



ST HELENA

REVISED EDITION OF THE LAWS, 2017

EMPLOYMENT & COMMERCE

MEDIA STANDARDS ORDINANCE, 2011¹

*Ordinance 18 of 2011
In force 9 October 2012*

Amended by Ordinance 3 of 2012

*Subsidiary legislation:
MEDIA STANDARDS REGULATIONS, 2012
*Legal Notice 30 of 2012**

*Also included:
MEDIA STANDARDS CODE OF PRACTICE, 2014
*Gazette Notice 22 in Extraordinary Gazette, Vol. XLXII No.16, March 2014**

MEDIA STANDARDS ORDINANCE, 2011

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AN ORDINANCE to regulate media services, to establish a Media Commission to monitor and enforce media standards, and for connected and incidental purposes.

**PART 1
PRELIMINARY**

Citation and commencement

1. (1) This Ordinance may be cited as the Media Standards Ordinance, 2011, and comes into force on a date the Governor appoints by notice in the *Gazette*.

(2) A notice or notices issued under subsection (1) may appoint different dates for the purposes of different provisions or for different purposes of the same provision.

Interpretation

2. (1) In this Ordinance—
“broadcaster” means a person who holds a broadcasting licence under the Telecommunications Ordinance, 1989;
“Code” means any Code of Practice issued, or adopted and applied, under section 6;
“Commission” means the St Helena Media Commission established under section 3;
“media service” has the meaning given in subsection (2), subject to the exceptions in subsection (3).

(2) **“Media service”** includes, subject to subsection (3), any radio or television broadcast, printed or internet publications and every other activity which constitutes the dissemination of information in a manner capable of being received (whether on payment or otherwise) by the public or by any section of the public.

(3) None of the following activities is a “media service” for the purposes of this Ordinance—

- (a) any audible or visual dissemination of information which is presented in such a way as to be received only by persons in the same building as, or otherwise in the immediate vicinity of, the person presenting the information;
- (b) the sale or hire (or offering to sell or hire) to members of the public of audio or video tapes or other means of recording sound or visual images, or both;

- (c) anything published on the internet by a person in a private capacity, unconnected with any trade, profession or vocation;
- (d) anything lawfully broadcast in St Helena by way of a re-broadcast of material lawfully broadcast elsewhere, in circumstances under which the person responsible for the rebroadcast has no effective means of editorial control;
- (e) any other activities prescribed by or under this Ordinance as not being media services.

(3A) Regulations made under section 11 may provide that, in prescribed circumstances, the activities mentioned in subsection (3)(b) are to be treated as a media service.

PART 2 MEDIA COMMISSION AND CODES OF PRACTICE

Constitution of Media Commission

3. (1) This section establishes a body of persons, to be known as the St Helena Media Commission, having the functions, powers and duties conferred or imposed upon it by this Ordinance or any other law.

(2) The Commission comprises a President and not less than 2 nor more than 4 other members.

(3) The Chief Magistrate is the President of the Commission; but if the office of Chief Magistrate is vacant, or the holder of that office is absent or otherwise unable to act, the Governor (acting in his or her discretion, but after consulting the President of the Judicial Service Commission) may appoint a Justice of the Peace to act as President of the Commission.

(4) The Governor must appoint the members other than the President, but may not appoint any person who is either a member of the Legislative Council or a member of the public service.

(5) Sections 90 to 93 of the Constitution apply to the members appointed to be members of the Commission in accordance with subsection (4), as they apply to judicial officers; except that a member of the Commission who becomes a member of the Legislative Council or a member of the public service is deemed to have resigned from the Commission.

(6) The Governor, acting in his or her discretion, may appoint a person (not being a public officer or a member of the Legislative Council) to act as Clerk to the Commission.

(7) If there is no subsisting appointment of a Clerk to the Commission, the duties of the Clerk may be performed by the Clerk of the Peace.

Function and duties of Commission

4. (1) The function of the Commission is to oversee media services delivered in or from St Helena, in accordance with the regulatory objectives set out in section 5, and for this purpose the Commission must—

- (a) issue Codes of Practice in accordance with section 6;
- (b) monitor compliance with the Codes; and

(c) investigate and adjudicate upon any alleged or suspected breach of the Codes, and may (subject to this Ordinance and any other rule of law) do all things which in its opinion are necessary or expedient for any of those purposes.

(2) Without limiting subsection (1), the Commission must, if so requested by the Governor, and may on its own initiative, from time to time advise the Governor in Council in relation to the Codes and their operation, and generally as to issues relating to the regulatory objectives.

Regulatory Objectives

5. (1) The regulatory objectives are—
- (a) protection of vulnerable persons (including, without limiting that objective, children and young persons);
 - (b) protection of the public from the inclusion in media services of defamatory, discriminatory, offensive or harmful material;
 - (c) ensuring accuracy and impartiality in the delivery of factual material, and clear differentiation between material delivered as fact and that delivered as opinion or commentary;
 - (d) preventing the inclusion of advertising which is misleading, harmful or offensive;
 - (e) preventing the use of techniques which exploit the possibility of conveying a message to the public, or of otherwise influencing members of the public, without their being aware, or fully aware, of what has occurred;
 - (f) ensuring compliance with any international obligations of St Helena relating to media services;
 - (g) protection of public safety, public health, public order and public morality.

(2) In applying the regulatory objectives, the Commission must have regard to the Constitutional rights to freedoms of opinion and of expression, but must ensure by the Codes and the way they are administered that due regard is had also to the matters mentioned in section 17(3)(b) of the Constitution and to the rights to freedom of conscience, privacy, and freedom from discrimination.

Codes of Practice

6. (1) The Commission may issue Codes of Practice calculated to secure the regulatory objectives in relation to media services provided in or from St Helena.

(2) Every Code of Practice issued by the Commission must be published by notice in the *Gazette*.

(3) The Commission may, instead of issuing a separate Code, declare (by notice in the *Gazette*) that any relevant Code which is from time to time in use in England is to be adopted and applied (with or without amendment) to St Helena.

(4) A Code of Practice must not be issued under this section unless, at least 42 days before it is issued, a draft of it has been published by notice in the *Gazette* and the Commission has considered any comments or objections submitted in writing to the Clerk to the Commission within a period (not being less than 21 days) specified in the notice.

