
Protecting participants in TV and radio programmes

Consultation on new broadcasting rules

CONSULTATION:

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1. Overview

This document proposes new rules to require broadcasters to ensure they take ‘due care’ of people¹ participating in television and radio programmes, extending existing protections.

Ofcom already has rules in the Broadcasting Code placing responsibilities on broadcasters around programme participants, and specific guidelines on the ‘due care’ required for minors who take part in programmes.

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.

Against this backdrop, we have been reviewing our existing protections for participants, and whether they should be extended to reflect the level of protection that exists for under-eighteens. Since we began examining these issues, events surrounding the cancellation of ITV’s *Jeremy Kyle Show* in May 2019 – and high levels of public concern about aspects of reality and other types of TV programmes – have underlined the importance of our review.

What we are proposing – in brief

We propose to introduce two new rules to help protect the wellbeing of people taking part in TV and radio programmes. These rules are based on the concept of ‘due care’, and would apply to programmes including reality shows, documentaries, news and current affairs, phone-ins, quiz shows, talent contests and other forms of factual and entertainment programming. They would not apply to drama including sitcoms or soaps. The proposed rules are:

- Due care must be taken over the welfare, wellbeing and dignity of participants in programmes.
- Participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes.

We are also inviting feedback on guidance around these rules. We are consulting on our proposed approach, and inviting examples of best practice to help broadcasters achieve appropriate protection and comply with the rules.

We are proposing clarificatory changes to two existing rules on the protection of children. This is to ensure consistency with the proposed new rules.

¹ We propose in this context that people who take part in programmes, or ‘participants’, means adults who have agreed to take part in a programme in any way, except presenters and reporters.

- 1.1 Ofcom is required to set standards for the content of TV and radio programmes. These are contained in the Broadcasting Code (“the Code”). We are reviewing whether there is a need for new Code requirements to protect people taking part in programmes, including reality TV.
- 1.2 When carrying out our principal duties under section 3 of the Communications Act 2003 (“the 2003 Act”), Ofcom must have regard to the vulnerability of children, and also “of others whose circumstances appear to Ofcom to put them in need of special protection”.
- 1.3 The focus of this review is potential harms arising from people’s participation in programmes, and whether we need to introduce “special protection” from those potential harms in the form of dedicated rules in the Code. Ofcom considers the provision in section 3 of the 2003 Act, together with our duty to set standards under section 319, would provide the necessary legislative framework to introduce potential new rules and guidance in this area.
- 1.4 Programme formats evolve over time, as do attitudes in society to welfare and wellbeing. So we recognise that proposed rules in this area must be sufficiently broad in scope to ensure they cover the potential harms that might arise from taking part in programmes.
- 1.5 However, we also recognise that new obligations in this area could have unintended consequences for programme-making and, ultimately, for freedom of expression. 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.
- 1.6 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.
- 1.7 So we are proposing a proportionate and flexible approach, taking into account the need to protect programme participants from potential harms; the need to enable broadcasters and programme makers to feature a diverse range of people; and the interests of viewers and listeners.
- 1.8 As well as considering appropriate protections for participants, we have also taken into account increasing public awareness of participants’ potential vulnerability. For example, at the same time as we have been carrying out our review, the House of Commons Digital, Culture, Media and Sport Select Committee has been carrying out its own review into Reality TV².
- 1.9 Programmes that focus on conflict between participants or expose a person’s vulnerabilities often generate a significant number of complaints from members of the public expressing concern about the welfare of the contributors. There is a risk that

² See: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/inquiries/parliament-2017/realitytv/>.

audience trust in broadcasting could be undermined by significant concerns that a broadcaster has not taken appropriate care of its programme participants. The proposed new rules would therefore work in tandem with Rule 2.3 of the Code, which requires that any potential offence to the audience is justified by the context, and that appropriate information is provided to audiences to help to avoid or minimise potential offence.

1.10 In this document we:

- explain why we are conducting this review and our relevant statutory duties;
- set out, and ask for stakeholders' views on, the two new Code rules and the clarificatory changes to two existing rules we are proposing; and
- outline the principles that we believe should be reflected in any supporting guidance to the proposed new Code rules. For example, this might include identifying the appropriate steps that should be taken by broadcasters before, during and after production, and considering issues arising from editorial techniques involving participants such as the use of lie detectors. As well as asking stakeholders for their views on these principles, we are inviting examples of existing or suggested good practice that could be incorporated in any new guidance in this area.

Next steps

1.11 We invite stakeholders to submit their views by 23 September 2019. We plan to publish a statement on our final decisions in the winter.

2. Why we are carrying out this review

- In recent years there has been a developing cultural change about awareness and de-stigmatization of mental health and wellbeing³. This has led to increasing openness and concern about potential harms arising from many experiences, including participating in programmes.
- The ever-increasing prominence of social media and its potential impact on programme participants means that taking part in a programme today raises more complex potential issues and risks than previously.
- Health professionals working in advisory roles in programme-making have recently highlighted some good examples of best practice but have also raised concerns about inconsistencies across the industry in the due care of participants in programmes⁴.
- Complaints received by Ofcom have more recently reflected a greater public awareness about the welfare and wellbeing of participants in programmes. Recent prominent examples include:
 - In summer 2018, Ofcom received 25,322 complaints about Celebrity Big Brother which featured allegations by Housemate Roxanne Pallett that her fellow Housemate Ryan Thomas had physically assaulted her. Most complainants expressed concern about the personal impact on Ryan and others specifically expressed concern about Roxanne's wellbeing⁵.
 - In August 2018, Ofcom received 7,912 complaints about the ITV programme Loose Women featuring Kim Woodburn. The majority of the complainants expressed concern that the presenters had humiliated Ms Woodburn and caused her unnecessary distress⁶.
 - In July 2018, Ofcom received 2,644 complaints about Love Island participant Dani Dyer being shown a video of boyfriend Jack reacting to his former partner entering Casa Amour. Many complainants expressed concern for Dani's mental wellbeing⁷.

We consider that any significant viewer and listener concerns in this area create a risk of undermining audience trust in broadcasting.

³ For example, a survey for Time to Change by the Institute of Psychiatry, Psychology and Neuroscience at King's College London in 2016 (see: <https://onlinelibrary.wiley.com/doi/full/10.1111/acps.12607#>) found that in the period 2009 to 2015 there was a 9.6% positive change in England in attitudes and behaviour towards people with mental health problems and a decrease in average levels of reported discrimination against people with mental health problems from 41.6% to 28.4%. Ofcom's latest Attitudes to Offensive Language Research published in 2016

(https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf) found there had been a change since previous Ofcom offensive language research, and respondents now consider discriminatory language specifically linked to a particular mental health problem or disability as among the most offensive and derogatory.

