

---

# Protecting participants in TV and radio programmes

Further consultation on new broadcasting rules

---

[Protecting participants in TV and radio programmes: further consultation on new broadcasting rules](#)  
– Welsh overview

**CONSULTATION:**

Publication date: 13 March 2020

Closing date for responses: 14 April 2020

# Contents

---

## Section

|  |   |
|--|---|
| 1. Overview                                    | 1 |
| 2. Why Ofcom is issuing a further consultation | 4 |
| 3. The proposed changes                        | 9 |

## Annexes

|  |    |
|--|----|
| A1. Proposed risk matrix for inclusion in Ofcom Guidance (for use in conjunction with Practice 7.3 and 7.15) | 19 |
| A2. Responding to this consultation  | 24 |
| A3. Ofcom's consultation principles  | 27 |
| A4. Consultation coversheet  | 28 |
| A5. Consultation questions   | 29 |

# 1. Overview

**This document is our second consultation on protecting participants in TV and radio programmes (“the second consultation”).**

On 29 July 2019, Ofcom published an initial [consultation](#) (“the first consultation”)<sup>1</sup> which proposed two new rules for Section Two of the Broadcasting Code (“the Code”) to require broadcasters to ensure they take ‘due care’ of people participating in television and radio programmes.

Ofcom has since engaged with a wide range of individuals and organisations including: former programme participants; psychiatrists and psychologists; broadcasters; academics and other professionals with an expert view in this area. We also received 30 formal written responses including: 11 from broadcasters; two from members of the public; and 17 from other experts and interested parties. A full list of non-confidential responses to the first consultation has been published on our [website](#).

The majority of respondents expressed strong support for the introduction of protections for participants in programmes. Respondents also highlighted various concerns, in particular around the definition of a ‘participant’ and the range of programmes to which the new proposals would apply.

We have considered the responses against our objective of establishing a targeted, flexible and proportionate approach to ensuring that programme participants are properly looked after by broadcasters. We maintain that any new rules must allow broadcasters and programme makers to take account of the different risks and considerations that arise, depending on the circumstances of a person’s participation, and the nature of the programme in question.

This objective has not changed. However, after carefully considering the points raised by respondents, we are proposing a revised approach and are inviting feedback on new amendments to the Code.

Our work in this area recognises the growing openness and concern in society about mental health and wellbeing in recent years. Ofcom has also seen a steady rise in complaints expressing concern about the welfare and wellbeing of people who take part in programmes.

---

<sup>1</sup> We recommend that the first consultation is read alongside the second consultation.

### What we are proposing – in brief

We now consider that **Section Seven of the Broadcasting Code (Fairness and Privacy)** is a more appropriate place to incorporate new Practices to protect participants. This section already provides a framework for people to complain directly to Ofcom about the way they have been treated in programmes.

We therefore propose to expand Section Seven as follows:

- **extend Practice 7.3 which sets out the measures broadcasters must take in obtaining’ informed consent’.** Our proposed addition would clarify that obtaining informed consent includes letting programme participants know about potential harms or negative impacts (insofar as these can be reasonably anticipated at the time), and any steps that broadcasters and/or programme makers intend to take to mitigate these. Practice 7.3 already makes clear that informed consent is not normally required when the subject matter is trivial or a person’s participation minor, or it is warranted for the broadcaster to proceed without obtaining it; and
- **add a new Practice 7.15 requiring broadcasters to ensure due care is provided to “vulnerable people” and those who are at risk of harm as a result of taking part in a programme.** In doing so, broadcasters must take into account: the person’s circumstances; the nature of their contribution; and the nature and genre of the programme.

We also maintain that there is a need to protect audiences from potential harm or offence resulting from a lack (or perceived lack) of due care to vulnerable people, and those who might be put at risk of harm as a result of their participation in a programme. Therefore we are also proposing to extend Section Two of the Code (Harm and Offence) by:

- **introducing a new requirement (Rule 2.17) for broadcasters to provide adequate protection to audiences from potential harm and/or offence arising from the treatment of “vulnerable people”, and those who appear to be put at risk of harm, in programmes.**

- 1.1 We also received constructive suggestions from respondents as to what further Guidance might be necessary in this area. We intend to consolidate these into detailed new Guidance for both Section Two and Section Seven, which we plan to issue alongside our statement on the outcome of this consultation.
- 1.2 Having assessed current examples of good practice in this area, we are proposing to include in our Guidance a ‘risk matrix’ which aims to help broadcasters when considering what level of care to provide to participants in different editorial situations. This would set out six key risk factors, which should assist broadcasters in determining whether a further, more detailed, analysis of the risks should then be undertaken in relation to a particular programme. The matrix is not exhaustive, and additional factors may be relevant depending on the nature of the production.
- 1.3 Our draft risk matrix, which is set out in the Annex to this consultation, would be used in conjunction with the new measure under Practice 7.3 and new Practice 7.15.

## Next steps

- 1.4 We invite interested parties to submit their views by 14 April 2020. We plan to publish a statement on our final decision later in the Summer.

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

## 2. Why Ofcom is issuing a further consultation

- 2.1 Respondents to our earlier consultation broadly supported Ofcom’s proposal to introduce new provisions that ensure broadcasters provide due care to participants in television and radio programmes.
- 2.2 In light of the helpful responses we received on our proposals to amend the Code, we have decided to change the scope of our proposals to amend Section Two (Harm and Offence) and Section Seven (Fairness) of the Code.
- 2.3 We consider that our revised approach will achieve the objectives outlined in our first consultation but, as it expands the application of Section Seven, we are issuing a short second consultation to seek further views.

