



**Ofcom consultation on new broadcasting rules:  
Protecting participants in TV and radio programmes.**

**About us**

1. Directors UK is the professional association of UK screen directors. It is a membership organisation representing the creative, economic and contractual interests of over 7,000 members — the majority of working TV and film directors in the UK.
2. Directors UK collects and distributes royalty payments and provides a range of services to members including campaigning, commercial negotiations, legal advice, events, training and career development. Directors UK works closely with fellow organisations around the world to represent directors' rights and concerns, promotes excellence in the craft of direction and champions change to the current landscape to create an equal opportunity industry for all.
3. Directors UK members play a key role in creating the productions affected by changes to the broadcasting rules. We therefore welcome the opportunity to comment on this consultation on the new broadcasting rules to protect participants in TV and radio programmes.

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

4. Directors UK agrees with the rationale for the proposed new rules. As programme makers our members have expressed concern over the lack of a clear and consistent approach to the care of participants in factual and entertainment programmes, and in particular with the assessment and after-care provisions for some contributors. As well as a lack of consistent approach, one of the key issues we have heard from our members is regarding the ability of production teams to raise concerns and have them recognised and addressed by other senior or more permanent members of the production. Often directors, who are almost always freelance, feel unable to flag their concerns for fear of being seen as a troublemaker which can impact on finding future work, some have found that their concerns are dismissed by other members of the production team.
5. Providing a clear set of rules regarding the responsibility of productions for ensuring due care of participants at all stages of production is welcomed, but we caution that these will only truly be effective if production companies and production teams at all levels adhere to the new rules, and that programme makers feel able to raise concerns about a participants welfare and wellbeing at any stage of production and have these properly examined and addressed. Without having an effective system for addressing concerns the new rules will have limited impact.

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

6. We agree with the proposed meaning of 'participant' for the purpose of these rules. It is right to exclude presenters and reporters as they are engaged in a production in a different context and

under different contractual arrangements than members of the general public who take part in programmes.

**Question 3: Do you agree with the proposed scope of these rules? Please give reasons for your answer.**

7. We agree with the proposed scope of these rules. Members of the public (participants), can contribute to a wide variety of news, factual and entertainment programmes in a variety of different ways and to different degrees. All participants should be treated with the appropriate level of 'due care' for the situation so that they are fully aware of any potential impacts as a result of their agreeing to be filmed. It is right that this does not apply to drama, as actors are engaged on an official contract with terms of engagement clearly set out.

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

8. We agree with the proposed wording of the new rules. It is important that participants are protected, just as it is important that programme makers still have the freedom to make programmes, push boundaries and take editorial decisions. The use of the word "due" will allow for production teams to agree the appropriate level of care based on the circumstances and nature of the production, and the participant's needs.
9. The change of wording from 'unnecessary' to 'unjustified' we see as a strong move as it reinforces the onus on the production teams to make responsible decisions. 'Unnecessary' is more subjective than 'unjustified'. As highlighted in the consultation document the use of 'unjustified' recognises that there are times when emotional distress is an important part of the storytelling and often something that the contributors themselves would see the merits of revealing. By making the production teams think about how they would justify this if challenged sets a stronger parameter for decision-making – if applied correctly.

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

10. Yes, it would be sensible to ensure a consistency of language across the rules.

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

11. Yes, it would be sensible to ensure a consistency of language across the rules.

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

12. Ofcom's proposed rules are general and sensible, and the guidance to support the new rules will be vital to ensure they are effective. Nobody would disagree that "welfare, well-being and dignity" are essential for all participants in programmes but, without clear guidance, what it actually means for a production is open to interpretation, and risks the most responsible courses of action not being taken. If the rules and guidance are not implemented on the ground as intended, they will be of no use and could cause even greater harm.

