

CHANNEL 4 RESPONSE TO OFCOM “PROTECTING PARTICIPANTS IN TV AND RADIO PROGRAMMES – FURTHER CONSULTATION ON NEW BROADCASTING RULES”

Introduction

Channel 4 has for many years considered contributor care to be of paramount importance and is continually working to improve our protocols and practices in light of new learning. We have set out our approach in detail in our response to the first phase of consultation, as well as sharing examples of best practice and highlighting the vital importance of ensuring a diverse range of contributors and voices within programmes.

We fully support Ofcom’s aim that all broadcasters should have in place where necessary appropriate protocols to ensure that all contributors are treated with due care. Whilst we believe that this is most effectively achieved by working with our production partners to develop bespoke protocols tailored to the needs of individual productions, we welcome the provision by Ofcom of overarching principles and best practice guidance to the industry in this area.

We note the way in which Ofcom has responded to concerns set out in the initial consultation phase and support Ofcom’s revised proposal that any new rules to protect contributors are most appropriately placed in Section Seven of the Code. We do, however, have some concerns, and areas where we would welcome further clarification, as set out below in our response to Ofcom’s specific questions. These points are intended to ensure that Ofcom’s proposals are clear, workable, and proportionate and that they do not have any unintended negative consequences, particularly in relation to freedom of speech and the diversity of contributors within programmes.

We also believe that the Guidance which will accompany any Rule/Practice changes is key, and look forward to working constructively with Ofcom to develop carefully considered guidance which will ensure consistent best practice across the industry through proportionate and workable solutions.

Question 1: Do you agree with our *proposed approach* to the:

a) Additional measure of informed consent set out in Practice 7.3

In part, yes.

- We have concerns regarding Ofcom’s approach and proposals regarding Rule 2.17 as set out in our responses to Questions 1(c) and 2(c) below. If, however, Ofcom remains committed to adding a new Rule 2.17, whether in the proposed or some other form, we do not agree that it should be cross-referenced to Practice 7.3.

Ofcom’s powers as reflected in Section Two and Section Seven of the Code derive from different statutory provisions. The matters they require Ofcom to protect are different, and the tests to be applied are different:

- Ofcom’s powers to set standards objectives derive from s319(2) of the Communications Act 2003 (“the 2003 Act”). With regard to harm/offence, section 319(2)(f) states:

“that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection

for members of the public from the inclusion in such services of offensive and harmful material.” (emphasis added)

- Ofcom’s powers to regulate contributor care derive from s107 of the Broadcasting Act 1996, which addresses unjust or unfair treatment of individuals or organisations in programmes and unwarranted infringements of privacy.

As set out in detail in our submission to Ofcom’s first consultation published on 29 July 2019, these are entirely separate matters and rightly dealt with under different sections of the Code. This distinction is acknowledged by Ofcom itself.

The Foreword to Section Seven of the Code states:

“This section and the following section on privacy are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.” (our emphasis)

Ofcom’s current proposals are consistent with this, because they now have protection of contributors addressed in Section Seven, not Section Two, of the Code.

In our view, to cross-reference Practice to Follow 7.3 to any proposed new Rule 2.17 (whether as currently worded or otherwise) would blur that necessary distinction and wrongly conflate and connect two issues which, for very good reason, should be kept entirely separate. The audience is essentially unaware of any care taken by the broadcaster before and after the programme has been transmitted. For example, it is possible that great harm may be caused to a participant without anything offensive being broadcast. Conversely, the audience may be highly offended by the inclusion of material in a programme, but the contributor is completely content with their participation. These examples demonstrate clearly why the Section Two and Section Seven should not be linked or cross-referenced in relation to contributor care.

Therefore, we strongly believe that any cross-referencing to Section Two of the Code (including any new Rule 2.17) in Practice to Follow 7.3 should be deleted. For the same reasons we consider there should be no cross-referencing to Rules 1.28 and 1.29.

- For the reasons stated above, standards complaints by viewers under Section Two of the Code and fairness and privacy complaints by contributors under Section Seven of the Code are (rightly) subject to different tests and different procedural regimes. Any conflation of these two areas would be a matter of serious concern.