### Background

- 2.4 In our [first consultation](#), we acknowledged that there has been growing openness and concern in society about mental health and wellbeing in recent years. Ofcom has also seen a steady rise in complaints expressing concern about the welfare and wellbeing of people who take part in programmes. We therefore proposed extending the existing protections against harm and offence under Section Two of the Code and introducing two new rules to require broadcasters to ensure due care is provided to participants in television and radio programmes.
- 2.5 We acknowledged that many broadcasters already have comprehensive care processes in place. However, a greater public awareness of mental health issues, as evidenced by increased complaints to Ofcom about the treatment of participants, has led to a need for further regulatory intervention to establish a clearer and more consistent industry-wide approach. Our intention was also to introduce rules which were sufficiently broad in scope to anticipate the range of potential harms that might arise from taking part in various programme formats.
- 2.6 Our original consultation proposed due care rules in Section Two which were based on the rules applying to the protection of child participants in programmes under Section One of the Code (Rules 1.28 and 1.29) and were intended to enable both participants and audiences to raise concerns about the treatment of people in programmes. Ofcom was particularly mindful that in most cases consenting adults are capable of making their own independent decisions about their participation. Therefore, to avoid imposing a disproportionate additional burden on broadcasters, the proposed rules were designed to take account of the particular circumstances and to reflect the important role broadcasters must play in determining what care is appropriate (i.e. “due”) in each case, taking into account the person involved, the nature of their participation, and the type of programme.

## Key themes in responses to the first consultation

- 2.7 Ofcom met with a range of experts, major broadcasters, and people who had first-hand experience of taking part in TV programmes as part of the consultation process. We also received 30 written responses. Overall, there was strong support for our proposal to introduce new rules to protect adult participants in programmes, but respondents identified three main concerns about the way in which we proposed to introduce these new requirements:
- first, there was concern that the level of protection required for adults was fundamentally different to that required for children;
  - second, some felt that Section Seven was a more appropriate section for rules to protect participants, as this already provides the framework for them to complain to Ofcom about the way they have been treated in programmes; and
  - third, some respondents considered that the proposed rules were drafted too widely and would impose an unreasonable burden on broadcasters and programme makers. In particular, they were concerned that the rules did not make a clear distinction between vulnerable and non-vulnerable participants, and that the proposed rules were not appropriate for all genres of programmes, especially news and current affairs.
- 2.8 While our overall objective to protect participants has not changed, having carefully considered this feedback, we have revised our original proposals.

## Revised proposals in summary

- 2.9 We are proposing amendments to the Code that set out clear avenues for making a complaint, depending on who is complaining and the nature of the complaint. For **programme participants<sup>2</sup> wishing to complain about their treatment in programmes**, we are proposing to amend Practice 7.3 to clarify that when obtaining informed consent, broadcasters or programme makers should provide appropriate information about negative impacts that may arise from contributing to a particular programme (insofar as these can be reasonably anticipated at the time). Practice 7.3 already makes clear that informed consent is not normally required when the subject matter is trivial or the person's participation minor, and that proceeding without informed consent may be warranted in some circumstances (see further below).
- 2.10 We also propose to add a new practice to follow in Section Seven of the Code (Practice 7.15) to make it clear that taking due care of "vulnerable people" who take part in programmes, or those who might be put at risk of harm from participating, forms part of ensuring fair and just treatment of people who take part in programmes.
- 2.11 We continue to be of the view that there is a need to protect audiences from potential harm or offence resulting from a lack (or a perceived lack) of due care to vulnerable people and those who might be put at risk of harm as a result of their participation in

---

<sup>2</sup> Both vulnerable people and people who might be at risk of harm as a result of taking part in a programme.

programmes. Audiences could be offended or caused emotional distress by their perception of how a participant has been treated in a programme. Therefore, for **viewers or listeners wishing to complain about a lack of due care being provided for programme participants**<sup>3</sup>, we are proposing to amend Section Two of the Code to introduce a new requirement (Rule 2.17) for broadcasters to provide adequate protection to audiences, by ensuring they are provided with appropriate information to minimise potential offence and protect against potential harm.

- 2.12 We acknowledge that the focus on ensuring broadcasters provide due care to participants should be on vulnerable people and those who might appear to be put at risk of harm as a result of their participation in a programme, for instance, due to their circumstances or because of the nature of their participation. This is reflected in our proposed changes to Section Two and Section Seven.
- 2.13 As we made clear in the first consultation, we recognise the risk that new obligations in this area could have unintended consequences for programme-making and, ultimately, for freedom of expression. We reiterate that we do not intend to hamper or obstruct programme-making by imposing disproportionate and unjustifiable requirements on broadcasters or, in turn, on the production companies commissioned to make programmes. Nor should broadcasters be accountable for events beyond their control, or which may involve a range of complex causes. We also wish to ensure that new requirements do not make programme makers and broadcasters less likely to want to feature people with vulnerabilities in their programmes. Indeed, we recognise that there may well be significant public interest in exploring such vulnerabilities in programmes.
- 2.14 We also understand concerns expressed by some respondents about the application of the rules to all programme genres, and to news and current affairs in particular. Having given this careful consideration, we believe this is best addressed through the Guidance for broadcasters that will accompany the new rules. We will ensure that it is clear what Ofcom expects broadcasters to do to assess the level of care that may be appropriate on a case by case basis, taking into account the programme format as well as the nature of the contribution from the participant, with specific examples by different programme genres. Importantly, in some genres and situations, a broadcaster may determine that there is no risk to a participant or that the level of risk is small or negligible. In these circumstances, we anticipate that the type of care required, if any, is likely to be minimal. For example, in relation to the vast majority of the participants who take part in news and current affairs programming we anticipate that, following any risk assessment, it would be highly unlikely that any specific measures would need to be put in place by broadcasters. However, there might be exceptional circumstances when a broadcaster might need to put in place particular measures to ensure due care is taken of a participant in news and current affairs (for example, if an abuse survivor was interviewed in a news programme about their experiences).