PART 3 COMPLAINTS TO COMMISSION

Complaints to Commission

7. (1) Any person who is of the opinion that any media service has acted in breach of any Code may submit a written complaint to the Commission, through its Clerk.

(2) A written complaint under subsection (1) must set out all the relevant particulars relating to the alleged breach of the Code.

(3) Upon receipt of a complaint under subsection (1), the Commission must investigate it.

(4) In this section “**written**” includes fax and e-mail.

Procedure on investigation and findings

8. (1) Subject to the following subsections the procedure to be adopted in the investigation of each complaint is as prescribed in regulations made under section 11.

- (2) The Clerk must conduct a preliminary investigation into each complaint by—
- (a) seeking clarification from the complainant of any ambiguity in the complaint; then
 - (b) calling upon the media service provider against whom the complaint is made to respond to the complaint and to provide a recording, transcript or copy (as the case may be) of the particular publication giving rise to the complaint; then
 - (c) inviting the complainant to comment upon the response received from the media service provider,

and must then submit the papers (together with any recording or other relevant material) to the President.

- (3) Upon receiving the papers from the Clerk, the President must either—
- (a) order that the complaint be dismissed on the basis that it reveals no issue worthy of further investigation; or
 - (b) convene a meeting of the Commission at which the complaint is to be further investigated and the parties are to have an opportunity to attend, to call witnesses, and make any representations they wish to make.

(4) A meeting of the Commission convened under subsection (3) must be conducted as a judicial inquiry of an inquisitorial nature, and accordingly—

- (a) regulations made under section 11 may provide that the Commission is to have powers to summon witnesses or require the production of documents or other exhibits, to require witnesses to take an oath or make an affirmation, and to administer any such oath or affirmation; and
- (b) the power of the Supreme Court to punish contempt of its authority is extended to include a power to punish contempt of the Commission.

(5) Upon conclusion of its inquiry the Commission must declare whether it is satisfied on the balance of probabilities that the media service committed a breach of a Code and, if so satisfied, must—

- (a) specify the nature of the breach and the Code which has been breached; and
- (b) make such one or more of the orders or recommendations mentioned in section 9 as are in the opinion of the Commission appropriate in the circumstances.

Sanctions when Code is breached

- 9.** (1) The orders and recommendations referred to in section 8 are—
- (a) in the case of a complaint against a broadcaster - a recommendation to the Governor that its broadcasting licence be revoked or restricted;
 - (b) in the case of any ongoing publication - an order that the publication be discontinued;
 - (c) in any case, an order that—
 - (i) a retraction or apology, or both, be published;
 - (ii) any owner or manager of the media service take any other remedial action that is appropriate in the circumstances;
 - (iii) any owner or manager of the media service take any steps that are in the opinion of the Commission reasonable to prevent a recurrence of the breach;
 - (iv) the Clerk refer the matter to the Attorney General for consideration whether any criminal proceedings should be initiated.
- (2) The Commission may not make a finding that any publication—
- (a) amounted to an actionable defamation (nor may it assess compensation on that basis);
 - (b) constituted a criminal offence; or
 - (c) violated any person's fundamental human rights under sections 5 to 25 of the Constitution.

Right of appeal

10. (1) Subject to the following subsections, any person aggrieved by a decision, order or recommendation of the Commission under section 9 may appeal to the Supreme Court.

(2) An appeal under this section may not be made unless an application for leave to appeal is made to the Chief Justice within 28 days of the date of the decision, order or recommendation of the Commission, and the Chief Justice has granted such leave.

(3) Rules of court may provide that notice must be given to the Commission of any application for leave pursuant to subsection (2) and for the Commission to have an opportunity to make representations before a decision is made on the application for leave. Any such rules of court must also provide that the person seeking leave to appeal must have an opportunity to respond to any representations made by the Commission.

(4) The decision of the Chief Justice upon any application for leave to appeal is final and conclusive.

PART 4 MISCELLANEOUS

Regulations

11. (1) The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

(2) Without limiting the power in subsection (1), regulations may—

- (a) provide for forms to be used and fees to be paid for or in connection with the operation of this Ordinance;
- (b) prescribe the procedures to be adopted by the Commission;
- (c) prescribe any other matter which may be prescribed under this Ordinance.

Offences

12. Any person who—

- (a) fails to comply with an order made under section 9; or
- (b) knowingly gives any false information to the Commission,

commits an offence.

Penalty: A fine of £2,500 or imprisonment for 12 months, or both.

Amendment of legislation

13. *Omitted*

Transitional provisions

14. *Omitted*

SCHEDULE

Amended legislation

Omitted

MEDIA STANDARDS ORDINANCE, 2011

MEDIA STANDARDS COMMISSION REGULATIONS

(Section 11)

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Citation, commencement and application

- 1. (1)** These Regulations may be cited as the Media Standards Commission

Regulations, 2012, and come into force with effect from the date on which the Ordinance comes into force.

(2) These Regulations apply to all inquiries under the Media Standards Ordinance, 2011.

Interpretation

2. In these Regulations—
“complaint” means a complaint to the Commission by any person under section 7 of the Ordinance;
“complainant” means any person who submits a complaint;
“controls” means has authority or the ability to manage or direct;
“provider” means any person who controls a media service;
“provider’s complaints procedure” means any internal procedure of a provider for the investigation and resolution of complaints alleging a breach of any Code by such provider.

Provider’s complaints procedure

3. (1) The complainant must, unless the President otherwise directs, follow the provider’s complaints procedure (if any) before the Commission will proceed to inquire into a complaint.

(2) If a complainant is not satisfied with the provider’s response to the complaint, or the provider has not responded within 14 days of the making of such complaint, the complaint may be inquired into by the Commission.

Form of complaint

4. (1) Complaints must, unless the President otherwise directs, be submitted to the Commission in writing (which includes fax or e-mail).

(1A) If the President so directs, the Clerk must reduce any verbal complaint to writing.

(2) Unless the President otherwise directs, the Commission will only inquire into a complaint if it is submitted through the completion of the Commission’s complaint form in accordance with the Schedule to these Regulations.

