

Section Seven: Fairness

(Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003 and sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), Article 28 of the Audiovisual Media Services Directive, Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.)

Foreword

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.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes as broadcast. Following these practices will not necessarily avoid a breach of this section of the Code (Rule 7.1). *However, failure to follow these practices will only constitute a breach where it results in unfairness to an individual or organisation in the programme.* Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid unfair treatment.

The following provisions in the next section on privacy are also relevant to this section:

- the explanation of public interest that appears in the meaning of “warranted” under Rule 8.1 in Section Eight: Privacy;
- the meaning of surreptitious filming or recording that appears under “practices to be followed” 8.13 in Section Eight: Privacy.

Principle

To ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes.

Rule

- 7.1 Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

Practices to be followed (7.2 to 7.14 below)

Dealing fairly with contributors and obtaining informed consent

- 7.2 Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise.
- 7.3 Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:
- be told the nature and purpose of the programme, what the programme 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 broadcast;
 - 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 programme 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 programme maker and broadcaster in relation to their contribution; and
 - be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being ‘informed consent’ (referred to in this section and the rest of the Code as “consent”).

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 section of the Code.

- 7.4 If a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or other person of eighteen or over in loco parentis. In particular, persons under sixteen should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.
- 7.5 In the case of persons over sixteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should normally give it on their behalf. In particular, persons not in a position to give consent should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.
- 7.6 When a programme is edited, contributions should be represented fairly.
- 7.7 Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.
- 7.8 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster's own material.

Opportunity to contribute and proper consideration of facts

- 7.9 Before broadcasting a factual programme, including programmes examining past events, broadcasters should 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.
- 7.10 Programmes – such as dramas and factually-based dramas – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

- 7.11 If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.
- 7.12 Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.
- 7.13 Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Deception, set-ups and ‘wind-up’ calls

- 7.14 Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or 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 wind-up calls or entertainment set-ups, consent should be obtained from the individual and/or organisation concerned before the material is broadcast;
 - if the individual and/or organisation is/are not identifiable in the programme then consent for broadcast will not be required;
 - material involving celebrities and those in the public eye can be used without consent for broadcast, but it should not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress. (Normally, therefore such contributions should be pre-recorded.)

(See “practices to be followed” 8.11 to 8.15 in Section Eight: Privacy.)