

**This Guidance on Rules 1.28 and 1.29 (dated March 2015) updates and replaces the previous published guidance on these rules which can be found in the following document: Guidance Notes, Issue Six: 30 March 2015 (<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/protecting-under-18s/>)**

## **Rule 1.28 to 1.29: The involvement of people under eighteen in programmes**

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*If a person aged under-eighteen appears in, or participates in any respect in a programme, the broadcaster must ensure that it complies with Rules 1.28 and 1.29<sup>1</sup>.*

*Broadcasters should take due care to protect any participants aged under-eighteen. The level of care required will depend on all of the relevant circumstances, including the nature of the appearance and level of participation of each under-eighteen. This applies whether the material is originally produced or is acquired from another source. Consideration of the child's welfare should be at the heart of the production.*

### **Introduction**

This guidance has been updated to reflect the findings of recent investigations in this area and in consultation with stakeholders.

It contains recommendations to assist broadcasters achieve the appropriate level of protection for under-eighteens in programmes so as to ensure a programme's compliance with Rules 1.28 and 1.29.

As always, however, responsibility for ensuring compliance rests with the broadcaster who will need to decide what measures are appropriate in the particular circumstances of individual programmes, genres and formats<sup>2</sup>. The rules apply to all broadcasters, whether television or radio. The primary focus of this guidance however is the participation, in any respect, of under-eighteens in television programmes, given their more widespread participation in television as compared to radio. Many of these recommendations may also be considered in radio programming.

Our research<sup>3</sup> has demonstrated that both adults and children value and enjoy under-eighteens being represented in programming. Children form strong views and feelings from a very early age and these deserve to be seen and heard in programmes. However, the

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<sup>1</sup> Broadcasters should note that Rule 2.3 may also apply. See guidance on p.3 of this document.

<sup>2</sup> As broadcasters are aware, there are additional considerations and requirements to be taken into account in the professional involvement of under eighteens in programmes, for instance as actors. In particular, broadcasters should see the latest legislation and guidance on child performance licensing issued by the Department for Education: (<http://www.legislation.gov.uk/ukxi/2014/3309/contents/made> (legislation and <https://www.gov.uk/government/publications/child-performance-and-activities-licensing-legislation> (guidance)). In addition the National Network of Child Employment and Entertainment (NNCEE) has also issued best practice guidance in this area. See: <http://www.nncee.org.uk/attachments/article/198/PDF%20Examples%20of%20best%20practice%20final-2>.

The Scottish Government has also recently published new rules and guidance for licensing the participation of children and young people in performances and specified sporting and modelling activities. The rules, general guidance and guidance on risk assessments can be found here: <http://www.gov.scot/Topics/People/Young-People/families/young-performers.pdf>

<sup>3</sup> *Children in Programmes: An independent research report for Ofcom by Sherbert Research (2007): [http://www.ofcom.org.uk/research/tv/reports/children\\_in\\_programmes/](http://www.ofcom.org.uk/research/tv/reports/children_in_programmes/). Also see earlier research conducted by the BSC: *Consenting children: the use of children in non-fiction television programmes (2001)*; *Consenting adults (2000)*.*

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ability of participants to weigh up the potential consequences of participation can vary widely depending on age, maturity and individual circumstances.

## **Key Issues**

### **Rule 1.28**

*“Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.”*

There are three key principles broadcasters should take into consideration when applying this rule:

#### **1) Central to Rule 1.28 is the concept of *due care*:**

“*Due*” is used in the same way as in other areas of the Code. It indicates that the level of care must be “appropriate to the particular circumstances”.

#### **2) The broadcaster must judge what is appropriate in each case<sup>4</sup>:**

Whether these recommendations, or alternative measures, are the most appropriate will vary according to the particular programme and the nature and degree of the child’s involvement. Other relevant factors include the participant’s age, maturity and capacity to make judgements about participation and its likely consequences.

#### **3) The phrase “physical and emotional welfare and the dignity of people under eighteen” indicates the broad potential impact that participating in a programme might have on this age group:**

Expert opinion indicates that a child’s vulnerability and resilience can vary significantly, depending on factors such as: age; gender; maturity; cultural, ethnic and religious background; personal circumstances; and previous life experiences. Broadcasters should not assume that every young person will respond in the same way when participating in a production.

### **Rule 1.29**

*“People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.”*

The key issues broadcasters should take into consideration when applying Rule 1.29 are as follows:

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<sup>4</sup> Broadcasters are reminded of their legal obligations in this area and the need to comply with other requirements that may apply for the protection of under eighteens. For example, a DBS (Disclosure and Barring Service) or equivalent disclosure may be necessary, and additional data protection considerations may apply when working with under-eighteens.