- (3) All complaints should include, where known—
- (a) the complainant’s full contact details (including email address where appropriate);
 - (b) the provisions of the relevant Code which it is alleged have been breached;
 - (c) the name and address of the provider;
 - (d) the name or title of the media service;
 - (e) the date and time of the media service;
 - (f) the channel, publication, internet site or other media on which the media service was broadcast or printed;
 - (g) the nature of the complaint and the particular parts of the media service complained about;
 - (h) whether (and, if so, when) the complainant made a complaint to the provider (and details of the complaint);

- (i) any supporting material or evidence which the complainant considers relevant to the substance of the complaint;
- (j) any explanation for the complaint not being made within the prescribed period; and
- (k) any connected proceedings in a court in St Helena or elsewhere.

Time limits

5. (1) The President may, after considering all relevant factors (including the complainant's explanation for any delay in submitting the complaint), refuse to inquire into a complaint if it appears not to have been submitted to the Commission within—

- (a) 28 days after the last occasion when the media service was broadcast or printed; or
- (b) 42 days after such last occasion if the complainant complained directly to the provider within that 28 day period before submitting a complaint to the Commission.

(2) If a complaint is made to the provider and submitted to the Commission simultaneously, the Commission will not normally proceed to inquire into the complaint until the provider has first had a period of 14 days to resolve the complaint under the provider's complaints procedure.

(3) A provider must retain all recordings or publications and any related material, for a period of 6 months from the last occasion when the relevant media service was broadcast or printed or until the final determination of any subsisting complaints, whichever is later.

Assessing whether to inquire into a complaint

6. (1) When a complainant submits a complaint to the Commission, the Clerk must, unless otherwise directed by the President, conduct a preliminary inquiry into the complaint in accordance with section 8(2) of the Ordinance.

- (2)** If it appears to the Clerk that—
 - (a) the matter complained of is the subject of proceedings in any court of law in St Helena, or is a matter in respect of which the complainant has a remedy by way of proceedings in any court of law in St Helena; and
 - (b) in the particular circumstances it is not appropriate for the Commission to inquire into the complaint,

the Clerk must seek a direction from the President who may dismiss or stay any inquiry until a time the President directs.

(3) The Clerk must require the complainant to clarify any ambiguity in the complaint or invite the complainant to comment upon any response received from the provider in terms of section 8(2)(a) or (c) of the Ordinance within 14 days.

(4) The Clerk must provide a copy of the complaint to the provider, and require the provider to respond to it, to specify the full legal title and address of the provider and to provide a recording, transcript or copy (as the case may be) of the particular broadcast or publication in terms of section 8(2)(b) of the Ordinance, within 14 days.

(5) On receipt of any written responses of the complainant or provider at any stage in the inquiry, the Clerk must provide a copy of it to all other parties.

(6) The Clerk must, on being satisfied that all preliminary inquiries have been completed, submit the papers together with any recording or other relevant material to the President in accordance with section 8(2) of the Ordinance.

Decision of President

7. (1) On receipt of the papers from the Clerk, the President must act as provided for in section 8(3) of the Ordinance and may dismiss all or part only of a complaint and convene a meeting of the Commission in relation to all or the remaining part of the complaint not so dismissed.

(2) If any facts become apparent to the President in the course of inquiring into a complaint, such that in his or her judgement there is no issue worthy of further investigation, or that in his or her opinion actions under these Regulations would have been otherwise had such facts been known at a previous time, the President may –

- (a) cease to proceed with inquiring into all or part of the complaint; or
- (b) take any other action that in the President's judgment is appropriate to achieve the regulatory objectives of the Commission.

(3) The Clerk must provide the complainant and the provider with a copy of the President's decision in terms of section 8(3) of the Ordinance or otherwise in terms of these Regulations, indicating whether (and to what extent) the Commission will be inquiring into a complaint.

Hearings

8. (1) A complaint determined to be worthy of inquiry and submitted to the Commission must be inquired into at a meeting of the Commission convened under section 8(3) of the Ordinance.

(2) The Commission must give at least 14 days' notice to the parties of such a Commission meeting date, unless all parties agree to a shorter period of notice.

(3) Hearings must be held in private and the following persons must be given an opportunity to attend, to call witnesses with the permission of the President, and to make representations:

- (a) the complainant or an authorised representative;
- (b) the provider or his authorised representative;
- (c) any other person the President considers might be able to assist at the hearing.

(4) The President may at any time, either on his or her own initiative or on the application of any party, make any orders necessary or reasonable in all matters relating to—

- (a) the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) the joinder or separation of complaints, complainants or providers;
- (c) adding or removing parties to the complaint;
- (d) the amendment of a complaint or response;
- (e) issuing summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (f) proving any fact by affidavit;

(g) such other procedural orders as may be competently made by the Magistrates' Court.

(5) Subject to sub-regulation (4), evidence given by a witness at any hearing must be on oath or affirmation of that witness, unless the President otherwise directs.

Issue of findings

9. (1) Once the Commission has heard representations from the parties, the Commission must conclude its inquiry into a complaint by issuing its findings setting out whether the complaint is upheld, not upheld, or upheld in part and any further particulars, orders or recommendations provided for by section 8(5) of the Ordinance.

(2) The President has a discretion, whether in the inquiry or in any findings, to protect the anonymity of a complainant or provider where the President considers this is required in order to enable the Commission to fulfil its regulatory objectives in terms of section 5 of the Ordinance.

Non -disclosure

10. (1) Subject to sub-regulations (1A) and (2), the parties to a complaint should not disclose any correspondence, documents and other material concerning the complaint received during the course of the inquiry unless required to do so in due course of law.

(1A) The requirement of non-disclosure does not limit what the Commission, with due regard to its regulatory objectives, may disclose during the inquiry or in its findings at the end of the inquiry.

(2) The complainant or the provider may make public the fact that a complaint has been submitted to the Commission or that the Commission is inquiring into a case.

(3) During the inquiry the identity of a complainant or provider may only be disclosed by the complainant or provider to those with a direct interest in the matter complained of and for the purposes of assisting in the inquiry or otherwise as required by law.

(4) Once a complaint has been submitted to the Commission, no party should take any steps which could, whether intentionally or not, compromise, or risk compromising, a fair decision on the matter by the Commission or otherwise constitute, in the Commission's opinion, an abuse of process.

