

*Diploma in Journalism*

**BROADCAST REGULATION**

**BR18**

Sample 1

Time allowed: 1 hour

**Instructions:**

- Put your **URN** at the top of each page and ensure page numbers are used
- Do **NOT** include your name or the training centre at which you are sitting the exam
- Dictionaries and other reference books are **NOT** allowed
- You have five minutes to read the paper before you start
- Answer **2 out of 3** questions

**Information:**

- The maximum score for this paper is 100 marks.
- Candidates are advised to allocate their time proportionately.
- The *Examining Body* for this paper is the NCTJ. The *paper reference* is BR18.

**DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR**

For each question you should provide a clear summary of the regulatory and ethical issues relevant to each scenario. The report should include reference to the relevant sections of the OFCOM code.

### **Question 1**

You are filming a TV news report for 'Nightly News' on the rise of gun crime committed by young people in your area.

As part of this investigation you work with your local police force who provide statistics and recent CCTV footage.

At 10pm on 9<sup>th</sup> January 2017 your report is broadcast. It features grainy CCTV footage of a raid on a corner shop. Five young people aged 17 are present.

You state in your report that two of the 17-year-olds (the only ones holding guns) were subsequently arrested and pleaded guilty to the crime.

They are named but the other three, who are in the background, are not referred to at all.

The mother of one of those three youths, Mrs Anne Mint, makes a complaint to your television station that, while her son was present, he had nothing to do with the crime.

Mrs Mint says he is identifiable which is unfair as he was never arrested.

#### **Task:**

Summarise the regulatory and ethical issues arising in relation to the broadcast of the CCTV footage, making reference to two relevant sections of the Ofcom Code, and indicate how Nightly News might mitigate any potential breaches of the Code.

What would your response be to any subsequent Ofcom investigation into the complaint?

**(50 marks)**

## **Question 2**

UK Update is a live news and current affairs programme broadcast at 9pm every night.

On 9<sup>th</sup> January, during the first segment at 9.03pm, the programme is discussing the events which unfolded that afternoon in London. A bakery was found guilty of discrimination for refusing to bake a cake for the wedding between two men earlier in the year.

The 'Little Buns' bakery owners had argued that gay marriage went against their Christian beliefs.

A Christian commentator on the panel remarks:

"I 100% agree with Little Buns and I hope they appeal this dreadful decision. Gay marriage is completely wrong- marriage is between a man and a woman. There is something wrong with homosexuals. You wouldn't expect the bakery to bake a cake supporting Hitler, now would you?"

The commentator is interrupted by another panellist, who recently wed his gay partner. He says,

"I can't f\*\*king believe what I'm hearing. How can you compare the two? You, sir, are a complete "f\*\*king idiot."

### **Task:**

Summarise the potential regulatory and ethical issues arising in relation to comments from both:

- (a) the Christian commentator
- (b) the panellist who recently wed.

**(50 marks)**

### **Question 3**

You are putting together a pre-recorded radio feature on reformed criminals for News and Views.

As part of this package you speak to three men who have turned their lives around after a life of crime. Two of the contributors are willing to speak for free but the third, Paul Cox, has asked for a small payment in return.

You tell him that you're not able to offer cash payment, as this is not allowed, so he asks for concert tickets (which your radio station can get freely) in return instead. You agree to his request.

His interview is detailed and he talks about how he was able to carry out his crimes undetected for many years.

The youngest contributor, 20-year-old Samuel Layer, says in his interview that he turned to a life of crime as there is very little for young people to do in the area - and it's the local council's fault.

You contact the council and arrange an interview with three councillors to give their views. They clearly disagree with Layer's sentiments.

In your package you say you spoke to local people in the area to get their opinions. You do not say they are councillors.

#### **Task:**

Summarise the potential regulatory and ethical issues arising in relation to:

- (a) the interview with Paul Cox
- (b) presenting the councillors' opinions as a "vox-pop".

**(50 marks)**

**Total: (100 marks)**

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### Marking guide

The following generic performance criteria should be assessed:

- The candidate's ability to identify the main regulatory issues and problems in a given scenario
- The candidate's ability to analyse and discuss the main regulatory issues and problems in a given scenario
- The candidate's ability to identify the relevant sections of the Ofcom code (but not necessarily the numbers and sub-sections).
- The candidate's ability to explain how the regulatory problems/issues identified might be mitigated/minimised or avoided (where relevant) [there should be some discussion of how problems may be ameliorated - e.g. warnings, post-watershed broadcast, pixellation of identity and explanation of when broadcasts are 'warranted']
- Reference to relevant Ofcom adjudications (where relevant)
- Reference to relevant penalties/sanctions under the Ofcom code (where relevant)
- The overall quality of the assignment

#### **Grade A (70%+)**

An answer in this band will address the question in a direct and coherent manner and be well structured. The answer will provide an excellent exposition and explanation of all the relevant regulatory issues with reference to the relevant section(s) of the Ofcom Code. The answer will provide a good analysis of how the identified problems might be avoided or minimised and make reference to relevant adjudications, where relevant. The answer will demonstrate a clear sense of the likely penalties to be imposed by Ofcom.