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**Some programme genres and formats focus on conflict and crisis. These can often feature experiences that have caused, or may cause, distress and anxiety.**

Broadcasters need to make very careful decisions when involving under-eighteens in such programmes and consider, for example, the age, maturity and personal circumstances of the young person before deciding on their involvement. Broadcasters should also consider the nature and content of the programme and the nature and extent of the child's involvement.

**Rule 1.29 does not require the elimination of all distress or anxiety for under-eighteens taking part in programmes.** This reflects the fact that there may be some editorial contexts in which it is justified for a child participating in a programme to be shown experiencing distress or anxiety. The word “unnecesssary” in the rule refers to a level of distress and anxiety that is not justified by the editorial context and may risk harm to an under-eighteen's physical and emotional welfare and dignity.

### **Rule 2.3**

*“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”*

The key principle broadcasters should take into consideration when applying Rule 2.3 in respect of the participation of under-eighteens in programmes is as follows:

**The level of care taken by broadcasters to protect under-eighteens is not always evident to the audience. When children and young people participate in programmes, broadcasters should consider whether “appropriate information” could be broadcast to avoid or minimise any offence.**

There is no explicit requirement under Rule 2.3 for the broadcaster to provide the audience with information about the measures it has taken to protect under-eighteens. Appropriate information about the safeguards in place can assist in some circumstances to adequately protect viewers by mitigating the risk of offence (as is made clear under Rule 2.3: “Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”).

Broadcasters have the editorial freedom to decide if, when and how it is most appropriate to provide information to mitigate offence in particular situations. The level of any “appropriate information” will be dependent on all the relevant circumstances the nature and content of the programme and/or the nature and extent of the child's participation.

### **Best practice**

Ofcom has monitored and assessed the way a number of broadcasters have ensured compliance with Rules 1.28 and 1.29 of the Code. As a result, and in consultation with stakeholders, we advise broadcasters to consider the summary of current best industry practice set out below when applying these rules. This covers all stages of production: pre-production; during production; and post-production (including the period after transmission). Ofcom acknowledges that the extent to which a broadcaster decides to follow this best

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practice will depend on the individual child, the level and nature of their participation and the nature of the programme.

## **Pre-production**

### ***Documented guidelines for in-house and independent production teams***

Production staff should have an easily accessible source of clear information on the broadcaster's key considerations when working with under-eighteens.

Depending on the nature and content of the programme and the level of participation involved, Ofcom recommends the development of documented guidelines for working with under-eighteens, and that production staff are made fully aware of these.

Independent production companies who work with children may also wish to consider drafting their own safeguarding protocols in addition to the broadcaster's guidelines and Ofcom's guidance.

### ***Background checks***

We recommend that broadcasters ensure that appropriate background checks are made on an under-eighteen's social, family, health and educational circumstances. These checks will vary depending on the nature and content of the programme and the level of participation of the young person.

In some cases, it may be helpful for programme makers to keep a documented trail of relevant checks, correspondence and any concerns raised throughout the process.

### ***Risk Assessments – both physical and emotional/mental***

Where appropriate, thorough risk assessments may help to ensure that the requirements of Rules 1.28 and 1.29 are met.

Children and young people differ in their vulnerabilities and resilience; their age, gender, physical and mental capacity, their maturity, their cultural, ethnic and religious background and their previous life experiences can all affect how they might respond to specific circumstances and nature of performance. Therefore these are factors that should be considered in assessing risks.

Productions regularly consider physical health and safety risk assessments. Ofcom recommends that a documented risk assessment of the impact of participating in the production on a young person's emotional and mental wellbeing and welfare may also be appropriate in some circumstances (see also 'qualified experts' below). For example: where the child is particularly young or new to acting; where they are participating in a production which may exceed their emotional maturity or experience; or where the format/genre or a particular scene in the production may involve potential negative risks.

Documented risk assessments completed during the pre-production stages (which cover both health and safety and physical and emotional wellbeing) may be particularly useful for reference should regulatory matters arise after transmission.

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Where necessary, risk assessments should be ongoing during the production and post-production stages as well so as to ensure that the physical and emotional welfare is considered throughout the production process.

(Note: Further helpful guidance on risk assessments, issued by the Scottish Government, can be found here: <http://www.gov.scot/Resource/0047/00471863.pdf>. Scottish regulations for licensing the participation of children and young people require that a risk assessment be submitted as part of a licensing application.)

