

## Your response

Question	Your response
<p>1. Do you agree with our proposed approach to the:</p> <ul style="list-style-type: none"><li>a) additional measure of informed consent set out in Practice 7.3;</li><li>b) new Practice 7.15; and</li><li>c) new Rule 2.17?</li></ul> <p>Please give reasons for your answer.</p>	Confidential? –N
<p>2. Do you agree with the proposed wording of the:</p> <ul style="list-style-type: none"><li>a) additional measure of informed consent set out in Practice 7.3;</li><li>b) new Practice 7.15; and</li><li>c) new Rule 2.17?</li></ul> <p>Please give reasons for your answer.</p>	Confidential? – N



## **Directors UK response to Ofcom's consultation on protecting participants in TV and radio programmes - Further consultation on new broadcasting rules**

### **About us**

1. Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic and contractual interests of over 7,500 members — the majority of working TV and film directors in the UK.
2. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.
3. Directors UK members have previously expressed concern over the lack of a clear and consistent approach to the care of participants in factual and entertainment programmes, and in particular with the assessment and after-care provisions for some contributors. We therefore welcome the opportunity to comment on this additional consultation on the new broadcasting rules to protect participants in TV and radio programmes.
4. Providing a clear set of rules regarding the responsibility of broadcasters and productions for ensuring due care of participants at all stages of production is welcomed, but these will only truly be effective if broadcasters, production companies and production teams at all levels adhere to the new rules. To ensure this happens we strongly believe there needs to be a system of scrutiny and enforcement, and a clear mechanism for production staff to raise concerns.

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

- a) additional measure of informed consent set out in Practice 7.3;
- b) new Practice 7.15; and
- c) new Rule 2.17?

Please give reasons for your answers.

**1a) Do you agree with our *proposed approach* to the additional measure of informed consent set out in Practice 7.3;**

5. We agree with the proposed approach to introduce additional measures regarding informed consent in section 7 of the Broadcasting Code, as this section already provides a framework for

setting out action for “Dealing fairly with contributors and obtaining informed consent”<sup>1</sup>. It therefore seems an appropriate place to update the measures aimed at protecting participants and to emphasise the importance of making people aware of the potential negative impacts of participating in a programme as part of securing informed consent.

**1b: Do you agree with our *proposed approach* to the additional measure of informed consent set out in new Practice 7.15;**

6. We agree with the need to take extra care of vulnerable participants and therefore with the proposed approach to introduce **new practice 7.15**, “to ensure that fair treatment also includes a requirement for broadcasters to provide due care over the welfare of “vulnerable people” who take part and those who might be put at risk of harm as a result of taking part in a programme”.
7. We agree that it seems appropriate to use the same definition of “vulnerable people” as is used elsewhere in the code e.g. 8.22<sup>2</sup>:  
*“Meaning of ‘vulnerable people’: This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill”.*  
We also agree that it is appropriate to highlight that other factors may also need to be considered: “e.g. a person’s age, past or current personal circumstances or experiences, or their physical or mental health”.
8. We agree that keeping 1.28 and 1.29 of the code, to provide additional protection in terms of due care for child participants, is appropriate.
9. We support the introduction of a risk assessment requirement within 7.15 to establish the level of risk to vulnerable participants, and to identify what measures should be implemented by broadcasters/productions to address or manage these. Our members believe that, if the example risk assessment matrix is adopted and correctly implemented, it is this sort of detail which sets the framework for ensuring the safety of well-being for participants. In our response to the first consultation we also provided examples of best practice, which we are re-submitting as an appendix to this submission. We recognise that Ofcom has also set out its position that “we are not proposing to define the level of due care required in different cases by reference to any particular genres. Rather we think the focus should be on the person taking part and an assessment of the potential risk, taking into account all the relevant factors in each case”. However, our members felt that it would be useful to include some additional examples in the matrix of what production types would be considered as ‘high/ medium/ low’ risk, as currently just one is given, or whether more detail could be given within these boxes to spell out why these programmes are in these categories. This would ensure that everyone understands the types of programme being considered and may prevent a production being counted as medium risk when in fact it is high, or low risk when it is medium.

**Additional points**

10. There are a number of additional issues raised in our response to the original consultation which we feel have not been adequately addressed in these updated proposals and guidance.