⁴ See for example: <https://www.bps.org.uk/news-and-policy/bps-calls-better-psychological-support-reality-tv-show-contestants> and <https://www.bps.org.uk/sites/bps.org.uk/files/Policy/Policy%20-%20Files/BPS%20response%20to%20the%20%28Digital%2C%20Culture%2C%20Media%20and%20Sport%20Committee%209%20Reality%20TV%20Call%20for%20Evidence.pdf>

⁵ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0030/138648/Issue-373-Broadcast-and-On-Demand-Bulletin-25-February-2019.pdf

⁶ See: https://www.ofcom.org.uk/_data/assets/pdf_file/0030/138648/Issue-373-Broadcast-and-On-Demand-Bulletin-25-February-2019.pdf

⁷ https://www.ofcom.org.uk/_data/assets/pdf_file/0020/116048/Issue-358-Broadcast-On-Demand-Bulletin.pdf

- 2.1 People participate in a huge range of programming formats including reality, factual, documentary, news and current affairs, audience phone-ins, audience interaction shows, quiz shows and talent competitions. All these genres are popular forms of TV and radio programming enjoyed and appreciated by significant numbers of viewers and listeners. Consistent with the right to freedom of expression: broadcasters and, by extension, programme makers, should have the creative freedom to make such programmes; people should have the opportunity to express themselves by taking part in programmes if they want to; and audiences should be able to value and enjoy watching and listening to those programmes.
- 2.2 However, the extent to which taking part in a programme offers a positive experience will differ according to a person's vulnerability and resilience, the nature and extent of their participation, and the programme type and approach taken by the programme makers. In particular, someone's circumstances might mean there is a risk of potential harm from which they need appropriate protection, either because they have inherent vulnerabilities and/or because of what they experience as a result of taking part⁸.
- 2.3 We recognise that many broadcasters have a comprehensive duty of care process in place to protect those who take part in their programmes. Our proposal for new rules and guidance in this area is not a judgement on the adequacy of those existing practices. Instead, we consider there is now a need for Ofcom to require a clear and consistent approach based on best practice, so that broadcasters and programme makers are applying a generally accepted standard of care to those who take part in their programmes.

Ofcom's legal framework and existing Code rules

- 2.4 Ofcom's principal duty under section 3 the 2003 Act is to further the interests of citizens and consumers. In carrying out this duty Ofcom must have regard, among other things, to the vulnerability of children, and also "of others whose circumstances appear to Ofcom to put them in need of special protection".
- 2.5 In line with these duties, the focus of this review is to consider potential harms arising from people's participation in programmes and whether we need to introduce "special protection" against those potential harms by setting dedicated rules in the Code under section 319 of the 2003 Act.
- 2.6 Section 319 of 2003 Act requires Ofcom to set, and from time to time review and revise, standards for the content of programmes included in television and radio programmes. The rules set out in the Code have been designed to secure those standards and include, in particular, the rules in Section One of the Code to protect people aged under 18, and the rules in Section Two (Harm and Offence).

⁸ As part of this consultation process Ofcom is engaging with former programme participants to gain an insight into their personal experiences of participation, whether positive or negative. Anyone who wishes to contact us about their experience of taking part in a programme can do so at: programmeparticipationreview@ofcom.org.uk

- 2.7 Separately, Ofcom is also required to set out principles to be observed, and practices to be followed in connection with the avoidance of unjust or unfair treatment in programmes, and in connection with the unwarranted infringement of privacy in programmes or in connection with the obtaining of material included in programmes. These are set out in Sections Seven and Eight of the Code.
- 2.8 Taken together, Ofcom considers that these duties provide the necessary legislative framework to introduce potential new rules and Guidance on best practice to protect adults from potential harms arising from their participation in programmes.
- 2.9 Annex A1 provides further detail about the statutory framework relevant to our review, sets out the relevant existing Code rules, and Ofcom’s duties under the Human Rights Act 1998.

Impact assessment

- 2.10 The analysis presented in the entirety of this consultation represents an impact assessment, as defined in section 7 of the 2003 Act.
- 2.11 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 Act) is secured or furthered by or in relation to what we propose.
- 2.12 Ofcom does not intend for the proposed rules to place a disproportionate and unjustified additional burden on broadcasters. The aim of the rules would be to set a clear, consistent generally accepted standard for the care of participants, supported by guidance on best practice in this area. The steps taken by broadcasters in each case would be a matter for their judgement and the required type and level of care would be appropriate to the particular circumstances in each case. 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, the expected standard of due care and accompanying Ofcom guidance; and
 - viewers and listeners – who, in watching or listening to programming, would be reassured that Ofcom-regulated broadcasters are required to meet a clear standard of care for programme participants.
- 2.13 In relation to equality (whether in Northern Ireland or the rest of the UK), Ofcom is required by statute to have due regard to any potential impacts our proposals may have on particular “equality groups” i.e. persons sharing a protected characteristic as defined by the Equality Act 2010, such as: sex, disability or race. In addition, our equality duties in Northern Ireland, under section 75 of the Northern Ireland Act 1998, require us to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. Ofcom has had due regard to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good

relations between those who share a relevant protected characteristic and those who do not. We consider that the proposals set out in this consultation document are consistent with our duties in this area.

- 2.14 Ofcom recognises there is a risk that placing additional requirements on broadcasters in this area could make them less likely to want to include in their programmes people who may require more complex care, for example, people with mental health issues. Ofcom has carefully considered this risk. As set out above, it is not our intention that these proposed rules will place unintended negative consequences on programme makers, particularly in terms of continuing to ensure the representation of people with protected characteristics in programmes and, ultimately, on their freedom of expression. We have addressed this risk by seeking to ensure that our proposed approach: gives due regard to the importance of freedom of expression; would be flexible and proportionate; and would enable broadcasters to take account of the particular circumstances of every programme and participant.
- 2.15 We consider that the proposed amendments to the Code will put better safeguards in place for vulnerable participants with protected characteristics and those who may be vulnerable as a result of a protected characteristic.

3. Proposed new rules to protect participants in programmes

Proposed new rules

Rule 2.17: Due care must be taken over the welfare, wellbeing and dignity of participants in programmes.

