

THE LAW

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BBC content producers should seek the advice of BBC lawyers whenever legal problems are encountered or suspected.

There are significant differences between the legal systems of:

- England and Wales
- Scotland
- Northern Ireland

which if not observed can cause serious problems.

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 we must consider:

- what effect breaking the law might have on the BBC.
- what the effect might be on the people concerned.
- internationally, the effect on the BBC's future coverage of the region.

Any proposal to break the law must be referred to a senior editorial figure or for Independents to the commissioning editor, who must consult Head of Programme Legal Advice and, if necessary, Controller Editorial Policy.

BBC LEGAL

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

- victims of sexual offences
- reporting restrictions

Advice on other issues should be sought from the relevant department. See below.

Programme Legal Advice has a duty lawyer on call 24 hours a day for urgent news enquiries.

For advice on Scottish media law consult the BBC lawyers in Glasgow.

Advice on foreign law can be obtained through BBC Legal, which keeps a list of lawyers in various countries.

DEFAMATION

An individual can sue for damage to their reputation caused by material broadcast or published to a third party, this includes online.

This area of the law is called defamation or libel. It is the biggest legal pitfall relating to the BBC's output, with serious financial consequences if we get it wrong.

Any living individual or company can sue as long as they are reasonably identifiable from what is said and the material is defamatory of them. This means that it would tend to lower them in the estimation of right-thinking people generally.

The claimant does not need to show that they suffered any actual damage, nor that what was said was false. On the contrary, the defendant generally has to prove that it was true.

If involved in an action for defamation there are a number of possible defences, but generally you will need to have good evidence to back up what you say.

PRIVACY

Until recently there was no recognised law of privacy in the UK.

This changed in October 2000, with the incorporation into UK law of the European Convention on Human Rights, which includes a right to privacy (Article 8).

Individuals can now take action to enforce that right. Often, they will ask the court to grant an injunction (or “interdict” in Scotland) to stop true stories about their private lives being made public.

If there is a reasonable expectation of privacy, the court will seek to balance the individual’s right to privacy against the media’s right to freedom of expression (Article 10).

When broadcasting or publishing a story which contains private information, each piece of private information will need to be considered separately. If private information is conveyed by pictures, these will be subjected to special scrutiny.

CONTEMPT

Contempt of Court is the body of law which protects the integrity of the legal process from outside influences. Contempt can take many forms but by far the most serious for the BBC is publication when legal proceedings are said to be “active”.

In most criminal cases, the “active” period 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.

Once a case is “active”, anything which creates a substantial risk that the course of justice in those proceedings will be seriously prejudiced or impeded will be a contempt of court. This is the case regardless of intent. A serious prejudice might include, for example, the publication of previous convictions.

These rules apply to all courts and tribunals exercising the judicial authority of the state. However, the risk is highest when the case is due to be heard by a lay jury (e.g. in criminal trials) and particular care should be taken with coverage immediately before a jury trial. Reports of the trial itself are safe so long as they are fair and accurate.

It is now possible for the courts (except in Scotland) to order third parties – such as the media – to bear the costs of a trial abandoned as a result of publication of material, even if this does not amount to a contempt of court.

VICTIMS OF SEXUAL OFFENCES

By law, all victims of rape and other sex crimes, including children, are automatically guaranteed anonymity for life from the moment they make a complaint that they are the victim of a sex crime. In Scotland, the law is different but the practice of respecting anonymity is the same.

These restrictions only apply to identifying the person as being the victim of an alleged sexual offence. They do not prevent the identification of the person in other contexts.

Judges may, on occasion, lift the restrictions at the request of the defence. They can do this to:

- get witnesses to come forward and to ensure a fair trial.
- allow the reasonable reporting of a case of public interest.

If a victim were identified in another, unrelated, criminal case, then the reporting of that case would not be restricted.

Victims can be identified if they agree to it. The consent should be in writing and must not be the result of any pressure.

Content producers should be aware of the risk of “jigsaw” identification. See Section 7 Crime and Anti-Social Behaviour – Identifying Victims, Witnesses and Sources.

OTHER REPORTING RESTRICTIONS

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

Automatic restrictions apply to:

- reports of preliminary/committal proceedings in magistrates’ courts in England. We can only report certain very basic details.
- petition proceedings in Scotland which may be reported in a restricted way. Please refer to BBC lawyers in Glasgow.

- Proceedings under the Children Act. We must not publish anything which is likely to identify any child as being involved in such proceedings.

These restrictions can be lifted or varied by a court.

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

- “Section 39 orders”, preventing the identification of under 18s involved in proceedings before an adult court.
- “Postponement orders”, preventing publication of reports of proceedings until after the conclusion of related proceedings or until the court lifts or varies the restrictions.
- “Anonymity orders”, where the court has allowed a person’s details to be withheld, for example in blackmail cases.

