

Ofcom Broadcasting Code & Libel Law Workshop

Copyright Law

We (ICR) are covered by the PPL, PRS & MCPS for all copyright material.

We do not encourage presenters to play illegally downloaded material.

Podcasting commercial music will incur extra copyright fees. It's OK to podcast interviews and other speech that we've put together ourselves, as we own the copyright.

"Commercial" music is any music that is being directly marketed to the public via any medium.

Libel Law

Libel = defamatory comments that are published or broadcast on radio, TV or internet.

Slander = defamatory comments made in everyday conversation.

A statement is defamatory if it:

- a) exposes a person to hatred, ridicule or contempt.
- b) causes a person to be shunned or avoided.
- c) lowers a person in the estimation of right-thinking members of society generally.
- d) disparages a person in his/her business, trade, office or profession.

In any libel case the plaintiff (the injured party) doesn't have to prove that there was any intent by the defendant (the accused) to defame them and furthermore they don't have to prove that they were damaged by the defamatory comments in question, only that they might be.

Identification

When reporting on something avoid identification that's too general and could refer to many people rather than a specific individual - e.g. Mr Smith from Ipswich.

Vague identification can be more dangerous than precise naming as if a libel is committed then several individuals or groups may be able to argue that it refers to them.

Repetition

Repetition of a statement counts as a new libel each time it's repeated, so take care with archive material. Also, it is worth noting that although technically it's not possible to libel a deceased person, those involved with that persons legacy or estate could have recourse to bring a case if your comments have in some way tarnished, discredited or otherwise affected the day-to-day operation of said estate.

Who can be prosecuted?



Any of the publishers. In terms of ICR that's both you (the presenter) and ICR (the radio station you are working for).

Can I be prosecuted if a guest on my programme makes libelous comments?

No, not if you have taken "due care" which means you would sit them down before the interview and gauge their state of mind by having a conversation or running through a few questions to see if their responses are reasonable (i.e. not libelous.).

Defenses against libel.

Justification

To successfully use this, you must be 100% sure of your facts. It can't be assumed to be true on the balance of probabilities.

Don't base your defense on "hearsay". This evidence is inadmissible in court.

Fair Comment

This applies to matters of "public interest" (the journalistic investigation and exposing of public officials, businesspersons or others involved in corruption or other criminal activities damaging to the public good.).

Something is judged as "fair comment" when it is irrefutable and is said without malice.

Be careful, and this applies to most forms of defense against libel, to not become invective (purposely hurtful) in your statements about the plaintiff.

Privilege

This defense can be used when reporting parliament, council and other public meetings.

As a reporter on such occasions, you are able to report anything that is said in the meeting, however libelous or invective it may be (you are reporting it, not stating it yourself!). All reports should be impartial and accurate as well as contemporary as possible.

Accord and satisfaction.

This could be used if you had broadcast a statement that in some way could be construed as being libelous after which you were contacted by the injured party by way of complaint (keep any documentation or emails). You would then; after agreeing this with the injured party (VERY IMPORTANT - any pre-emptive action will likely be seen by a court as an admission of guilt). broadcast an apology, and, if need be, a correction. After fully complying with the wishes of the injured party (and remember you will have both written and audio evidence of this) then they no longer have recourse to pursue a court case against you.

Offer of amends.

In some ways similar to the above, this method of defense is only applicable where the defamatory comment was wholly unintentional (i.e. if you were to mention Mr Smith and his fiancée when they were in fact married, unbeknownst to you). You

would in this instance on being contacted by the injured party, make a written offer to make amends which in our case at ICR would be an on-air apology and correction. If, however, the injured party does not accept this offer we should not then carry it out anyway. In any ensuing court case, the court will generally hold that you would have a defense if the injured party had no reasonable expectation that the original comments in question would defame them or cause them distress in any meaningful way.

OFCOM Broadcasting Code

Preface and advice on programme planning/scheduling.

The aim of the code is to set out for broadcasters what is and isn't acceptable when producing programmes.

Context is a very important consideration when planning and indeed scheduling a programme.

There are four major considerations we must take into account when doing this.

1. The degree of harm and offence our programme may cause. Cultural shift is important to take note of here. Cultural shift, simply put, means what is acceptable in a radio programme now versus, say, 20-30 years ago. A common example of this is that certain swear words are now deemed acceptable (in context) in radio drama, whereas in the past they would have been the subject of many complaints if they had been broadcast.
2. The size and composition of its audience.
3. The likely expectation of its audience (what it normally does.).
4. The chances of listeners to the programmes before or after straying into it.

Section 1 - Protecting Under 18s

The code should protect them from content that might seriously impair their mental or moral development.

They should be protected by appropriate scheduling.

Radio should show particular regard to times when children are likely to be listening. These are mostly school runs and breakfast, but we also need to consider other times such as school holidays and weekends.

The reporting of sexual offences involving under 18s.