(5) Failure to follow this regulation may result in the Commission ceasing to inquire into the party's representations, without affecting the power to refer any contempt of the Commission to the Supreme Court in terms of section 8(4)(b) of the Ordinance.

Service on parties

11. Service of any document on any party must be made as provided for in the Civil Procedure Ordinance, 1968, and may be carried out by e-mail or fax.

Discretion of President

12. (1) The President may, if the President considers it appropriate (in the interests of fairness or in order properly to inquire into a complaint) amend or adapt the time limits set out in these Regulations in relation to a particular complaint.

(2) Any complainant or provider seeking an extension of a time limit should explain in writing to the President why he, she or it believes it is appropriate and the President will decide if an extension is appropriate and inform all parties accordingly.

(3) Subject to sub-regulation (3A), the President may direct that there be a departure from these Regulations in any material respect in a particular case for reasons of fairness or in order for the Commission properly to inquire into a complaint.

(3A) The President must canvass a proposed departure with the parties present at any meeting of the Commission or otherwise write to the parties who are not so present setting out the nature and extent of the departure and the reasons for directing the departure and seeking the relevant parties' response.

(4) If the Commission considers it necessary in order to fulfil its regulatory objectives under section 5 of the Ordinance, it may initiate an inquiry in the absence of a complaint and in those circumstances the Commission ~~will~~ must follow similar procedures as when there is a complaint but adapted as appropriate to ensure that they are fair and appropriate in the particular circumstances.

SCHEDULE
(Regulation 4(2))

MEDIA STANDARDS COMMISSION

COMPLAINT FORM

1. Complainant
 - 1.1 Title
 - 1.2 First Name(s)
 - 1.3 Surname
 - 1.4 Address
 - 1.5 Telephone
 - 1.6 Fax
 - 1.7 Email
2. Complainant's Representative (if any)
 - 2.1 Title
 - 2.2 First Name(s)
 - 2.3 Surname
 - 2.4 Address
 - 2.5 Telephone
 - 2.6 Fax
 - 2.7 Email
3. Provisions of Code(s) alleged to have been breached

4. Name & Address of the Media Service Provider
5. Name/Title of the Broadcast/Article
6. Date & Time of the Broadcast/Publication
Date: _____ Time: _____
7. Channel/ Publication/Internet Site etc. on which broadcast/published
8. Nature of Complaint & Parts of Broadcast/Publication complained about
9. Previous complaint to the Media Service Provider
When:
Details:
10. List and attach any supporting material/evidence relevant to the complaint
11. Explanation for late submission of complaint (if applicable)
12. Any connected proceedings in a court of law in St Helena or elsewhere
13. Declaration

I understand that on receipt of this complaint the Commission will provide a copy of this complaint form and any accompanying information to the relevant Media Service Provider. I understand that the inquiry into this complaint falls under the Commission’s jurisdiction and undertake to abide by all the Commission’s regulations and procedures.

Signature of Complainant

Date of Complaint.....

Return to: The Clerk, St Helena Media Standards Commission, The Castle,
Jamestown, St Helena STHL 1ZZ
Telephone Tel: +290 2340 Fax: +290 2598 E-mail: judicial.manager@sainthelena.gov.sh

MEDIA STANDARDS ORDINANCE, 2011

MEDIA STANDARDS CODE OF PRACTICE, 2014
(Section 6(1))

ST HELENA MEDIA COMMISSION

Preamble

The St Helena Media Commission is charged with overseeing Media Services delivered in or from St Helena in accordance with the regulatory objectives set out in the Media Standards Ordinance, 2011.

The regulatory objectives of the Commission are;

- (a) protection of vulnerable persons (including, without limiting that objective, children and young persons);
- (b) protection of the public from the inclusion in media services of defamatory, discriminatory, offensive or harmful material;
- (c) ensuring accuracy and impartiality in the delivery of factual material, and clear differentiation between material delivered as fact and that delivered as opinion or commentary;
- (d) preventing the inclusion of advertising which is misleading, harmful or offensive;
- (e) preventing the use of techniques which exploit the possibility of conveying a message to the public, or of otherwise influencing members of the public, without their being aware, or fully aware, of what has occurred;
- (f) ensuring compliance with any international obligations of St Helena relating to media services;
- (g) protection of public safety, public health, public order and public morality.

In applying the regulatory objectives, the Commission must have regard to the constitutional rights to freedom of opinion and of expression, but must ensure by the Code and the way it is administered that due regard is also had to:

- (i) the protection of the reputation, rights and freedoms of other persons, and the private lives of persons concerned in legal proceedings or proceedings before any other tribunal or authority;
- (ii) preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, and regulating telephony, posts, telegraphy, electronic communications, broadcasting and public shows in accordance with the rights to freedom of conscience, privacy, and freedom from discrimination.

The Ordinance does not have application to anything lawfully broadcast in St Helena by way of re-broadcast of material lawfully broadcast elsewhere and where the Provider has no effective means of editorial control. This excludes a considerable part of television Media Services in St Helena from the jurisdiction of the Commission. The Ordinance does however have application to locally broadcast television and radio Media Services.

The Ordinance provides that the Commission may issue Codes of Practice calculated to secure these regulatory objectives in relation to applicable Media Services provided in or from St Helena.

Commencement

This Code of Practice has effect from 1st April 2014.

Definitions

In this Code:

“adult material” means material which the Commission considers objectively most parents would consider appropriate only for an adult. Adult material can be based on violence, sex, aberrational behaviour, drug abuse or any other elements that most parents would consider too strong and therefore inappropriate for viewing by persons not yet adult.

“appropriate scheduling” only applies to television and radio Media Services and is to be

judged according to:

- The nature of the content of a Media Service;
- The likely number and age range of persons not yet adult likely to be watching or listening to the Media Service;
- The start time and finish time of the Media Service;
- The nature of the channel or station and the Media Service; and
- The likely expectations of the public for a channel or station at a particular time and on a particular day.

“candidate” means a candidate standing nominated at an election.

“consent” means ‘informed consent’ such as is likely to result from the taking of the measures specified in Section 3.5.3 of this Code.

