



Higher National Unit specification

General information for centres

Unit title: Law and the Media

Unit code: F6JF 34

Unit purpose: This Unit is designed to equip the candidate with a knowledge and understanding of the essential aspects of Scots Law and the legal restrictions applicable to the media.

On completion of the Unit the candidate should be able to:

- 1 Describe the law of Contempt of Court in Scotland in respect of media activity.
- 2 Describe the law of copyright in respect of media activity.
- 3 Describe the law of Defamation in Scotland in respect of media activity.
- 4 Describe ethical issues and voluntary controls on the media.

Credit points and level: 1 HN credit at SCQF level 7: (8 SCQF credit points at SCQF level 7*)

**SCQF credit points are used to allocate credit to qualifications in the Scottish Credit and Qualifications Framework (SCQF). Each qualification in the Framework is allocated a number of SCQF credit points at an SCQF level. There are 12 SCQF levels, ranging from Access 1 to Doctorates.*

Recommended prior knowledge and skills: Access to this Unit is at the discretion of the centre. However, candidates would normally be expected to have competence in communication skills at SCQF level 6 or equivalent.

This could be demonstrated by the achievement of one of the following:

- ◆ C115 12: *English (Higher)* or its component Units
- ◆ EE3T 12: *Communication* and E9X8 12: *Literature 1*
- ◆ D01B 12: *Communication* or F3GB 12: *Communication*
- ◆ Relevant work experience

Core Skills: There are opportunities to develop the Core Skills of *Problem Solving* and *Communication* at SCQF level 6 in this Unit, although there is no automatic certification of Core Skills or Core Skills components.

Context for delivery: If this Unit is delivered as part of a Group Award, it is recommended that it should be taught and assessed within the subject area of the Group Award to which it contributes.

Assessment: All assessments will be unseen, closed book and undertaken in supervised conditions. Knowledge and/or Skills will be sampled in each assessment.

Higher National Unit specification: statement of standards

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The sections of the Unit stating the Outcomes, Knowledge and/or Skills, and Evidence Requirements are mandatory.

Please refer to *Knowledge and/or Skills for the Unit* and *Evidence Requirements for the Unit* after the Outcomes.

Where evidence for Outcomes is assessed on a sample basis, the whole of the content listed in the *Knowledge and/or Skills* section must be taught and available for assessment. Candidates should not know in advance the items on which they will be assessed and different items should be sampled on each assessment occasion.

Outcome 1

Describe the law of Contempt of Court in respect of media activity

Knowledge and/or Skills

- ◆ Restrictions on reporting under the Contempt of Court Act 1981
- ◆ Effect of Strict Liability Rule
- ◆ Danger of prejudicing active court proceedings
- ◆ Defences
- ◆ Miscellaneous provisions of Sections 8 – 10 of the Contempt Of Court Act 1981

Outcome 2

Describe the law of copyright in respect of media activity

Knowledge and/or Skills

- 1 The principles of copyright:
 - ◆ Originality
 - ◆ Ownership
 - ◆ Co-Ownership
 - ◆ Intellectual Property Right
- 2 The works for which copyright may be claimed:
 - ◆ Original literary, dramatic, musical or artistic works
 - ◆ Sound recording, films, broadcasts or cable programmes
 - ◆ The typographical arrangement of published editions
- 3 Legislation:
 - ◆ Copyright, Designs and Patents Act 1988
 - ◆ Copyright and Related Rights Regulations 2003
 - ◆ Human Rights Act 1998

Higher National Unit specification: statement of standards (cont)

Unit title: Law and the Media

- 4 Possible defences to alleged breaches of copyright:
 - ◆ Fair Dealing for the purposes of research and private study
 - ◆ Fair dealing for the purposes of criticism, review and news reporting
 - ◆ Incidental inclusion
 - ◆ Certain educational uses
 - ◆ Certain uses in libraries and archives
 - ◆ Public administration

