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Gender Descriptions in Legal Reporting

This media law and ethics guide first published and released 22nd April 2024.

- BBC News was criticised for not revealing that a person convicted of murder was a transgender woman i.e. a biological man who had identified/transitioned as a woman;
- This was the sensational trial of Scarlet Blake at Oxford Crown Court in February 2024. BBC accepted in response to initial complaints that the information that Blake is a transgender woman should have been included;
- The BBC's Executive Complaints unit investigated further escalated complaints that the frequent use of the term "trans woman" in reports 'were materially misleading because the term is either not understood or misunderstood by many members of the public.' These were rejected;
- Longstanding Guardian writer and respect family law reporter Louise Tickle was so angered by the newspaper's reporting of the case that she announced she would be boycotting the newspaper over an article that failed to inform readers that Scarlet Blake was transgender. The *Guardian* and *Observer*, along with the *Standard*, *Financial Times* and *Independent* do not allow themselves to be externally regulated by IPSO or IMPRESS.
- The case and debate about it has raised the general spectre of proper ethics and law when representing transgender people in legal and court reporting. The media needs to be compliant with privacy and equality law as well as sensitive to secondary media law regulation and professional ethical standards;
- IPSO has published guidance on these matters and US associations of LGBTQ+ and transgender journalists have issued media guides on representation and terminology;
- The consensus position, despite the subject generating strong feelings and apprehension, is that respect must be accorded to the wishes of individuals in respect of gender self-identification. There needs to be public interest justification, and/or consent in referring to an individual's sex recorded at birth.
- This briefing presents the detail of the Scarlet Blake BBC complaints case and links to articles in the media discussing it. There is a summary of some current

recommendations on the UK position on how to report gender, links to professional, NGO and public authority guidance of gender matters, IPSO case histories, and style-guides published by US associations of LGBTQ+ and transgender journalists.

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BBC Executive Complaints unit ruling on use of pronouns in Scarlet Blake trial

<https://www.bbc.co.uk/contact/ecu/bbc-news-coverage-of-the-trial-and-sentencing-of-scarlet-blake>

BBC News Coverage of the trial and sentencing of Scarlet Blake

11 April 2024

Complaint

The Executive Complaints Unit (ECU) has received complaints about television and online reporting by BBC News of the trial and conviction of Scarlet Blake at Oxford Crown Court. Complainants have raised a number of concerns about the accuracy and impartiality of the BBC coverage.

This summary of the ECU's finding uses she/her pronouns in reference to Scarlet Blake, as was done during the trial. This does not indicate a view on which pronouns might be appropriate in other contexts.

Issues of Complaint:

Accuracy:

A number of complainants said it was inaccurate and misleading to refer to Scarlet Blake as a woman and to use she/her pronouns in reports of the case at Oxford Crown Court.

The majority of the complainants made specific reference to a report on the BBC News (1pm) on 26 February 2024 (the day on which Scarlet Blake was sentenced) or to the initial version of a [report](#) on the Oxford page of the BBC News website published on 23 February, (the day on which Blake was found guilty of murder), both of which termed Blake a woman, with no reference to her trans status. The ECU has therefore considered whether the omission of any reference to Blake as a trans woman meant the two reports failed to meet the BBC standards for accuracy.

The ECU noted that Blake's trans status was not known to the BBC (or, as far as it could establish, to other media) until it was introduced by the defence on 19 February. The police made no reference to it in their pre-trial briefing, it formed no part of the prosecution case, and Blake was referred to as a woman throughout the court proceedings. There was therefore no question of referring to sex recorded at birth or using anything other than she/her pronouns until gender identity was introduced by the defence on 19 February, on the basis that Blake claimed her experience of coming out as transgender and her parents' adverse reaction to it accounted for much of her subsequent behaviour.

The ECU noted the majority of subsequent BBC reports did refer to Blake's gender identity, and considered that the omission of such information in the two instances specified by complainants, in a context where it had become material to an understanding of the case, amounted to a breach of the BBC's standards of accuracy.