Rule 2.18: Participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes.

For the purposes of proposed Rules 2.17 and 2.18:

‘Participant’ means an adult who has agreed to take part in a programme in any way, except presenters and reporters.

The proposed rules would apply to programmes including, but not limited to, the following genres: reality (including scripted reality shows), documentaries, news, current affairs, audience phone-ins, audience interaction shows, quiz shows, talent contests and other forms of factual and entertainment programming. The rules would not apply to drama content, including sitcoms and soaps.

Introduction

- 3.1 As set out in Annex A1, current rules in Section Two of the Code focus on potential harm and/or offence caused to viewers or listeners by programmes. The rules in Section Seven and Eight of the Code give recourse to people appearing in programmes to object to their portrayal or to an unwarranted infringement of their privacy. There is a due care rule for under-eighteens who take part in programmes, but currently there is no equivalent provision for adults.
- 3.2 We set out below (and above) two proposed new rules which encompass the concept of due care for adults who take part in programming. The proposed new rules would enable Ofcom to set and enforce a generally accepted standard of care for programme participants.
- 3.3 We consider such rules would serve to protect against potential harm:
 - caused to programme participants who might already be potentially vulnerable before taking part in a programme and/or who may be placed in situations during their participation which might make them potentially vulnerable; and
 - caused to audience trust in broadcasting, so that viewers and listeners can trust that broadcasters are fulfilling their duty of care to programme participants, where required.

- 3.4 We propose that the new rules would apply to programme content including, but not limited to, reality shows (including scripted reality shows), documentaries, news, current affairs, audience phone-ins, audience interaction shows, quiz shows, talent contests and other forms of factual and entertainment programming. This reflects the fact that people take part in a wide range of programmes which might involve risks of harm to them. In determining the scope of the proposed new rules, we consider that an exception for drama content is appropriate, taking into account that the circumstances of adults who take part in drama programmes as actors are very different. The existing Code rules for due care of under eighteens apply to all types of programmes, but we consider that this difference with the proposed new rules for adult participants is appropriate given the particular need to protect children, and their inherent potential vulnerability. We have also proposed an exception for programme presenters and reporters on the grounds that their circumstances are also very different from other adults who participate in programmes.
- 3.5 We recognise that different types of participation may raise very different risks of harm to participants. The steps broadcasters and programme makers should take to ensure due care of programme participants will vary considerably depending on factors such as: the person who is participating; the programme format; the nature of a person's participation in a programme; and the degree of control a broadcaster/programme maker has over someone's experience within a programme (e.g. the difference between an observational documentary programme and a reality TV format in which participants are placed in a constructed environment). We therefore acknowledge that the proposed new rules need to be flexible enough to work in a range of situations, and to take account of the fact that very different types and levels of care may be necessary.
- 3.6 We propose that the new rules would form part of Section Two of the Code (Harm and Offence) as they would concern the potential for harm to participants and to audience trust, as explained in paragraph 1.9 above.
- 3.7 We have used the existing rules for the due care of under eighteens who participate in programming as the basis for our proposed new Rules 2.17 and 2.18. The rules for child participants currently state:
- 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".
- 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".
- 3.8 We acknowledge that broadcasters' duty of care to child participants (who are inherently vulnerable due to their age) may well differ significantly from that required for a consenting adult who is capable of making their own independent decisions about their participation. In our view however, the use of the word "due" is an important way of ensuring that the proposed new rules are flexible and proportionate. It would also ensure

that the rules reflect the important need for broadcasters to make judgements on what care is appropriate in each individual case, taking account of the person involved, the nature of their participation, and the type of programme.

- 3.9 We propose that the new rules would be accompanied in the Code by clear cross-references to other rules which may also be relevant to ensuring the care of people participating in programmes, including the Fairness and Privacy rules (Sections Seven and Eight), the harm and offence rules (Section Two) and rules for the due care of under-eighteens (Section One). The proposed new rules would not replace the requirement to comply with these rules.
- 3.10 In determining which programme participants the proposed new rules should cover, we have taken account of the fact that the Fairness and Privacy rules in Sections Seven and Eight of the Code apply to programme participants in a very particular way. For instance, Sections Seven and Eight apply not just to people who choose to be in programmes but to anyone who appears or whose voice is heard in a programme. These sections can also apply to people who are not shown or heard in a programme, because they have a direct interest in the unfairness that may have occurred in its broadcast and/or because they believe their privacy was infringed.
- 3.11 To ensure that the proposed new Rules 2.17 and 2.18 do not place a disproportionate burden on broadcasters and programme makers, we consider it is appropriate to limit the meaning of ‘participant’ to people who agree to take part in any way in programme content including, but not limited to, reality shows (including scripted reality shows), documentaries, news, current affairs, audience phone-ins, audience interaction shows, quiz shows, talent contests and other forms of factual and entertainment programming. We have proposed an exception for presenters and reporters, given that their circumstances are different from other participants. The term ‘agree to take part’ is broader than the meaning of ‘informed consent’ (as set out in Practice 7.3 in Section Seven of the Code). Practice 7.3 makes it clear that informed consent is normally required, except “where the subject matter is trivial or the participation minor”. Therefore, the term ‘agree to take part’ would also cover those circumstances where ‘informed consent’ may not be necessary under the Code, but some level of due care may still be appropriate. ‘Agree to take part’ therefore means that the broadcaster believes the person has given their agreement (either in writing, verbally or by their conduct – whether on or off camera, in the case of television) to participate in the programme. It also reflects the fact that circumstances in which someone does not agree to take part in a programme (for example, if they are filmed or recorded surreptitiously in the public interest) are very different, and in Ofcom’s view, any issues arising from this kind of inclusion in a programme are likely to be best dealt with under Sections Seven and/or Eight of the Code (Fairness and Privacy).
- 3.12 We have given careful consideration to how Ofcom would enforce the proposed new Rules 2.17 and 2.18. Ofcom is a post-transmission regulator and cannot intervene in broadcast content prior to transmission. However, we would use complaints from viewers and listeners, and from participants themselves to identify programmes which may raise issues

under the new rules. As set out in our published procedures⁹, Ofcom can act in relation to a broadcast post-transmission in the absence of any complaint.