“context” includes (but is not limited to):

- The Media Service in which the material is disseminated;
- The time of dissemination;
- What other Media Services are scheduled before and after the Media Service concerned or what other material is contained in any Media Services;
- The degree of harm or offence likely to be caused by the inclusion of any particular sort of material in Media Services generally or Media Services of a particular description;
- The likely size and composition of the potential public and likely expectation of the public;
- The extent to which the nature of the content can be brought to the attention of the potential public for example by giving information beforehand; and
- The effect of the material on the public who may come across it unawares.

“due impartiality” means not favouring one side over another. It does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of Media Service, the likely expectation of the public as to content, and the extent to which the content and approach is signalled to the public.

“Election”: means a general election or by-election.

“election period”: means for a general election, the period beginning with the announcement of the dissolution of Legislative Council. For a by-election, this period begins with the date of the occurrence of a vacancy. In all cases the period ends with the close of the poll.

“generally accepted standards” means standards which the Commission consider objectively the public would consider to be generally acceptable taking into account the context.

“guardian” means a person who looks after and is legally responsible for someone who is unable to manage their own affairs.

“life-changing advice” includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

“mandatory restricted access” means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

“matters of major political or industrial controversy and major matters relating to current public policy”: means generally matters of political or industrial controversy or of current public policy which are of national, and often international, importance and vary according to events.

“matters of political or industrial controversy” means political or industrial issues on which politicians, industry and/or the media are in debate.

“matters relating to current public policy” means matters relative to a policy under discussion or already decided by government or by bodies mandated to make policy on their behalf, and which need not be the subject of debate.

“Media Service” includes, subject to section 2(3) of the Ordinance, any radio or television Media Services, printed or internet Media Services and every other activity which constitutes the dissemination of information in a manner capable of being received (whether on payment or otherwise) by the public.

“Media Service competition” means a competition or free prize draw featured in a Media Service in which the public are invited to enter by any means for the opportunity to win a prize.

“Media Services included in any service taken as a whole”: means all programming on a Media Service dealing with the same or related issues within an appropriate period.

“parental responsibility” means being responsible for exercising some or all of the functions and responsibilities of a parent in the then prevailing circumstances.

“personal view Media Services” means Media Services presenting a particular view or perspective. personal view Media Services can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered “authored” opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream.

“persons not yet adult” mean persons who are under the age of 18 years.

“printed media” means a publication usually containing news regarding current events, informative articles, diverse features, editorials, and advertising whether in paper or electronic form.

“Provider” means any person who controls a Media Service.

“public” includes any section of the public where the context requires the same.

“public interest” means the welfare or well-being of the public including revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals, organisations or government or disclosing incompetence that affects the public.

“recording” means the recording of someone for Media Service purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

“referendum”: means a direct vote in which an entire electorate is asked to either accept or reject a particular proposal, usually a piece of legislation which may be passed into law by the Governor, Governor in Council or Legislative Council.

“referendum period”: means from the date a referendum is announced until the close of the poll.

“religious Media Service” means a Media Service which deals with matters of religion as the central subject, or as a significant part, of the Media Service.

“seek recruits” means directly appealing to public members to join a religion or religious denomination.

“series of Media Services taken as a whole” means more than one Media Service by the same Provider, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like public. A series can include, for example, a strand, or two Media Services (such as a drama and a debate about the drama) or a ‘cluster’ or ‘season’ of Media Services on the same subject.

“surreptitious advertisement” means a reference to a product, service or trade mark within a Media Service, where such a reference is intended by the provider to serve as an advertisement and this is not made clear to the public. Such an advertisement is likely to be considered intentional if it occurs in return for payment or other valuable consideration to the Provider or another.

“surreptitious recording” means leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent and includes the use of long lenses. It also includes recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

“the Watershed” is at 2100 hours, being the time before which adult material must not generally be broadcast as more particularly set out in this Code. the Watershed only applies to television and radio Media Services. On subscription film services which are not protected by mandatory restricted access the Watershed is at 2000 hours. There is no watershed on premium subscription film services or pay per view services which are protected by mandatory restricted access.

“undue prominence of views and opinions”: means a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.

“voting” means a feature in a Media Service in which the public are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

“vulnerable persons”: means persons not yet adult and persons who are susceptible to physical or emotional injury including those with learning difficulties, those with mental health problems, the bereaved, persons with brain damage or forms of dementia, and persons who have been traumatised or who are sick or terminally ill.

“warranted” means being able to demonstrate why in the particular circumstances of the case

something is warranted. If the reason is that it is in the public interest, the Provider must be able to demonstrate that the public interest outweighs another right e.g. a right to privacy.

PART ONE

PROTECTION OF VULNERABLE PERSONS, INCLUDING CHILDREN AND YOUNG PERSONS

Objective

To ensure that vulnerable persons are protected.

Section 1: Scheduling and content information for persons not yet adult

1.1.1 Providers must take all reasonable steps, including appropriate scheduling and observance of the Watershed, to protect persons not yet adult from Media Services that contain adult material.

1.1.2 Adult material must not, in general, be broadcast on television or radio Media Services before 2100 hours or after 0530 hours.

1.1.3 The transition to more adult material in television or radio Media Services must not be unduly abrupt at the Watershed. The strongest material must appear later in the schedule.

1.1.4 Providers must appropriately forewarn members of the public, immediately before the commencement of the particular Media Service or on the first page of any printed media, that the Media Service contains adult material.

1.1.5 Printed media which may be generally available to persons not yet adult must not contain adult material.

Section 2: Generally protecting vulnerable persons

1.2.1 Providers must appropriately forewarn members of the public, immediately before the commencement of the particular Media Service or on the first page of any printed media, that such Media Service contains material that may distress some vulnerable persons (taking into account the context).

1.2.2 If a contributor to a Media Service is a vulnerable person, consent may require to be obtained from a parent or guardian, or other person of 18 or over with parental responsibility. In particular, vulnerable persons must not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

1.2.3 Providers must pay particular attention to the privacy of vulnerable persons. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.

1.2.4 Where a Media Service features a vulnerable person in a way that infringes privacy, consent may require to be obtained from:

- A parent, guardian or other person of 18 or over with parental responsibility; and
- Wherever possible, the individual concerned;

unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

1.2.5 Vulnerable persons should not be questioned about private matters without the consent of a parent, guardian or other person of 18 or over with parental responsibility unless it is warranted to proceed without consent.