In relation to the report in the 26 February bulletin, BBC News published a posting on the [BBC Complaints website](#) on 1 March acknowledging that the information that Blake is a transgender woman should have been included, and this was made clear to all complainants

in correspondence before the matter was escalated to the ECU. In relation to the report on the Oxford page of the BBC News website, the ECU noted that information about Blake's transgender status had been added within an hour of its initial publication. The ECU considered these actions to be sufficient to resolve the issue of complaint.

This point of complaint has been resolved.

A small number of complainants raised a separate concern about accuracy, on the basis that references to Blake as a "*trans woman*" were materially misleading because the term is either not understood or misunderstood by many members of the public.

While acknowledging that the term is not universally understood, the ECU noted that the concept of gender identity and the terms trans woman and trans man are widely used in public discourse and by relevant authorities such as the [NHS](#) when referring to people with gender dysphoria. In the ECU's view, therefore, the extent to which members of the audience would have been misled by the use of the term in question was limited and did not justify departing from the BBC's published policy and associated guidance when reporting sex and gender.

This point of complaint is not upheld.

Impartiality:

A small number of complainants said the decision by BBC News to use the accused's chosen gender identity was evidence of a lack of due impartiality in a controversial area.

The BBC recognises there is controversy over the distinction between sex and gender. People who experience a difference between the sex registered on their birth certificate and their gender identity may describe themselves as transgender. Some others may take the view that gender is entailed in what is often referred to as biological sex, and cannot be changed. Against this background, a simple refusal to use the terms in which people who regard themselves as transgender describe themselves would in effect be an endorsement of one viewpoint in this controversy, and the ECU considers impartiality is best served by the

BBC's policy of using language and terminology which is clear and appropriate to the context, taking account of the subject and nature of the content.

This point of complaint is not upheld.

<https://www.bbc.co.uk/contact/complaint/scarletblake-0>

BBC News, conviction of Scarlet Blake, February 2024

01 March 2024

Summary of complaint

We received complaints from people unhappy our reports on the conviction of Scarlet Blake have referred to her as a woman.

Our response

Scarlet Blake was tried as a woman and the pronoun 'she' was used throughout.

BBC reporting in this area follows the publicly available BBC News style guide. It says: "We generally use the term and pronoun preferred by the person in question, unless there are editorial reasons not to do so." In this case, we considered it editorially appropriate to

include the fact that Blake is a transgender woman and did so across our output. We accept that should have been included in the report on the News at One on 26 February.

The BBC's online style-guide as of 20th April 2024 had the following guidance on gender:

gender/sex

Using appropriate language is an important part of how we portray people in our stories. Sexuality, race, ethnicity or disability should not be mentioned unless they are relevant to the subject matter. But when we do focus on one aspect of a person's character we should ensure we do not define them by it.

Gay/lesbian: Use **gay** as an adjective rather than a noun (eg: **two gay men** - but not "two gays"). It can apply to members of both sexes, but current preferred practice is to refer to "**gay men and lesbians**".

For wider references, talk about **LGBT** people or the **LGBT community** (lesbian, gay bisexual, transgender). If this does not suffice, the preferred initialism is "**LGBTQ**" or "**LGBTQ+**" - the "**Q**" means questioning and/or queer, the "**+**" acknowledges not all people may feel represented by these initials. Where possible, however, initials should be avoided. The issues affecting lesbian, gay, bisexual and transgender people can be very different and the more specific we can be with our language, the better.

If using LGBTQ+ or another formulation - for example in a quote – consider the likely audience of the story and whether the term needs explaining. Instead of "**LGB**", for example, consider "**lesbian, gay or bisexual**".

"Gender identity" means how people feel or present themselves, distinct from their biological sex or sexual orientation. Use **sex** to refer to a person's physical development and **gender** to describe how they identify themselves. We should be aware that the concept of a gender identity is contested by some. Sex is "**recorded**" or "**observed**" at birth. Use of "assigned at birth" should be attributed.