### ***Experts***

Ofcom recognises that no one can predict every impact. However we suggest that broadcasters decide at the earliest stage in pre-production whether to seek advice from an appropriate expert – such as a counsellor, child psychologist, a doctor or a teacher – on the likely impact of participation on the under-eighteen.

The genre and format of the programme, a specific scene and/or the age of the young person and their life experience and maturity may influence the extent of any expert opinion considered appropriate.

It is for the broadcaster, in consultation with the production team, to identify what circumstances may warrant expert advice. Broadcasters should however particularly consider: the nature and extent of the participation of the under-eighteen; whether their participation may have any impact on their emotional or physical welfare; whether the scene has the potential to harm a vulnerable under-eighteen; and whether there could be any potential negative consequences arising from their involvement.

If it is considered that expert advice is appropriate broadcasters and production companies should, dependent on the relevant circumstances, consider the level of expertise necessary (e.g. an appropriate understanding of the process of TV production) in order to ensure that the expert can advise on the possible impacts on the under-eighteen(s) participating.

In some circumstances, it may be beneficial to retain the same expert throughout the production to contribute to ongoing risk assessment.

### ***Record-keeping***

Production teams can often disperse quickly after production. Therefore it may be appropriate, in certain circumstances, for copies of key relevant documents to be made available to broadcasters during the course of the production, or at least soon after production has concluded, should Ofcom require information relating to compliance with Rules 1.28 and 1.29 following the programme's transmission.

### ***Participants aged under sixteen***

For those participants aged under-sixteen (“under sixteens”), the Code<sup>5</sup> requires that broadcasters should normally obtain consent from a parent, guardian or other person over-eighteen or in loco parentis. However, Ofcom reminds broadcasters that their obligations under Rules 1.28 and 1.29 apply irrespective of such consent.

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<sup>5</sup> In addition to Rules 1.28 and 1.29, see also Section 7: Rule 7.4

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On the basis of expert advice, Ofcom understands that from an early age, children are capable of indicating their willingness (“assent”) to participate or be involved in a programme. The appropriate delivery of meaningful information to under-sixteens about the exact nature of their involvement as well as any likely consequences of participation (to allow “informed consent”) will vary according their age, maturity and capacity to understand.

In the case of those unable to give informed assent, such as toddlers and babies, extra considerations, including the need for appropriate expert advice, may be necessary.

An adult is often seen by a child, especially a young child, as an authority figure. As such, the child may find it difficult to contradict an adult’s suggestion to participate. It is therefore important that programme makers make it clear to the child that it is acceptable to agree or disagree when asked to participate.

Children are unlikely to understand fully the process by which content is recorded, edited and broadcast, or how their participation relates to this, so a simple child-friendly explanation is recommended. It is important the child does not feel pressured and is given adequate time to process the information provided. It might be helpful, particularly for young children, to ask the child to say what they think their participation will involve.

Expert advice suggests that young children cannot always put anxiety or uncertainty into words, especially with an unknown adult. Non-verbal indications may reflect a child’s reservations about participating.

Where appropriate, it is recommended that under-sixteens are given meaningful, child-friendly information on any likely positive and negative consequences of participation. Depending on age and maturity, it may be difficult for children to imagine long-term outcomes. It may help if this information is provided in terms appropriate to the child’s age, maturity and circumstances. If a programme has previously involved other children, information written by earlier participants on the pros and cons could be useful. We accept that programme makers may not be able to predict every outcome, but the delivery of clear information on likely outcomes is a core element of “due care”.

Ofcom suggests that, where appropriate, programme makers ensure that checks are made regularly during production that a child remains willing to participate.

### ***Participants aged under eighteen***

Ofcom recognises that those aged over sixteen are able to give their own consent to participate. However broadcasters might find it helpful to consider the extent to which the above recommendations may apply when seeking the informed consent of older teenagers. Background checks undertaken on the young person over sixteen as well as awareness of their maturity and experience may prove a helpful guide in identifying whether a greater level of due care is required.

### ***Parents and Guardians***

Ofcom reminds broadcasters that their obligations under Rules 1.28 and 1.29 apply irrespective of consent given by parents, guardians or anyone in *loco parentis*. We do not seek to lessen the importance of the views of parents or guardians on children’s participation. However, many parents and guardians will not be familiar with the production

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process or have a full understanding of the implications of their child's participation. They may only be able to see what they perceive to be the benefits of their child taking part in a programme, rather than any potential negative outcomes. Programme makers are advised to highlight both the positive and negative likely outcomes with parents or guardians. In particularly sensitive situations, we recommend that a documented note of this is kept.