Section 3: The coverage of sexual and other offences in St Helena involving persons not yet adult

1.3.1 Where statutory or other legal restrictions apply preventing personal identification,

Providers must also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different legislation) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:

- By reporting limited information which may be pieced together with other information available elsewhere, for example in printed media reports (the ‘jigsaw effect’);
- Inadvertently, for example by describing an offence as “incest”; or
- In any other indirect way.

1.3.2 When covering any pre-trial investigation into an alleged criminal offence in St Helena, Providers must pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before disseminating their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. Particular justification is also required for the dissemination of such material relating to the identity of any person who is not yet adult who is involved as a defendant or potential defendant.

Section 4: Drugs, smoking, solvents and alcohol

1.4.1 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must not be featured in Media Services made primarily for persons not yet adult unless there is strong editorial justification;
- must not be condoned, encouraged or glamourised in Media Services likely to be widely seen or heard by any person who is not yet adult unless there is editorial justification;
- must generally be avoided and in any case must not be condoned, encouraged or glamourised in Media Services before the Watershed or otherwise disseminated by a Provider unless there is editorial justification.

Section 5 Violence and dangerous behaviour

1.5.1 Violence, whether verbal or physical, or dangerous behaviour, or the portrayal of dangerous behaviour that is easily imitable by persons not yet adult in a manner that is harmful or dangerous:

- must not be featured in Media Services which may be generally available to persons not yet adult unless there is strong editorial justification;
- must not be disseminated before the Watershed unless there is strong editorial justification.

Section 6: Offensive language

1.6.1 The most offensive language must not be disseminated before the Watershed;

1.6.2 Offensive language must not be disseminated before the Watershed unless it is justified by the context. In any event, frequent use of such language must be avoided before the Watershed.

1.6.3 Offensive language must not be used in Media Services which may be generally available to person not yet adult unless there is strong editorial justification.

Section 7: Sexual material

1.7.1 Measures must be in place by Providers to ensure that the subscriber to or purchaser of

any Media Service which disseminates adult material is an adult.

1.7.2 Representations of sexual intercourse must not occur before the Watershed unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the Watershed and must be appropriately limited.

Section 8: Nudity

1.8.1 Nudity before the Watershed or otherwise disseminated by a Provider must be justified by the context.

Section 9: Films, premium subscription film services, pay per view services

1.9.1 No film refused classification by the British Board of Film Classification (BBFC) may be disseminated unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:

- The BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
- The BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.

1.9.2 BBFC 18-rated films or their equivalent must not be disseminated before the Watershed on any Media Service (except for pay per view Media Services), and even then they may be unsuitable for broadcast at that time.

1.9.3 Premium subscription film services may disseminate up to BBFC 15-rated films or their equivalent, at any time of day provided that Mandatory Restricted Access is in place pre-2000 hours and post 0530 hours. In addition, those security systems which are in place to protect persons not yet adult must be clearly explained to all subscribers.

1.9.4 Pay per view Media Services may disseminate up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 hours and post 0530 hours.

In addition:

- Information must be provided about Media Service content that must assist adults to assess its suitability for persons not yet adult;
- There must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- Those security systems which are in place to protect persons not yet adult must be clearly explained to all subscribers.

Section 10: Exorcism, the occult and the paranormal

1.10.1 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the Watershed. Paranormal practices which are for entertainment purposes must not be disseminated when significant numbers of persons not yet adult may be expected to be watching, or are particularly likely to be listening. (This rule does not apply to drama, film or comedy.)

Section 11: The involvement of persons not yet adults in Media Services

1.11.1 Due care must be taken over the physical and emotional welfare and the dignity of persons not yet adult who take part or are otherwise involved in Media Services. This is

irrespective of any consent given by the participant or by a parent, guardian or other person over the age of 18 with parental responsibility.

1.11.2 Persons not yet adult must not be caused unnecessary distress or anxiety by their involvement in Media Services or by the dissemination of those Media Services.

1.11.3 Prizes aimed at persons not yet adult must be appropriate to the age range of both the target public and the participants.

Section 12: The involvement of vulnerable adults in Media Services

1.12.1 In the case of persons over 16 who are not in a position to give consent, a parent, guardian or other person over the age of 18 with parental responsibility must normally give it on their behalf. In particular, persons not in a position to give consent must not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

PART TWO PROTECTION OF THE PUBLIC FROM DEFAMATORY, DISCRIMINATORY, OFFENSIVE OR HARMFUL MATERIAL

The rules in this Part are designed not only to provide adequate protection for adults but also to protect persons not yet adult.

Objective

To ensure that the public are protected from the inclusion in Media Services of defamatory, discriminatory, offensive or harmful material.

Section 1: Generally accepted standards

2.1.1 Generally accepted standards must be applied to the contents of Media Services so as to provide adequate protection for members of the public from the inclusion in such services of defamatory, discriminatory, offensive and/or harmful material.

2.1.2 In applying generally accepted standards Providers must ensure that material which may cause offence is justified by the context. Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Such material need not be directed towards a specific individual to come within the terms of this Code. Appropriate information must also be disseminated where it would assist in avoiding or minimising offence.

2.1.3 Violence, its after-effects and descriptions of violence, whether verbal or physical must be justified by the context.

Section 2: Exorcism, the occult and the paranormal

2.2.1 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity.

2.2.2 If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.

2.2.3 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals.

(Religious Media Services are exempt from this rule but must, in any event, comply with the provisions in Part 7 Section 4: Religion. Films, dramas and fiction generally are not bound by this rule.)

Section 3: Privacy

2.3.1 Any infringement of privacy in Media Services, or in connection with obtaining material included in Media Services, must be warranted.

2.3.2 Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where persons can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that recording, even in a public place, could involve an infringement of privacy. Persons under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

2.3.3 Information which discloses the location of a person's home or family must not be revealed without permission, unless it is warranted.

2.3.4 When persons are caught up in events which are covered by the news they still have a right to privacy unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later Media Services that revisit those events.

2.3.5 Providers must ensure that words, images or actions filmed or recorded in a public place, are not so private that prior consent is required before disseminating from the individual or organisation concerned, unless disseminating without their consent is warranted.

