

Legal guidance for Mediahuis Ireland journalists

Accuracy and maintaining trust in our journalism have always been crucial – and are ever more important in the era of ‘fake news’.

Journalists who work for Mediahuis are pledged to be professional, courageous and relentless in their pursuit of truth and of news. They are also committed to independence, fairness and balance in informing people of events and issues about which they have a right to know.

The reputation of our brands is based on the high standards of our journalism.

While we should be fearless in our pursuit of truth, we also have to be conscious of the ‘chill effect’ of Ireland’s onerous defamation laws, where the burden of proof lies with the media. Damages awards and legal costs are off the scale compared to other jurisdictions. The cost of running cases is so prohibitive that very few libel cases make it to court.

A priority is to prevent defamation, associated damages and costs, and reputational harm.

As well as defamation, there are also adverse consequences for publication of any material which may be deemed to be in contempt of court. Primarily, contempt of court arises from publishing anything which creates a substantial risk of prejudicing a fair trial. It is a criminal offence and can result in Mediahuis and / or the editor / journalist being fined. If a particular publication results in a trial collapsing then Mediahuis could also be held liable for the substantial costs of the trial.

Please remember that more often than not legal issues are caused by mistakes – but unfortunately there is no defence of ‘innocent mistake’ for journalists and publishers. Of course mistakes and errors happen, that is a fact of life, but we must all be committed to doing everything we can to minimise them.

The guidelines below are designed to highlight the most common pitfalls and make it clear how to escalate any legal issues. These guidelines **must be** adhered to. Failure to do so may result in possible disciplinary proceedings.

You should also refer to the additional legal guidance available on Indonet, our Editorial Code of Practice and the NUJ Code of Conduct.

Ed McCann, Deputy Publisher

Referring up / obtaining legal advice

If you are in any doubt, always consult a senior editor, the Managing Editor or the legal manager.

You don't have to wait until filing copy to take legal advice. If you think there may be legal issues with a story then take advice as early as possible.

Flynn O'Driscoll (incorporating Fanning & Kelly) provide our pre-publication legal advice. They are onsite at the news desk 6.30pm-10.30pm Sunday to Thursday, 5.30pm-9.30pm on Friday and 12pm-6pm on Saturday. They are also available during the day by email - medialaw@outlook.ie - and can also be contacted by email and phone out of hours. The roster and contact numbers are available on Indonet.

Please note that emails to medialaw@outlook.ie must only be labelled URGENT if a response is required URGENTLY - i.e. a breaking story online or a story close to print deadline. It is important that our legal advisers can prioritise stories effectively and that we do not prejudice colleagues who are genuinely in urgent need of legal advice.

The subject header of your email to the lawyers must identify a story keyword, your name and the publication, e.g.

'Mayo_Phelan_Indo/Online', 'Lucan_Feehan_Herald/Online', 'Refugees_Sherry_SW' or 'Quinn_Sheahan_Sindo_', etc.

If you are privy to background information that is not obvious from the filed copy but is relevant to potential legal risks then this must be highlighted to the lawyer in a short note at the top of your email to them.

To allow colleagues and editors to track what stories have been legalised and the legal advice that has come back, the final email in all exchanges with the lawyers **must be** marked 'Legal OK' and copied to legalreview@independent.ie.

All Editorial staff should have access to the legalview@independent.ie mailbox. Before sending a story for legal review check the mailbox to see if the story has already been reviewed and marked 'Legal OK'.

If you are requesting legal approval for amending or updating copy that has previously been marked 'Legal OK' then indicate this in the subject header to the lawyers, e.g.

UPDATE _Mayo_Phelan_Indo

Sending partial copy for legal review is not good practice. This should only be done on rare occasions and if so the full article **must** thereafter be sent for further legal review.

If the lawyers recommend that you rewrite something then the amended copy must be sent for further legal review.

If the lawyers suggest a rewrite that causes you concern from an editorial perspective then speak to an editor.

For editors, sub-editors and page editors any article marked 'Legal OK' should never be taken as 'good to go'. If anything it requires more rather than less scrutiny. If you make any changes to an article / headline marked 'Legal OK' then carefully consider if it should be sent back to the lawyers with the change identified in a short note.