Transgender, or **trans**, is an umbrella term for a person whose gender identity differs from their sex recorded at birth. A person born male who lives as a female, would typically be described as a "**transgender woman**" and would take the pronoun "**she**". And vice versa. We generally use the term and pronoun preferred by the person in question, unless there are editorial reasons not to do so. If that's unknown – apply that which fits with the way the person lives publicly. If reporting on someone who is making their transition public, it may be appropriate to refer to their previous identity to help audience understanding. It may also be appropriate to refer to a transition to make sense of some stories. We should not include "intersex" or people with differences of sexual development as part of this group. Take care with the term "**sex change**", unless referring specifically to the surgical element of a transition. It should not be used as a general description for a transgender person.

Queer is an adjective used by some people who find more specific terms, such as "**lesbian**", "**gay**", "**bisexual**", "**trans**" and "**LGBT**", too limiting to describe their romantic or sexual orientation, gender identity and/or gender expression. Originally a pejorative term, more recently "**queer**" has been reclaimed by some in the **LGBTQ+** community, to describe themselves. However, it is not universally accepted and has the potential to cause offence. Be careful when using the term. We should not apply the term to an individual or group unless they have already adopted it.

Non-binary is an adjective used to describe a person who does not identify as only male or only female, or who may identify as both. It is increasingly common for non-binary people to

use the singular pronoun “they”. We should not ascribe a gender to someone non-binary. But we may need to explain any use of “**they**” as a singular pronoun to the audience for clarity. This could be without explicitly mentioning their gender, however (eg: [First name surname] - who uses "they" and "them" as personal pronouns - is...).

“Sexual preference” suggests a person chooses to be gay or bisexual. For the same reason, phrases such as “alternative lifestyle” should also be avoided where possible. Instead of “sexual preference” and “admits being gay”, consider “**sexual orientation**” and “**is gay**”.

See: <https://www.bbc.co.uk/newsstyleguide/g>

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Coverage of the complaints and issues by trade and general media

Press Gazette 12th April 2024: ‘BBC says omission of trans identity of murderer Scarlet Blake was breach of accuracy rules’

See: <https://pressgazette.co.uk/the-wire/newspaper-corrections-media-mistakes-errors-legal/bbc-trans-pronouns-scarlet-blake/>

Mail Online: 12th April 2024: “BBC breached accuracy rules after it failed to mention 'don't f*** with cats' murderer Scarlet Blake was trans - in a move that led to a wave of complaints.”

See: <https://www.dailymail.co.uk/news/article-13302589/BBC-breached-accuracy-rules-failed-mention-dont-f-cats-murderer-Scarlet-Blake-trans-led-wave-complaints.html>

Oxford Mail 28th February 2024: ‘JK Rowling has her say on Scarlet Blake transgender debate.’

See: <https://www.oxfordmail.co.uk/news/24149675.jk-rowling-say-scarlet-blake-transgender-debate/>

Herald Scotland 15th March 2024: ‘BBC flooded with complaints over its Scarlet Blake report’

See: <https://www.heraldscotland.com/news/24187858.bbc-flooded-complaints-scarlet-blake-report/>

GB News 20th March 2024: “Ofcom sparks fury after failure to investigate BBC trans complaint: 'Outrageous, biased regulation!'”

See: <https://www.gbnews.com/news/ofcom-sparks-fury-after-failure-to-investigate-bbc-trans>

Patrick O’Flynn for the Spectator Magazine 27th February 2024: ‘Patrick O’Flynn Why is the BBC not telling the truth about a trans cat-killing murderer?’

He complained: ‘...it beggars belief that at no point did either Brown or Kennedy flag up to their viewers the basic biological facts relating to Blake. A woman did this, they told us. But a woman did not murder Jorge Carreno or livestream the dissection of a cat. A biological male in the grip of typically male forms of violent criminal deviancy did all that.’

See: <https://www.spectator.co.uk/article/why-is-the-bbc-spreading-fake-news-about-a-trans-cat-killing-murderer/>

The Crown Prosecution Service media release on Scarlett Blake’s conviction and sentencing 26th February 2024. See: ‘Murderer and cat killer Scarlet Blake jailed for life.’