- 3.13 We also recognise that a complaint to Ofcom may engage potentially different areas of the Code (e.g. due care of participants and fairness and privacy). In such circumstances, Ofcom would use its discretion to determine the most appropriate rule or rules which should apply in each case.
- 3.14 Enforcing the proposed new Rules 2.17 and 2.18 would require Ofcom to make an assessment of any steps taken by the broadcaster to demonstrate due care was taken. Broadcasters would therefore need to have clear processes in place, and to ensure production companies have clear processes in place and retain records of any actions taken in the due care of adult participants for a reasonable time period. This is because they may need to refer to this information after broadcast if Ofcom decided to assess any complaint or investigate any potential issue under the proposed new rules.
- 3.15 As mentioned above, we have based our proposed new rules on Rules 1.28 and 1.29 of the Code. However, the wording of Rule 1.28 and its requirement for due care over the “physical and emotional welfare and dignity” of under-eighteens who take part in programmes was first introduced almost 15 years ago. We recognise that, in line with the changing awareness in society about mental health issues, this wording could be updated. For that reason, we are proposing the inclusion of the words “welfare, wellbeing and dignity” in Rule 2.17. We are also proposing a change to Rule 1.28 (and its associated guidance) to reflect this wording, for clarity and consistency.
- 3.16 Rule 1.29 requires that people aged under 18 who participate in programmes are not caused “unnecessary” distress or anxiety by their involvement in programmes or by the broadcast of those programmes. We recognise that there may be occasions where, taking into account the context, there may be editorial justification for broadcasters to show programme participants in a state of distress or anxiety. Therefore, we consider a more appropriate test when considering distress or anxiety would be whether it is justified in the specific context. We have therefore reflected this approach in the wording of the proposed Rule 2.18 and are also proposing to amend Rule 1.29 to reflect this, for clarity and consistency.
- 3.17 We are also proposing that Rules 2.17 and 2.18 would be supported by guidance setting out recommendations to assist broadcasters to achieve the appropriate level of protection for adults who participate in programmes, and to help ensure compliance with the new rules. A summary of the key principles we propose to include in this guidance is in Section 4 of this document, and we welcome views on these proposals, as well as any recommendations on other aspects of best practice which should be included.

⁹ https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Our proposals

The text below sets out our proposed new inclusions and changes to the Code.

The complete proposed changes within the full Code sections in which they would be included can be viewed at Annex A2.

Section Two of the Code (Harm and Offence)

Introduction to the proposed new Rules 2.17 and 2.18

For the purposes of Rules 2.17 and 2.18, ‘participant’ means an adult who has agreed to take part in a programme in any way, except presenters and reporters. These rules do not apply to drama content including sitcoms and soaps. They apply to programme content including, but not limited to, reality shows (including scripted reality shows), documentaries, news, current affairs, audience phone-ins, audience interaction shows, quiz shows, talent contests and other forms of factual and entertainment programming.

The word “due” is an important way of ensuring that the requirement in Rule 2.17 is flexible and proportionate. It means that the care provided to adult participants should be adequate or appropriate for the person concerned and for the subject and nature of the programme. The rule therefore reflects the important need for broadcasters to make judgements on what care is appropriate in each case, taking account of the person involved, the nature of their participation, and the type of programme.

Rules 2.17 and 2.18 are intended to reflect broadcasters’ right to freedom of expression and audiences’ right to receive information and ideas. As with other sections of the Code, no rule should be read in isolation but in the context of the whole Code and the supporting notes provided (and the specific other rules mentioned below). Broadcasters should also refer to Ofcom’s published guidance for more information on how to comply with these rules.

Proposed Rules 2.17 and 2.18

Participants in programmes (except drama)

Rule 2.17: Due care must be taken over the welfare, wellbeing and dignity of participants in programmes.

Rule 2.18: Participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes.

(See also Rules 1.28 and 1.29 (due care of under-eighteens); Rule 2.3 (offence; and Section Seven (fairness) and Section Eight (privacy)).

Question 1: Do you agree with our rationale for proposed new Rules 2.17 and 2.18? Please give reasons for your answer.

Question 2: Do you agree with the proposed meaning of 'participant' for the purpose of these rules? Please give reasons for your answer.

Question 3: Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.

Question 4: Do you agree with the proposed wording for the new Rules 2.17 and 2.18? Please give reasons for your answer.

Section One of the Code (Protection of children)

Rule 1.28: “Due care must be taken over the ~~physical and emotional~~ welfare, **wellbeing 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.”

Question 5: Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.

Rule 1.29: “People under eighteen must not be caused ~~unnecessary~~ **unjustified** distress or anxiety by their involvement in programmes or by the broadcast of those programmes”.

Question 6: Do you agree that Rule 1.29 should be amended in this way? Please give reasons for your answer.

4. Creating new Code guidance to help broadcasters and programme makers

We propose to publish new guidance to accompany new Code Rules 2.17 and 2.18. This would assist broadcasters and programme makers in interpreting them.

The guidance would contain information on best practice at each stage of production (before, during and after production, where relevant) to assist broadcasters in ensuring due care has been taken, and to draw together a generally accepted standard of best practice for broadcasters to follow.

Stakeholders can refer to our guidance accompanying the rules for due care of child participants as an example of our proposed approach in this case¹⁰.

Introduction

- 4.1 To assist those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards, guidance to accompany the Code is issued by Ofcom on the Ofcom website and is reviewed regularly.
- 4.2 The guidance provides information on individual rules and how Ofcom considers broadcast content against them. In taking any decisions in this area Ofcom would also have regard to any industry agreed best practice as well as protocols or procedures for due care established by individual broadcasters and programme makers.
- 4.3 The application of the concept of “due” care (as cited in Sections One, Five and Nine of the Code) is significant for the proposed new Rules 2.17 and 2.18. We consider that detailed guidance on the type of practical steps broadcasters and programme makers may determine is appropriate in different circumstances would therefore help to ensure compliance in this area.
- 4.4 In the rest of this section, we lay out what we think are the key principles that should be reflected in any guidance to accompany the proposed new rules. We are inviting views from stakeholders on these principles including, where appropriate, any details of existing best practice which Ofcom may include in the proposed new Guidance.