For page editors – always consider whether the page layout and juxtaposition of articles and/or photos creates a potential legal risk. If you have any concerns at all the page must be shown to the duty lawyer.

Where a legal issue has arisen or a complaint has been made the relevant Editor, Deputy Publisher and Legal Manager must be notified immediately.

Prompt and prominent corrections can mitigate damage if done properly but care must be taken not to create an issue where there was none or to make a bad situation worse. Upon receiving a complaint you must not do anything that could compromise or prejudice Mediahuis's position without first agreeing a course of action with a senior editor, the Managing Editor or the Legal Manager.

This also applies to any request for an amendment to online copy, even if it is not a formal legal complaint. This includes requests from the journalist(s) who wrote the copy. No change is to be made without the approval of the Deputy Publisher, the relevant Editor or the Legal Manager.

If you receive a 'right to be forgotten' request directly this must be sent to data.protection@Mediahuis.ie

Please find below a non-exhaustive list of guidance notes to assist you in avoiding legal pitfalls.

Copy / Avoiding legal risks

Further guidelines for defamation are available on Indonet.

1. Stories must be true in fact. It is the obligation of every journalist to be able to 'stand up' their story. Accuracy and fact checking is not the responsibility of the pre-publication lawyers.
2. People subject to allegation or comment that is adversarial, critical or accusatory must be contacted for comment prior to publication. Every effort must be made to contact them and efforts must be logged and retained.
3. 'Sources' (including Garda sources): Stories must be verifiably true. Any allegation of wrongdoing should be backed up by two independent and trusted sources.

Sources should be prepared to support Mediahuis in the event of legal challenge.

If the only verification for your story is via sources who will not be available in the event of legal challenge then this must be brought to the attention of your Editor before publication. Beware of false or misleading information provided maliciously.

4. Do not use unverified content from any social media sites. Wikipedia should be used as a reference only.
5. Beware of Twitter storms and other online feeding frenzies – 'everybody / somebody else is doing it' is not a sound basis for publishing a story.
6. Do not assume that just because somebody has posted something on social media that we are free to publish the information without defamation or privacy concerns. Follow the normal protocol for any story – contact the subject for comment, verify what is being said, will you be able to stand it up independently?
7. Consider the information being posted, if it is potentially sensitive personal information then are there privacy concerns? Is the social media account 'private'? Even if not, we reach a much wider public than most people's social media accounts. Speak to a senior editor or take legal advice if you think there may be privacy issues.
8. Exercise extreme caution with messages / pictures / videos circulating on WhatsApp. On their own they are little more than a story lead, you need to build the story independently.
9. Do not use or allow loaded, declaratory, adversarial words like 'scam', 'unprofessional', 'rogue', 'liar', 'criminal', 'chancer', 'fraud', 'rip off', 'bogus', 'sacked', 'axed' etc. without careful consideration.

10. Be careful in your use of medical job descriptions / protected titles, .e.g. physical therapist .v. physiotherapist, nutritionist .v. dietitian. In those examples the latter are registered titles regulated by CORU while the former have no official status or designation. Other titles are regulated by the Irish Medical Council.
11. Do not release or publish a story where there is the slightest doubt about a legal issue or a question around factual accuracy.
12. Comment, even hostile or critical, is perfectly valid legally provided it is based on verifiable fact(s) that can be proven. It is also subject to editorial standards and judgment. Readers should be given a chance to make up their own mind so you should also include key facts that reflect the alternative view.
13. Headlines must reflect accurately the kernel of the story which in most cases should be captured in the intro/second paragraph. The wording of the headline should be clearly supported in the copy and should not be stretched beyond that. This is particularly important in court reports.
14. Headlines on court cases or stories containing complex legal issues should be referred for legal advice.
15. Always take the time to reread carefully before filing to catch facts and/or legal issues. Recheck the headline to ensure it does not create .
16. Treat ‘innuendoes’ with utmost care in comment pieces and get legal advice. Similarly beware of the dangers of repetitive opinions, innuendoes in a series of articles or stories which suggest a campaign.
17. Avoid the danger of jigsaw identification where combination, repetition of facts/statements or contemporaneous identification (online or elsewhere) can provide the basis for defamation claims.

