

SECTION 18: THE LAW

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18.1 INTRODUCTION

BBC producers, whether making programmes or other content, should seek the advice of Programme Legal Advice whenever legal problems are encountered or suspected.

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 and reporting restrictions.

Advice on other issues should be sought from the relevant department (see below).

There are significant differences between the legal systems of England and Wales, Scotland and Northern Ireland which, if not observed, can cause serious problems.

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 Principal Solicitor, Scotland.

In addition, Programme Legal Advice keeps a list of lawyers in various countries and may be able to assist with advice on foreign law.

In this section, children are referred to according to legal definition rather than the ages used elsewhere in the Editorial Guidelines.

18.2 MANDATORY REFERRALS

(Mandatory Referrals are part of the BBC's editorial management system. While they will not, in themselves, meet the Principles in the Editorial Guidelines, they are an essential part of the process to ensure compliance and must be observed.)

Referrals to Director Editorial Policy and Standards

18.2.1 Any decision to proceed with a programme despite legal advice must be referred to the most senior editorial level in the relevant division and Director Editorial Policy and Standards.

(See 18.3.1)

Other Referrals

18.2.2 Any proposal to break the law must be referred to a senior editorial figure, or for independents to the commissioning editor, who may consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards.

(See 18.3.1)

18.2.3 Any formal requests for information or notices to stop processing under the Data Protection Act must be referred in good time to Information Policy and Compliance (IPC).

(See 18.11.4)

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 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 may consult Programme Legal Advice and, if necessary, Director Editorial Policy and Standards.

Any decision to proceed with a programme despite legal advice must be referred to the most senior editorial level in the relevant division and Director Editorial Policy and Standards.

18.4 DEFAMATION

18.4.1 An individual can sue for damage to their reputation caused by material broadcast to a third party, including material published 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 (or pursuer in Scotland) does not need to show that they suffered any actual damage, nor that what was said was false. On the contrary, the defendant (or defender in Scotland) generally has to prove that it was true.

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

18.5 PRIVACY

18.5.1 The Human Rights Act, which came into effect in 2000, includes a right to privacy.

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.

When broadcasting 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.

18.6 CONTEMPT

18.6.1 Contempt of court is the body of law which protects the integrity of the legal process from outside influence. Contempt can take many forms but the most serious for the BBC is publication of prejudicial material 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, 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 (for example, in criminal trials) and particular care should be taken with coverage immediately before a jury trial. Reports of the trial itself are generally safe so long as they are fair and accurate and no reporting restrictions have been put in place.

18.7 VICTIMS OF SEXUAL OFFENCES

18.7.1 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, or to 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.

We should be aware of the risk of 'jigsaw identification'.

(See Section 6 Fairness, Contributors and Consent: 6.4.10 - 6.4.12 and Section 8 Reporting Crime and Anti-Social Behaviour: 8.4.34 - 8.4.39)

18.8 OTHER REPORTING RESTRICTIONS

18.8.1 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
- reports of proceedings in Youth Courts (see below)
- proceedings under the Children Act. We must not broadcast 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.

Note that any queries involving legal proceedings in Scotland should be referred to the BBC Principal Solicitor, Scotland.

18.9 CHILDREN AND THE LAW

18.9.1 Programme Legal Advice should be consulted whenever there are queries about the law as it affects children.

Children Involved in Criminal Cases

18.9.2 In England, Wales and Northern Ireland people accused of committing offences while under 18 are usually dealt with in Youth Courts. In Scotland, a young person accused of criminal behaviour is treated as an adult from the age of 16, except in children's hearings.

(See Section 18 The Law: 18.9.4)

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.

This includes a prohibition of giving the name, address or school, as well as the use of pictures.

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

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

Children Involved in Civil Cases

18.9.3 Other court proceedings involving children may be heard in magistrates' courts, County Courts, or the High Court. They may deal with care proceedings, adoption or guardianship.

The Children's Hearings System

18.9.4 The Children's Hearings 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 broadcast anything in respect of any case about which Scotland's 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.

For children's hearing purposes, a person remains a child until he or she turns 18.

Courts Sitting in Private

18.9.5 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 and guardianship of an infant.

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

Protection of Children Act

18.9.6 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 16
- involve a child under 16 in a photograph that is itself indecent even if the child's role is not.

18.10 COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

18.10.1 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 the Litigation and Intellectual Property Department (L&IP) give advice on the protection and exploitation of the BBC's intellectual property rights and on the infringement risks to the BBC of using third parties' intellectual property rights. Litigation lawyers in that department give advice on the infringement of intellectual property rights.

18.10.2 Advice must be sought from the Talent and Rights Negotiation Group (TRNG) in Rights and Business Affairs about the commissioning or clearance of copyright works for use in BBC programmes or the contracting of performers. TRNG will generally provide the contracting service and contact should be made with them in good time.

There may be circumstances where a copyright work, in which rights have not been cleared, can nevertheless be included in a programme under fair dealing

or other copyright exceptions. Anyone requiring advice on this from News and Current Affairs should contact the Intellectual Property lawyers in L&IP. Other departments should contact TRNG.

18.10.3 If negative checks cast any doubt on the use of a particular programme title or associated products, titleclearance@bbc.co.uk should be consulted.

18.11 DATA PROTECTION ACT

18.11.1 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 content, including images and sound recordings.

18.11.2 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
- not excessive (i.e. we only collect and use the data necessary for the BBC's purposes)
- accurate
- stored for the minimum time relevant to the use for which it is collected
- stored and used securely, for example, by using encrypted memory sticks or CD- ROMs and in accordance with any further applicable guidelines issued by the BBC
- 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 or other special arrangements are also needed if personal information is being sent to a third party or agent of the BBC located outside the EU.

(See Section 7 Privacy: 7.4.45 - 7.4.54)

18.11.3 Material acquired and used for journalistic, artistic or literary purposes is exempt if compliance with the act would frustrate those purposes. For example, we do not need the consent of someone being filmed committing crime. It must be incompatible with the journalistic, artistic or literary purpose to comply with the Act – inconvenience is not enough. Note that the requirement to store and use data securely applies at all times.

18.11.4 People have certain rights under the act in relation to information stored about them and can make a request to the BBC to be provided with a copy of that information.

Any formal requests for information or notices to stop processing under the act must be referred in good time to the Information Policy & Compliance Department (IPC).

18.11.5 IPC or the Commercial and Regulatory Legal department can advise on queries about the act.