

FACTFILE:

GCSE

JOURNALISM IN THE MEDIA AND COMMUNICATIONS INDUSTRY

UNIT 3: INDUSTRY, THEORY AND PRACTICE



Journalism Law, Regulation and Ethics

Part 1, Section A: Technology, Conventions and Modern Journalism

JOURNALISM LAW, REGULATION AND ETHICS

Purpose of Factfile?

To enable students to develop knowledge and understanding of journalism law, regulation and ethics.



Specific Learning Outcomes supported by the FactFile?

Students should be able to:

- explain the difference between legal and ethical considerations in journalism;
- identify and define the following legal terms:
 - defamation; and
 - libel;
- cite one example of defamation (either real or imagined);

- identify and define the following legal defences:
 - justification (truth);
 - honest opinion;
 - absolute and qualified privilege;
 - offer of amends; and
 - accord and satisfaction;
- cite one example (either real or imagined) to illustrate how each defence might be used;
- define the purpose of the Freedom of Information Act 2000;
- identify the 12 key ethical principles within the National Union of Journalists (NUJ) code of conduct;
- cite one example (either real or imagined) of how each of the NUJ's ethical principles might be upheld or breached;
- identify the titles of Sections 1–8 of the Ofcom Broadcasting Code and demonstrate understanding of the principles they relate to;
- cite one example (either real or imagined) of how each of the Ofcom Broadcasting principles might be upheld or breached.

Target audience? Student? Teacher? Both?

Teachers and Students.

How the FactFile supports development of Key Stage 4 Statutory skills?

Opportunities for UICT, PS, WO and Comm throughout.

FactFile Content

Unit 3 of the GCSE Journalism course is assessed through an online examination, and Section A of the exam draws on students' knowledge of journalism law, regulation and ethics, among other topics. Students may be asked to explain and identify definitions and current understanding of each of these areas. They must therefore be able to confidently recognise the difference between legal and ethical considerations and recall definitions of legal terms, defences and principles, citing examples as required.

Similar factfiles on the conventions of TV, print and online formats, the role and purpose of journalism, technology and modern journalism and professional roles in journalism are also available from the CCEA microsite.

Legal and Ethical Considerations

When writing a story, every journalist must consider both **legal** and **ethical** issues.

- **Legal issues:** Journalists must follow laws which are designed to stop them reporting information which may damage or harm other people or organisations.
- **Ethical issues:** Ethics means doing what is ethically and morally right, regardless of what the law might say. Journalists follow professional ethical codes or guidelines.



Defamation and Libel

Defamation law is designed to protect people's reputations. It helps prevent statements being published which might unfairly attack or harm an individual's personal or professional reputation.

The law states that defamatory statements are those which 'tend' to expose a person to 'hatred, ridicule or contempt', cause them to be 'shunned

or avoided' or lowered in the estimation of 'right-thinking members of society'.

For a business, a statement is judged to be defamatory if it could lead to a fall in sales or profit.

For example, imagine if a local newspaper called the Malton Times published a story which claimed a poultry farm that reared and sold chickens, Malton Farm, was using illegal and cruel practices in raising its chickens. Unless the newspaper could find evidence to prove the story was true, this would be defamation against Malton Farm. The farmer could sue the newspaper for defamation.

Because more and more people are now using social media, defamation is no longer a risk for journalists only. Anyone who writes or publishes anything online is liable. For example, imagine if a school pupil sent a tweet from his Twitter account claiming that his maths teacher was a racist and a bigot. Unless he had evidence to back this up, it would be defamation against his teacher.

If a journalist (or any publisher) loses a defamation trial, they may have to pay 'damages' – a sum of money – to the **claimant**. They would also have to pay legal fees. Since it is expensive to lose a defamation case, most cases are settled out of court, i.e. an arrangement is made between the defendant – the publisher or journalist – and the claimant.

What must the claimant prove?

The claimant – that is, the person who believes they have been defamed and wants to sue – must prove three things:

- that the publication is defamatory; and
- that it may be reasonably understood to refer to him/ her (the claimant); and
- that it has been published to a third person.

The claimant does **NOT** have to prove:

- that the statement is false;
- that the journalist intended to damage their reputation; or
- that he or she has suffered actual damage.

The claimant only needs to show that the statement 'tends to discredit', i.e. that it has the *potential* to damage their reputation.

Legal Defences

What defences are available to journalists in defamation cases?

Several defences are available to journalists or media companies who choose to fight defamation cases.