CHILDREN AND THE LAW

Children involved in criminal cases

In England, Wales and Northern Ireland people accused of committing offences while under 18 are usually dealt with in Youth Courts. In Scotland, an accused person is treated as an adult from the age of 16, except in children’s hearings. See below under Children’s Panel System.

In Youth Court proceedings, there is an automatic ban on anything which might lead to the identification of a witness, defendant or other party in those proceedings who is under 18.

The restrictions include:

- the naming of schools and of addresses
- not showing pictures of a person under 18.

In other courts, there is no automatic restriction but the court can make an order preventing identification of a child involved in the proceedings.

Other court proceedings involving children may be heard in Magistrates’ Courts, County Courts, or the High Court. They may deal with:

- care proceedings
- adoption
- guardianship

The Children's Panel system deals with children in Scotland. Any child involved in a hearing before the Children's Panel or an associated referral hearing before a Sheriff cannot be identified. It is forbidden to publish anything in respect of any case about which the principal reporter has received information or any matter to do with a children's hearing which is likely to identify any child concerned in any way with the case. Please note that this may include not just victims and witnesses, but children who are brothers, sisters, friends etc. Note, too, that contentious "Children's Panel" cases can end up in the Sheriff Court. If they do, they are still covered by this wide prohibition. Unlike in the ordinary court system, for children's hearing purposes, a child remains a child until s/he turns 18.

The restrictions for Youth Courts also apply to Children's Panel/ Referral cases.

In any courts sitting in private it is usually a contempt to broadcast detailed accounts of child related hearings. This will include proceedings involving:

- wardship
- adoption
- guardianship of an infant

In wardship cases it is not a contempt to report the court's order or an accurate summary of it, unless the court expressly forbids this.

The Protection of Children Act (1978) covers cases of children filmed or otherwise displayed for pornographic purposes. It is an offence under the act to:

- take an indecent photograph of a child under the age of sixteen.
- to involve a child under 16 in a photograph that is itself indecent even if the child's role is not.

Content producers should consult PLA if they have any queries about the law as it affects children.

See Section 8 Harm and Offence – Sex and Section 9 Children – Anonymity.

COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights include:

- copyright
- moral rights
- performers' rights
- trade marks
- patents and designs
- rights to prevent “passing off” and breach of confidence

Intellectual Property lawyers in Corporate Legal & Intellectual Property Department (CL&IP) give advice on the protection and exploitation of the BBC's intellectual property rights. Litigation department gives advice on the infringement of such rights.

Content producers must seek advice from the **Talent Rights Group** in Rights and Business Affairs about the commissioning or clearance of copyright works for use in BBC programmes or the contracting of performers. Talent Rights Group will generally provide the contracting service and contact should be made with them as early as possible. They can also advise whether a copyright work, in which rights have not been cleared, can nevertheless be included in a programme under fair dealing or other copyright exceptions.

The **Trade Mark Lawyer in CL&IP** should be consulted if negative clearance checks cast any doubt on the use of a particular programme title or associated products.

DATA PROTECTION ACT

This act protects individuals' privacy by regulating how personal information, known in the act as "personal data", is collected and used. The act applies to information stored electronically or in manual systems.

"Personal data" is any information that relates to a living individual who can be identified:

- from that information or,
- from that and other information in our possession or likely to come into our possession.

Personal data can include:

- email addresses or telephone numbers, collected when people enter competitions, sign up for a newsletter or become part of a programme's database of contributors.
- information about people we collect for use in programmes, including images and sound recordings.

The act requires that personal information is:

- collected and used fairly i.e. we make it clear to people how we intend to use their information and whether it will be given to anyone else inside or outside the BBC.
- appropriate to the uses which have been agreed.
- accurate.
- stored for the minimum time relevant to the use for which it is collected.
- stored securely.
- disposed of securely once the use for which it has been collected has come to an end.

- protected by a contract, if it is being given to an agent of the BBC (for example to distribute tickets or conduct surveys) or to a third party to ensure the information is only used for the purpose the BBC has agreed. A contract is also needed if personal information is being sent to a third party or agent of the BBC located outside the EU.

Material acquired for journalistic, artistic or literary purposes is exempt if compliance with the act would frustrate the journalistic purpose. For example, we do not need consent of someone being filmed committing crime.

People have certain rights under the act in relation to information stored about them.

Content producers with any queries about the Data Protection Act should contact the **Information Policy & Compliance department (IPC)** or the **Regulatory Legal department**.

Any formal requests for information or notices to stop processing under the act must be dealt with by IPC. Pass any such requests immediately to IPC.

See Section 5 Privacy – Personal Information.