We should be grateful for confirmation from Ofcom in the accompanying Guidance that, whether or not any amendments are made to Section Two to enhance due protection of audiences from harm/offence because of a perceived lack of due care towards contributors to programmes, complaints under Section Two concerning perception of contributor care will be assessed on the basis of harm and offence to the audience by virtue of what they see and/or hear in the programme, not speculation as to what actual care may have been provided to

contributors before, during and/or after broadcast. It would be contrary to the Code and the statutory provisions underlying Section Two to go beyond this and assess viewer complaints under Section Two on the same basis as contributor complaints under Section Seven.

b) New Practice 7.15

Yes, in principle, however we believe the Guidance which will accompany this will be key to ensuring that (1) the burden placed on broadcasters is not disproportionate and unrealistic so that it results in an unintentional, undue restriction of freedom of speech and/or adversely affects the diversity of contributors; and (2) broadcasters and production companies understand clearly what is expected of them.

The Wording

- As we stated in our response to the initial consultation, Ofcom can and should legitimately focus on those contributors who are either vulnerable or who become vulnerable because of their inclusion in the programme.

However, Ofcom's current proposals start from the presumption that all participants in programmes are to be treated as vulnerable. Using the definition "*someone who might be at risk of harm as a result of taking part in a programme*" leads inexorably to the inclusion of almost all contributors to a television programme. This can be seen from the examples Ofcom gives:

"Someone might be at risk of harm as a result of taking part in a programme for reasons including (but not limited to):

- *they are not used to being in the public eye;*
- *the programme involves being filmed in an artificial or constructed environment;*
- *the programme is likely to attract a high level of press, media and social media interest;*
- *key editorial elements of the programme include potential confrontation, conflict, emotionally challenging situations; or*
- *the programme requires them to discuss, reveal, or engage with sensitive, life changing or private aspects of their lives."*

Parliament made no such definition. By taking such a broad approach and assuming vulnerability, we believe that the proposals go beyond the powers conferred on Ofcom by Parliament and risk unduly restricting the diversity of those that take part in programmes, with the potential for a chilling effect and a restriction on freedom of expression. As a consequence, we are concerned that effect of the proposed new rules and guidance remains disproportionate.

We believe that a more proportionate and permissible approach would be to amend the proposed new Practice 7.15 (b) and the introduction to the examples referred to above to read "*someone who might be at significant risk of serious harm as a result of taking part in a programme.*" (amendments underlined)

- **We also suggest that the paragraph in proposed new Practice 7.15 identifying relevant factors taken should be amended to:**

“In addition to the examples in this meaning, other factors that may be relevant in the context of Practice 7.15 include a person’s age, past or current personal circumstances or experiences, or their physical or mental health if these factors are disclosed to the broadcaster.” (amendment underlined)

It would be unduly onerous on broadcasters to be expected to address risks in situations where contributors do not disclose these factors to producers of programmes.

- **For the same reasons as stated in relation to Practice 7.3 above, we strongly believe that the cross-referencing new Practice 7.15 to Rules 1.28 and 1.29 and to Section Two of the Code (including any new Rule 2.17) should be deleted.**

The Guidance – General

We also welcome in principle the inclusion of an example risk matrix in the Guidance to assist broadcasters and programme makers in how to approach assessing and addressing risk in each case. It is difficult to comment definitively on the risk matrix proposed in the consultation without considering it in the context of the remainder of the Guidance which will accompany the new Practices 7.13 and 7.15.

The consultation paper contains a number of statements regarding approach to contributor care which we believe it would be very helpful to include in the Guidance:

- Ofcom does “...not intend to hamper or obstruct programme-making by imposing disproportionate and unjustifiable requirements” on broadcasters or programme makers, and “Programme participants should... be made aware of potential harm to their welfare (insofar as can be reasonably anticipated at the time) before they agree to take part and understand appropriate mitigations that the broadcaster or programme maker is proposing to put in place in order to minimise such risks.” The Guidance should also recognise that, when assessing the vulnerability of a contributor and consequential potential risks, broadcasters, programme makers and any expert advisors will be reliant on the veracity and accuracy of information provided to them by the contributors themselves. They can only make assessments on the basis of the information given to them by contributors. It is therefore vital that a relationship of trust can be created with contributors so that (1) they are not deterred from being honest, and (2) if broadcasters take appropriate steps to elicit relevant information to assess risk, and put in place measures which are appropriate on the basis of the information provided by the contributor, that is taken into account when assessing compliance with the Code.