---

<sup>3</sup> Ibid.



- 2.15 Under our proposals, revised Practice 7.3, new Practice 7.15, and the due care afforded by broadcasters to programme participants in the context of our proposed Rule 2.17, will apply, in principle, to all contributors in programmes<sup>4</sup>, including actors, presenters and reporters. However, as we indicated in our first consultation, when people are acting in programmes, working in a presenting capacity, or reporting, we would expect their welfare to be protected by their contractual arrangements with broadcasters or programme makers. We would, however, carefully assess any complaint received.
- 2.16 In our first consultation, we proposed some amendments to Rules 1.28 and 1.29 of the Code which deal with the treatment of under eighteens in programming. We received a number of responses on this issue and will set out our response and decision in our final Statement.

## Ofcom's Legal Framework

- 2.17 Ofcom's functions under the Communications Act 2003 ("the 2003 ACT") and the Broadcasting Act 1996 in respect of standards and fairness in broadcasting are set out in Annex A1 to our [first consultation](#).

## Impact Assessment

- 2.18 The analysis presented in the entirety of this consultation represents an impact assessment, as defined in section 7 of the 2003 Act.
- 2.19 Pursuant to section 7, an impact assessment must set out how, in our opinion, the performance of our principal duties (within the meaning of section 3 of the 2003 Act) is secured or furthered by or in relation to what we propose.
- 2.20 Ofcom does not intend for our revised proposals to place a disproportionate and unjustified additional burden on broadcasters. Our revised approach takes account of the feedback we received concerning our initial proposals. The aim of the changes is to add due care as a measure of fair treatment and informed consent; and enable a generally accepted standard for the care of participants that is clear and consistent and supported by Guidance on best practice in this area. It would be for broadcasters to judge on a case by case basis what type and level of care is appropriate and what steps they should take to secure the necessary protections according to the particular circumstances. We therefore consider the proposed new approach would be beneficial to:
- people who take part in programming – who would be more likely to receive a consistent, best practice approach to their due care;
  - broadcasters – who would be able to follow, or direct programme makers to follow, the expected standard of due care and accompanying Ofcom Guidance; and

---

<sup>4</sup> In relation to revised Practice 7.3 and new Practice 7.15, under section 130 of the Broadcasting Act 1996, a programme participant who can make a complaint of unjust or unfair treatment (i.e. under Section seven of the Code) is defined as a "person who appeared, or whose voice was heard, in the programme".

- viewers and listeners – who, when watching or listening to programming, would be reassured that Ofcom – regulated broadcasters meet a clear standard of care for programme participants.
- 2.21 In considering these new proposals we have had regard to our duties under the Equality Act 2010 and the Northern Ireland Act 1998, as set out in Section 2 of the first consultation. We consider that the revised proposals set out in this consultation document are consistent with our duties in this area.
- 2.22 Ofcom has carefully considered the views of broadcasters and other interested parties provided in response to our first consultation. In particular, we recognise the importance of ensuring our proposals are appropriately framed to avoid any potential negative impacts on programme makers, such as the risk that they become less willing to include in their programmes people who may require more complex care (for example, people with mental health issues). It is not Ofcom’s intention to hamper programme makers or hold broadcasters accountable for events beyond their control. At the same time, Ofcom is also mindful of its statutory duties with regard to securing appropriate protections for people who take part in programmes and for viewers and listeners from potential harm and offence from what they see or hear in programmes.
- 2.23 To minimise these risks, we are proposing amendments to the Code which would require broadcasters to adopt a proportionate and flexible approach, taking into account:
- the appropriate level of care required (depending on the particular circumstances of the participant and the nature of their contribution);
  - the importance for broadcasters to continue to feature vulnerable people in programming and to continue to make innovative and challenging programmes; and
  - the necessary protections for viewers and listeners from harm and/or offence, where a programme participant is treated, or appears to have been treated, in a way which could cause audiences offence, or could trigger emotional distress or other harms. For example if viewers experiencing a mental health condition are negatively affected by seeing how a participant with a similar condition is treated in a programme.

## 3. The proposed changes

- 3.1 We consider that our revised amendments to Sections Seven (fairness) and Two (harm and offence) of the Code are proportionate to achieving our objective of establishing a targeted, flexible, and proportionate approach to the due care of people who participate in programmes and to protect audiences from harm and or offence resulting from a lack (or perceived lack) of due care to inherently or potentially vulnerable participants.
- 3.2 The proposed changes take account of the differing risks and considerations that may arise depending on the circumstances of a person's participation and the nature of the programme. Our proposals also take account of the right to freedom of expression, namely: that broadcasters and programme makers must have the creative freedom to make a diverse range of programmes and to make programmes featuring a diverse range of people; that people should have the opportunity to express themselves by taking part in programmes if they want to; and that audiences should be able to value and enjoy watching and listening to those programmes.