Once fully informed, most parents or guardians are likely to be better able to help their child understand what participation means. Giving them adequate time to consider the consequences of their child's participation is advisable.

Broadcasters are advised to form their own judgements on whether an under sixteen's participation is appropriate and not to rely solely on the assurances of parents or guardians, particularly where vested interests may be involved.

Responsibility for ensuring compliance rests with the broadcaster not the parent, guardian or anyone in loco parentis. It is for the broadcaster to decide what measures are appropriate in the particular circumstances of the child and the individual programme, genre and or format.

## **Production**

### ***Physical and emotional wellbeing of the child must be the priority***

Whilst Ofcom appreciates that production can be an intense and stressful period, it is important that all production staff are made fully aware that the physical and emotional welfare and well-being of under-eighteens is a central concern throughout the process.

### ***Single point of contact***

Where practicable, it is sensible to provide a single, consistent point of contact with whom the participant is able to liaise throughout the production, and who has been given responsibility to oversee the participant's welfare. It may also be helpful for parents or guardians to have access to this contact.

We suggest that broadcasters consider that in some circumstances, under-eighteens may benefit from the presence of a familiar person with whom they have a positive attachment, such as a parent, sibling, friend or teacher. In certain circumstances, given the nature and degree of the child's involvement, it may be appropriate to make other expert support available such as access to a counsellor or psychologist.

### ***Format considerations***

Careful consideration of the nature and content of the programme and its likely impact on the participant is recommended. For instance, springing high-impact surprises on under eighteens in 'live' or 'as live' programmes, in front of studio audiences, or where conflict or highly emotional situations may be involved could cause harm and/or distress. Likewise, in genres which involve young people in competition with others, performance anxieties and pressure to succeed may be issues.

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## **Post-production**

### ***Contact with participants***

Depending on the child, the nature of the programme and the level of participation involved, it may be appropriate for production staff (preferably the participant's main point of contact during production), to keep in touch with the participant in the short-term and monitor any specific after-effects that might result. In some circumstances, it may be helpful for production staff to provide access to sources of professional help or support.

### ***Updating the participant on their participation pre-transmission***

Ofcom recognises that inviting child participants and/or parents to view the final cut of a programme pre-transmission is and should remain at the discretion of the broadcaster.

In some circumstances, under-eighteens may benefit from being given appropriate information before transmission about how their contribution has evolved during post-production.

### ***Advising pre-transmission on social media and media interest***

A potential negative impact of participating in a production is the social media and media attention which may be generated following transmission. This is an area of risk which may benefit from consideration at an early stage in production, depending on the circumstances.

Broadcasters should consider the impact of social media and the risk of bullying (including online bullying) on the child participant and take appropriate steps to advise the young person(s) and/or their parents/carers in advance of transmission. This advice might include guidance on privacy settings on social media sites and/or providing a designated contact to assist the young person/parents/carers with any media attention post-transmission.

## **Precedent cases**

*Benefits Street*, Channel 4, various dates and times, January 2014 (Not in breach of Rules 1.29 and 1.29)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb257/obb257.pdf>

*Jeremy Kyle*, ITV, 23 September 2013, 09:25 (Breach of Rule 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb252/obb252.pdf>

*Big Fat Gypsy Weddings*, Series 2, Channel 4 and More4, 14 February 2012 to 26 July 2012, various times (Not in breach of Rules 1.28, 1.29, 2.1, 2.2 & 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2402/obb241.pdf>

*Big Fat Gypsy Weddings: Born to be Wed*, Series 1, Episode 1, More4, 7 June 2012, 23:05 (Not in breach of Rules 1.28, 1.29, 2.1, 2.2 & 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2402/obb241.pdf>

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*Thelma's Gypsy Girls*, Channel 4 and Channel 4seven, 8 July 2012 to 21 August 2012, various times (Not in breach of Rules 1.28, 1.29, 2.1, 2.2 & 2.3)  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2402/obb241.pdf>

*Dick and Dom's Hoopla*, CBBC, 9 November 2012, 18:00 (Breach of Rules 1.28 and 2.3)  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

*I'm a Celebrity Get Me Out of Here*, ITV1, 27 November 2012, 20:13 (Breach of Rule 2.3)  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

*Line of Duty*, BBC 2, 17 July 2012 & 24 July 2012, 21:00 (Breach of Rule 1.28)  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>

*Boys and Girls Alone*, Channel 4, 3 to 24 February 2009, 21:00 (Breach of Rule 2.3)  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb144/Issue144.pdf>

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