- *“Nor should broadcasters be accountable for events beyond their control, or which may involve a range of complex causes.”* In particular, care should be taken not to assume an automatic causal link between a contributor’s treatment, or portrayal, in a programme and harm suffered by that contributor as a result of negative social media or other press coverage. It is right to expect broadcasters to warn contributors of the potential for negative social media commentary and to appropriately prepare contributors and support them to deal with such, but it would be wrong to expect broadcasters or programme makers to foresee exactly what sort of negative comments might be made.
- That the application of any new rules to all programme genres, news and current affairs in particular, will be addressed in the Guidance.
- Whilst it is of course right to expect broadcasters and production companies to put in place appropriate aftercare for contributors, what is appropriate will depend on the nature of the programme and the circumstances of the contributor. It would be unreasonable to expect broadcasters and production companies to provide aftercare to every contributor, or to do so on an indefinite basis, or to provide support for issues unconnected to the broadcast. Guidance regarding what will be expected in this respect would be welcomed.

The Guidance - Risk Matrix

In principle, Channel 4 supports the guidance that can come with the availability of a risk matrix as proposed by Ofcom. However, we have concerns about some of the matters in the matrix, the applicability of the assessment approach, its scope and proportionality. Subject to seeing the proposed Guidance, we have highlighted below some of the key points and queries on which we would value further discussion, clarity and guidance on from Ofcom before the rule changes and guidance are finalised:

- Acquired, UGC or historic content is not currently considered. Broadcasters do not necessarily have the ability to interrogate, oversee or monitor content which it did not itself commission. This is a particular issue in the current pandemic and beyond, when acquired or historic content may be re-broadcast years later. The content may comply with the existing requirements of the Code, yet it may not be feasible for the broadcaster to re-assess the welfare of contributors when repeating a programme long after it was made. This is particularly the case where the content is commissioned from independent production companies (which, in some cases, may no longer exist) and there is no direct contact between broadcaster and contributor. We believe that the Guidance and risk matrix should reflect this.
- We suggest amendment of A1.1 to replace “should refer” in terms of broadcasters and/or programme makers to “may wish to” refer to the risk matrix. As Ofcom has highlighted in its consultation process, it is not possible for duty of care measures to be a one size fits all approach in programme making. We consider that a risk matrix is a helpful guidance tool, but should not create an unfettered obligation or ‘tick box’ exercise which requires any given measure to be applicable in every case. A risk matrix produced now may not envisage the particular circumstances of programmes to be produced in the future or, as

recent events have shown, the factors that may impact on future productions. A clear statement from Ofcom in the Guidance that the risk matrix is an example rather than an obligation would be helpful.

- The risks and assessments referred to in the risk matrix appear primarily suited to big-budget, high-profile, constructed reality formats, which would typically fall within the 'high risk' measures referred throughout. It also appears directed towards broadcasters with in-house production units, so that the statutory obligation to assess and deal with health and safety risks lies directly with the broadcaster. Whilst it is right to expect a commissioner broadcaster to satisfy itself that the welfare of contributors is duly protected, it is for independent producers to comply with health and safety obligations towards occupiers of their premises which will include contributors to programmes. It would not be correct to expect the broadcaster to usurp that role. This is another reason that any risk matrix produced by Ofcom can only be for guidance and not to be used compulsorily.
- Channel 4 is concerned that the guidance is not sufficiently clear in relation to programmes such as news, current affairs and documentary making, whose risk profile considerably varies and yet the programmes often have public interest considerations that could or should outweigh the other matters referred to in the risk matrix. Whilst the public interest is referred to in passing ("*It may be fair to withhold all or some of this information where it is justified in the public interest...*") this public interest consideration should have greater weight and prominence in the wording of the Guidance and in the risk matrix, to underline its importance. We have concerns that without such emphasis, duty of care measures may be open to abuse by those whose actions are being exposed by public service programming in the public interest.
- Additional proportionality could be achieved in respect of news, current affairs and documentary programming in further ways:
 - **Amending the beginning of Practice to Follow 7.3 to read: "*Where a person is invited to make a contribution to a programme (except when the public interest outweighs it, the subject matter is trivial or their participation minor) they should normally, at an appropriate stage...*" (amendment underlined)**
 - We propose the first column in section (a) of the proposed risk matrix should be headed "*Factors to consider*" rather than "*Risks to identify*". The additional "*factors*" should in our view include a section on time and public interest, as set out below. We also consider that the "*Type of Participant*" should explicitly refer to public interest-type programming, where an organisation or individual's wrongdoing is potentially being exposed. We consider that these measures would assist in clarifying the weight to be given to different format types (eg. public interest potentially being a weightier consideration in non-constructed reality format film making and public service broadcasting).