Key proposed guidance principles

- 4.5 We propose that the guidance would set out four key principles broadcasters should take into consideration when applying proposed Rules 2.17 and 2.18:

¹⁰ https://www.ofcom.org.uk/data/assets/pdf_file/0023/45833/updated-code-guidance.pdf

a) **Definition of a ‘participant’:** for the purpose of these proposed rules, we are proposing a specific definition of a ‘participant’ as a person who has agreed to take part in a programme in any way, except presenters and reporters. The term ‘agree to take part’ is broader than the meaning of ‘informed consent’ (as set out in Practice 7.3 in Section Seven of the Code). Practice 7.3 makes clear that informed consent is normally required, except “where the subject matter is trivial or the participation minor”. Therefore the term ‘agree to take part’ would also cover those circumstances where ‘informed consent’ may not be necessary under the Code, but some level of due care may still be appropriate. ‘Agree to take part’ therefore means that the broadcaster believes that the person has given their agreement (either in writing, verbally or by their conduct – whether on or off camera, in the case of television) to participate in the programme. It would not cover those featured in a programme due to its coverage of an event, e.g. players in a sports game. It also reflects the fact that circumstances in which someone does not agree to take part in a programme (for example, if they are filmed or recorded surreptitiously in the public interest) are very different, and in Ofcom’s view, any issues arising from this kind of inclusion in a programme are likely to be best dealt with under Sections Seven and/or Eight of the Code (Fairness and Privacy).

b) **The phrase “welfare, wellbeing and dignity of participants in programmes” indicates the broad potential physical, mental and other impacts that taking part in a programme might have on participants:** the guidance would make clear that it is not Ofcom’s intention to hold broadcasters to account for outcomes beyond their reasonable control, or which might entail complex causes. However, there are multiple potential negative outcomes for participants which a broadcaster may need to give careful consideration to and take measures to protect against, depending on the circumstances, to ensure compliance with Rule 2.17 and 2.18.

It could be possible for a broadcaster to take comprehensive and appropriate steps to protect the welfare and wellbeing of its participants, only for an unforeseen potential harm to arise for one of them as a result of their participation in a programme. The guidance would make clear that, provided appropriate steps had been taken, these circumstances would not necessarily lead to an automatic breach of Rules 2.17 or 2.18.

c) **Central to proposed Rules 2.17 and 2.18 is the concept of due care:** “due” has the same meaning here as in other areas of the Code. It indicates that the level of care must be “appropriate to the particular circumstances”. The guidance would make clear that this means Rule 2.17 enables a flexible and proportionate approach to the care that broadcasters are required to ensure in the case of each programme.

d) **The broadcaster must judge what is appropriate in each case:** the guidance would explain that whether specific recommendations set out within it, or alternative measures, are the most appropriate will vary depending on: the participant themselves, the programme, and the nature and degree of the participant’s involvement. Other relevant factors may include, for example – where appropriate – the participant’s ability to make judgements about their participation and its likely

consequences. Broadcasters should be able to demonstrate that they gave careful consideration to the circumstances and that the actions or steps taken in each case were appropriate.

- 4.6 The guidance would also make clear that the detailed steps and best practice it contains are not provided by Ofcom to indicate all the measures a broadcaster must take in each and every programme. For example, the steps a broadcaster may need to take in a programme where the subject matter is in the public interest, for example, in a news programme, are likely to be very different from the appropriate steps in an entertainment or reality format. It is a matter for the broadcaster to decide whether any or all of the steps, and/or any additional steps, are appropriate in each particular case. The guidance would also make clear that there could be some types of participation where none of the steps set out in the guidance are necessary. However detailed best practice would be provided in the guidance to be helpful to broadcasters in understanding the type of care they should consider in different example circumstances.
- 4.7 We propose that the guidance would outline the following key steps and make clear that they may be appropriate in some circumstances (with examples), depending on the type of programme and the nature of the participation:

Key proposed guidance for different production stages:

a) **before production**, such as:

- background checks;
- risk assessments;
- engaging experts to advise on the suitability of a person participating (including key principles to consider when doing so);
- participant agreement to take part in a programme (and /or informed consent, with reference to Section Seven of the Code), including advising potential participants on potential negative impacts of taking part; and
- keeping adequate records to provide evidence of the steps taken to safeguard the welfare of participants.

b) **during production**, such as:

- providing a single point of contact for participants;
- issues to consider around the use of editorial techniques such as lie detectors, and the risks of unjustified anxiety, harm and distress; and
- considering the need to alter the care being provided if needed during filming.

c) **post-production**, such as:

- retaining contact with participants to monitor any specific after-effects;
- advising potential participants on steps to minimise or limit social media contact post-transmission; and
- keeping the participant informed on their participation pre-transmission.

4.8 The guidance would give some explanation of how participation in different circumstances might raise different potential risks and involve different types of care being taken, for example by comparing some programme examples such as a reality format, a talent show, a documentary, a news programme or a phone-in radio show.

4.9 Importantly, the guidance would not specify individual steps required in each example but would make clear that the Code's requirements in this area are intended to be flexible and proportionate and provide an appropriate level of care to participants without inadvertently hampering freedom of expression or programme making.

Question 7: Do you agree with the proposed approach to the Code guidance? Please give reasons.

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.

A1. Legal and regulatory framework

Legal framework

- A1.1 Ofcom’s principal duty under section 3(1) of the 2003 Act is to further the interests of citizens in relation to communications matters and to further the interests of consumers in relevant markets, where appropriate by promoting competition. This principal duty to further the interests of citizens and consumers is intrinsic to all of our other functions and in performing that duty, Ofcom is required, among other things, to have regard to the vulnerability of children and of others whose circumstances appear to us to put them in need of special protection (section 3(4)(h)).
- A1.2 Under section 319 of the 2003 Act, Ofcom is required to set, and from time to time review and revise, such standards for the content of programmes to be included in television and radio services as appear to us to be best calculated to secure the specific objectives described in that section. The rules set out in Ofcom’s Broadcasting Code (“the Code”) have been designed to secure those standards. These include, in particular, the rules in Section One of the Code to protect people aged under 18, and the rules in Section Two (Harm and Offence).
- A1.3 In setting, or revising, broadcasting standards Ofcom must have regard to the following matters under section 319(4) of the 2003 Act:
- a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - b) the likely size and composition of the potential audience for programmes included in television services generally, or in television services of a particular description;
 - c) the likely expectation of the audience as to the nature of a programme’s content and the extent to which the nature of a programme’s content can be brought to the attention of potential members of the audience;
 - d) the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
 - e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - f) the desirability of maintaining the independence of editorial control over programme content.
- A1.4 Section 107 of the Broadcasting Act 1996 (“the 1996 Act”) places a duty on Ofcom to draw up, and from time to time review a Code setting out principles to be observed, and

practices to be followed in connection with the avoidance of unjust or unfair treatment in programmes, and in connection with the unwarranted infringement of privacy in programmes or in connection with the obtaining of material included in programmes.

