

Media Regulation

European Convention on Human Rights

The balancing act.....

Privacy versus freedom of expression

English and Welsh law is subject to European law, the bedrock of which is the European Convention on Human Rights (ECHR). Two important 'articles' for journalists to be aware of in the ECHR are the seemingly opposed Articles 8 and 10. The one protects an individual's privacy, the other seems to give licence to journalists.

Article 8

1 Everyone has the right to respect for his private and family life, his home and his correspondence.

2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10

1 Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2 The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The PCC (Press Complaints Commission) has a 'voluntary' code of conduct' with 16 clauses covering areas such as privacy, intrusion into grief, children, use of hidden cameras and recording devices. It often indicates that journalists' behaviour should be guided according to whether or not the matter they are reporting is in the public interest.

PCC Code of conduct: definition of 'the public interest'

THE PUBLIC INTEREST

1. The public interest includes, but is not confined to:
 - i) Detecting or exposing crime or serious impropriety.
 - ii) Protecting public health and safety.
 - iii) Preventing the public from being misled by an action or statement of an individual or organisation.
2. There is a public interest in freedom of expression itself.
3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.
4. The PCC will consider the extent to which material is already in the public domain, or will become so.
5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

PCC adjudications –a selection:

1. Caroline Langdon, of Reading, complained that an article reporting that Andre Genestin – who had been convicted of murdering his wife Catherine – was appealing the length of his sentence contained the inaccurate claim that she had been pregnant at the time of her death. (Clause 1).

Resolution: The complaint was resolved when the newspaper published a clarification in the following terms:

"On 9 September, The Argus carried a report stating that Catherine Genestin was pregnant at the time of her murder. Her husband Andre Genestin claimed during his trial for her murder that Catherine had told him she was expecting, although a post-mortem examination found that she was not pregnant. We are happy to set the record straight."

2. A local weekly newspaper along with 11 national titles have been rapped by press watchdogs over a "too explicit" online report about a man who committed suicide with a chainsaw. The Crawley Observer website was one of a number of publications which carried Press Association copy on the inquest into the man's death held in November last year. PA realised that their original report fell foul of a Press Complaints Commission Code of Practice clause designed to minimise the risk of "copycat" suicides and sent out an amended version.

NCTJ (National Council for the Training of Journalists)

Law Exam questions for trainee journalists

Question example One :

Sam Nemot, a Member of Parliament, is found guilty at the Crown court of rape and sentenced to five years' imprisonment. The next day The Daily Oracle publishes a news story reporting the verdict and sentence, and an editorial in which it expresses the opinions which include : 'Parliament is well rid of this man.'

Mr Nemots conviction is later quashed by the Court of Appeal and the newspaper reports the next day that court's decision. He then sues the newspaper over the original news story and the editorial comment.

What is the newspaper's liability, of any, for defamation?

Question example Two :

A gang has been jailed for various offences and as a result a newspaper is preparing a feature on local crime. With the feature it has a picture of a red light district in its town. The picture shows clearly vehicles being driven in a street or being at a kerb with people apparently talking to drivers. People are also walking on the pavement. A check call establishes that no appeal has been lodged against the jail sentences. What legal dangers exist in publishing clear pictures and how can it be avoided? The answer must show how conclusions are reached.

Question example Three :

A soccer reporter in his column strongly criticises the decision of the team manager in leaving out Jock McTavish..... McTavish, says the reporter in a comment piece, is clearly a brilliant striker and he must therefore have been left out because of the manager's oft-stated dislike of Scots. The manager threatens to sue for libel. What is the newspaper's legal position?

Regulation of the Internet

Extract from Digital Britain – Government report, January 2009, Section on Media regulation

The Byron Review and the UK Council for Child Internet Safety (UKCCIS)

Professor Tanya Byron was commissioned to lead a review on the risks to children from exposure to potentially harmful or inappropriate material on the internet and in video games. The review was published on 27 March 2008 and Government accepted all Professor Byron's recommendations.

The review found that:

- Digital technologies offer enormous opportunities for fun, learning and development.
- With these new opportunities come potential risks. Parents' general lack of confidence and awareness about new technology is leaving children vulnerable within their digital worlds. Parents need the right support to overcome this 'digital divide' and engage with their children.
- Decisions about what is harmful and inappropriate for children, as opposed to illegal, are largely subjective: what one family feels is unsuitable for their children may not be considered or experienced in the same way by another.
- Keeping children and young people safe from harm must be the priority and responsibility of us all. While children need to be able to learn, have new experiences and enjoy their childhoods, we need to help families strike the right balance between keeping children safe and allowing them the freedom they need.
- There is no silver bullet solution to making our children safer and we need a shared culture of responsibility with families, industry and government all playing their part to reduce the availability of potentially harmful material, restrict access to it by children and increase children's resilience.

In order to improve children's digital safety, the Review made a number of ground breaking recommendations including

- The creation of a new UK Council for Child Internet Safety, established by and reporting to the Prime Minister, and including representation from across Government, industry, children's charities and other key stakeholders including children, young

people and parents.

- Challenging industry to take greater responsibility in supporting families through establishing transparent and independently monitored codes of practice on areas such as user-generated content; improving access to parental control software and safe search features; and better regulation of online advertising.
- Developing a comprehensive public information and awareness campaign on child internet safety across Government and industry, and which includes an authoritative 'one stop shop' on child internet safety.
- Setting in place sustainable education and children's service initiatives to improve the skills of children and their parents around e-safety. This includes making sure schools and teachers have the necessary support to be e-safe.
- Specific measures to support vulnerable children and young people, such as taking down illegal internet sites that promote harmful behaviour, such as suicide, self-harm and eating disorders, while at the same time providing the right space and support where at risk people can safely talk.

UKCCIS

The UK Council for Child Internet Safety (UKCCIS) is a central part of the recommendations. It is a forum enabling Government and stakeholders – including industry, law enforcement, and the third sector – to come together and contribute jointly to the development and delivery of the strategy for child internet safety. The Council was officially launched by the Prime Minister on 29 September alongside the formal announcement of the membership of the Executive Board.

The Government will work with partners through UKCCIS to produce a Child Internet Safety Strategy which will be published in spring 2009. The strategy will form part of the Child Internet Safety Summit which will be hosted by the Prime Minister.

The work of UKCCIS will drive the programme for ensuring children, young people and parents have the necessary skills and support to make the most from the internet and video games while minimising the potential risks. It will work with other Government programmes, such as Digital Britain, to ensure a coordinated response across Whitehall to maximising the enormous opportunities and innovation that new technology provides.