### Proposed amendments to Section Seven

- 3.3 Section Seven of the Code already provides a clear regulatory framework for participants who wish to raise concerns about their treatment in programmes. Most broadcasters and programme makers have a comprehensive understanding of what it means to treat programme participants fairly, including obtaining informed consent.
- 3.4 We propose to extend the practices in this area so that the provision of information about potential negative impacts of participating in a programme (insofar as they can be reasonably anticipated at the time) forms part of informed consent for all those who take part in programmes, except when the subject matter is trivial or their participation minor, or proceeding without informed consent is warranted; and that due care forms part of the fair and just treatment of vulnerable people who participate in programmes, or those who may be at risk of harm due to their participation.
- 3.5 The process for making a complaint and the consideration and adjudication of that complaint will follow Ofcom's Fairness and Privacy [Procedures](#). Where Ofcom entertains a Fairness and/or Privacy complaint, Ofcom will act as the adjudicator of the complaint between the individual and the broadcaster, where both are given equal standing.
- 3.6 As with the rest of Section Seven of the Code, only "the person affected", or someone with authorisation to complain on their behalf, would be able to make a complaint of unfair treatment relating to the proposed additional measure in Practice 7.3 and the new Practice 7.15 (see below for further details).
- 3.7 We propose that the new amendments are accompanied by clear cross-references to other provisions of the Code which may also be relevant to ensuring the fair treatment of people participating in programmes, including those relating to Privacy (Sections Eight), the Harm and Offence rules (Section Two) and rules for the due care of under-eighteens (Section

One). The proposed new amendments would not replace the requirement to comply with these rules.

### Proposed additional measure to informed consent in Practice 7.3

3.8 Proposed deletions are shown in struck through text and proposed additions are shown in bold.

#### Proposed addition to Practice to Follow 7.3

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; ~~and~~
- **be informed about potential negative consequences arising from their participation in the programme which may affect their welfare (insofar as these can be reasonably anticipated at the time) and any steps the broadcaster and/or programme maker intends to take to mitigate these.**

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.

**See also Practice 7.15, Section Eight (privacy), Rules 1.28 and 1.29 (due care of under-eighteens); and Rule 2.17 (harm and offence).**

3.9 Informed consent is a well-established concept. Ofcom’s Code includes a number of measures to obtain properly informed consent. They do not constitute a definitive list of how to obtain ‘informed consent’ and the measures broadcasters should take may differ depending on the programme being made and any other relevant circumstances.

3.10 We recognise from consulting with former programme participants, broadcasters and other industry specialists during this review that in many cases people who are invited to

take part in programmes are already being fully informed about reasonably foreseeable negative impacts to their welfare that could arise from their participation. However, the introduction of a new measure under Practice 7.3 will emphasise the importance of the broadcaster or programme maker giving information about potential negative impacts, where these can be reasonably anticipated, as part of ensuring a person has given informed consent. For example, if someone agrees to participate in a programme on the understanding that he or she will receive appropriate aftercare once the programme has finished, that person may want to bring a complaint against the broadcaster if that aftercare is ultimately not provided. This would be because the terms on which they had consented to participate in the programme had changed by the broadcaster deciding not to provide the aftercare and, therefore, that person may not have given informed consent.

- 3.11 We accept that people may still want to take part in programmes even where this carries a risk of potential harm to them. Therefore, we consider that the proposed changes to Section Seven do not hinder people from taking part in programmes that present risk. Programme participants should, however, be made aware of potential harm to their welfare (insofar as can be reasonably anticipated at the time) before they agree to take part and understand appropriate mitigations that the broadcaster or programme maker is proposing to put in place in order to minimise such risks.
- 3.12 The proposed new informed consent measure, like all measures in this practice, applies in circumstances where “...a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor)”. Therefore, when applying Practice 7.3, the expectation is that informed consent is required unless a person’s contribution to a programme is minor or the subject matter trivial.
- 3.13 Practice 7.3 also recognises that there can be circumstances where it may be fair to withhold all or some information from people who are included in programmes, for example, where it is justified in the public interest to do so.
- 3.14 It is up to the broadcaster when following Practice 7.3 and obtaining informed consent to determine what information is appropriate to provide to the participant in the particular circumstances. For instance, it may be the case that a person’s inclusion in a programme without his or her consent is warranted in the public interest. In such cases, it may not be necessary to follow all or any of the measures set out in Practice 7.3 and the proposed new Practice 7.15.

### **Proposed new Practice 7.15**

- 3.15 We are also proposing a new practice to follow in Practice 7.15. This aims 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.
- 3.16 Broadcasters would need to carry out an initial risk assessment to determine the risk factors to take into consideration when: identifying; assessing; and managing the potential

risks a programme format may pose to a participant) (Please see Annex A1 to this document).

- 3.17 We are proposing that the existing non-exhaustive definition of “vulnerable people” set out in relation to Practices 8.21 and 8.22 in Section Eight of the Code would apply to the new Practice 7.15:

“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”.

### **Proposed new Practice to Follow 7.15**

**7.15** In addition to obtaining a contributor's informed consent (as outlined in Practice 7.3), broadcasters should take due care over the welfare of:

- (a) vulnerable people who take part in a programme; and
- (b) someone who might be at risk of harm as a result of taking part in a programme,

taking into account: the nature and degree of their contribution in terms of any potential risks; and the nature and genre of the programme.