The short answer to this is don't, but if we find ourselves in a situation where this is merited then we have to avoid identifying any victims, defendants, witnesses or anyone else involved with the case unless legal restrictions, set out by a judge, are not in place (which they almost always are). If in doubt, check!

Take care not to fall foul of the "jigsaw effect" which is when you inadvertently reveal some information about a crime, incident or case which then allows people to be able to identify the individuals involved by filling in the missing pieces of the puzzle (hence the term "jigsaw effect").

Take care if you are talking about a pre-trial alleged offence to not mention anything that could be prejudicial to the case.



Talking about illegal drugs, smoking or alcohol.

Avoid talking about it if possible. The condonement of the use of the aforementioned should be avoided by presenters (the same standard should apply to song lyrics as well) on programmes that are particularly likely to be attractive to under 18's or on at a time when they are more likely to listen.

Talking about violence and dangerous behavior.

Please avoid this (once again the same standard should apply to song lyrics as well) as younger minds can be very suggestible to the spoken word.

Use of offensive language.

Please avoid this (once again the same standard should apply to song lyrics as well). There's no need for this at all really on programmes aimed at or broadcast when under 18s are likely to listen. If you feel that you are in a grey area on using a certain word or phrase, then take a moment to think if you would like any children you know (or, perhaps more importantly even, their parents, who are more liable to complain) to hear whatever you are about to say.

Sex

There should be no representations(descriptions) of sexual intercourse or other significant sexual activity.

Exorcism, The Occult & The Paranormal.

Avoid, even if for entertainment.

(OFCOM takes a slightly different view in the case of programming aimed at adults.)

The Involvement of Those Under the Age of 18 in Programmes and Programme Making.

The dignity and emotional welfare of young persons should be protected at all times when visiting broadcast facilities or when involved in programme making at an outside venue. The responsibility for this falls upon the broadcaster. The broadcaster, in effect, is in loco parentis and should act to ensure the welfare and dignity of young persons, irrespective of any contradictory advice or consent given by parents or guardians.

Section 2: Harm & Offence

"Remember - treat those how you would wish to be treated yourselves"

Offensive material may include: offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity and discriminatory treatment or language.

Avoid material which condones or glamourises violent dangerous or seriously anti-social behavior.

Avoid discussing methods of suicide or self-harm. It's OK to discuss the topic but the emphasis should be upon the help that's available and signposting people towards it.

Demonstrations of the paranormal, the occult, divination etc.

If claims are being made by a guest using a factual basis, then they should be treated objectively (without bias). It's fine to challenge any assertions made but please back up any counter-argument with facts of your own.

If you are talking about any of the subjects in the header for entertainment purposes, then clearly identify this!

Any such discussion must not contain life-changing advice for individuals, i.e. advice upon which could influence decisions made by an individual concerning their health, finance, employment or relationships. Horoscopes are a typical example of these.

If a hypnotist is being interviewed, they should not be encouraged to deliver their full routine, for fear of adversely affecting listeners.

Use of simulated news.

This is fine as long as any material used is clearly identified as a spoof or generally made-up.

Section 3: Crime

Avoid material likely to encourage or incite the commission of crime or that could lead to disorder.

No payment, either monetary or in-kind, or promise of the aforementioned should be made to convicted or confessed criminals.

There should be no payments made to witnesses (even potential) to a crime when a court case is either imminent or likely & foreseeable.

Information should not be broadcast that could endanger lives or that could prejudice dealing with a kidnap or highjack.

Section 4: Religion

This section relates to programmes that deal wholly or in part with religious matters.

When a religion or religious denomination is the subject then the identity of it should be made clear.

Religious views must not be promoted by stealth. Any agenda should be clearly identified.

Religious programmes should not be used to exploit the susceptibilities of the listeners in order to facilitate such activities as fundraising.

Claims of special powers for a particular group of people should be treated objectively and should not be broadcast when children are likely to be listening. There should be no abusive treatment of the religious views and beliefs of those belonging to a particular religion or denomination.

Section 5: Due impartiality, due accuracy and undue prominence of views.

This section is concerned that news, in whatever form is reported accurately and impartially.

Accuracy should cover both facts and views. When reporting something that someone has said (their view) then it should be whenever practical quoted directly and the context should always be taken into account. When reporting factual news then it should be done accurately and any contributing source (website, newspaper, contributor etc.) should be credited.

Impartiality

This can be achieved over a series of programmes (for and against in different shows perhaps).

"Due" is an important qualification.

This doesn't mean that every argument of facet thereof has to get absolutely equal time in a debate setting but the broadcaster should strive to ensure that no one view gets undue prominence.

The personal views of the presenter.

You can express your own views as long as they are balanced by others. The exception to this are news readers and reporters who should never express their own viewpoint. Any personal interest or view of the presenter should be made clear to listeners.

The broadcaster, unlike newspapers, should not editorialise.

Section 6: Elections

This section is concerned with general elections, parliamentary by-elections, local government elections and European parliamentary elections.

During any election period we should preserve due impartiality.

When does an election start?

General - on dissolution of parliament.