‘Blake, 26, who is a transgender woman, targeted Mr Carreno as he was walking home after a night out. She took him to a secluded area near the river, then attacked and strangled him before pushing him into the river where he drowned.’

See: <https://www.cps.gov.uk/thames-and-chiltern/news/murderer-and-cat-killer-scarlet-blake-jailed-life>

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On 26th February 2024, the Telegraph reported: “Guardian writer boycotts newspaper for failing to tell readers ‘cat killer’ murderer was transgender. Louise Tickle accuses the newspaper of ‘deceiving its readers’ for using the word ‘woman’ in its headline.” Report is available behind a paywall at: <https://www.telegraph.co.uk/news/2024/02/26/louise-tickle-boycott-guardian-cat-killer-transgender/>

The details of her protest have been analysed by the Free Speech Union in the online article ‘A longstanding Guardian writer is boycotting the newspaper over an article that failed to inform readers that a cat killer who went on to murder a stranger was transgender.’

See: <https://freespeechunion.org/guardian-writer-boycotts-newspaper-for-airbrushing-biological-sex-in-report-on-transgender-murderer/>

The article reported: ‘Louise Tickle, an award-winning journalist who has written for the Guardian for more than 20 years, accused the newspaper of “deceiving its readers”, and leaving them unaware that Blake was a “male killer”.

In a letter to Kath Viner, the newspaper’s editor, Tickle said: “The headline used the word ‘woman’ and nowhere in the piece did I pick up any reference to the killer being transgender.

“So, as far as I – and as far as any of your other readers were concerned that day – a woman had committed an extraordinarily depraved and sexually motivated murder of a man, after having carried out a hideous act of animal cruelty,” she added. Tickle also described the article’s references to Blake as a woman as a “failure of transparency” and “failures of editorial judgement and process.””

in March 2020, 338 members of *Guardian* staff signed a letter of complaint to Kath Viner following an article by columnist Suzanne Moore challenging the trans activist claim that biological sex is merely a social construct.

Moore subsequently left complaining letter's signatories had 'basically bullied her out and now writes for the *Telegraph*. Another *Guardian* columnist, Hadley Freeman also resigned from the paper over its position on transgender reporting.

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Gender identity issue online resources

Website for 'Independent review of gender identity services for children and young people.'

See: <https://cass.independent-review.uk/>

The Cass Review Final Report

See: <https://cass.independent-review.uk/home/publications/final-report/>

Here are some additional online resources from NGOs and public authorities providing briefings on the subject of gender identity:

Young Minds: 'A guide for parents and carers Gender identity.'

See: <https://www.youngminds.org.uk/parent/parents-a-z-mental-health-guide/gender-identity/>

Royal College of Paediatrics and Child Health: 'Gender identity services and advocacy for children and young people.' March/April 2024.

See: <https://www.rcpch.ac.uk/resources/gender-identity-services-advocacy-children-young-people>

NSPCC: 'Gender Identity? Advice to help you understand what gender identity is and how to support a child.'

See: <https://www.nspcc.org.uk/keeping-children-safe/sex-relationships/gender-identity/>

Stonewall: 'The Cass Review - Our initial review and actions.'

See: <https://www.stonewall.org.uk/cass-review>

Journalism.co.uk 28 June 2019 by Daniel Green: 'A guide to reporting on LGBTQ+ community.'

See: <https://www.journalism.co.uk/news/a-guide-to-reporting-on-lgbtq-stories/s2/a740869/>

BJTC electronic book 'Everybody In: A Journalist's Guide To Inclusive Reporting For Journalism Students' 2017 by Bob Calver, Diane Kemp, Marcus Ryder and supported by Birmingham City University School of Media

See: <https://bjtc.org.uk/wp-content/uploads/2019/07/everybodyinbook-copy.pdf>

NLGJA: The Association of LGBTQ+ Journalists USA: 'Stylebook on LGBTQ+ Terminology'

See: <https://www.nlgja.org/stylebook-on-lgbtq-terminology/>

US Trans Journalists Association: 'Stylebook and Coverage Guide'

See: <https://styleguide.transjournalists.org/?ref=transjournalists.org>

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Ethical representation of the identity of transgender defendants and other participants in court reporting

Professional journalists and student journalists, particularly in universities, will be very much aware of the acute debates taking place about proper vocabulary and references to gender identities.