- We believe that the vast majority of programmes will fall into the medium or high risk categories when assessed on the basis of section (a) of the risk matrix. It would be helpful to include further examples from Ofcom of the types of programmes it considers fall into these risk categories, so as to inform our own understanding of the position. In our view, the examples in the first column of section (c) are too broad and amorphous. If Ofcom is of the view that news and current affairs programming should ordinarily fall within low risk categorisation as Channel 4 does, a statement to this effect may be helpful.
- We would suggest the following specific amendments to section (a) of the risk matrix (amendments underlined)

<u>Factors to Consider</u>	<u>[Considerations]</u>
<u>Amend "Control" to "Control: participant"</u>	[as before]
<u>Control: production</u>	<p><u>Is this a programme commissioned/controlled by the broadcaster, and does it have knowledge of the filming conducted and participants involved?</u></p> <ul style="list-style-type: none"> • <u>Is this acquired content, or repeated from years ago?</u> • <u>Does the contractual agreement assist with some of these matters?</u>
<u>Type of Participants</u>	<p>[What type of participant is taking part?]</p> <ul style="list-style-type: none"> • [bullets as before] • <u>Are there public interest measures relevant to the particular participant, that warrant their inclusion and outweigh other matters in the risk matrix?</u>
<u>Time</u>	<p><u>Is the broadcast time sensitive?</u></p> <ul style="list-style-type: none"> • <u>Do the matters being broadcast to the public need to be done with some urgency or time sensitivity, which may outweigh other matters in the risk matrix?</u>
<u>Public interest</u>	<p><u>Is this programme a matter of public interest?</u></p> <ul style="list-style-type: none"> • <u>Is the public interest such that it outweighs some/all of the risks to the particular individual participant?</u>

- With regard to sections (b) and (c) of the proposed risk matrix, it is helpful to outline steps which broadcasters and production companies may consider when assessing and managing risk, and may reflect as appropriate in their guidance for

specific productions. However, it is vital that the Guidance makes clear that Ofcom understands that not every step (or indeed any step) will be relevant, practicable or appropriate in every case, otherwise it could have unintended consequences of (1) making some programmes unaffordable and (2) smaller production companies might not be commissioned because they are themselves unable to support every single measure. This could have a serious impact on Channel 4's ability to fulfil its statutory remit and offer a diverse range of programming and support independent producers.

c) **New Rule 2.17**

No.

- We understand Ofcom's rationale for proposing an amendment to Section Two to reflect the fact that in recent years there has been a rise in complaints by the public focusing on the welfare of contributors. However, the mere fact that complaints have increased does not in and of itself create a presumption that the Code does not already provide adequate protection. It is not (so far as we are aware) suggested that such complaints were assessed as not to be pursued, or not upheld, by Ofcom because they were outside the remit of the Code as currently drafted.

Perception of editorial content is a subjective matter, and there may be many reasons for the increase in complaints. The key considerations are (1) whether the Code already makes provision for such complaints to be made and (2) whether there has been an increase in the number of breaches of the Code which provides evidence that there may be issues that need addressing. We believe that the Code in its current form already provides adequate protection. We are also not aware of Ofcom experiencing an increase in breaches of the Code (or indeed complaints outside the scope of the current wording of the Code) of a type to necessitate this amendment to the Code.

If an increase in such complaints or breaches were to be a criterion for considering regulatory intervention, then their precise nature should be central to the assessment of whether new rules are needed and, if so, what their scope should be. This is key because any amendments must conform to the overriding principles under which Ofcom is obliged to perform its duties, namely that its *"regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed"*. (s3(3)(a) of the 2003 Act)

- The powers conferred on Ofcom by statute to set objectives standards to protect audiences from harm and offence are limited to harm and offence caused by what the public see and/or hear in a programme. Rule 2.1 already clearly states that broadcasters must adequately protect the public from the inclusion of harmful and/or offensive material in programmes. Rule 2.3 provides examples of material which might cause offence, which include examples which audiences might well perceive as linked to a lack of due care (eg. offensive language, humiliation, distress, violation of human dignity, discriminatory treatment), but it is not an exhaustive list. Ofcom has regularly investigated complaints about

audience harm or offence in relation to perceived lack of due care under these rules and has taken action where it has concluded that broadcast programmes were in breach of the rules.