Court reports / Statutory Restrictions/In Camera

For more detail please refer to the separate guidelines on court reporting available on Indonet but always bear in mind:

- Beware of contempt, not complying with a court order, breach of the *sub judice* rule and reporting matters in the absence of the jury.
- A case is active once it is before the court. At this stage the criminal history of a suspect cannot be reported.
- When a criminal court case is ‘active’ and particularly when the trial has commenced beware of any reporting that implies a suspect is either guilty or innocent – or any other inference that may be perceived to sway a jury’s outlook. Stick to the facts of what has happened in Court.

- Never report legal argument in the absence of a jury while a trial is ongoing.
- Any “colour” copy from Court proceedings must be sent for legal review.

Always bear in mind that the following are covered by specific reporting restrictions:

- Family law – NO identification of parties expressly or by jigsaw effect
- Proceedings involving children – NO identification of parties expressly or by jigsaw effect
- Rape offence cases – NO identification of accused or complainant. If accused is convicted then they can be identified so long as this would not lead to identification of the complainant.
- Sexual assault cases. NO identification of complainant. Accused may be identified, after charge but before conviction, so long as this would not lead to identification of the complainant.
- Bail applications (do not report details of previous criminal history).
- Detention before charge under Section 30 Offences Against the State Act, Section 50 Criminal Justice Act 2007 and Section 2 Drugs Act 1996 – when applications to the District Court are made by Gardai for an extension of time to detain an arrested suspect we can only report the fact of the application and the whether the extension was granted or refused. We cannot report the information put before the Court by the Gardai.
- If you are covering a court case that you are unfamiliar with, or if you missed any part of the proceedings, e.g. you missed the start, had to step out for a few minutes, then ask the Court registrar or the lawyers for the DPP if you missed any directions by the Judge about reporting restrictions.

Privilege/Honest Mistake

Please refer to separate guidelines on court reporting available on Indonet for more information about privilege and what is meant by “fair and accurate reporting”. Key points to bear in mind:

1. Journalists can freely report on stories or proceedings which qualify for absolute privilege. These are stories from:
 - Oireachtas debates;
 - court cases (unless Judge has given specific contrary direction or a statutory restriction applies – see above and separate Court reporting guidelines on Indonet);
 - inquests;
 - tribunals of inquiry.
2. To benefit from the defence of absolute privilege for an otherwise defamatory statement you must report the relevant statement fair and accurately – do not paraphrase or rewrite the words in a way that alters the meaning.
3. If in any doubt about a Court / Dáil report then consult with a senior editor and send it for legal review.
4. Qualified privilege: this applies to a broader range of situations than absolute privilege but has one crucial restriction: it will only cover statements which are part of “fair and accurate” reports made without malice.

It is granted, for example, for wider ranging reports of certain public meetings, organisations and bodies (such as local authorities). If in doubt, check. Malice, for legal purposes, can include being negligent or reckless rather than just improper motive.

5. There is no defence of ‘honest mistake’. The intention of the publisher/author is irrelevant. An error will deprive Mediahuis of a defence of absolute privilege and potentially expose us to very serious claims - what is said in contentious court cases or Dáil proceedings is often highly defamatory and can only be published because of privilege.

Pictures

1. Think before using photos and look at them carefully. Sounds simple but make a big difference!
2. Look beyond what you are immediately focused on. Photographers and those handling pictures must ensure pictures do not include innocent bystanders or uninvolved premises, houses or buildings. This is particularly important in crime scenes / Court reports.
3. Consider the context of the article that pictures will accompany and, in the case of print, the overall page layout / juxtaposition with other articles.
4. Photographers must caption pictures absolutely accurately. It is their sole responsibility to ensure that captions are accurate. This applies particularly to court cases where pictures are taken of accused, witnesses, relatives or associates.