The issue is taken so seriously in professional and institutional life individuals found to have disrespected fair and respectful wishes on gender identification have faced disciplinary proceedings and dismissal.

There is understandable anxiety on the part of trainee journalists about the expectations of how defendants and other participants represent themselves in court, how they are referred to in the legal proceedings and how this must be properly and fairly reported.

In 2023 IPSO (The Independent Press Standards Organisation) published fresh draft guidance on reporting of sex and gender identity, which contains advice for newsrooms on covering court cases involving transgender and gender-diverse defendants.

IPSO is seeking consultation before finalising the guidance.

Journalists are being urged to take account of trans defendants' gender at the time they offended.

IPSO Draft guidance on reporting of sex and gender identity

See: <https://www.ipso.co.uk/media/2302/ipso-draft-guidance-on-reporting-of-sex-and-gender-identity.pdf>

The key points arising from the guidance on court reporting recommend:

1. Taking into account and respecting the way a defendant says they wish to be identified in the court proceedings, including the name used and pronoun used by court officials and/or any witnesses;
2. Taking account of the defendant's gender identity at the time of the alleged crime;
3. Considering any guidance provided by the court about a defendant's gender identity;
4. Evaluating the public interest in reporting the gender identity and any transition in the context of protecting public health or safety particularly in respect of the need to ensure accuracy when reporting a major news event;

5. Considering the significance of the charges the defendant faces and whether gender identity is relevant to the case brought by the prosecution and the defence and/or mitigation provided during the trial.

The stalwarts of legally safe court reporting: accuracy, fairness and attribution are effective lines of protection from what would be secondary media law complaints to regulatory bodies.

However, it might be argued there are still areas of discretion which should be determined by the exercise of an individual's conscience and the freedom of expression prerogative.

Primary media law litigation could arise if gender transitioning and identity information about an individual has not been put into the public domain by the individual concerned, and if the journalist and publisher cannot show by documentary trail they have carried out a balancing act analysis of whether in reporting gender identity the degree of intrusion is proportionate to the public interest being served.

The navigation of this area is clearly controversial.

Dr Amy Binns and Sophie Arnold sought to research the subject and produced guidance on covering court cases involving transgender defendants.

But this was removed by the University of Central Lancashire after its publication online following complaints made to the university.

See the following articles and case law for further guidance and background:

Law Column: IPSO and reporting on sex and gender identity by Sam Brookman Published 21 Feb 2023 <https://www.holdthefrontpage.co.uk/2023/news/law-column-ipso-and-reporting-on-sex-and-gender-identity/>

Journalists urged to take account of trans defendants' gender at time they offended <https://www.holdthefrontpage.co.uk/2023/news/pronouns-and-transgender-defendants-feature-in-press-watchdogs-new-guidance/>

IPSO commissions research into standards of UK media reporting on transgender issues <https://pressgazette.co.uk/news/ipso-commissions-research-into-standards-of-uk-media-reporting-on-transgender-issues/>

New guidance launched to aid reporting on transgender defendants <https://www.holdthefrontpage.co.uk/2022/news/new-guidance-launched-in-bid-to-aid-reporting-on-transgender-defendants/>

Guidance on covering transgender defendants removed after complaints <https://www.holdthefrontpage.co.uk/2022/news/guidance-on-covering-transgender-defendants-removed-after-complaints/>

Editor and reporter leave weekly after transgender column controversy by David Sharman
Published 13 Nov 2017 Last updated 17 Nov 2017
<https://www.holdthefrontpage.co.uk/2017/news/editor-and-reporter-leave-weekly-after-transgender-column-controversy/>

Press Gazette: ‘Kentish Gazette transgender article was wrong – but journalists should not be sacked for exercising freedom of speech’ <https://pressgazette.co.uk/publishers/regional-newspapers/kentish-gazette-transgender-article-was-wrong-but-journalists-should-not-be-sacked-for-exercising-freedom-of-speech/>