#### **Grade B (60%-69%)**

An answer in this band will be distinguished from grade A answers by showing a slightly less comprehensive engagement with the regulatory issues and a slightly less confident understanding and application of the Ofcom Code. Nevertheless answers will demonstrate a good awareness of the key regulatory issues/problems and identify the relevant sections of the Ofcom Code. There is likely to be some discussion of how the regulatory problems might be minimised/avoided and reference to likely penalties and relevant adjudications.

#### **Grade C (50%-59%)**

Answers in this band will offer a competent attempt at answering the question and provide a reasonable attempt at explaining and discussing the main regulatory issues with reference to the relevant sections of the Ofcom Code. Answers in this band will be distinguished from grade B answers by providing less analysis of the issues. However there will be no key omissions or misinterpretations of the Code. Reference may be made to likely penalties and the correct sections of the Ofcom Code.

**Grade D (40%-49%)**

Bare fail answers will be those which make some attempt to answer the question but fail to engage satisfactorily with the Ofcom Code and apply the Code to scenario featured in the question. Some of the regulatory issues may be identified but there will be omissions or misinterpretations which bring into question the candidate's knowledge and understanding of the Code and his/her ability to apply it to journalistic scenarios. References to the Code and or penalties for breaching the Code will be weak as compared to a grade C answer and analysis will be limited.

**Grade E (30%-39%)**

Answers in this band will offer little substantial of relevance and leave a serious question as to whether the candidate understands any (relevant) section of the Code. Few of the relevant regulatory issues will be identified and there will be key omissions and/or understandings of the Code. The candidate will not analyse the problems with sufficient reference to the Ofcom Code.

**Grade F (20%-29%)**

Answers in this band will offer nothing substantial of relevance, whatever its source, and leave a serious question as to whether any (relevant) section of the Ofcom Code has been studied and understood. None of the relevant sections of the Code are identified and the candidate shows little understanding of the relevant regulatory issues and how they might be avoided.

The scenarios used in broadcast regulation exams are designed to test candidates' knowledge and application of the Ofcom Code rather than media law. The NCTJ Diploma's essential media law and regulation exam tests knowledge of media law. However if there is a media law issue related to any scenarios used in the broadcast regulation exam, markers should reward candidates for correct exposition of the law in addition to accurate consideration of the relevant regulatory/compliance issues. It is important to note, however, that candidates are able to achieve a grade C or higher without referring to any legal considerations.

## Question 1

Question 1 is designed to assess candidates' knowledge and understanding of Section 7 of the code, Fairness and Section 8, Privacy. Although candidates are not required to give the name and number of each section and individual rules, they should make clear reference to these two distinct areas of the code. Candidates should also outline how the broadcast might have infringed these rules.

Following Mrs Mint's complaint, the two issues Ofcom are likely to consider are whether the broadcast broke rule 7.1, which states: *"Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes"*. Ofcom would need to assess whether the footage would have led viewers to believe that her son was part of the gang and whether he appeared to be as "guilty" as the two youths who were convicted of the crime.

Ofcom would also look at rule 7.9 which states *"Broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual."*

In addition, Ofcom would consider whether Mrs Mint's son had his privacy breached in broadcasting the footage. Rule 8.6 states *"Any infringement of privacy in programmes or in connection with obtaining material included in programme must be warranted."* Regulators would decide whether Mrs Mint's son had a legitimate expectation of privacy.

Candidates should outline the arguments, which Nightly News might use to defend itself against the complaint. This should certainly include mention of public interest and make some reference to the foreword sections of Section 7 and Section 8 which both state that; *"failure to follow these practises will only constitute a breach where it results in unfairness to an individual or organisation."*

The CCTV footage accompanied a report on rising gun crime, which is clearly a matter of public interest. The footage has been supplied by the police so was obtained through official channels.

Certainly there was no consent given from Mrs Mint, or indeed her son as he is over 16, but Nightly News could argue that showing the footage was warranted. They could say that the omitted facts which (that is, further information about the other three young people) were not unfair to Mrs Mint's son.

In addition, the producers could argue that in stating that the two youths holding the guns were later prosecuted for the crime, the assumption to viewers is that the other three were *not* arrested or charged, i.e. they were not deemed to have played any part in the crime.

Nightly News could further argue that a corner shop is a public place and so there is no expectation of privacy. They could state that despite this, the youth's privacy has not been breached, nor is showing the footage unfair, as:

- he was not referred to by name in the report
- he was in the background of the footage
- the report did not draw attention to the other three boys
- and the CCTV footage was "grainy" so not high quality

Candidates should outline the measures Nightly News might have taken to avoid a potential breach of Sections 7 and 8. The programme could have pixelated/blurred the faces of the other three boys. This is to avoid any assumption that they were involved in the gun crime. They could also have explicitly stated that the other three youths were never prosecuted for the crime, instead of relying on the public to infer this.

Candidates should be rewarded for mention of relevant case studies and sanctions available for such breaches, for example:

Case study: In September 2016 Ofcom did not uphold a complaint against Channel 4 by Ms G on behalf of her son who was shown in CCTV footage in a report about knife crime.