2.3.6 Any infringement of privacy in a Media Service must be with the person's and/or organisation's consent or is otherwise warranted.

2.3.7 If the dissemination of a Media Service would infringe the privacy of a person or organisation, consent must be obtained before the relevant Media Service is disseminated, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the Provider for their contribution).

2.3.8 If an individual or organisation's privacy is being infringed, and they ask that the recording or live Media Service be stopped, the Provider must do so, unless it is warranted to continue.

2.3.9 When recording in institutions, organisations or other agencies, permission must be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public must not normally be required. However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent must normally be obtained before recording from those in sensitive situations (unless not obtaining consent is warranted). If the individual is not identifiable in the Media Service then separate consent for dissemination is not required.

2.3.10 The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the Media Service.

2.3.11 Providers must ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a Media Service for another purpose or used in a later or different Media Service, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the Provider's own material.

2.3.12 Recording for factual Media Services must not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation must be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally Providers may, without prior warning

interview, film or record persons in the news when in public places.

2.3.13 Providers can record telephone calls between the Provider and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible Media Services (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded is to be used in a Media Service (but this was not explained to the other party at the time of the call) then the Provider must obtain consent before dissemination from the other party, unless it is warranted not to do so.

2.3.14 Surreptitious recording must only be used where it is warranted. Normally, it will only be warranted if:

- There is on first examination a story which appears to be evident from the facts to be in the public interest;
- There are reasonable grounds to suspect that further material evidence could be obtained; and
- It is necessary to the credibility and authenticity of the Media Service.

2.3.15 Material gained by surreptitious recording must only be disseminated when it is warranted.

2.3.16 Surreptitious recording or recorded ‘wind-up’ calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material must not be disseminated without the consent of those involved. However if the individual and/or organisation is not identifiable in the Media Service then consent for dissemination is not required.

2.3.17 Providers must not take or disseminate pictures, footage or audio of persons caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place where that results in an infringement of privacy, unless it is warranted or the persons concerned have given consent.

2.3.18 Persons in a state of distress must not be put under pressure to take part in a Media Service or provide interviews, unless it is warranted.

2.3.19 Providers must take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

2.3.20 Providers must try to reduce the potential distress to victims and/or relatives when making or disseminating Media Services intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual Media Services. In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a Media Service, must be informed of the plans for the Media Service and its intended dissemination, even if the events or material to be disseminated have been in the public domain in the past.

PART THREE ENSURING ACCURACY AND IMPARTIALITY

Objective

To ensure accuracy and impartiality in the delivery of factual material, and clear differentiation between materials delivered as fact and that delivered as opinion or commentary.

Section 1: Misleading

3.1.1 Factual Media Services must not materially mislead the public.

Section 2: Due Impartiality and due accuracy in news

3.2.1 News, in whatever form, must be reported with due accuracy and presented with due impartiality.

3.2.2 Significant mistakes in news must normally be acknowledged and corrected quickly. Corrections must be given appropriate prominence whether by scheduling or location.

3.2.3 No politician may be used as a newsreader, interviewer or reporter in any news Media Services unless, exceptionally, it is editorially justified.

Section 3: The preservation of Due Impartiality

3.3.1 Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a Media Service. This may be achieved within a particular Media Service or over a series of Media Services taken as a whole.

3.3.2 The dissemination of editorially linked Media Services dealing with the same subject matter (as part of a series in which the Provider aims to achieve due impartiality) must normally be made clear to the public at the time of dissemination.

3.3.3 Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.

3.3.4 Any personal interest of a reporter or presenter, which would call into question the due impartiality of the Media Service, must be made clear to the public.

3.3.5 Presenters and reporters (with the exception of news presenters and reporters in news Media Services), presenters of “personal view” or “authored” Media Services, and chairs of discussion Media Services may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the Media Service, or in a series of Media Services taken as a whole. Additionally, presenters or reporters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins or letters to publishers must encourage and must not exclude alternative views.

3.3.6 A “personal view” or “authored” Media Service must be clearly signalled to the public at the outset. This is a minimum requirement and may not be sufficient in all circumstances. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear.)

3.3.7 In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service in each Media Service or in clearly linked and timely Media Services.

3.3.8 In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each Media Service or in clearly linked and timely Media Services. Views and facts must not be misrepresented.

3.3.9 Providers must not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the Media Services included in any Media Service taken as a whole.

Section 4: Media Services at the time of elections and referendums

3.4.1 The rules in Section 4, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums. The remainder of this section only applies during the actual election or referendum period.

3.4.2 Due weight must be given to the coverage of candidates with significant views and perspectives during the election period.

3.4.3 Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)

3.4.4 Providers may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes.

3.4.5 Candidates in elections must not act as news presenters, interviewers, presenters or journalists of any type of Media Service during the election period.

3.4.6 If a candidate takes part in an item then all other candidates must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)

3.4.7 Any electoral report or discussion after the close of nominations must include a list of all candidates standing, giving first names and surnames.

Section 5: Fairness

3.5.1 Providers must avoid unjust or unfair treatment of individuals or organisations in Media Services.

3.5.2 Providers must normally be fair in their dealings with potential contributors to Media Services unless, exceptionally, it is justified to do otherwise.

3.5.3 Where a person is invited to make a contribution to a Media Service (except when the subject matter is trivial or their participation minor) they must normally, at an appropriate stage:

- be told the nature and purpose of the Media Service, what the Media Service is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first disseminated;
- be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc.;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the Media Service as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the Provider in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the Media Service, about whether they must be able to effect any changes to it.

It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this Part of this Code.

3.5.4 When a Media Service is edited, contributions must be represented fairly.

3.5.5 Guarantees given to contributors, for example relating to the content of a Media Service, confidentiality or anonymity, must normally be honoured.

3.5.6 Providers must ensure that the re-use of Media Services, i.e. use of Media Services originally filmed, recorded or published for one purpose and then used in a Media Service for another purpose or used in a later or different Media Service, does not create unfairness. This applies both to Media Services obtained from others and the Provider's own Media Services.

3.5.7 Before disseminating a factual Media Service, including Media Services examining

past events, Providers must 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 or organisation; and
- Anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.