Outcome 3

Describe the law of Defamation in respect of media activity

Knowledge and/or Skills

- 1 Elements required to be proved by pursuer in Defamation law:
 - ◆ Identification
 - ◆ Communication
 - ◆ Defamation
- 2 What makes a statement defamatory:
 - ◆ Extended meaning, and
 - ◆ Innuendo
- 3 Presumptions in Defamation law.
- 4 Common Law defences and their limitations:
 - ◆ Veritas
 - ◆ Fair Comment
 - ◆ Privilege
- 5 Statutory privilege under Defamation Act 1996:
 - ◆ Reports of court proceedings
 - ◆ Reports under Part 1 of Schedule 1
 - ◆ Reports under Part 2 of Schedule 1
- 6 Offer of amends

Higher National Unit specification: statement of standards (cont)

Unit title: Law and the Media

Outcome 4

Describe ethical issues and voluntary controls in the media

Knowledge and/or Skills

- 1 Press Complaints Commission:
 - ◆ Enforcement
 - ◆ Code of Practice
- 2 Ofcom:
 - ◆ Statutory duties
 - ◆ Regulatory Principles
 - ◆ Data Protection legislation
 - ◆ Freedom of Information legislation
- 3 Advertising Standards:
 - ◆ Advertising Standards Authority
 - ◆ Code of Practice
- 4 NUJ Guidelines:
 - ◆ Code of Conduct
 - ◆ Public Relations Guidelines
- 5 Children in the media:
 - ◆ Children (Scotland) Act 1995
 - ◆ Social Work (Scotland) Act 1968
 - ◆ Children's Hearing

Evidence Requirements for the Unit

Candidates will need to provide evidence to demonstrate their Knowledge and/or Skills by showing that they can accurately describe:

- ◆ the law of Contempt of Court in Scotland in respect of media activity
- ◆ the law of copyright in respect of media activity
- ◆ the law of Defamation in respect of media activity
- ◆ ethical issues and voluntary controls on the media

The whole of the Unit could be assessed in individual or in combinations of outcomes. The sampling of knowledge may be achieved by including sampling questions covering the following:

- ◆ any two from the five bullet points in Outcome 1, **and**
- ◆ any two from the four numbered points in Outcome 2, **and**
- ◆ any two from the six numbered points in Outcome 3, **and**
- ◆ any two from the five numbered points in Outcome 4

Higher National Unit specification: statement of standards (cont)

Unit title: Law and the Media

All assessments will sample the Knowledge and/or Skills in all outcomes and will be unseen, closed book and undertaken in supervised conditions.

Assessment Guidelines

Different Instruments of Assessment may be chosen depending on which is the most appropriate to the candidates.

For example, Outcomes 1, 2 and 3 could be assessed in one sitting using restricted response or multiple choice questions which cover the required sample of Knowledge and/or Skills. A suggested time for this exercise would be 90 minutes.

Outcome 4 could be assessed by using a case study relating to voluntary controls of the media. The case study could be given out in advance of the assessment date but the questions would not be seen until the actual start of the assessment. The case study should contain sufficient information to enable the candidate to provide accurate solutions to a particular situation/situations regarding voluntary controls applied in the media industry. The case study should cover the required sample of Knowledge and/or Skills. A suggested time for this assessment would be two hours.

Administrative Information

Unit code: F6JF 34
Unit title: Law and the Media
Superclass category: EC
Original date of publication: May 2009
Version: 01

History of changes:

| Version | Description of change | Date |
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Higher National Unit specification: support notes

Unit title: Law and the Media

This part of the Unit specification is offered as guidance. The support notes are not mandatory.

While the exact time allocated to this Unit is at the discretion of the centre, the notional design length is 40 hours.

Guidance on the content and context for this Unit

The purpose of this Unit is to provide the candidate with sufficient knowledge of the laws of Defamation and contempt of court to enable the candidate to ensure that material produced by the candidate is safe for publication.

