

Your response

Question	Your response
<p>Question 1: Do you agree with our rationale for proposed new Rules 2.17 and 2.18? Please give reasons for your answer.</p>	<p>ANO TV Novosti holds two Ofcom licences broadcasting RT channels and has a number of concerns about Ofcom's proposed two new rules set out in the 'Protecting participants in TV and radio programmes' consultation. Ideally it wishes Ofcom not to introduce these rules, but if they are introduced they should be narrowed in range. By way of background, ANO TV Novosti (which rarely features children) underlines that it is already fully committed to giving due care to adults - and especially potentially vulnerable ones - taking part in all its programmes. In response to this question, ANO TV Novosti's response is no, ANO TV Novosti does not agree. Ofcom bases its proposals on growing awareness about mental health, the growth of social media, perceived inconsistencies in broadcasters' practice in providing due care to adults, and a rise in complaints about the treatment of participants. In ANO TV Novosti's view this rationale is insufficient to justify Ofcom introducing onerous new duties on TV broadcasters to take care of all adults participating in all their programmes (except drama). It fully acknowledges that the deaths of adult participants who took part in two UK reality TV shows which contributed to this consultation are tragic, but points out that licensees already have a duty to take due care of adults taking part in their programmes under existing laws such as that of negligence, and questions whether the two new rules are a proportionate or necessary response to the various and disparate factors referred to by Ofcom as the rationale for their proposed introduction. ANO TV Novosti queries importantly whether Ofcom has the legal powers to introduce the new rules. Ofcom sets out some explanation in Annex A.6 but our UK legal advisers think this is insufficient. They point for example to the fact that Ofcom only has powers to introduce Code rules in accordance with the standards objectives set out in section 319(2) of the 2003 Communications Act. These objectives include one to ensure that under-eighteens are protected but there is no equivalent to protect adults. Ofcom instead relies on section 3(4)(h) (Ofcom must have regard to those 'whose circumstances appear to Ofcom to put them in need of special protection') but then proposes new rules giving new protections to all adults, not just those who are vulnerable or potentially vulnerable. Ofcom also seems to take no</p>

	<p>account of its important duty to ensure - in proposing to introduce these new rules -that they are 'proportionate...and targeted only [emphasis added] at cases in which action is needed' - see section 3(3)(a). There are also important potential legal issues as to whether the planned new rules are a proportionate and necessary interference with broadcasters' and audiences' right to freedom of expression under Article 10 ECHR. If Ofcom decides to go ahead with introducing these new rules it must deal with all these legal arguments (and others) adequately in its published Statement and explain clearly the proper legal basis for the new provisions.</p>
<p>Question 2: Do you agree with the proposed meaning of 'participant' for the purpose of these rules? Please give reasons for your answer.</p>	<p>No. Overall we consider the scope of the new rules is much too wide (see also answer to Question 3). One of the reasons for this is the use of the word 'participant' and the meaning given to it by Ofcom ie people who agree to take part in any way in any programming (except drama). Ofcom underlines (Consultation, para. 3.11) that 'agree to take part' is wider than just people who give informed consent. It therefore at the moment seems to include potentially all adults who give their express or implied consent to take part, which could therefore be read to mean any person who features in a programme who does not actively make clear at the time of recording or broadcast that they do NOT agree to participate.</p> <p>ANO TV Novosti therefore proposes that the word 'participants' in the new rules be amended to 'vulnerable participants' or 'potentially vulnerable participants' - to deal with the specific potential harm which Ofcom wishes these rules to address. The definition of 'participants' would then be changed accordingly to mean adults who give express or clearly implied consent to take part whom a broadcaster had reasonable grounds to believe was in need, or potentially in need, of special protection.</p>
<p>Question 3: Do you agree with the proposed scope of these rules? Please give reasons.</p>	<p>No. The new rules would place a duty on all broadcasters under the Broadcasting Code to take 'due care' of all adults taking part in all types of programming except drama. The only protections for broadcasters against the new rules being applied over zealously would be the words 'due care' and the wording of the new Guidance. ANO TV Novosti thinks these protections are neither clear nor sufficient. We are already very concerned by the wide discretion exercised by Ofcom in the area of impartiality through its interpretation and application of the subjective word 'due' in 'due impartiality' and fear that the application of these proposed new rules would be similarly unpredictable. The scope of the rules should be restricted considerably.</p>

	<p>The output of ANO TV Novosti's RT channels is news and current affairs. If the new rules are implemented as drafted at present we fear it would mean that every time one of our staff interviews or films an adult for one of our news bulletins or programmes, they would need to complete a risk assessment first. If there was any doubt at all about that adult being allowed to take part in compliance with the new rules, our reporter or producer (possibly filming in a dangerous location) would then need to undertake a more detailed, and probably written, assessment to decide what (if any) measures would need to be taken to demonstrate RT had taken 'due care' of that individual. The net result would be a dangerous "chilling effect", with RT and other news broadcasters avoiding risk and making many fewer reports and programmes featuring vulnerable individuals who (or people on their behalf) would potentially make a complaint to Ofcom.</p> <p>To address these genuine concerns about scope we think the new rules, at a minimum, should not apply to news and current affairs programmes, in respect of which there is a special obligation to respect and not interfere with free speech.</p> <p>We also think that "welfare, wellbeing and dignity" are concepts far too restrictive and vague. How far does this go? Would it offend to broadcast a frank examination of the effects of Brexit on a family divided by Brexit? In discussions about Brexit often no-one behaves with dignity or respects the dignity of others. Would that not in itself be a worthy topic for current affairs coverage?</p>
<p>Question 4: Do you agree with the proposed wording for the new Rules 2.17 and 2.18? Please give reasons for your answer.</p>	<p>-</p>
<p>Question 5: Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.</p>	<p>-</p>
<p>Question 6: Do you agree that Rule 1.29 should be amended in this way? Please give reasons for your answer.</p>	<p>-</p>
<p>Question 7: Do you agree with the proposed approach to the Code guidance? Please give reasons.</p>	<p>No. See answer to Question 3. The Guidance must narrow the scope of application of any new rules as much as possible to reassure broadcasters that they cannot be applied in a disproportionately onerous way, and especially</p>

	against news and current affairs channels and content.
Question 8: Can you provide examples of best practice in the due care of programme participants which you think should be included in the guidance? Please share details if possible.	-