- A1.5 The requirement under section 3 of the 2003 Act to have regard to the vulnerability of “others whose circumstances appear to Ofcom to put them in need of special protection” is the basis for Ofcom’s current review. Ofcom’s approach to considering whether to revise the Code is to determine whether the circumstances of taking part in a programme place an adult in need of special protection, similar to the way in which the legislation requires Ofcom to have regard to the vulnerability of children.

Existing rules under the Code

- A1.6 The Code contains rules reflecting the standards and fairness code set out above. These include:
- A1.7 Due care of under-eighteens: The Code includes requirements designed to safeguard children who take part in programmes. Specifically, Rule 1.28 of the Code requires broadcasters to ensure that: “Due care is taken over the physical and emotional welfare and dignity of people under eighteen who take part or are otherwise involved in programmes.” In addition, Rule 1.29 of the Code requires broadcasters to ensure: “People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.”
- A1.8 Following several investigations involving the due care of children in programming, in 2008 we issued comprehensive guidance to set out best practice and help broadcasters comply with Rules 1.28 and 1.29. We updated and enhanced this guidance¹¹ in 2015, following engagement with broadcasters, production companies, health professionals and other relevant stakeholders. The guidance is based on three key principles:
- “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”;
 - the broadcaster is responsible for judging what measures are appropriate in each case; and
 - there is a broad potential impact as every child’s vulnerability and resilience can vary significantly depending on a number of factors. Broadcasters should not assume that every young person will respond in the same way when participating in a production.
- A1.9 The guidance includes detailed measures such as:

¹¹ See pages 11 to 19: https://www.ofcom.org.uk/data/assets/pdf_file/0017/24704/section1.pdf

Before production

- Undertaking background checks on social, family, and health circumstances and emotional wellbeing.
- Completing risk assessments about the physical welfare and the emotional and mental wellbeing of the participants.
- Engaging experts (including psychologists) – identifying circumstances which may warrant expert advice.
- Keeping adequate records to provide evidence of the steps taken to safeguard the welfare of participants.

During production

- Prioritising the physical and emotional wellbeing of the child.
- Providing a single point of contact to oversee the child's welfare.
- Reviewing format considerations to limit anxiety, harm and distress.

Post-production

- Retaining contact with participants to monitor any specific after-effects.
- Updating the participant on their participation pre-transmission.
- Advising participants pre-transmission on social media and media interest.

A1.10 We are aware that broadcasters, as well as some independent production companies, have increasingly developed protocols that closely reflect the guidance, and this has ensured a high level of compliance with Rules 1.28 and 1.29¹².

A1.11 **Offence caused to audiences:** Section 319 of the 2003 Act requires that generally accepted standards are applied to the content of TV and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material. Rule 2.3 of the Code states: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

¹² In the period following the introduction of the latest guidance on Rules 1.28 and 1.29 (March 2015 to present), Ofcom has published Findings recording breaches of Rule 1.28 in the following cases:

- *Blinging Up Baby*, Channel 5, 28 July 2014. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0017/50507/issue_288.pdf
- *Panorama*, BBC1, 11 January 2016. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0027/117468/broadcast-on-demand-bulletin-issue-359.pdf
- *Children's Hour*, Betar Bangla Radio, 21 February 2016. See: https://www.ofcom.org.uk/_data/assets/pdf_file/0035/49796/issue_304.pdf

- A1.12 Viewers and listeners may be offended by what they perceive to be the lack of appropriate care for programme participants shown in challenging, distressing or disturbing circumstances. Under Rule 2.3, broadcasters can mitigate any potential offence caused to the audience if they provide “appropriate information” on some of the steps they have taken to care for participants. We have conducted a number of investigations raising issues of potential offence arising from viewers’ concerns about the welfare of children participating in television programmes.
- A1.13 **Fairness and privacy:** Section 107 of the 1996 Act places a duty on Ofcom to set out principles to be observed, and practices to be followed, in connection with the avoidance of unjust or unfair treatment in programmes and in connection with the unwarranted infringement of privacy in programmes or in connection with the obtaining of material included in programmes. These principles and practices are set out in Sections Seven and Eight of the Code, and Ofcom is required to take them into account in any fairness or privacy investigation it conducts. Anyone who believes that they have been treated unjustly or unfairly in a programme as broadcast, or that their privacy has been unwarrantably infringed in a programme, or in connection with obtaining material included in a programme, can complain to Ofcom and Ofcom is required to consider and reach a decision on such complaints.
- A1.14 The current rules in Section Two of the Code focus on potential harm or offence caused to viewers or listeners by programmes. The rules in Section Seven and Eight of the Code give recourse to people appearing in programmes to object to an unfair portrayal or to an unwarranted infringement of their privacy. While there is a due care rule for under-eighteens who appear in programmes, there is currently no equivalent provision for adult participants within the Code.

Application of the Code to broadcasters

- A1.15 Ofcom regulates the providers of television channels and radio stations (i.e. the broadcasters) under our licensing framework, which requires broadcasters (including the BBC under the BBC Agreement) to comply with Ofcom’s Code. Broadcasters, not independent production companies, are responsible for ensuring that all programming broadcast on their channels or stations complies with the Code, regardless of whether they produced the content itself, the production is commissioned from a third party, or acquired from other sources. This creates a culture of responsibility which means potential issues cannot “slip between the gap” between a broadcaster and a production company.

Human Rights Act 1998

- A1.16 As a public body Ofcom has a duty under the Human Rights Act 1998 to ensure that we act in a way which is compatible with the European Convention of Human Rights (“the Convention”).
- A1.17 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster’s right to impart information and ideas as well as the

audience's right to receive them, without interference by a public authority. In addition, Article 8 provides for the right to a private and family life, home and correspondence. The exercise of these freedoms may be restricted, for example, where it is prescribed by law and necessary in a democratic society; where it is in the interests of public safety; for the prevention of disorder or crime; for the protection of health and morals; for the protection of the reputation or rights of others; and in order to prevent the disclosure of information received in confidence.

- A1.18 Ofcom must take such rights into account both when introducing new rules into the Code, and when enforcing those rules. Ofcom also has a public law duty to ensure that our decisions are fair and proportionate to achieving our objectives, including our statutory objectives.

A2. Proposed new and amended rules as they would appear in the Code

Proposed areas of change are shaded in grey, with bold text to show proposed additions and strikethrough text to show proposed amendments.