13. As outlined in the consultation there are a wide variety of programmes which need to be considered, each with different potential participant impacts and support needs. There is a clear distinction between programmes in which contributors are challenged emotionally as part of their story, and programmes in which the challenging of contributors' emotions IS the story. For example, a documentary about murder may obviously find contributors dealing with emotionally difficult territory, which could have consequences for their mental well-being. But these emotions are part of a bigger story, which is the subject of the film. Similarly, observational documentaries, such as *Educating Yorkshire* or *24 Hours in A&E* are observing the everyday lives of participants as they unfold but which may expose vulnerabilities that may have an emotional impact on the participants. By contrast, a show such as *Love Island* or *Jeremy Kyle* is based around the exploitation of people's emotions. These are television constructs with no real world dimension, and as such the responsibility on programme makers in these situations is much greater. Not least because often the people who make 'great telly' in these genres are often people who carry with them existing vulnerabilities. Between those two extremes there are programmes such as *Strictly Come Dancing* and *The Great British Bake Off*, which place contributors in emotionally exposing situations for the sake of a TV construct, but crucially, the TV construct is not about those emotions. These different types of programming need distinct protocols around them. The guidelines should provide a sense of what is felt to be an appropriate level of individual evaluation and support in each of the categories of programmes.
14. The proposed approach to guidance outlined in the consultation represents what Directors UK members consider to be good practice and should be what happens on any responsible production. But in our members experience not every production they work on is responsible and, significantly, not every production that requires this level of care has a budget that could support this process. As a result, all too often the path of least resistance is taken - an over the phone chat and questionnaire with a psychologist, lasting about half an hour, may be all that is put in place to determine someone's suitability for a production and their ability to navigate the fall out of being on TV. The resulting 'psych reports' are taken seriously, but feel like a box-ticking exercise that exists to clear production and broadcasters of blame rather than a truly rigorous exploration grounded in care.
15. For these reasons our members main concern is regarding implementation - ensuring that the new rules and guidelines are effective and how they will be enforced to ensure they are acted on. They are also concerned over the pressure that production teams (including directors) can be under to push boundaries. Some members have told us of their experiences where they have felt something is uncomfortable but others on a production think it is OK or that the participant seems happy. These situations can become complex - particularly when in pursuit of bigger ratings.
16. The guidance should therefore address what happens if someone on the crew witnesses something they think is against the spirit of the rules, but more senior (often producers, executives and commissioning editors) disagree, and feel that the content requires boundaries to be pushed. A director or producer, or any member of the crew, needs to feel supported and confident in raising or reporting concerns and that these will be listened to and taken seriously. We believe this is an area that Ofcom should be addressing and considering whether there needs to be an independent system of scrutiny. Our members raised the question of whether there should be some form of whistle blowing procedure, or protected disclosure to a third party for concerned individuals. Consideration would need to be given to how that would

that work in practice without exposing individuals who fear damaging their future employment prospects.

17. Directors UK believes that the lack of due care in dealing with vulnerable participants largely stems from budgetary restrictions resulting in a trade-off between spending money on getting the content for a programme or the welfare of participants, and in part from an unhealthy mentality within television that the show is the most important thing. We have seen this same mentality and budgetary constraints give rise to damaging impacts on freelancers within the workforce where resources are stretched thin and the burden of expectation on one person's shoulders becomes unhealthy. We have a lot of evidence that the distortion in the relationship between employers and freelancers means that normal systems of referring problems up the chain do not function effectively and freelancers lack the power to resist or kick back against abusive practices, but the impact can be damaging to their physical and mental health. An example of this is Directors UK's recent attempts to address very serious concerns over health and safety among self-shooting directors via a set of new guidelines which has been resisted by the production sector. Given the serious nature of these concerns we have now taken them to the Health and Safety Executive as we have been unable to gain support from production companies. We are concerned that Ofcom's proposed new rules to protect participants will fail to have the desired effect unless every person who needs to enact them is empowered to do so.
18. We also believe there is an issue regarding training for production teams over what is acceptable and unacceptable when it comes to the welfare, wellbeing and dignity of participants.
19. A key issue that has not been addressed in this consultation is how this requirement to provide wellbeing support is funded. In our members experience not every broadcaster or production company factors the cost of psychological assessment or follow up needs for participants into their budgets. We have heard instances where production companies are undertaking the appropriate assessments on key contributors who will be put into vulnerable situations, but the channel will not contribute funding for this assessment. In some cases, responsible production companies pay for the assessments themselves outside of their programme budgets or by squeezing them out of the programme budget to the detriment of other production costs - but this is not a sustainable approach as it can be costly.
20. Whilst our members wholeheartedly support the call for improved rules and guidance to protect the welfare of participants, they are concerned that the amount a production spends on the welfare of participants should not be something that is being weighed up alongside how many shoot days a production can afford. We believe that if the industry genuinely wants to prove itself as responsible, the money required for these assessments cannot be a factor which prevents it from happening. On each production, there should be a budget line ring-fenced by broadcasters or production companies for delivering participant care. The already stretched financial resources of a production cannot be part of the equation when worrying about due care of participants. Our members have expressed very real concern that if the costs of delivering this are not factored in as a real cost of production then it will be the welfare of the crew that ends up being further compromised as they try to deliver it.