---

<sup>1</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-seven-fairness>

<sup>2</sup> <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-eight-privacy>

### **Continuity of duty of care commitments:**

11. The proposed guidance includes a suggested risk assessment matrix to support the new practice, 7.15. This includes the recommendation to “*Provide participant with a production contact*” during and after production, based on the vulnerability assessment of the participant. Given the freelance and transient nature of production teams who are assembled for a project and quickly move on once it is finished, we believe it is important to highlight within this guidance:
  - i. That productions must ensure that duty of care requirements are conveyed to the entire production team and are followed through on, even after the programme team has disbanded.
  - ii. The need for clear channels of communication across the production team regarding participant well-being. For example, on some productions directors may be filming using rigged or remote cameras and therefore don’t have direct contact with participants, but in their role capturing the stories have insights on contributor’s wellbeing that need to be shared, particularly as stories evolve and change. Similarly, those in contact or responsible for a contributor need to be able to advise the production teams, who are filming the participant, of any concerns.
  - iii. Continuity of care is key, particularly for vulnerable participants. On productions where there are a number of executives, producers and directors involved at different stages it is easy for information to be forgotten or not passed on in the process. This is particularly important with regards aftercare, as freelance production teams disband after a production finishes this continuity can be lost, keeping track of the level of rigour being applied to the aftercare can be difficult, but is paramount.
  - iv. Good record keeping is essential to ensure there is a paper trail of information to document what has been done and what has been decided.

### **Implementation and enforcement**

12. The current approach offers no insight on the mechanism for scrutiny or accountability of delivering duty of care, other than providing a route to complain to Ofcom if participants are unhappy with their treatment. Currently the proposals states that broadcasters should require the production company to undertake an appropriate level of risk assessment which they *may* then want to manage. The concern raised by our members is that if the evaluation of participant risk assessments is solely left to broadcaster or production companies, it runs the risk that the implementation of the appropriate duty of care may not always be followed through as it should, especially given the pressure of squeezed production resources (money, time and people) to adequately address these. In our members experience not every production they work on is responsible and, significantly, not every production that requires this level of care has a budget that could support this process.
13. For these reasons implementation and enforcement were key issues raised by our members in our original response, and we do not feel these have been fully addressed in the updated proposals. If the rules and guidance are not implemented on the ground as intended, they will be of no use and could cause even greater harm. Who is scrutinising the broadcaster or production company assessments of the risks to vulnerable participants, or reviewing whether the provisions being taken are robust enough regarding contributor care and aftercare? In the same way that an independent Health & Safety body might vet Health & Safety filming risk assessments, it is important that there is a mechanism to assess and enforce duty of care obligations to participants if the new code is to achieve its purpose.
14. In addition, a real concern for our members is that production crews need to feel confident in reporting concerns about participant welfare and wellbeing at any stage of production, and that

these will be listened to and taken seriously. Some members told us of their experiences flagging something which they felt is uncomfortable for the participant, but other senior or more permanent members of the production think is OK, or perceived that the participant seems happy. Directors and other crew, who are almost always freelance, often feel unable to raise their concerns for fear of being viewed as a troublemaker and risking future employment, or that their concerns are dismissed.

15. We therefore believe that as the regulator, Ofcom should also be addressing the need for some form of whistle blowing procedure, or protected disclosure to a third party for individuals on a production to raise concerns regarding the treatment of participants.

**Question 1c: Do you agree with our *proposed approach* to the new Rule 2.17?**

16. Ofcom is right to recognise the greater sensitivity audiences have towards perceived or actual harm of programme participants, and how they are treated/portrayed. Adding a new rule 2.17 in the Broadcasting Code under Section 2 “Harm and Offence” provides recognition of this and an expectation for broadcasters, audiences and Ofcom to address it. Ofcom is also right to acknowledge that *“most of the care given to participants by broadcasters and programme makers takes place off air and is often not evident to audiences.”* As outlined in the guidance, careful consideration will need to be given by broadcasters and production companies as to how to signpost and reassure audiences about any safeguarding measures which are in place, without this interrupting or affecting the storytelling.

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

- a) additional measure of informed consent set out in Practice 7.3;
- b) new Practice 7.15; and
- c) new Rule 2.17?

Please give reasons for your answers.

17. Regarding the proposed wording of the new rules and practice, the wording of the proposed changes seems appropriate. However, we reiterate the points raised above about the need for greater enforcement and scrutiny to ensure that the intended protection and duty of care is delivered.

**Additional issues**

**Budget for wellbeing support**

18. A key issue not addressed in this consultation, but which we raised in our previous response, is how this requirement to provide wellbeing support for participants is funded. In our members experience not every broadcaster or production company factors the cost of psychological assessment or follow up needs for participants into their budgets. We have heard of instances where production companies have undertaken the appropriate assessments on key contributors who will be put into vulnerable situations, but the channel will not contribute funding for this assessment or the after care. In some cases, responsible production companies pay for the assessments themselves outside of their programme budgets or by squeezing them out of the programme budget to the detriment of other production costs - but this is not a sustainable approach.

19. Directors UK believes that the lack of due care in dealing with vulnerable participants largely stems from budgetary restrictions resulting in a trade-off between spending money on getting the content for a programme or the welfare of participants. Whilst our members wholeheartedly support the call for improved rules and guidance to protect the welfare of participants, they are concerned that the amount a production spends on the welfare of participants should not be something that is being weighed up alongside how many shoot days a production can afford.
  
