



Guidance Notes

Section 7:

Fairness

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This guidance is provided to assist broadcasters in interpreting and applying the Broadcasting Code. Research which is relevant to this section of the Code is indicated below.

Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

We draw broadcasters' attention to the legislative background of the Code which explains that:

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text.”

Practice to follow 7.3

It should be noted that the measures outlined in “practice to follow” 7.3 are not a definition of “informed consent”. In particular, there may be times when it is unnecessary to follow each and every point, for instance in the production of a news item. There are other occasions, for instance in the interest of a legitimate investigation when the broadcaster may withhold certain information. Conversely, there may be circumstances where other information should be provided to the contributor.

Complaints about fairness may occur some time after the programme is transmitted and after relevant freelance staff have left or independent production teams have been disbanded. (Time limits within which complaints are considered are given on the Ofcom website). Therefore broadcasters may find it helpful to make and maintain written records of discussions with contributors before filming and/or broadcast and obtain informed consent in writing. It may also be helpful to the broadcaster to provide information on the areas of questioning, where practicable, in writing.

Significant changes

In these circumstances, “significant changes” could include changes to the programme title, changes to when and where the programme is to be first broadcast (particularly if the timing and location of broadcast is particularly sensitive), changes to the other likely contributions, or a decision to edit a contribution where assurances had been given to the contrary. However, as the “practice to follow” points out these would only be relevant where not doing so might result in material unfairness.

Practice to follow 7.7 Guarantees given to contributors relating to protection of identity

Complaints in this area may arise through a lack of understanding about what was actually agreed in the first instance.

If a contributor has concerns about protecting their identity and the programme maker agrees to take steps to protect their identity, it is important that the contributor is given sufficient information to be able to understand in advance what steps the programme maker proposes to take, including the degree of protection that will result from any steps taken.

In some circumstances it may be sufficient to ensure that the contributor is simply not specifically identified (e.g. by being named). In other (more sensitive) circumstances, it may be necessary to ensure that they are not rendered identifiable to a particular person or persons, including their own family or friends (e.g. as a result of the broadcast of certain images, the divulging of personal details or characteristics etc).

It should not be assumed that a contributor will necessarily appreciate the fine distinction between not identifying them in the programme and making sure they are not identifiable. Programme makers should judge the sensitivity of the particular circumstances when considering what level of protection is appropriate to protect a participant's identity.

To reduce the possibility of any subsequent misunderstanding, television programme makers should ensure participants understand exactly how their image and voice will be disguised (e.g. by using an actor's voice or by blurring, pixilation or silhouetting).

Practice to follow 7.9 Contribute

In these circumstances, "contribute" can include an interview, live or recorded, or a report of a written or oral statement or comments.

Practice to follow 7.10 Factually-based dramas

When dramas are based on facts and on real characters it may help avoid later complaints of unfairness if it is clear to audiences whether they are watching or listening to dramatised documentaries, presented as reconstructing actual events, or dramas more loosely-based on real-life characters or incidents.

Practice to follow 7.11 Opportunity to respond

An individual or organisation needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond properly. The programme should fairly represent the substance of any response but it is not normally necessary, in the interests of fairness, to reproduce a response in its entirety.

Where an individual or organisation withdraws their proposed response, there is still an obligation on the broadcaster to achieve fairness (for example broadcasters are still obliged under section 7.9 of the Broadcasting Code to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation). This does not mean that the broadcaster should transmit all or part of a withdrawn statement, nor that the broadcaster should break any pre-transmission agreements over its use. However the broadcaster should explain the reasons for the absence of a contribution, and reflect any material facts in relation to the position of the individual or organisation in the programme, if it would be unfair not to do so.

Practice to follow 7.12 Non-participation

Anyone has the right to refuse to participate in a programme, but the refusal of an individual or organisation to take part need not normally prevent the programme from going ahead.

Practice to follow 7.14 Surreptitious filming or recording

Surreptitious filming or recording includes the use of clandestine long lenses or secret recording devices, as well as leaving an unattended camera or recording device on private property without the informed consent of the occupiers or their agent. It may also include 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.