst a number of possible defences are available, it is important to note that when relying on the truth of what was published, it is the defendant (or defender in Scotland) who has to prove that it was true. Where serious allegations of wrongdoing are made, content makers will usually be required to demonstrate that they offered the individual or corporation concerned a right of reply.

See Section 6 Fairness: 6.4.43–6.4.49

Individuals can take legal action to enforce their right to privacy, including asking the court to grant an injunction (or 'interdict' in Scotland) to stop true stories based on private information being made public. Examples of private information

include information about their family life, health or sexual relationships. Children and vulnerable people may have a greater expectation of privacy than adults. The fact that information is in the public domain diminishes but does not necessarily extinguish the expectation of privacy. Allegations of wrongdoing and/or criminality raise both defamation and privacy issues.

All legal entities including corporations may also have enforceable rights to keep information confidential. In these cases, the court will seek to balance the right to privacy or confidentiality against the media's right of free expression and the right of the public to be informed.

Legal Rights to Anonymity

- 18.4.2 Victims and alleged victims of sexual offences, some human trafficking offences and female genital mutilation have a legal right to anonymity. The rules regarding anonymity in these cases are complex and the right of anonymity cannot always be waived.

Teachers also have a legal right of anonymity in some circumstances when an allegation of an offence is made concerning a pupil.

See Section 6 Fairness: 6.4.36

Reporting Restrictions

- 18.4.3 There are a number of situations in which reporting restrictions either apply automatically or can be specifically ordered by a court.

Automatic restrictions apply to:

- reports of preliminary hearings in criminal proceedings. What can be reported is very restricted

- reports of proceedings in Youth Courts. In particular, anything likely to identify someone under 18 as involved in Youth Court proceedings must not be published
- family proceedings and Court of Protection proceedings (which may be heard in a number of courts including magistrates' courts, the County Court, the Family Division of the High Court, the Court of Appeal and Supreme Court). In particular, anything which is likely to identify any child as being involved in such proceedings must not be published.

These restrictions can be lifted or varied by a court.

Some of the more common reporting restrictions which may be ordered include:

- orders preventing the identification of under-18s involved in proceedings before an adult court
- postponement orders, preventing publication of reports of proceedings, usually until after the conclusion of related proceedings
- anonymity orders, where the court has allowed a person's details to be withheld.

Any queries involving legal proceedings in Scotland should be referred to the BBC Legal Director, Scotland.

See Section 8 Crime and Anti-Social Behaviour: 8.4.13 and Section 9 Children and Young People as Contributors: 9.4.22

Obligations Under Terrorism Legislation

- 18.4.4 There are obligations under terrorism legislation on all people, including journalists, to disclose information regarding terrorist activity to the police as soon as reasonably practicable. Failure can amount to a criminal offence. There is also a wide range of powers for the police and other authorities to obtain information from journalists as part of a terrorism investigation.

See Section 12 War, Terror and Extreme Violence, Disaster and Disorder: 12.4.23

Contempt

- 18.4.5 Contempt of court is a criminal offence. Contempt can take many forms. The aim of the law is to prevent interference with legal proceedings in the UK. It protects proceedings in all courts and tribunals in the UK which carry out judicial functions.

Statutory contempt law bans the publication of material which creates a substantial risk of seriously prejudicing or impeding ‘active’ legal proceedings. The risk of causing serious prejudice is highest when the proceedings involve a lay jury, for example, in serious criminal cases.

The ‘active’ period in criminal legal proceedings starts with the granting of an arrest warrant, the arrest of a suspect or the issue of a summons (in Scotland a complaint) or indictment. This may be well before a person is charged.

Serious prejudice to a criminal case might be caused by, for example, the publication of information linking the person to the offence, suggesting they are of bad character or publishing previous convictions.

Accessing Illegal Content

- 18.4.6 Journalists carrying out investigations may wish to access illegal content which may include indecent images or information relating to terrorism. There are offences regarding accessing and disseminating this material which can present difficulties. Advice should be sought from Programme Legal Advice.

Content makers should also seek advice as to whether laws around disseminating indecent images apply to paintings and artwork.

Bribery

- 18.4.7 It is illegal under the UK's Bribery Act to offer or receive a bribe anywhere in the world and there is a separate offence of bribing a foreign public official.

Data Protection

- 18.4.8 Personal data must be processed in accordance with the provisions of the Data Protection Act 2018 and the Information Commissioner's Office Data Protection and Journalism Code of Practice. Data protection breaches, in some circumstances, can give rise to criminal sanctions as well as fines. In addition, data breaches which may result in a high risk of adversely affecting individuals' rights and freedoms must be reported to the Information Commissioner within 72 hours.

Where there may have been a data breach, a data breach form on Gateway must be completed or the matter must be referred to Information Rights, who will assess if the breach meets the legal threshold for reporting to the Information Commissioner.