See Practices 8.21 and 8.22 for the meaning of "vulnerable people". In addition to the examples in this meaning, other factors that may be relevant in the context of Practice 7.15 include a person's age, past or current personal circumstances or experiences, or their physical or mental health.

Someone might be at risk of harm as a result of taking part in a programme for reasons including (but not limited to):

- they are not used to being in the public eye;
- the programme involves being filmed in an artificial or constructed environment;
- the programme is likely to attract a high level of press, media and social media interest;
- key editorial elements of the programme include potential confrontation, conflict, emotionally challenging situations; or
- the programme requires them to discuss, reveal, or engage with sensitive, life changing or private aspects of their lives.

To determine the appropriate level of due care broadcasters and programme makers should:

- (a) identify the potential risks associated with a programme format;
- (b) if potential risks exist, assess the level of risk in each case; and
- (c) identify how to manage these potential risks at each stage of the production process.

Where there is a low level of risk, the level of care due may be minimal, if any. In such cases broadcasters would not be expected to put in place measures to manage the risks.

Where there is a higher level of risk, a greater level of care is likely to be required and broadcasters should put in place measures to mitigate such risks.

Ofcom's accompanying Guidance provides more detail on how to approach this risk assessment.

See also Practice 7.3, Section Eight (privacy), Rules 1.28 and 1.29 (due care of under-eighteens); and Rule 2.17 (harm and offence).

- 3.18 The use of “due” is important as it means that the level of care required by the broadcaster will be measured by an evaluation of the potential risks associated with the person involved, the programme and the nature of how they will be taking part in it.
- 3.19 When applying Practice 7.15, broadcasters would need to ascertain whether the programme involves a person who is vulnerable; and/or whether the nature of a person’s contribution to the programme, or the format or genre of the programme, place that person at risk of harm. This initial triage would enable broadcasters to determine whether a more detailed risk assessment is necessary (as set out at a)-c) in Practice 7.15), and whether they need to take any particular precautions to protect those at risk.
- 3.20 The new Practice 7.15 is not intended to discourage programme makers and broadcasters from featuring people with vulnerabilities in their programmes as we recognise the importance of freedom of expression and that there may well be significant public interest in exploring such vulnerabilities in programmes. The intention is that a broadcaster or programme maker can assess the needs of the vulnerable person or the potential for the person to be at risk of harm due to their participation and identify and respond to these in terms of the level of care that may be required.
- 3.21 Ofcom has intentionally drafted the new Practice 7.15 to be proportionate and flexible. We recognise that a requirement to provide due care could potentially arise in many different situations. Therefore, 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. Where there is a low level of risk to the participant, we consider that the level of care may be minimal, or even negligible. Conversely, where participants are exposed to higher risks by participating in a programme, the expected level of protection for a participant will be high.
- 3.22 For example, we would generally expect the level of risk to be low for most participants where: the inclusion of the participant is minor or trivial; a programme does not involve challenging situations; the duration of filming is limited; or where a programme is unlikely to generate press, media or social media interest. In the context of Practice 7.15, this would mean that, for example, a news item featuring a participant commenting in a vox pop about the closure of shops on the high street would be very unlikely to require the broadcaster to provide any measures to actively manage the person’s care.
- 3.23 By contrast, a greater level of risk is likely where, for example, a programme creates a variety of emotionally challenging situations and has the potential to expose existing or new vulnerabilities. Therefore, an immersive reality programme where participants are filmed in a new location, away from their home environment and support networks for long durations of time in emotionally challenging situations, is likely to be a high-risk format which could adversely affect participants. In this situation, we would expect the greatest level of care would be needed to protect the welfare of those taking part.



## Practice 7.3 and Practice 7.15 and their interaction with Rules 1.28 and 1.29

3.24 A complaint about the treatment of a child participant can be made (for example by a parent on behalf of the child) under Section Seven of the Code, and therefore Practices 7.3 and 7.15 could be relevant to such a complaint. However, we consider it continues to be necessary for Rules 1.28 and 1.29 to also be included in the Code so that complaints can still be made about the due care of child participants (where the concern is about harm to the child, not offence to the audience), even if not by “the person affected” or someone authorised to do so on their behalf. This could arise, for example, where a child expert has concerns about a child’s inclusion in a programme. This is because Rule 1.28, in particular, requires broadcasters to take due care of programme participants aged under 18, irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis. In our view, this additional level of protection in the Code appropriately reflects the particular vulnerabilities of those aged under 18 who take part in programmes.

## Guidance to Practice 7.3 and 7.15

3.25 To assist broadcasters, we propose to provide detailed Guidance on the proposed amendment to Practice 7.3, and the proposed new Practice 7.15. This would be issued alongside our statement on the outcome of this consultation. We set out below a summary of what the Guidance would cover.

3.26 For Practice 7.3, the Guidance would explain how broadcasters can identify potential negative consequences arising from a person’s participation in a programme and the type of steps which could be considered to mitigate these.

3.27 For Practice 7.15, the Guidance would:

- advise broadcasters that when considering the level of risk associated with a person’s participation in a programme, they may find it helpful to use a risk matrix<sup>5</sup>, either based on an example provided in Annex A1 or by developing their own;
- set out an example of a risk matrix reflecting three stages for determining risk under Practice 7.15, namely: (a) identifying the key risk factors; (b) if such risks exist, assessing the level of care that may be appropriate in particular circumstances; and (c) where necessary, identifying the necessary steps to manage the risks and to ensure an appropriate level of due care; and
- explain how to apply the risk matrix. For instance, the Guidance would set out:

---

<sup>5</sup> In its response to the first consultation, ITV provided details of a ‘risk matrix’ it has put in place when considering what level of care to provide to participants in different editorial situations. We think it would be helpful for broadcasters and programme makers to adopt a similar approach when assessing potential risks associated with different types of editorial situations. We are therefore proposing to include in our Guidance an adaptation of this ‘risk matrix’ setting out six key risk factors. They are not exhaustive, and additional factors may be relevant depending on the nature of the production.