Section One – Protecting the Under-Eighteens

(Relevant legislation includes, in particular, sections 3(4)(h) and 319(2)(a) and (f) of the Communications Act 2003, Article 27 of the Audiovisual Media Services Directive, Article 10 of the European Convention on Human Rights, and the BBC Charter and Agreement.)

This section must be read in conjunction with Section Two: Harm and Offence.

Principle

To ensure that people under eighteen are protected.

Rules

Scheduling and content information

- 1.1 Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.
- 1.2 In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen. For television services, this is in addition to their obligations resulting from the Audiovisual Media Services Directive (in particular, Article 27, see Appendix 2).
- 1.3 Children must also be protected by appropriate scheduling from material that is unsuitable for them. Although scheduling requirements in this section are not relevant to the provision of programmes on demand, the BBC must put in place appropriate measures on BBC ODPS that provide equivalent protection for children.

Meaning of “children”: Children are people under the age of fifteen years

Meaning of “appropriate scheduling”:

Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

1.4 Television broadcasters must observe the watershed.

Meaning of “the watershed”:

The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530. On premium subscription film services which are not protected as set out in Rule 1.24, the watershed is at 2000. There is no watershed on premium subscription film services or pay per view services which are protected as set out in Rule 1.24 and 1.25 respectively.

1.5 Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Meaning of “when children are particularly likely to be listening”:

This phrase particularly refers to the school run and breakfast time, but might include other times.

1.6 The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule.

1.7 For television programmes broadcast before the watershed, or for radio programmes broadcast when children are particularly likely to be listening, or for BBC ODPS content that is likely to be accessed by children, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context). (For the meaning of “context” see Section Two: Harm and Offence.)

Meaning of “likely to be accessed by children”:

Factors affecting whether content is likely to be accessed by children include (but are not limited to):

- the nature of the content – whether it is aimed at or has particular appeal to children; and
- the nature of access to the content e.g. whether there are measures in place that are intended to prevent children from viewing and/or listening to the content.

The coverage of sexual and other offences in the UK involving under-eighteens

1.8 Where statutory or other legal restrictions apply preventing personal identification, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:

- by reporting limited information which may be pieced together with other information available elsewhere, for example in newspaper reports (the ‘jigsaw effect’);
- inadvertently, for example by describing an offence as “incest”; or
- in any other indirect way.

(Note: Broadcasters should be aware that there may be statutory reporting restrictions that apply even if a court has not specifically made an order to that effect.)

- 1.9** When covering any pre-trial investigation into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. Particular justification is also required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved in the defence as a defendant or potential defendant.

Drugs, smoking, solvents and alcohol

- 1.10** The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS) unless there is editorial justification;
 - must not be condoned, encouraged or glamorised in other programmes likely to be widely seen, heard or accessed by under-eighteens unless there is editorial justification.

Violence and dangerous behavior

- 1.11** Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio) or when content is likely to be accessed by children (in the case of BBC ODPS) and must also be justified by the context.
- 1.12** Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful or dangerous:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must not be broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS), unless there is editorial justification.
- 1.13** Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must not be broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS), unless there is editorial justification.

(Regarding Rules 1.11 to 1.13 see Rules 2.4 and 2.5 in Section Two: Harm and Offence.)

Offensive Language

- 1.14** The most offensive language must not be broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS).
- 1.15** Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances.
- 1.16** Offensive language must not be broadcast before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS), unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

(Regarding Rules 1.14 to 1.16 see Rule 2.3 in Section Two: Harm and Offence.)

Sexual Material

- 1.17** Material equivalent to the British Board of Film Classification (“BBFC”) R18 rating must not be broadcast at any time.
- 1.18** ‘Adult sex material’ - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access. In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of “mandatory restricted access”:

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

- 1.19** Broadcasters must ensure that material broadcast after the watershed, or made available on BBC ODPS, which contains images and/or language of a strong or explicit sexual nature, but is not ‘adult sex material’ as defined in Rule 1.18 above, is justified by the context.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of “context”.)

- 1.20** Representations of sexual intercourse must not occur before the watershed (in the case of television), when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, when children are particularly likely to be listening, or when content is likely to be accessed by children on BBC ODPS, and must be appropriately limited.

Nudity

- 1.21** Nudity before the watershed, or when content is likely to be accessed by children (in the case of BBC ODPS), must be justified by the context.

Films and mandatory daytime protection

Meaning of “mandatory daytime protection”:

Mandatory daytime protection means there is a PIN protection system in place pre-2100 and post-0530 which cannot be removed by the user and restricts access solely to those authorised to view. This does not apply to ‘adult sex material’ which under Rule 1.18 can only be shown between 2200 and 0530 and must be behind mandatory restricted access (see Rule 1.18).

- 1.22** No film refused classification by the British Board of Film Classification (BBFC) may be broadcast, unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:
- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
 - the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.
- 1.23** BBFC 18-rated films or their equivalent must not be broadcast before 2100, on any service (except behind mandatory daytime protection), and even then they may be unsuitable for broadcast at that time.
- 1.24** Provided that mandatory daytime protection is in place pre-2100 and post-0530 (or pre-2000 and post 0530 for up to BBFC 15-rated films or their equivalent on premium subscription film services), programmes that are unsuitable for children that would usually be scheduled after the watershed, and films up to BBFC 18-rated or equivalent, may be broadcast on television at any time of day. Clear information must be provided with programme and film content that will assist adults to assess its suitability for children, and the mandatory daytime protection which is in place must be clearly explained to all viewers. When not using mandatory daytime protection, broadcasters must comply with Ofcom’s rules on scheduling and the watershed (see Rules 1.1 to 1.7).

Note:

Clear information about programme and film content’ may include but is not limited to:

- information about the programme provided in the EPG referring to any potentially unsuitable material such as “strong language”, “nudity”, “scenes of graphic violence”, or “sexual images”;
- ratings (BBFC or equivalent); and/or information given in continuity announcements.

- 1.25** Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory daytime protection is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of “mandatory daytime protection” above.)

1.26 BBFC R18-rated films must not be broadcast.

Exorcism, the occult and the paranormal

1.27 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), or when content is likely to be accessed by children (in the case of BBC ODPS). Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching, or are particularly likely to be listening, or when content is likely to be accessed by children (in the case of BBC ODPS), (This rule does not apply to drama, film or comedy.)