There are particular areas which, while not apparently necessary to the completion of the Unit, are a necessary background to assist a candidate in linking different legal and ethical concepts. For example, it is difficult to deal with legal concepts without a basic understanding of the differences between common law and statute law, and civil and criminal law. The Press Complaints Commission's Code of Conduct overlaps with some areas covered by the law and supplements the law in other areas. Where appropriate, it (along with any other relevant ethical codes) should be discussed. Material should be made available to enable the candidate to understand and apply those underpinning concepts.

On completion of the Unit the candidate will be able to identify situations where specific principles apply, explain how they apply and suggest approaches to be taken to ensure legal compliance.

Outcome 1

This Outcome introduces the candidate to the dangers which may trap the unwary journalist whose reporting creates a substantial risk of serious prejudice to active court proceedings. Although the Contempt of Court Act applies in respect of both civil and criminal cases, the emphasis should be on the implications for the reporting of the investigation and prosecution of crime. The potential for prejudicing a case by influencing either jurors or witnesses should be explored. Reference should be made to the possibility of contempt at common law when a publication prejudices a case which is not active. However, the emphasis should be on the potential for creating a risk of prejudice to cases which are active at the time of publication.

The Contempt of Court Act places restrictions on reporting and if any of these restrictions are breached then an individual could be charged with a criminal offence. Restrictions could include eg reporting on cases which involve and identify children.

This Outcome should be taught in as practical a way as possible, in terms of how risk of contempt of court operates at the various procedural stages of a prosecution. Emphasis should be placed on what in practice would be dangerous to include in a published report, and, with reference to recent case law, what arguments may be used to support publication of material which could create a less than substantial risk of prejudice.

Higher National Unit specification: support notes (cont)

Unit title: Law and the Media

The defences provided by the Contempt of Court Act should be explained again with a view to their practical application in a journalistic context. Thus, the kinds of enquiries required to satisfy the s.3 defence, and the kinds of article that may be covered by the s.5 defence, should be discussed. The practical requirements for a publication to satisfy s.4(1) (including how to ensure compliance with s.4(2) or s.11 orders) should be explored in detail.

The dangers of approaching jurors and taking recording equipment into court should be emphasised. Recent case law may be used to explore the extent to which the protection of journalists' sources is recognised by the courts.

Outcome 2

This outcome deals with the legal issues in relation to copyright. Explanation should be given regarding ownership of new documents/materials and who owns copyright. It should be pointed out that copyright material requires to be expressed in writing but this could be in print in a book or e-mail etc but copyright does not exist until that time. It should also be discussed that copyright is an intellectual property right. Individuals should be aware that they cannot use another individual's copyright material without permission or they may find themselves being sued or in extreme circumstances, subject to criminal charges.

The candidate should be able to identify in which types of work copyright exists and the time limits relating to copyright. They should also be familiar with the legislation which deals with copyright and the rules detailed in that legislation.

Also, there can be defences to an action for breach of copyright for example where it is being used for private research. Another example could be where a journalist reports on an incident which involves a Member of Parliament which on the face of it appears to be defamatory, if he can prove it is in the interest of the public this could be upheld as a suitable defence. There are a number of defences available to the journalist and these should all be discussed and explained, bearing in mind that licences can be issued to enable use of copyright materials.

Outcome 3

This Outcome introduces the candidate to the legal dangers which may trap the unwary individual whose reporting unjustifiably damages another individual or organisation's reputation. The material should be delivered in a way that stimulates the candidate's understanding and application of the relevant law in media contexts. Thus, reference to actual Defamation cases involving media activity should be used as much as possible.

The distinction between those elements of a Defamation case which must be proved by the pursuer and those elements which then become legal presumptions should be explored, with particular emphasis on the presumptions and onus of proof in respect of falsity and truth.

The practical situations where a pursuer may claim to be identifiable in a story without being identified individually or specifically should be explored with the candidate. The situations where a statement may only be defamatory by innuendo or because of the context in which it is published should also be explored. Reference should also be made to actionable non-defamatory statements.