3.5.8 Media Services – such as dramas and factually-based dramas – must not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

3.5.9 If a Media Service alleges wrongdoing or incompetence or makes other significant allegations, those concerned must normally be given an appropriate and timely opportunity to respond.

3.5.10 Where a person approached to contribute to a Media Service chooses to make no comment or refuses to appear in a Media Service, the Media Service must make clear that the individual concerned has chosen not to appear and must give their explanation if it would be unfair not to do so.

3.5.11 Where it is appropriate to represent the views of a person or organisation that is not participating in the Media Service, this must be done in a fair manner.

3.5.12 Providers must not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious recording.) However:

- It may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
- Where there is no adequate public interest justification, for example some unsolicited windup calls or entertainment set-ups, consent must be obtained from the individual and/or organisation concerned before the Media Services is disseminated;
- If the individual and/or organisation is/are not identifiable in the Media Service then consent for dissemination of the Media Service must not be required;
- Media Services involving celebrities and those in the public eye can be used without consent for Media Services, but they must not be used without a public interest justification if likely to result in unjustified public ridicule or personal distress. (Normally, therefore such contributions must be pre-recorded).

PART FOUR

MISLEADING, HARMFUL OR OFFENSIVE ADVERTISEMENTS

Objective

To prevent the inclusion of advertisements which are misleading, harmful or offensive.

4.1.1 The central principle for all advertisements is that they must be legal, decent, honest and truthful. All advertisements must be prepared with a sense of responsibility to consumers and society and must reflect the spirit, not merely the letter, of this Code.

4.1.2 Marketers must take account of the generally accepted standards and the context in which a marketing communication is likely to appear to minimise the risk of causing harm or serious or widespread offence.

4.1.3 Care must be taken when featuring or addressing persons not yet adult in advertisements. The way in which persons not yet adult perceive and react to advertisements is influenced by their age, experience and the context in which the message is delivered. Advertisements that are acceptable for older teenagers will not necessarily be acceptable for younger persons not yet adult. The Commission must take those factors into account when assessing whether advertisements comply with this Code.

4.1.4 Individuals must be protected from unwarranted infringements of privacy in any

advertisements.

4.1.5 Advertisements for alcoholic drinks must not be targeted at persons not yet adult and must not imply, condone or encourage immoderate, irresponsible or anti-social drinking.

4.1.6 Advertisements must not condone or encourage unsafe or inconsiderate driving practices. If they make environmental claims, advertisements for motor vehicles, fuel or accessories must not materially mislead.

4.1.7 Advertisements must distinguish clearly between offers of employment and business opportunities. Employment advertisements must relate to genuine vacancies and potential employees must not be asked to pay for information.

PART FIVE PREVENTION OF THE USE OF EXPLOITATIVE TECHNIQUES

Objective

To prevent the use of techniques which exploit the possibility of conveying a message to the public, or of otherwise influencing members of the public, without their being aware, or fully aware, of what has occurred.

Section 1: Hypnotic and other techniques, simulated news

5.1.1 When disseminating material featuring demonstrations of hypnotic techniques, Providers must exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not disseminate his/her full verbal routine or be shown performing straight to camera.

5.1.2 Simulated news (for example in drama or in documentaries) must be disseminated in such a way that there is no reasonable possibility of the public being misled into believing that they are listening to, watching or reading, actual news.

5.1.3 Providers must not use techniques which exploit the possibility of conveying a message to viewers, listeners or readers, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred.

Section 2: Media Service competitions and voting

5.2.1 Media Service competitions and voting must be conducted fairly.

5.2.2 Providers must ensure that viewers, listeners and readers are not materially misled about any Media Service competition or voting.

5.2.3 Providers must draw up rules for any significant Media Service competition or voting. These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer's, listener's or reader's decision to participate must be stated at the time an invitation to participate is in any way disseminated.

5.2.4 Media Service competition prizes must be described accurately.

PART SIX ENSURING COMPLIANCE WITH ANY INTERNATIONAL OBLIGATIONS OF ST HELENA

Objective

Ensuring compliance with any international obligations of St Helena relating to Media Services.

6.1.1 Providers must comply with any international obligations of St Helena relating to Media Services.

PART SEVEN PROTECTION OF THE PUBLIC SAFETY, ETC.

Objective

To protect public safety, public health, public order and public morality.

Section 1: Crime

7.1.1 Media Services likely to encourage or incite the commission of crime or to lead to disorder must not be disseminated.

7.1.2 Descriptions or demonstrations of criminal techniques which contain essential details which could enable the commission of crime must not be disseminated unless editorially justified.

7.1.3 No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether directly or indirectly for a Media Service contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.

7.1.4 While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor must any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a Media Service contribution may be reimbursed.

7.1.5 Where criminal proceedings are likely and foreseeable, payments must not be made to persons who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it is appropriate to disclose the payment to both defence and prosecution if the person becomes a witness in any subsequent trial.

7.1.6 Providers must use their best endeavours so as not to disseminate Media Services that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

Section 2: Violence, dangerous behaviour and suicide

7.2.1 Media Services must not include material which, taking into account the context condones or glamourises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

7.2.2 Methods of suicide and self-harm must not be included in Media Services except where they are editorially justified and are also justified by the context.

Section 3: Photosensitive epilepsy

7.3.1 Providers must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where Providers can demonstrate that the dissemination of flashing lights and/or patterns is editorially justified, viewers must be given an adequate verbal and also, if appropriate, text warning at the start of the Media Service item.

Section 4: Religion

7.4.1 Providers must exercise the proper degree of responsibility with respect to the content

of Media Services which are religious Media Services.

7.4.2 The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.

7.4.3 Where a religion or religious denomination is the subject, or one of the subjects, of a religious Media Service, then the identity of the religion and/or denomination must be clear to the public.

7.4.4 Religious Media Services must not seek to promote religious views or beliefs by stealth.

7.4.5 Religious television or radio Media Services must not seek recruits.

7.4.6 Religious Media Services must not improperly exploit any susceptibilities of the public.

7.4.7 Religious Media Services that contain claims that a living person (or group) has special religious powers or abilities must treat such claims with due objectivity and must not disseminate such claims when significant numbers of persons not yet adult may be expected to be watching, listening or reading.

St Helena Media Commission

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