- how, in some cases, appropriately qualified experts such as psychologists or psychiatrists may play a significant role in assessing whether someone is vulnerable or may be put at risk of harm by taking part in a programme (including issues to consider when selecting an expert to provide this kind of advice);
- that the steps required to manage any risks identified should be ongoing and should be planned for each stage of the production process;
- that broadcasters and programme makers may find it helpful to identify in advance the type of protocols they believe are appropriate to ensure due care for a lower risk programme, a medium risk programme and a higher risk programme;
- that it is for broadcasters to decide on the most appropriate steps needed to manage the level of risk in each individual circumstance (although expert advice may play an important role); and
- that the risk matrix is not a tick box list of steps broadcasters must take to ensure due care is provided to participants.

3.28 **Annex A1** to this consultation sets out an example of the risk matrix we propose to include in Guidance which could be used when following Practice 7.15.

## Proposed amendment to Section Two

### Proposed new Rule 2.17

3.29 As set out in the first consultation, we are aware from viewer and listener complaints of a greater awareness and concern about mental health and emotional wellbeing of programme participants, and a sensitivity to broadcast content where participants appear to be put at risk of harm or in some way negatively affected by taking part in a programme. This can cause audiences offence, and could trigger emotional distress or other harms, for example if viewers experiencing a mental health condition are negatively affected by seeing how a participant with a similar condition is treated in a programme. Therefore, rather than relying on the general requirements set out in Rule 2.1 and Rule 2.3, audiences would be able to raise such concerns under proposed new Rule 2.17. For clarity, this rule would apply to complaints about audience harm or offence relating to the treatment of either adult participants or participants aged under 18.

### **Proposed new Rule 2.17**

**2.17** In applying generally accepted standards to the contents of television and radio services, broadcasters must provide adequate protection for members of the public from potential harm and/or offence arising from the treatment of vulnerable people in programmes, and those who appear to be put at risk of harm as a result of their participation in a programme.

See Practices 8.21 and 8.22 for the meaning of “vulnerable people”. In addition to the examples in this meaning, other factors that may be relevant in the context of Rule 2.17 could include a person’s age, past or current personal circumstances or experiences, or their physical or mental health.

Broadcasters need to make judgements on how they provide sufficient context and/or appropriate information to audiences to minimise the potential for harm and/or offence in these circumstances.

See also Practices 7.3 and 7.15, Section Eight (privacy), and Rules 1.28 and 1.29 (due care of under-eighteens)

3.30 We recognise that most of the care given to participants by broadcasters and programme makers takes place off air and is often not evident to audiences. Therefore, in some cases, it may be necessary for broadcasters to take additional steps to include sufficient context and/or some other information in a programme to reassure audiences that due care has been taken. This would serve the purpose of minimising the potential harm and/or offence that could arise if audiences believe that vulnerable people or those who are at risk of harm due to their participation in a programme have been negatively affected by it.

### **Guidance to Rule 2.17**

3.31 We would also issue detailed Guidance to Rule 2.17 alongside our statement on the outcome of this consultation. The Guidance would cover some examples of ways in which broadcasters can ensure compliance with Rule 2.17 by giving appropriate information to minimise harm and/or offence to viewers or listeners arising from concerns about the treatment of participants in programmes. We envisage that the Guidance will make clear the following:

- there may be many circumstances in which, in light of audience expectations, or well-established programme formats, the broadcaster judges it is not necessary to provide specific information or context to justify any potential offence arising from the treatment of vulnerable people in a programme;
- in other cases, the natural course of events of a programme may be sufficient to contextualise any potential offence arising from the treatment of a vulnerable person in a programme. For example, a presenter or fellow participant may demonstrate support or care, or the participant themselves may indicate that they are feeling

- supported. In such circumstances, it is likely that broadcasters would not need to take any additional steps to minimise harm and/or offence to viewers or listeners; and
- equally, however, depending on the circumstances, there may be occasions that broadcasters may need to provide additional information in or around the programme to justify potential offence arising from the treatment of vulnerable people in a programme. Broadcasters will need to determine what information it is appropriate to provide and how that information is communicated to the audience on a case by case basis but examples might include steps such as:
    - including brief references during programmes, for example in voiceovers, to highlight the support participants have received;
    - in an immersive reality format in which a participant shows signs of significant distress, the voiceover or a presenter might briefly indicate to the audience that the participant is getting support off camera; or
    - in particularly sensitive situations, there might be some instances where a broadcaster judges it is necessary to signal to the audience the availability of further details about the due care in place, e.g. in a caption or in programme information on the broadcaster’s website. Even an end credit showing that an appropriately qualified expert was involved to assess and support participants could be a relevant factor in some cases.

**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.

**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.

# A1. Proposed risk matrix for inclusion in Ofcom Guidance (for use in conjunction with Practice 7.3 and 7.15)

## Practice to Follow 7.3

A1.1 Broadcasters and/or programme makers should refer to the risk matrix in the Guidance to 7.15 when identifying the potential negative consequences arising from a person’s participation, and what steps might be required to mitigate these.