20. We believe that if the industry genuinely wants to prove itself as responsible, the money required for these assessments cannot be a factor which prevents it from happening. On each production, there should be a budget line ring-fenced by broadcasters or production companies for delivering participant care. The already stretched financial resources of a production cannot be part of the equation when worrying about due care of participants. Our members have expressed very real concern that if the costs of delivering this are not factored in as a real cost of production then it will be the welfare of the crew that ends up being further compromised as they try to deliver it.

**Appendix:**

This list of best practice was outlined in our original response paper (Sept 2019) based on the experience of Directors UK members in relation to protecting participants:

Directors UK members have stressed the importance of:

- i Reinforcing that responsibility for due care rests with all - from the senior executives to the casting team to the junior and senior production teams. All production team staff need to understand their role in delivering a duty of care to participants.
- ii Thoroughly vetting and conducting appropriate assessments with participants before committing to filming.
- iii Providing clear one-to-one guidance to participants to ensure they are explicitly aware of what the production is, what it will entail and what they are undertaking; this should include being clear in advising them that what they say can be used, how what they say or do may reflect on them, and what may happen after a programme is broadcast and on social media.
- iv "Pysch testing" must be more than just a box-ticking exercise and must be at the appropriate level for the production and the participant. This will need to be budgeted for.
- v Appropriate after-care must be considered and provided if required. This will need to be budgeted for.
- vi Putting in place the right people to look after vulnerable participants during and after production as appropriate, and ensuring that their duty of care requirements are conveyed to the entire production team and are followed through on.
- vii Continuity of care is key, particularly for vulnerable participants, and on productions where there are a number of executives, producers and directors involved at different stages. It is easy for information to be forgotten or not passed on in the process, particularly as stories evolve and change. This is particularly important with regards aftercare, as freelance production teams usually disband after a production finishes and this continuity can be lost, keeping track of the level of rigour being applied to the aftercare can be hard.
- viii Clear channels of communication – for example, on some productions, directors may be filming using remote cameras and don't have direct contact with participants, but in their role capturing the stories have insights on contributor's wellbeing that need to be shared.

Similarly, those in contact or responsible for a contributor need to be able to advise production teams of any concerns.

- ix Good record keeping is essential to ensure there is a paper trail of information to document what has been done and what has been decided.
- x Providing a safe place for production teams to take their concerns and that these will be handled correctly.
- xi Recognising the value of experience in key production roles. How experienced is the person doing the participant selection? They may be junior members of a team with less experience of the impact of production on vulnerable participants. Often directors are brought on later in the production process and their experience working with contributors directly on a shoot and afterwards is not used to the best advantage.
- xii Debriefing with production teams after to assist in developing and sharing best practice.

An example of best practice described by a member was the psychological assessment and support process on a series about children in poverty. The 'psych assessment' was a three stage process - starting with a questionnaire, followed up by a face to face meeting, and then a phone call with a different expert who fully explained the experience of being on TV and who offered ongoing support to those involved. Three years later, the psychologist is still offering support to the children on that series. This is an example of how best to deal with contributors who are emotionally vulnerable or who are being put in situations that are designed to exploit their emotions.

We also want to draw attention to the British Psychological Society's publication 'Psychology and Media Productions' which they have developed following consultation and piloting across the broadcast industry. It aims to provide a best practice framework for commissioners and producers.<sup>3</sup>

They advise that where BPS members have been involved in TV productions, best practice can include:

- Initial screening of potential participants conducted by psychologists with the appropriate qualifications and experience to use the various tools available, including psychometric tests, structured interviews and clinical judgements.
- Comprehensive risk assessment tailored to the expected demands and challenges of the proposed participation level in that particular production.
- Psychologists to provide ongoing advice regarding the monitoring of participants and who may continue to be involved in that during production.
- Working with chaperones or other persons in caring roles to ensure that adequate sensitivity to risks and potential harms is in place, along with protocols for intervening if problems are seen to arise.
- Planning aftercare that is tailored to the needs of the production and level of risk and potential consequences, informed by the reactions of the participants during the production.

Throughout the three stages of safeguarding, before, during and after production, the psychologist(s) involved will ensure that producers agree to follow the advice and guidance of the psychologist(s) to protect the best interests of the participant, to mitigate as far as possible psychological risks identified by the psychologist(s) and to put in place procedures such as provision for immediate mood restoration if participants show signs of distress during production or for more

---

<sup>3</sup> British Psychological Society <https://www.bps.org.uk/sites/bps.org.uk/files/News/News%20-%20Files/Media%20ethics%20guide%20FRIDAY%20FINAL%20v5.pdf>

extended support if needed after the production. For aftercare that may involve psychological treatments, for example for anxiety or depression, appropriately qualified and experienced psychologists need be involved, and the aftercare needs to be adequately resourced. Psychologists will advocate for and support valid consent and withdrawal protocols to ensure that the autonomy of contributors is protected.

*Source: BPS*

**Directors UK**  
**[www.directors.uk.com](http://www.directors.uk.com)**  
**July 2020**