The involvement of people under eighteen in programmes

1.28 Due care must be taken over the ~~physical and emotional~~ welfare, **wellbeing 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.

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

1.30 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.

(See Rule 2.16 in Section Two: Harm and Offence.)

Section Two – Harm and Offence

(Relevant legislation includes, in particular, sections 3(4)(g) and 319(2)(a),(f) and (l) of the Communications Act 2003, Articles 10 and 14 of the European Convention on Human Rights, and the BBC Charter and Agreement.)

This section must be read in conjunction with Section One: Protecting the Under Eighteens. The rules in this section are designed not only to provide adequate protection for adults but also to protect people under eighteen.

Principle

To ensure that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/ or offensive material.

Rules

Generally Accepted Standards

- 2.1** Generally accepted standards must be applied to the contents of television and radio services and BBC ODPS so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.
- 2.2** Factual programmes or items or portrayals of factual matters must not materially mislead the audience. (Note to Rule 2.2: News is regulated under Section Five of the Code.)
- 2.3** In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of “context” below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation, and marriage and civil partnership). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Meaning of “context”:

Context includes (but is not limited to):

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast
- what other programmes are scheduled before and after the programme or programmes concerned
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on viewers or listeners who may come across it unawares.

Time and scheduling of broadcast are not relevant to the provision of programmes on demand but, for programmes made available on BBC ODPS, context also includes (but is not limited to) the nature of access to the content e.g. whether there are measures in place that are intended to prevent children from viewing and/or listening to the content.

Violence, dangerous behaviour and suicide

- 2.4** Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

(See Rules 1.11 to 1.13 in Section One: Protecting the Under-Eighteens.)

- 2.5** Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context.

(See Rule 1.13 in Section One: Protecting the Under-Eighteens.)

Exorcism, the occult and the paranormal

- 2.6** Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity.

(See Rule 1.27 in Section One: Protecting the Under-Eighteens, concerning scheduling restrictions.)

- 2.7** If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.

- 2.8** Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals.

(Religious programmes are exempt from this rule but must, in any event, comply with the provisions in Section Four: Religion. Films, dramas and fiction generally are not bound by this rule.)

Meaning of “life-changing”:

Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

Hypnotic and other techniques, simulated news and photosensitive epilepsy

- 2.9** When broadcasting material featuring demonstrations of hypnotic techniques, broadcasters must exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not broadcast his/her full verbal routine or be shown performing straight to camera.

- 2.10** Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.

- 2.11** Broadcasters must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred.

- 2.12** Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

Broadcast competitions and voting

- 2.13** Broadcast competitions and voting must be conducted fairly.

- 2.14** Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.
- 2.15** Broadcasters must draw up rules for a broadcast competition or vote. These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time an invitation to participate is broadcast.
- 2.16** Broadcast competition prizes must be described accurately.

(See also Rule 1.30 in Section One: Protecting the Under Eighteens, which concerns the provision of appropriate prizes for children.)

Note:

For circumstances in which audience participation or interaction with programming (including broadcast competitions and voting) may involve a cost to the viewer, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

Meaning of "broadcast competition":

A competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means for the opportunity to win a prize.

Meaning of "voting":

Features in a programme in which viewers or listeners are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

Participants in programmes (except drama)

For the purposes of Rules 2.17 and 2.18, 'participant' means an adult who has agreed to take part in a programme in any way, except presenters and reporters. These rules do not apply to drama content including sitcoms and soaps. They apply to programme content including, but not limited to, reality (including scripted reality shows), documentaries, news, current affairs, audience phone-ins, audience interaction shows, quiz shows, talent contests and other forms of factual and entertainment programming.

The word "due" is an important way of ensuring that the requirement in Rule 2.17 is flexible and proportionate. It means that the care provided to adult participants should be adequate or appropriate for the person concerned and for the subject and nature of the programme. The rule therefore reflects the important need for broadcasters to make judgements on what care is appropriate in each case, taking account of the person involved, the nature of their participation, and the type of programme.

Rules 2.17 and 2.18 are intended to reflect broadcasters' right to freedom of expression and audiences' right to receive information and ideas. As with other sections of the Code, no rule should be read in isolation but in the context of the whole Code and the supporting notes provided (and the specific other rules mentioned below). Broadcasters should also refer to Ofcom's published guidance for more information on how to comply with these rules.

2.17 Due care must be taken over the welfare, wellbeing and dignity of participants in programmes.

2.18 Participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes.

(See also Rules 1.28 and 1.29 (due care of under eighteens); Rule 2.3 (offence; and Section Seven (Fairness) and Section Eight (Privacy)).

A3. Responding to this consultation

How to respond

- A3.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on 23 September 2019.
- A3.2 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.
- A3.3 If your response is a large file, or has supporting charts, tables or other data, please email it to 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 23 September 2019.
- A3.4 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
- A3.5 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.
- A3.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential).
- A3.7 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.
- A3.8 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.
- A3.9 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 A6. 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.
- A3.10 If you want to discuss the issues and questions raised in this consultation, please email programmeparticipationreview@ofcom.org.uk.

Confidentiality

- A3.11 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.
- A3.12 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.
- A3.13 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.
- A3.14 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

- A3.15 Following this consultation period, Ofcom plans to publish a statement in the winter.
- A3.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A3.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex A4.
- A3.18 If you have any comments or suggestions on how we manage our consultations, please email us at 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.
- A3.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

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

A4. Ofcom's consultation principles

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

Before the consultation

- A4.1 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

- A4.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A4.3 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.
- A4.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A4.5 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.
- A4.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A4.7 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.

A5. 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 | <input type="checkbox"/> |
| Name/contact details/job title | <input type="checkbox"/> |
| Whole response | <input type="checkbox"/> |
| Organisation | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/> |

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)

A6. Consultation questions

- Question 1:** Do you agree with our rationale for proposed new Rules 2.17 and 2.18? Please give reasons for your answer.
- Question 2:** Do you agree with the proposed meaning of ‘participant’ for the purpose of these rules? Please give reasons for your answer.
- Question 3:** Do you agree with the proposed scope of these rules? Please give reasons for your answer.
- Question 4:** Do you agree with the proposed wording for the new Rules 2.17 and 2.18? Please give reasons for your answer.
- Question 5:** Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.
- Question 6:** Do you agree that Rule 1.29 should be amended in this way? Please give reasons for your answer.
- Question 7:** Do you agree with the proposed approach to the Code guidance? Please give reasons.
- 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.