5. Beware of inadvertent juxtaposition of pictures with headlines. A recent case involved a brother whose two siblings were convicted of murder. He sued several media outlets claiming that the fact that he was in the background in a photo illustrating the story made it look like he was a murderer.
6. Pictures taken from the library with accompanying captions should be checked for accuracy.
7. Staff handling library or archive pictures must ensure that the published picture carries a correct caption and does not retain the original caption. Beware of using a picture of a different person with the same name. Verify the identity before publishing – where there is any doubt at all then identity must be verified by at least three sources / individuals (this includes colleagues).
8. Pick-up pictures of deceased, accident victims, crime victims, seriously ill, must be verified with family members. See below about the need for vigilance around privacy issues.
9. **DO NOT** use pictures from third party social media or other online sources without permission from the copyright holder and being sure of the veracity of what the picture is alleged to show. On some occasions a judgment call will need to be made and this should be approved by the Head or Deputy Head of Visuals plus a news editor.
10. See below for further information about photographs of children.
11. Everyone should be fully aware of the issues around privacy. Borderline decisions to publish copy or pictures where privacy is an issue must be authorised by editor/managing editor on the basis that the circumstances warrant publication in the public interest. Identifying features such as number plates etc. should be pixelated or hidden.
12. Pictures identifying members of the CAB and the ERU should be pixelated. Similarly car registrations should be hidden.

Children

- Children are those under 18 years of age. If children are involved and you have any doubts at all then refer it up.
- **CRIME** – children as victims or accused - do not identify children who are victims or accused of crime in any way once (name, location, school). Please refer to the detailed Guidance notes on Court reporting available on Indonet.
- **INTERVIEW / COMMENT** - As a general rule consent of a parent or guardian or person in loco parentis is needed to interview children.

- However, the presence or absence of such consent should not be taken as definitive for every scenario. Use common sense – what would you do if it was a family member?
- If consent is forthcoming but you are uneasy or concerned about how publication of a picture, comment or story will impact a child then refer it up.
- If consent has been explicitly denied then there are very few instances where this can be bypassed. Such a decision will require careful editorial and legal consideration.
- If consent is absent because a parent / guardian / person in loco parentis is unavailable then there may be circumstances where it is still permissible to use comment by children aged 16 years or over, e.g. if they were attending a protest march, a popular sports event.
- In such instances you must use your judgment to evaluate the awareness of the individual and their capacity to understand what they are consenting to. You will also need to assess whether the views they express are too controversial or otherwise likely to create difficulties for them.
- You should **never** use posts from the social media account of a child for a story unless (a) consent of a parent or guardian has been obtained or (b) you can verify they are over 16 and the subject matter is uncontroversial.
- **PICTURES** – The default position is to seek consent from a parent / guardian / person in loco parentis.
- This is an absolute rule where the child is in a vulnerable position. So, publishing a picture of a child in a hospital is not permissible without consent. A close up picture of a child distraught at the funeral of a family member or school friend is not permissible without consent.
- However, a group shot from a funeral that includes children can be used if the story justifies the picture.
- A picture of children at a public event such as a parade, sports event will generally be permissible. Pictures of children at music concerts would also be permissible subject to their attire / appearance – again, a common sense approach applies, if it was a young family member of yours would you want them appearing in a national newspaper?

Copyright

Using material from social media / online sources

Highlights from sports matches – unless you have permission from the rights holder then showing goals / tries / key moments on independent.ie or any of our social media channels is a breach of copyright.

Tweets – embedding third party Tweets in an article is permitted. However, you must still exercise caution about the content of such tweets, are they defamatory?

Links to a third party website – embedding a link to an article is also permitted unless the link destination contains information that is clearly unlawful.

Fair dealing – not applicable to photographs

Fair dealing exemptions to copyright apply for the following:

1. The making of a copy of a work (**other than a photograph**) on current economic, political or religious matters or similar matters by a media business and communicated by the media business to the public. This exemption only applies if the copyright holder has not expressly reserved such use and so long as sufficient acknowledgement is given, i.e. you must credit the rights holder.

For example, a terrorist incident hits a European city. Short video clips from the scene and still frame pictures created by us from such video will be allowed. REMEMBER though – photographs do not qualify for the exemption.

DO NOT use pictures from third party social media or other online sources without permission from the copyright holder. On some occasions a judgment call will need to be made and this should be approved by the Head or Deputy Head of Visuals plus a news editor.