By-election - issue of writ or notice in the London Gazette.

Local Government - the last date for publication of notices of the election.

European - 25 days before election.

When does an election end?

When the polls close.

During coverage, equal weight should be given to major political parties, but consideration should be given to other parties and independents with a record of significant electoral support.

Discussion of an election must end when polls open.

Candidates for election cannot be newsreaders or presenters. If such people choose to stand then they have to take a leave of absence during the campaign period.



Appearances on non-political programmes organised by candidates before the campaign that during it should be honoured but no new ones agreed to.

If a candidate is interviewed during campaigning about a news item, then the other candidates from major parties should be invited to take part. As above consideration should also be given to other parties and independents with a record of significant electoral support.

Any constituency report should include the following details of all candidates including name and name of party. If the report is repeated later then there's no need to repeat all this as long as a website address is given with the details.

Section 7: Fairness

This section considers the way that we treat individuals and organisations directly affected by our programmes.

We need to make clear to any contributors.

The nature and purpose of the programme.

The time of broadcast.

What kind of contribution we are expecting of them (live, pre-record)

Areas of questioning.

Nature of other likely contributions.

Any significant changes to the programme as it develops.

Whether contributors will be able to affect change to the programme.

There can be public interest exceptions to the above.

No material facts should be presented, disregarded or omitted in a way that's unfair. Items should not be edited "creatively".

Dealing with contributors under the age of 16 or over 16s not in the position to give consent (vulnerable adults).

Consent should be obtained, if at all possible, from a parent or guardian.

Guarantees to all contributors should normally be honoured (public interest exception).

The opportunity to contribute.

Anyone whose omission could be construed to be unfair should be given a chance to participate.

If wrongdoing is alleged, then the accused party should be given the opportunity to put their side of the story. If such an individual or representative of an organisation declines to take part or says "no comment" then the programme can go ahead but should make this clear and offer an explanation if it would be unfair not to.

Deception, set up & wind-ups.

Always get consent for wind-up calls before broadcast.



Running of competitions.

Competitions can be a regular feature on radio and television and as such it is vital to conduct them in a transparent manner.

Anybody from the broadcaster in question is disqualified from entering the competition.

Questions should be clear as should be the method(s) of entering the competition.

Competitions can be run either on a single programme or over a number of weeks.

Either way the winner should be contacted in as timely fashion as possible and should also be mentioned on-air.

Section 8: Privacy

This section relates to people participating in programmes, not listeners. Privacy refers to a persons private and family life as well as their home and correspondence.

Consent is required before broadcasting any material that could infringe privacy.

Phone in callers are deemed to have given consent by the act of calling in.

If there is no consent, broadcast of this material should be warranted (public interest).

Being a public figure does not mean that an individual forfeits the right to privacy.

But remember that private behavior can impact upon public credibility (e.g. politicians preaching family values whose having an extra marital affair).

Don't reveal where a person or their family live!

Respect requests to stop recording if privacy is being infringed.

When recording in institutions, organisations or other agencies then consent should be obtained from the relevant authority or management, but not generally from individuals if they are incidental (walking by) or essentially anonymous (random opinion of person on the street.).

In sensitive places such as hospitals, schools, prisons or police stations, prior consent should normally be obtained from anybody who'll be identifiable (not identified).

Avoid door stepping unless reasonable requests for an interview have been turned down or you have good reason to believe an investigation will be frustrated by an open request (this does not include vox pops).

People in the news can normally be approached for comment when in a public place.

Recording phone calls.

When doing this, make clear who you are, the purpose of your call and that it will be broadcast. If consent is not sought at the time of the call then it should be obtained before broadcast (obviously this applies prerecorded calls.).

If the other party believes that the recorded part of the phone call has come to an end then anything said afterwards will not be used on air (you should not trick "off the record comments").



Take care

at times of emergency, accident or personal tragedy, even in a public place unless warranted.

with people in distress.

not to reveal the identity of a person who has died due to accident or violent crime unless it's clear that the next of kin has been informed.

when examining past events that involve trauma to reduce stress to victims and/or relatives. Inform survivors and immediate relatives of your intentions.

Under 16s and vulnerable people.

They don't forfeit the right to privacy because of events at their school or notoriety of their parents.

If their privacy is infringed, then consent should be obtained by a parent or guardian before broadcast.

The definition of a vulnerable person.

The meaning is not fixed but could include persons experiencing learning difficulties

dementia

mental health issues

bereavement

brain damage

trauma

sickness or terminal illness

Section 9: Sponsorship

Sponsorship messages should be separate from programming.

Sponsorship should be distinct from advertising.

Sponsorship should not affect editorial independence.

Sponsorship is not appropriate for programmes dealing with political, industrial or public policy.

Section 10: Commercial references and other matters.

Advertising and programming elements should clearly be separated.

No undue prominence should be given to something where there is no editorial justification.

No product placement or reference in return for financial consideration should be given.

References to commercial brands when talking about sponsorship of sporting events should be brief and secondary.