Higher National Unit specification: support notes (cont)

Unit title: Law and the Media

On a day to day basis, privilege is enormously important to journalists in protecting the publication of stories which contain defamatory imputations. Thus, with particular reference to Schedule 1 of the Defamation Act 1996, the range of stories which enjoy privilege and the specific criteria which those respective stories must satisfy should be explored in detail. The impact of malice, and, in respect of reports covered by Part 2 of Schedule 1 of the Defamation Act 1996, how to deal with requests to publish 'their side of the story' by those who complain they may be or have been defamed by such reports should be discussed. The 'Reynolds defence' should be discussed, but the level of consideration should reflect the level of its practical impact on the media.

For non-privileged reports the distinction between statements of fact and statements of opinion should be discussed, with a view to exploring when veritas or fair comment may apply. The importance of evidence to support a veritas defence should be emphasised along with an exploration of the legal limitations of the defence eg with reference to the Rehabilitation of Offenders Act 1974. The criteria which a publication must satisfy for the defence of fair comment to be reliable should be explained.

The statutory offer of amends scheme under the Defamation Act 1996 should be discussed as a 'last resort' which, for the careful journalist who before publication ensures that every story is legally sound, should never have to be considered.

Further legislation now has also to be taken into consideration by the media in the Counter Terrorism Act 2008 which lays down new provisions to limit photography in a public place. Attention should be drawn to this new legislation during the teaching process.

16 February 2009 marked the enforcement date of a number of provisions of the Counter Terrorism Act 2008 including Section 76, which relates to offences relating to information about members of armed forces, etc.

Outcome 4

This outcome introduces the candidates to the statutory bodies that oversee and regulate controls on the media. All reports from the media are governed by a set of ethical standards and these standards are laid down by particular statutory bodies.

The first body is the Press Complaints Commission (PCC) that is charged with enforcing the Code of Practice which was framed by the newspaper and periodical industry and was ratified by the PCC on 01 August 2007.

All members of the press have a duty to maintain the highest professional standards. The Code sets out ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.

It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not compromise its commitment to respect the rights of the individual, nor on the other hand should it constitute an unnecessary interference with freedom of expression or prevent publication in the public interest.

Higher National Unit specification: support notes (cont)

Unit title: Law and the Media

It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications.

The second statutory body is Ofcom, established as a body corporate by the Office of Communications Act 2002. Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

Further legislation, ie the Communications Act 2003, divided the duties into six areas:

- 1 Ensuring the optimal use of the electro-magnetic spectrum.
- 2 Ensuring that a wide range of electronic communications services - including high speed data services - is available throughout the UK.
- 3 Ensuring a wide range of TV and radio services of high quality and wide appeal.
- 4 Maintaining plurality in the provision of broadcasting.
- 5 Applying adequate protection for audiences against offensive or harmful material.
- 6 Applying adequate protection for audiences against unfairness or the infringement of privacy.

This legislation also covers Data Protection and Freedom of Information rules.

Advertising Standards

The next body is the Advertising Standards Authority (ASA) that regulates the content of advertisements, sales promotions and direct marketing in the UK by the following:

- ◆ Make sure standards are kept high by applying the advertising standards codes
- ◆ Stop misleading, harmful or offensive advertising
- ◆ Ensure sales promotions are run fairly and helping to reduce unwanted commercial mail, either sent through the post, by e-mail or by text message
- ◆ Resolve problems with mail order purchases

The ASA investigates complaints made about adverts, sales promotions or direct marketing. They also monitor adverts themselves to spot problems. They carry out research in many areas to help in their work, including research into peoples' attitudes towards advertising and compliance with the advertising standards codes within specific sectors and media.

The advertising standards codes

The advertising standards codes are separated out into codes for TV, radio and all other types of adverts. There are also rules for Teletext adverts, interactive adverts and the scheduling of television adverts. The main principles of the advertising standards codes are that adverts should not mislead, cause harm, or offend.