Sanctions for a breach include broadcasting a correction or apology.

## Question 2

This question assesses candidates' knowledge and understanding of Section 1 of the Ofcom Broadcasting Code, Protecting the Under 18s and Section 2, Harm and Offence. Although candidates are not required to give the name and number of each section and individual rules, they should make clear reference to these two distinct areas of the code. Candidates should outline how the broadcast might have infringed these rules.

The Christian commentator says that gay marriage is “completely wrong” and claims there is “something wrong with homosexuals.” Section 2 of the Ofcom Code ensures that generally accepted standards are applied to the content of television so as to provide adequate protection for members of the public from harmful and/or offensive material. Rule 2.3 states that “*Broadcasters must ensure that material which may cause offence is justified by the context*” and says that “*such material may include, but is not limited to, offensive language on grounds of sexual orientation.*” Candidates may discuss whether the comments about gay marriage themselves breach the code and whether the additional remarks about Hitler change the nature of the breach.

A panellist interrupts the commentator and uses the word “f\*\*king” twice. Under Section 1 Ofcom considers this to be amongst the most offensive language. This word should not be broadcast before the watershed to protect those under the age of 18.

This programme begins at 9pm and therefore, could be considered to be compliant, however Rule 1.6 states that the transition to more adult material must not be unduly abrupt at the watershed. Children may not have ceased viewing at exactly 9pm.

Candidates should outline the arguments, which UK Update might use to defend itself against the complaint. In this instance, rule 2.3 states that in applying generally accepted standards, broadcasters must ensure that material, which may cause offence is justified by the context. It could be argued that context is important here because, as a debate looking at both sides of the argument, the editorial content will cover disparate views. It could be argued that many people of faith believe homosexuality is wrong and they should not be silenced.

However, equally, it could be argued that his comments regarding Hitler go beyond an opposing view into confrontational and offensive remarks.

UK Update could claim that as a live broadcast, it is difficult to control what contributors might say and that the swearing was out of their control. They could also explain that the item was not broadcast before the watershed and that the programme is aimed at an adult audience, not at children. The producers could further argue that three minutes had lapsed so the swearing was not broadcast within seconds.

Candidates should mention some of the measures UK Update might have taken to mitigate any possible infringement. The presenter could have made an immediate apology for any offence caused and could have stated that the Christian commentator's views were not the views of the programme or programme makers.

Candidates should be rewarded for mention of relevant case studies and sanctions available for such breaches, for example:

Case study: Ofcom recently received over 100 complaints after Coleen Nolan's remarks on ITV's Loose Women that baking a cake supporting gay marriage was akin to asking for one supporting ISIS.

Case study: In September 2016 Made in Tyne and Wear was found to be in breach of Rule 1.6 after the news reader was heard saying f\*\*king shortly after the 9pm bulletin began.

Ofcom sanctions may include a direction not to repeat a programme or a financial penalty.

### Question 3

This question has been written to assess candidates' knowledge and understanding of Section 3, Crime Disorder, Hatred and Abuse and Section 5, Due Impartiality, Due Accuracy and Undue Prominence. Although candidates are not required to give the name and number of each section and individual rules, they should make clear reference to these two distinct areas of the code. Candidates should outline how the broadcast might have infringed these rules.

Rule 3.5 states that *"No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals relating to his/her crime/s."*

Paul Cox has asked for payment in return for his interview. The reporter correctly understands that cash payment is not allowed but then agrees to give him concert tickets instead. This would be considered "payment in kind."

Rule 3.4 states that; *"Descriptions or demonstrations of criminal techniques which contain essential details which could enable the commission of crime must not be broadcast unless editorially justified."* Paul Cox's interview is described as "detailed" and he even discusses the techniques he used to carry out his crimes.

The second part of the package considers whether young people turn to crime because of the lack of social activities in the area. The reporter has secured the views of a number of different councillors. However, the package makes this seem like a "vox-pop", i.e. the opinions of a random sample of people on the street. This is misleading and inaccurate.

Rule 5.1 states that: *"News, in whatever form, must be reported with due accuracy and presented with due impartiality."*

Candidates should outline the arguments, which the broadcaster might use to defend itself against the complaint. This should certainly include mention of public interest and freedom of expression, which are covered in the foreword to Section 3.

In the case of Paul Cox there is unlikely to be any public interest justification for his payment or the detailed explanation of how his crimes were committed. It would also be hard for the broadcaster to find a defence for the breach of 5.1.

Candidates should mention some of the measures the broadcaster might have taken to mitigate or avoid any possible infringement. In this case Mr Cox should not have been paid and alternative sections of interview could have been chosen. The speakers in the vox-pops should have been clearly identified, with mention of their council roles and political party.

Candidates should be rewarded for mention of relevant case studies and sanctions available for such breaches, for example:

Case study: In March 2014 the Metropolitan Police Service complained that Channel 4's "vox pop" with individuals seemingly chosen at random, was actually the opinions of the employees of an organisation called Livity where the reporter had previously worked. Channel 4 was found to be in breach of Rule 5.1

Ofcom sanctions may include a financial penalty and to direct the Licensee to broadcast a statement of Ofcom's findings.

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