## Practice to Follow 7.15

A1.2 When considering the level of risk associated with a person’s participation in a programme, broadcasters may find it helpful to use a risk matrix. The matrix set out below is not prescriptive and broadcasters may want to develop their own methods for determining risk. However, consideration of the factors set out in table a), or similar factors, should assist broadcasters in assessing what (if any) the risk or risks are in a programme and therefore whether the further stages as set out in table b) and, consequently, in table c) should be considered. For instance, if no risk is identified, or the level of risk is negligible, no further assessment may be necessary in that case. However, where potential risks exist, a more detailed assessment, as set out in table b) and in table c), should be conducted.

### (a) Identifying Potential Risks

| Risks to identify | Considerations  |
|-------------------|---|
| Control           | How far does the participant retain control? <ul style="list-style-type: none"> <li>• Are participants staged in a constructed reality situation?</li> <li>• Is the participants’ environment created or largely controlled by production teams with continuous filming?</li> </ul> |
| Format            | What is the nature of the format? <ul style="list-style-type: none"> <li>• Will key editorial aspects of the format be likely to include potential confrontation, conflict, or emotionally challenging situations?</li> </ul>   |
| Profile           | How high is the programme profile? <ul style="list-style-type: none"> <li>• Is there likely to be a high level of media and/or social media interest in the programme and the participants?</li> </ul>  |
| Location/Duration | Are participants separated from normal life? <ul style="list-style-type: none"> <li>• Are participants required to be away from home during the production?</li> </ul>  |

|                     |   |
|---------------------|---|
|                     | <ul style="list-style-type: none"> <li>• Are participants not able to have contact with their usual support network during the production?</li> </ul>   |
| Residence           | <p>Are participants away for any time from their usual home?</p> <ul style="list-style-type: none"> <li>• Are participants required to share accommodation for a period of time?</li> <li>• Are participants living in close proximity to others such that this may impact on their usual sleeping habits?</li> </ul>   |
| Type of Participant | <p>What type of participant is taking part?</p> <ul style="list-style-type: none"> <li>• Is the participant not used to being in the public eye?</li> <li>• Does the participant have any vulnerabilities – for example: due to their personal circumstances or experiences, or their health, whether physical or mental?</li> <li>• Could the programme format make the participant vulnerable – for example: do key editorial elements of the programme include potential confrontation, conflict, emotionally challenging situations, or does the programme require them to discuss, reveal, or engage with sensitive, life changing or private aspects of their lives?</li> </ul> |

## (b) Assessing Potential Risks

A1.3 Once risks have been identified, broadcasters and programme makers should consider ranking these risks as low, medium or high, with reference to the type of programme in question. The higher the risk factors, the greater the requirement upon broadcasters to manage the risk and ensure a comprehensive level of due care. This table illustrates the risks associated with examples of different editorial situations.

|         | Low   | Medium  | High  |
|---------|---|---|---|
| Control | Documentary portrayal of a real situation – largely observational, unstaged | Directed or “produced” scenarios or discussions.  | Artificial environment (e.g. location or activity).<br><br>Producers have near total control of the environment being filmed, and activities of the participants. |
| Format  | Generally does not include emotionally challenging situations.              | May include some emotionally challenging situations or increased anxiety, but these are not central to the content. | Key editorial elements include potential confrontation, emotionally challenging situations, or increased anxiety.   |

Protecting participants in TV and radio programmes

|                   |   |   |   |
|-------------------|---|---|---|
| Profile           | Relatively low degree of press and media interest and/or social media in the individuals featured in the programme anticipated.                                       | Some press and media and/or social media interest in the participants featured in the programme anticipated.  | High level of press and media and/or social media interest in the programme and participants anticipated.   |
| Location/Duration | No need for participants to travel far from home or be filmed for long periods.<br><br>Filming the normal day to day activities of participants in home or community. | Participants are required to be away from home, although not in a remote location.<br><br>Able to maintain contact with natural support network.  | Participants required to be remote from home, in a potentially “alien” environment.<br><br>No contact with their natural support network during filming.  |
| Residence         | Time away from home short and not significant (e.g. a few hours in a studio, or overnight in a hotel).  | Filming for a short period away from home.<br><br>Accommodation shared, but by a small number of people/ people who already know each other.  | 24/7 shared accommodation for a sustained period of time.<br><br>Nature of accommodation could have a potential impact on participants’ sleep.  |
| Participants      | Participants have access to personal management, advice and representation before, during and after the production.   | Participants are not used to being widely known in the public eye.<br><br>Participants may have or used to have some public profile and are seeking to increase or revive that profile.<br><br>Participants have disclosed, or are suspected to be, pre-disposed to poor mental health, although currently displaying good mental health. | Participants are not used to being in the public eye.<br><br>Participants have disclosed recent or current mental health issues.<br><br>Participants are considered more vulnerable for example - young or elderly, or their personal circumstances or experiences make them particularly vulnerable. |