Higher National Unit specification: support notes (cont)

Unit title: Law and the Media

The last body is the National Union of Journalists (NUJ), which lays down codes of practice for the media when dealing with members of the public. The following are examples of areas which are covered by the NUJ code of practice:

- ◆ Professional and ethical standards
- ◆ Defend the freedom of the press
- ◆ Deal fairly and honestly with the public
- ◆ Ensure that their employers or clients acknowledge that goodwill and reputation are based on trust
- ◆ Ensure that information disseminated is accurate and fair
- ◆ Not engage in any practice likely to corrupt the integrity of the public relations profession, the organisations they represent, the media or the NUJ and its members.
- ◆ Not attempt to 'buy' editorial space or air time, either by direct bribery or by promising to buy advertising space
- ◆ Provide independent professional advice to their employers or clients without fear or favour
- ◆ Not attempt to induce any journalist to work for less than NUJ rates or conditions
- ◆ Members working in local and national government shall maintain professional political neutrality at work, unless their conditions of employment specifically allow otherwise

This outcome also covers legislation which requires to be taken into consideration when reporting in the media. The Children (Scotland) Act 1995 covers the rights of children, their views and welfare hearings, together with the Social Work (Scotland) Act 1968 which deals with children in need of compulsory care and the restrictions on prosecution of children. The Children's Hearing system represents one of the radical changes initiated by the Social Work (Scotland) Act 1968.

Since there are many restrictions in reporting on anything relating to children, this is where the ethical issues and voluntary controls come into play. There are standards laid down by statutory bodies and although most of these are codes of practice and are voluntary controls, they lay down ethics and standards which should be followed by the media to ensure compliance. Where the media breaches these controls, they may lead to enforcement by the statutory bodies. It is worthwhile for anyone working in the media industry to be aware of these controls and ensure they follow procedures to comply with them.

Higher National Unit specification: support notes (cont)

Unit title: Law and the Media

Guidance on the delivery and assessment of this Unit

This is a mandatory Unit within the HNC/HND Creative Industries: Media and Communication awards.

Teaching should be focused on helping the candidate to understand and apply the principles and main provisions of the relevant areas of law rather than to memorise details of case law.

Wherever possible, links should be drawn which will enable the candidate to understand the connection between knowledge and its application in the context of familiar situations relating to relevant areas of media law. Close liaison with other tutors teaching on the HNC/D Creative Industries: Media and Communication awards is recommended in order to enhance subject integration.

Opportunities for developing Core Skills

The delivery and assessment of this Unit may contribute towards the component Written Communication of the Core Skill *Communication* at SCQF level 6 if the assessment takes the form of a written submission. The general skill for this component is ‘produce a document that conveys several pieces of information, opinions or ideas’.

In both formative and summative assessment you should encourage the candidate to:

- ◆ present all essential concepts/ information/ ideas and supporting detail and authority, in a logical and effective order
- ◆ use a structure that takes account of purpose and audience, and links major and minor points in ways that assist the clarity and impact of the writing
- ◆ use conventions that are effective in achieving the purpose and adapted as necessary for the target audience
- ◆ use spelling, punctuation and sentence structures that are consistently accurate
- ◆ vary sentence structure, paragraphing and vocabulary to suit the purpose and target audience

These skills can be developed through formative activities, such as short essays discussing each aspect of the law and how it applies in practice, without being formally assessed for certification of the Core Skill. You should encourage the candidate to use an appropriate referencing method, especially in respect of case law, for any formative essays.

Higher National Unit specification: support notes (cont)

Unit title: Law and the Media

The delivery and assessment of this Unit could also contribute towards the component Critical Thinking of the Core Skill *Problem Solving* at SCQF level 6 because of the requirement for assessment in the form of identifying and unravelling legal issues arising in one or more scenarios. The general skill for this component is 'identifying and analysing the factors affecting a situation or issue'.