2. Fair dealing for the purpose of criticism or review.

You can use extracts or quotes from a book, movie or play that has been made available to the public for the purpose of reviewing or critiquing the work so long as you do not use excessive amounts of the original work and you sufficiently acknowledge the rights holder.

Be careful not to publish embargoed material before a copyright work is available to the general public.

Website / Social Media

Publication of an article on our websites or on our Facebook pages can have legal consequences just like our printed newspapers. The same general principles apply.

Do not ever rush to be first on a story that is in any way controversial or critical of somebody without having considered the legal / editorial issues and taken advice where necessary.

Do not include sidebars of earlier reports when publishing Court reports of an ongoing trial on our website, e.g. the initial crime / investigation.

Do not post an article about a live criminal Court case on any Mediahuis social media channels.

Do not post an article to Facebook if you have particular concerns about the type of comments the article is likely to attract.

Online removal

Online removal on foot of a 'right to be forgotten' request must be processed through the Data Protection team and any requests received directly by journalists must be sent to data.protection@Mediahuis.ie

Online removal for any other reason should only be done with the agreement of the relevant Editor, the Deputy Publisher or the legal manager.

Removal is a five-part process:

- Delete from Escenic, including accompanying pictures.
- Inform media partners.
- Request search engine removals : Google, Bing etc.
- Record the takedown for our notes in shared online document 'Legal Action'.
- Log the number of views

And finally... Just because a story has passed legal does not mean it has to be published. There may be additional ethical or moral reasons why it shouldn't be published. Lawyers are not arbiters of taste and tone.

Glossary of Terms

- **Liquidation:** Liquidation is the process by which companies are wound up, bringing their life to an end. The liquidator is the person appointed to supervise and implement the company's winding up. The two main forms are compulsory and voluntary. The liquidation process in the Republic of Ireland is governed by the Companies Acts.
- **Receivership:** The most common form of receivership is initiated by secured creditors (commonly a bank) seeking to recover unpaid loans. A receiver is appointed to recover the money owed to the creditor.
- **Examinership:** Where a company is in financial difficulty, the High Court may be petitioned by one of several parties including the company, directors, creditors and employees to provide 'protection of the court' and approve the appointment of an examiner. If an examinership is granted, no request may be made to wind up the company or appoint a receiver for up to 100 days. In the UK, a similar process is called administration, though this does not always have to entail a court order.
- **Out of business:** No longer operating as a business at all. Be especially careful not to say somewhere has gone out of business or the business has shut down when it may simply have moved premises and continues to trade successfully.
- **Bankruptcy:** A settlement of the debts of someone who is wholly or partially unable to repay their debts. The purpose of the bankruptcy is to distribute an indebted person's assets fairly among his/her creditors and protect him/her from these creditors. Under the Bankruptcy (Amendment) Act 2015, the normal period of bankruptcy was reduced from three years to one. In the UK, the normal period is also 12 months.
- **Tax evasion vs tax avoidance:** The former is illegal, the latter is not.
- **Restriction vs disqualification** of company directors: can only be done by the High Court so publish only after verifying precise accuracy and relevance. Stick to the details of the relevant Court proceedings insofar as possible.
- **Coercive control** – a phrase used to describe psychological rather than physical domestic abuse. “coercive control” is a criminal offence under the Domestic Violence Act 2018. So do not use it any less lightly than another criminal offence such as “assault”.
- **Fraud** – is a criminal offence so while it can sometimes seem an apt colloquial reference, e.g. to consumer stories, it is not a word to be used lightly.

- **FSAI orders:** The Food Safety Authority can issue closure orders, improvement orders and prohibition orders - and also initiate prosecutions. Be certain of the accuracy of the terminology when reporting on same. Also check if a 'closed' premises has reopened since the inspection.
- **Press Releases:** the highest defamation award in Ireland arose out of a press release. Press releases should never be taken as 'gospel' and anybody criticised in such a release must be contacted for comment. Rewriting or paraphrasing a press release jeopardises the ability to claim privilege so you must not make factual errors when doing so or create innuendo meanings.