### (c) Identifying how to manage risk to participants and ensuring due care

| Identified risk  | Steps to be taken MAY include:  |
|--|---|
| <p><b>HIGH RISK</b></p> <p><b>For example: a participant in a high-profile immersive reality programme</b></p> | <p><b>Before production:</b></p> <ul style="list-style-type: none"> <li>• Before production: Informed consent, including information about the nature and purpose of the programme and the nature of their contribution, providing the person with information about potential risks arising from taking part in the programme (insofar as they can be reasonably anticipated) and any intended steps to mitigate these.</li> <li>• Identify and seek advice from relevant appropriately qualified experts (if required).</li> <li>• Medical history background checks.</li> <li>• Assessment of vulnerabilities.</li> <li>• Psychological assessment of participants before selection.</li> <li>• Encourage discussion about participation with families and friends.</li> <li>• Provide a single point of contact from casting to aftercare.</li> </ul> |
|  | <p><b>During production:</b></p> <ul style="list-style-type: none"> <li>• Expert psychological advice accessible at all times for production team and participants.</li> <li>• Dedicated production team members to oversee welfare of participants.</li> <li>• Monitor for any behaviours indicating stress or mental health issues.</li> </ul>  |
|  | <p><b>After production:</b></p> <ul style="list-style-type: none"> <li>• Provide a psychological debrief after filming and devise a tailored programme of aftercare to include counselling and training to readjust.</li> <li>• Advise participant on how they were portrayed in the programme.</li> <li>• Provide participants with a production contact who will be available after the production.</li> <li>• Encourage participants to seek advice and support at any time – consider retaining psychologists.</li> <li>• Support and advice on managing negative social media and media.</li> <li>• Advice on transmission date and check-in before and afterwards to check on wellbeing.</li> </ul>   |
| <p><b>MEDIUM RISK</b></p>  | <p><b>Before production:</b></p> <ul style="list-style-type: none"> <li>• Informed consent, including information about the nature and purpose of the programme and the nature of their contribution, providing the person with information about potential risks arising</li> </ul>  |



|   |   |
|---|---|
| <p><b>For example: a contestant on a dating programme</b></p>   | <p>from taking part in the programme (insofar as they can be reasonably anticipated) and any intended steps to mitigate these.</p> <ul style="list-style-type: none"> <li>• Medical history background checks.</li> <li>• Assessment of vulnerabilities.</li> <li>• Seek advice/retain experts such as a psychologist.</li> </ul>   |
|   | <p><b>During production:</b></p> <ul style="list-style-type: none"> <li>• Monitor for signs of stress or other mental health issues, and act on any concerns.</li> <li>• Expert psychological support available and on call during filming.</li> <li>• Single point of contact for participant throughout filming.</li> </ul>   |
|   | <p><b>After production:</b></p> <ul style="list-style-type: none"> <li>• Provide participants with a production contact who will be available once the production team has dispersed.</li> <li>• Offer participants advice or support at any time.</li> <li>• Provide advice on potential hostile social media.</li> <li>• Contact participants immediately before transmission, to ask about their post filming experiences, and afterwards, to check on their wellbeing.</li> </ul> |
| <p><b>LOW RISK</b></p> <p><b>For example: an interviewee taking part in a news item or current affairs programme item</b></p> | <p><b>Before production:</b></p> <ul style="list-style-type: none"> <li>• Depending on the circumstances, informed consent, including information about the nature and purpose of the programme and the nature of their contribution, providing the person with information about potential risks arising from taking part in the programme (if any and insofar as they can be reasonably anticipated) and any intended steps to mitigate these.</li> </ul>                           |
|   | <p><b>During production:</b></p> <ul style="list-style-type: none"> <li>• Check on participant for any signs of stress or anxiety.</li> </ul>   |
|   | <p><b>After production:</b></p> <ul style="list-style-type: none"> <li>• Provide participant with a production contact and advise on details of transmission.</li> <li>• Offer advice and support if required (depending on nature of contribution).</li> <li>• Provide advice on potential negative social media (if risk of any).</li> </ul>  |

## A2. Responding to this consultation

### How to respond

- A2.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 14 April 2020.
- A2.2 You can download a response form from <https://www.ofcom.org.uk/consultations-and-statements/category-2/protecting-tv-radio-participants>. You can return this by email or post to the address provided in the response form.
- A2.3 If your response is a large file, or has supporting charts, tables or other data, please email it to [programmeparticipationreview@ofcom.org.uk](mailto:programmeparticipationreview@ofcom.org.uk), as an attachment in Microsoft Word format, together with the [cover sheet](#). This email address is for this consultation only, and will not be valid after 14 April 2020.
- A2.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- Standards and Audience Protection Team  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- A2.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files. Or
  - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A2.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A2.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A2.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A2.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex A5. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.

- A2.10 If you want to discuss the issues and questions raised in this consultation, please email [programmeparticipationreview@ofcom.org.uk](mailto:programmeparticipationreview@ofcom.org.uk)

## Confidentiality

- A2.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A2.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A2.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

## Next steps

- A2.15 Following this consultation period, Ofcom plans to publish a statement in Summer 2020.
- A2.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

## Ofcom's consultation processes

- A2.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A3.
- A2.18 If you have any comments or suggestions on how we manage our consultations, please email us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

**Protecting participants in TV and radio programmes**

Corporation Secretary  
Ofcom  
Riverside House  
2a Southwark Bridge Road  
London SE1 9HA  
Email: [corporationsecretary@ofcom.org.uk](mailto:corporationsecretary@ofcom.org.uk)

## A3. Ofcom's consultation principles

### Ofcom has seven principles that it follows for every public written consultation:

#### Before the consultation

- A3.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

#### During the consultation

- A3.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A3.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A3.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A3.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A3.6 If we are not able to follow any of these seven principles, we will explain why.

#### After the consultation

- A3.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

## A4. Consultation coversheet

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? \_\_\_\_\_

---

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## A5. Consultation questions

**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.

**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.