In both formative and summative assessment the candidate should be encouraged to:

- ◆ identify the factors involved in the situation or issue
- ◆ assess the relevance of these factors to the situation or issue
- ◆ develop and justify an approach to deal with the situation or issue

These skills can be developed through formative activities, such as short essays discussing each aspect of the law and how it applies in practice or reports of court proceedings attended.

The component Accessing Information Using ICT of the Core Skill *Information and Communication Technology* at SCQF level 5 could be developed within this Unit. The candidate should be encouraged to carry out information searches using efficient and effective search strategies.

The Core Skill could be developed without formal certification.

Open learning

This Unit could be delivered by open learning provided suitable open or online learning materials were developed. However, it would require planning by the centre to ensure the sufficiency and authenticity of candidate evidence. Arrangements would have to be made to ensure that the evidence for all Outcomes is generated by assessment undertaken in the mode(s) detailed in the Evidence Requirements for each Outcome.

For further information and advice, please see *Assessment and Quality Assurance for Open and Distance Learning* (SQA, February 2001 — Publication code A1030).

Disabled candidates and/or those with additional support needs

The additional support needs of individual candidates should be taken into account when planning learning experiences, selecting assessment instruments, or considering whether any reasonable adjustments may be required. Further advice can be found on our website www.sqa.org.uk/assessmentarrangements.

General information for candidates

Unit title: Law and the Media

This is a one credit Unit designed to give you a practical understanding of reporting in Scotland. It is designed also to give you a practical understanding of the laws of Contempt of Court and Defamation as well as the legal restrictions on reporting, so as to enable you to ensure that relevant materials you produce are legally safe to publish. It is also a core Unit in the HNC/HND Creative Industries: Media and Communication.

Outcome 1 explores the dangers that the law of Contempt of Court poses for the journalist reporting on the investigation and prosecution of crime in Scotland. In particular, you will learn at what stages of criminal procedure you must be especially careful in ensuring you do not publish material which may cause a substantial risk of serious prejudice to a court case, what material may be safe or unsafe to publish and what checks you can make on your copy to ensure it is safe. You will also learn how you should behave when in court — especially the dangers in approaching jurors or taking recording equipment into court.

Outcome 2 covers legal issues in relation to copyright law to show you the dangers of using other people's materials in producing any reports. It details how copyright is protected and who owns copyright. It also deals with the different types of work where copyright exists and how long copyright lasts for. You should be aware the even when taking pictures that appear to be quite legitimate you could be breaching copyright laws by taking a picture of something in the background which is copyright material. The outcome also explains defences to a copyright action and where a journalist is held to be in breach of copyright, if he/she can prove these defences then the action will fall.

Outcome 3 explores the dangers that the law of Defamation poses for the journalist in publishing any story in any context. In particular, you will learn what makes a statement defamatory, who can be defamed in a story, who has to prove what and what you can do to ensure that so far as is possible what you produce is safe to publish. You will discover that the law of Defamation stacks the dice very much against the journalist — and so to navigate this area of law safely the journalist has to know it in detail.

Outcome 4 examines the different statutory bodies which govern reporting in the media. There are a number of these and you will learn about the Press Complaints Commission in relation to their Code of Practice and how they enforce this. You will also learn of Ofcom in relation to their statutory duties and regulatory principles together with explanations of why the Data Protection legislation and Freedom of Information legislation required to be developed. You will also learn of the Advertising Standards Authority and their Code of Practice together with the NUJ guidelines and their Code of Conduct. Outcome 4 also covers legislation relating to children and children's hearings.

All assessments will be unseen, closed book and undertaken in supervised conditions.

The Unit offers the opportunity to develop the Written Communication component of the *Communication* Core Skill at SCQF level 6, the Critical Thinking component of the *Problem Solving* Core Skill at SCQF level 6 and the *Information and Communication Technology* Core Skill at SCQF level 5.