- **Truth/justification.** Truth, or justification, is the simplest defence. It is simply the defence that the statement made was the truth. To use this defence successfully, the defendant (i.e. the journalist or publisher) must provide evidence to prove that what they wrote was true.

For example, imagine a newspaper called UK News reports that Sir Samuel Moore, the chief executive of Chocolate Bunnies company, is guilty of tax evasion and of underpaying his staff. Sir Samuel decides to sue UK News for defamation and demands damages, on the grounds that his company's sales will probably be affected by this report. To successfully defend itself, UK News will have to find and show evidence to the court to prove that its claims were true.

- **Honest opinion/honest comment.** Journalists can use this defence if the statement in question was their *honestly held view on an issue of public importance or interest*. This defence protects writers of opinion pieces and reviews.

For example, imagine a food blogger visits a restaurant and has an unpleasant experience. She then goes home and writes a critical review of the meal she was served, claiming the food was cold, unappetising and overcooked. As long as the blogger makes clear this review is her *opinion* based on the meal she was served, the restaurant cannot sue her for defamation, even if it feels its reputation has been damaged.

- **Privilege.** Certain situations are **privileged** or **have privilege**. On these occasions, journalists have the right to report whatever is said, even if it is defamatory. In a courtroom, journalists have **absolute privilege** to report whatever is said by anyone there, whether they are witnesses, defendants, a judge or a member of the public.

When reporting what was said at public meetings, including council meetings, assembly meetings, parliament, or press conferences, journalists have **qualified privilege**. This means they can report whatever is said, but there are some conditions or qualifications attached.

For example, imagine you, a reporter for a local newspaper, are present at a council meeting. During the meeting, a councillor claims that the building company Blakes' Builders is untrustworthy and about to go bankrupt. When writing your story for the newspaper, you are safe to report exactly what the councillor said at the meeting. However, if Mr Blake from Blakes' Builders contacts you and angrily denies the accusation, you are legally obliged to also publish what he says.

- **Accord and Satisfaction** and **Offer of Amends:** A media organisation can use these defences to prevent a potential defamation case from going to court. In 'Accord and Satisfaction', the claimant agrees not to sue, usually on the condition that the media company publishes a correction and apology. In '**Offer of Amends**', the media company admits it has made a mistake and offers to publish an apology and pay damages.

Student Activity:

You are writing an article for a local newspaper about the results, recently published in a league table, of secondary schools in your area. A local man phones you to complain about the head teacher in one of the local secondary schools. He says: 'Mrs Smyth is lazy and doesn't do her job properly. Standards have fallen and she has run the school into the ground.'

Can you publish these remarks in your article? Explain.

The Freedom of Information Act

The **Freedom of Information Act** (FoI Act) is an important source of news for journalists. This law, which was enacted in 2000, allows the public to access information held by public authorities. It means that journalists (or any member of the public) can ask authorities to tell them information, such as the way taxpayers' money is spent, or crime statistics.

The FoI Act is useful for journalists and the public as it can often result in information being revealed which otherwise would have been kept hidden.

Some information which has been brought to light by FoI requests includes:

- The Times revealed girls as young as ten had been given the contraceptive implant under the National Health Service;

- The Manchester Evening News revealed that nearly 1,000 children in Greater Manchester were suspected of committing crimes in a period of just three years;
- The BBC revealed that in the 2010/11 season it cost Strathclyde Police over £2m to police football games between Celtic and Rangers;
- The Daily Telegraph reported in 2016 that patients were waiting in ambulances outside A&E departments for periods as long as nine hours.

A downside of the FoI Act is that it can be open to abuse – some requests have demanded frivolous, unimportant information, and wasted time and money.

Student Activity:

See if you can find any other stories that have been unearthed because of a Freedom of Information request.

NUJ Code of Conduct

Journalists follow professional codes of conduct which set out principles of good, ethical practice. One of the main codes is the **National Union of Journalists' (NUJ) Code of Conduct** – a set of guidelines published by the UK journalists' union, which every professional journalist should follow.

The 12 principles are:

1. Upholding and defending media freedom, the right of freedom of expression and the right of the public to be informed.
2. Ensuring information is honestly conveyed, accurate and fair.
3. Correcting harmful inaccuracies.
4. Differentiating between fact and opinion.
5. Obtaining material by honest, straightforward and open means.
6. Avoiding intrusion into anybody's private life, grief or distress.
7. Protecting the identity of sources who supply information in confidence.
8. Refusing to influence, distort or suppress information and taking no unfair personal advantage of information before that information is public knowledge.
9. Producing no material likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation.

10. Not endorsing or advertising any commercial product or service.
11. Seeking the consent of an appropriate adult when interviewing or photographing a child for a story about her/his welfare.
12. Avoiding plagiarism.