- Channel 4 also has serious concerns that in seeking to protect audiences, this rule could require causing harm to contributors. The obligation of transparency to viewers could be at odds with our obligations to individual contributors, particularly in relation to privacy and fairness. In order to satisfy this Rule as drafted, broadcasters could be required to disclose personal and sensitive details to viewers about duty of care measures taken in respect of individual participants (such as medical care, adjustments to deal with disability, counselling or psychological support). Unless consent is obtained to do that, which may not be forthcoming - particularly in the case of for example mental health support - such a disclosure would result in a breach of a contributor's privacy. We are concerned that this rule would unacceptably involve broadcasters having to choose between the legal rights of its contributors and the rights conferred on its audience by the Code, resulting in a breach of either the law or the Code depending on which right is chosen. This inherent contradiction will lead to insurmountable practical difficulties for broadcasters. Such an obligation could also deter individuals from participating in our programming, particularly if they have mental health or other private needs that require support and that they do not want to disclose to audiences. Channel 4 is concerned that an important pool of diverse individuals could be deterred from contributing to its programming by this Rule, which could inhibit its ability to fulfil its statutory remit.
- Channel 4 also has significant concerns that this new rule will require broadcasters to unnecessarily disclose detailed editorial measures taken 'behind the scenes' which could negatively impact on programming and the viewer experience of programming:
 - We consider the reference to "those who appear to be put at risk of harm" is disproportionately wide and should be amended for consistency and for the reasons stated above to "significant risk of serious harm". (Amendment underlined)
 - Whilst we understand that the avoidance of unjustified offence is part of responsible programme making, the imposition of a requirement to include for the audience during a programme "*sufficient context and/or appropriate information to audiences to minimise the potential for harm and/or offence*" goes significantly further than the wording of Rule 2.3, adding in particular both a requirement for "context" and referring to the amorphous concept of "potential" harm and offence rather than actual offence as currently described in Rule 2.3. We have concerns that this could unduly and unnecessarily require disclosure of the detail of duty of care measures taken to support contributors. This would be an impermissible encroachment into editorial discretion which could ruin creative aspects of a programme including drama, suspense, surprise and the appearance of jeopardy. Programmes where contributors have given their informed consent to take part in challenging tasks, such as in immersive programmes like those

involving survival on a desert island may lose their value and interest if all measures taken are required to be explained to viewers. We consider such measures to be an undue fetter on freedom of expression and believe viewers are sophisticated enough to understand that in each programme contributors are appropriately cared for, and do not need to be informed what specific measures have been taken. The other changes Ofcom is proposing to the Code to ensure appropriate duty of care is exercised remove any need to provide detailed information in programming. We suggest that if the requirement to provide such information to the audience remains that the wording of the provision be amended to make clear that it can be provided on a broadcaster's website and that the requirement is framed to allow for post broadcast provision of the information if a viewer makes contact. Given the convergence of broadcast and digital content and the increased familiarity and expectation of audiences in relation to interaction between both, we believe this would satisfy any concerns Ofcom and viewers may have in this area.

Given the protection already provided to audiences, in particular the wording of Rule 2.3 which allows wide scope for interpretation as to what may be considered offensive, we remain unclear as to why a new Rule 2.17 is needed at all. It is also a matter of concern that there does not appear to be any recognition in the proposed Rule 2.17 that there may be circumstances in which offence is justified, although the consultation paper itself does recognise this. It would be disproportionate and risks becoming an impermissible restriction on broadcasters' freedom of expression to entirely exclude the possibility of there being cases in which the context is such that the offence may be justifiable.

Channel 4 believes that Rules 2.1 and 2.3 already protect audiences from any harm and offence they might suffer from their perception of how they see and hear the groups identified in the proposed new Rule 2.17 being treated in programmes. We therefore do not see what the proposed new Rule 2.17 adds to the audience protection already provided by Rules 2.1 and 2.3, and indeed is more likely to cause confusion.