Journalist who launched LGBTQ+ network leaves regional press for national role
<https://www.holdthefrontpage.co.uk/2023/news/journalist-who-launched-lgbtq-network-leaves-regional-press-for-national-role/>

Press Gazette Transgender ex-Times journalist loses discrimination claim against paper
<https://pressgazette.co.uk/news/transgender-ex-times-journalist-loses-discrimination-claim-against-paper/>

Media wins right to name transgender man battling to be named ‘father’ on own child’s birth certificate <https://pressgazette.co.uk/news/media-wins-right-to-name-transgender-man-battling-to-be-named-father-on-own-childs-birth-certificate/>

TT, R (on the application of) v The Registrar General for England and Wales [2019] EWHC 2384 (Fam) (25 September 2019)
<https://www.bailii.org/ew/cases/EWHC/Fam/2019/2384.html>

Courts and Tribunals Judiciary April 2023 interim revision of the Equal Treatment Bench Book <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

The Crown Prosecution Service Trans Equality Statement
<https://www.cps.gov.uk/publication/trans-equality-statement>
and <https://www.cps.gov.uk/sites/default/files/documents/publications/Trans-equality-statement.pdf>

Relevant IPSO rulings

00804-20 Smith v The Herald Decision: No breach – after investigation
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00804-20>

Daily newspaper cleared over SNP trans row story
<https://www.holdthefrontpage.co.uk/2020/news/daily-newspaper-cleared-over-snp-trans-row-story/>

09159-19 Fair Play for Women v kentlive.news Decision: Breach – sanction: action as offered by publication
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09159-19>

Watchdog raps news site over 'transphobic abuse' claim

<https://www.holdthefrontpage.co.uk/2020/news/ipso-raps-news-site-for-reporting-alleged-transphobic-abuse-as-fact/>

00572-15 Trans Media Watch v The Sun Decision: Breach – sanction: publication of adjudication

<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15>

01972-22 The Radcliffe School v miltonkeynes.co.uk Decision: Breach – sanction: publication of adjudication

<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01972-22>

Resolution Statement – 06439-21 Pascoe v spectator.co.uk Decision: Resolved – IPSO mediation

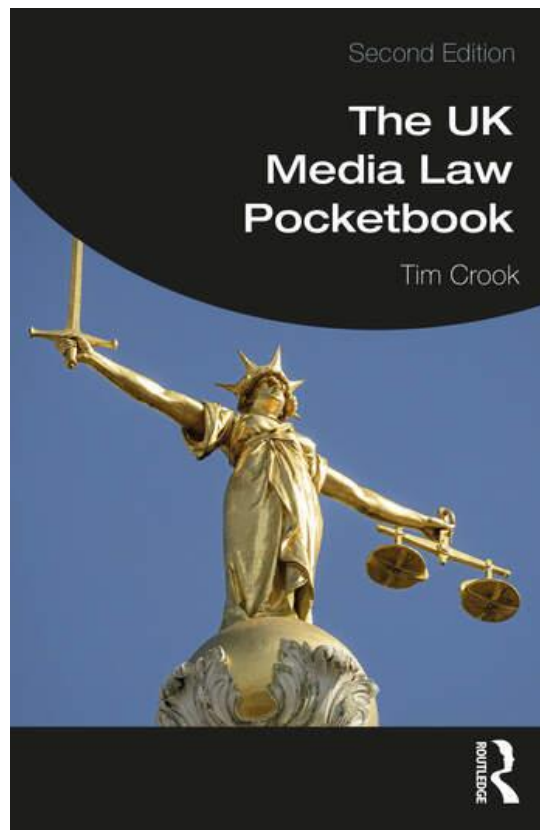
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=06439-21>

09309-21 A woman v Daily Mail Decision: No breach – after investigation

<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09309-21>

01695-21 Parrott v Norwich Evening News Decision: Breach – sanction: action as offered by publication

<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01695-21>



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

The UK Media Law Pocketbook is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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