Student Activity:

For each guideline, discuss:

- **Why it is important;**
- **How it should be followed; and**
- **How it might be breached.**

Ofcom Broadcasting Code

The Ofcom Broadcasting Code is a set of guidelines which every media company that broadcasts in the UK is legally obliged to stick to. The Ofcom Broadcasting Code includes:

- Section 1: Protecting the under-18s
- Section 2: Harm and offence
- Section 3: Crime, disorder, hatred and abuse
- Section 4: Religion
- Section 5: Impartiality and Accuracy
- Section 6: Elections
- Section 7: Fairness
- Section 8: Privacy

The following sections will look at some of these issues in more detail.

Protecting Sources

In a free and open society, it is important that stories about corruption, unlawful activity or wrongdoing can be published. These types of stories are usually leaked by 'whistleblowers', who may wish to remain anonymous in order to protect themselves from ill-treatment or intimidation. So, although it is generally good practice in journalism to name sources, there are times when journalists should not reveal the names of people who have given them information. The NUJ code of conduct states that a journalist must 'protect the identity of sources who supply information in confidence and material gathered in the course of her/his work' (Point 7).

Privacy

Privacy has been defined as 'the right to be left alone'. For legal and ethical reasons, journalists should respect people's privacy and avoid

interfering or intruding into anyone's life. Section 8 of the OfCom Broadcasting Code and Point 6 of the NUJ code of conduct both deal with privacy. Breach of privacy could include listening into someone's phone calls, taking a photo of them and publishing it without their consent, or reporting intimate details about their private relationships.

Privacy: Law

In UK law, privacy is based on Article 8 of the European Convention on Human Rights which states: "Everyone has a right to respect for his private and family life, his home and his correspondence."

In law, individuals may sue and seek damages from media companies for breach of privacy. They must convince a judge that there has been unnecessary intrusion into their lives.

Privacy: Ethics

The journalistic ethical codes state that journalists should respect people's privacy, particularly in times of grief, illness or shock.



Privacy: Exceptions

Only in exceptional cases, for reasons of public interest, should privacy be breached. For example, imagine there is a celebrity footballer who is an outspoken critic of drugs, and claims never to have used them. Imagine a journalist sees this footballer taking drugs in a nightclub and secretly films him. Should the journalist publish the footage, or would it be a breach of the footballer's privacy?

The journalist would argue that the celebrity has been hypocritical and has misled the public, including young fans, so has therefore forfeited his right to privacy. In this case, it would be in the public interest to publish the information.

Covert Recording and Filming

Generally, journalists should avoid using hidden recording devices to record or film. However, as in the case of the celebrity footballer mentioned above, sometimes it may be justified to use hidden cameras to reveal an important story.

The ethical codes advise that hidden cameras or recording devices should only be used when there are no other means of obtaining an important story that is in the public interest. In the past, hidden cameras have exposed wrongdoing from bodged building jobs to poor and even dangerous practices in nurseries and care homes.

Reporting on Juveniles

There are special laws and ethical guidelines around reporting on young people.

It is illegal to name young people (under 18s) who are involved in court cases, whether as defendants, witnesses or victims.

Ethically, the codes (Section 1 of the OfCom Code and Point 11 of the NUJ code of conduct) state that no young person under the age of 16 should be interviewed or asked to appear in a programme without the consent of their parent or guardian.

Public Interest

Occasionally, journalists will breach these ethical guidelines, but this only happens in cases where there is an overwhelming **public interest** to do so.

Public interest includes:

- Detecting or exposing crime or serious impropriety;
- Protecting public health and safety;
- Preventing the public from being misled by an action or statement of an individual or organisation.

Glossary

Breach – to break (a regulation, law etc.)

Impropriety – being ‘improper’, inappropriate or immoral

Juvenile – person under 18 years of age

Questions to consider?

- What is the difference between law and ethics?
- What is defamation? What should a journalist do to avoid it?
- What topics are covered in journalists’ ethical codes?
- Why and how should journalists consider other people’s privacy?
- What is the Freedom of Information Act and how do journalists use it?

Additional information sources

Ofcom Broadcasting Code

<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

NUJ code of conduct

<https://www.nuj.org.uk/about/nuj-code/>

Keeping your news safe and legal

<http://www.bbc.co.uk/schoolreport/16220838>

BBC Bitesize Journalism

<http://www.bbc.co.uk/education/guides/zyt282p/revision>

BBC values

<http://www.bbc.co.uk/academy/journalism/values>