For the above reasons, our primary position is that Rules 2.1 and 2.3 already permit the public to complain about any harm/offence they suffer as a result of any lack of due care which they perceive on screen in respect of any individual, vulnerable or otherwise, and no new Rules, whether in the form of the proposed new Rule.2.17 or otherwise, are required.

- If Ofcom does not agree with our primary position and considers that further assurances with regard to the protection of audiences are required, we believe that a more consistent and effective approach would be to amend Rule 2.3 rather than creating a new Rule 2.17. In this eventuality, we would propose that Rule 2.3 should be amended as follows:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). 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 reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership), treatment in programmes of vulnerable people and those who appear to be put at significant risk of serious harm as a result of their participation in a programme. Appropriate information should also be broadcast or provided online to viewers where it would assist in avoiding or minimising offence.” (Amendments underlined)

This would not only provide a clear statement that these matters are protected under Section Two of the Code, it would also ensure a proportionate approach by recognising that there might be circumstances in which such offence to the audience might be justified by the context (for example in the scenarios outlined in our response to Question 1(a)). Furthermore, it would prevent an undue restriction on editorial choices in the types of programmes that can be made or the diversity of contributors in those programmes, which we believe is vital to ensuring that we can make programmes which reflect the diversity of the UK, break down stigma and promote greater understanding, inclusion and empathy. This is of particular concern to Channel 4 given our statutory remit to reflect diversity and showcase alternative viewpoints.

- Regardless of what (if any) amendments are made to Section Two of the Code:
 - It should be recognised, for the reasons set out above, that there are circumstances in which offence to the audience might be justified by the context.
 - The danger of conflating the scope of what is to be protected (and how it is to be protected) is such that we would ask Ofcom to ensure that the accompanying Guidance makes clear the distinction between the matters to be taken into account when protecting audiences under Section Two from harm/offence by virtue of what they hear and see in the programme, and protecting the welfare of contributors as set out in any new Practice to Follow 7.15. Clearly, it would be wholly disproportionate to oblige broadcasters to protect viewers from offence caused by their own assumptions rather than what they see or hear in the programme. Ofcom should not be opening a door to complaints by pressure groups, lobbyists and campaigners with their own agendas in circumstances where contributors are satisfied with their care and have made no complaint under Sections 7 or 8 of the Code. Having to deal with such campaigning complaints could have a chilling effect on freedom of expression.
- For the reasons stated in our response to Question 1(a) above, if a new Rule 2.17 is included in the Code, we strongly believe that it should not be cross-referenced to Practices 7.3 and 7.15 and Section Eight (Privacy).

Question 2: Do you agree with the *proposed wording* of the:

a) Additional measure of informed consent set out in Practice 7.3

Not entirely:

- We are concerned that the reference to “potential negative consequences” is too broad and unduly burdensome, as it could cover relatively trivial matters such as someone being mocked for making a fool of themselves on a quiz show, even if the show did not make fun of them. In our view, “potential risks or harms” (the original wording proposed by Ofcom in its first consultation on this matter) would be more proportionate.

We submit that the beginning of the new bullet point in 7.3 should read “be informed about potential risks or harms arising from their participation in the programme...” (amendment underlined). This should also be the case in any proposed Guidance.

- For the reasons stated in our response to Question 1(a) above, we do not agree that Practice to Follow 7.3 should be cross-referenced to Section Two of the Code (including any proposed new Rule 2.17), or to Rules 1.28 and 1.29 and that these references should be deleted altogether.

b) New Practice 7.15

See our response to Question 1(b) above.

c) New Rule 2.17

No.

As set out in our response to Question 1(c) above:

- Our primary position is that no amendment is required to Section Two of the Code.
- If Ofcom feels strongly that an amendment is necessary, we believe that any clarification of Section 2 is most appropriately dealt with by way of an amendment, as suggested above, to Rule 2.3, not by adding the proposed new Rule 2.17.
- Any amendments made to Section Two to address contributor care should expressly acknowledge that there may be circumstances in which offence to the audience might be justified.
- Any amendment to Section Two made to deal specifically with contributor care should not be cross-referenced to Sections Seven and Eight for the reasons stated in our response to Question 1(a) above.