**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.**

21. Directors UK members have stressed the importance of:
- i Reinforcing that responsibility for due care rests with all - from the senior executives to the casting team to the junior and senior production teams. All production team staff need to understand their role in delivering a duty of care to participants.
  - ii Thoroughly vetting and conducting appropriate assessments with participants before committing to filming.
  - iii Providing clear one-to-one guidance to participants to ensure they are explicitly aware of what the production is, what it will entail and what they are undertaking; this should include being clear in advising them that what they say can be used, how what they say or do may reflect on them, and what may happen after a programme is broadcast and on social media.
  - iv “Pysch testing” must be more than just a box-ticking exercise and must be at the appropriate level for the production and the participant. This will need to be budgeted for.
  - v Appropriate after-care must be considered and provided if required. This will need to be budgeted for.
  - vi Putting in place the right people to look after vulnerable participants during and after production as appropriate, and ensuring that their duty of care requirements are conveyed to the entire production team and are followed through on.
  - vii Continuity of care is key, particularly for vulnerable participants, and on productions where there are a number of executives, producers and directors involved at different stages. It is easy for information to be forgotten or not passed on in the process, particularly as stories evolve and change. This is particularly important with regards aftercare, as freelance production teams usually disband after a production finishes and this continuity can be lost, keeping track of the level of rigour being applied to the aftercare can be hard.
  - viii Clear channels of communication – for example, on some productions directors may be filming using remote cameras and don’t have direct contact with participants, but in their role capturing the stories have insights on contributor’s wellbeing that need to be shared. Similarly, those in contact or responsible for a contributor need to be able to advise production teams of any concerns.
  - ix Good record keeping is essential to ensure there is a paper trail of information to document what has been done and what has been decided.
  - x Providing a safe place for production teams to take their concerns and that these will be handled correctly.
  - xi Recognising the value of experience in key production roles. How experienced is the person doing the participant selection? They may be junior members of a team with less experience of the impact of production on vulnerable participants. Often directors are brought on later in the production process and their experience working with contributors directly on a shoot and afterwards is not used to the best advantage.
  - xii Debriefing with production teams after to assist in developing and sharing best practice.
22. An example of best practice described by a member was the psychological assessment and support process on a series about children in poverty. The 'psych assessment' was a three stage process - starting with a questionnaire, followed up by a face to face meeting, and then a phone call with a different expert who fully explained the experience of being on TV and

who offered ongoing support to those involved. Three years later, the psychologist is still offering support to the children on that series. This is an example of how best to deal with contributors who are emotionally vulnerable or who are being put in situations that are designed to exploit their emotions.

23. We also want to draw attention to the British Psychological Society's publication 'Psychology and Media Productions' which they have developed following consultation and piloting across the broadcast industry. It aims to provide a best practice framework for commissioners and producers.<sup>1</sup>

They advise that where BPS members have been involved in TV productions, best practice can include:

- Initial screening of potential participants conducted by psychologists with the appropriate qualifications and experience to use the various tools available, including psychometric tests, structured interviews and clinical judgements
- Comprehensive risk assessment tailored to the expected demands and challenges of the proposed participation level in that particular production
- Psychologists to provide ongoing advice regarding the monitoring of participants and who may continue to be involved in that during production.
- Working with chaperones or other persons in caring roles to ensure that adequate sensitivity to risks and potential harms is in place, along with protocols for intervening if problems are seen to arise.
- Planning aftercare that is tailored to the needs of the production and level of risk and potential consequences, informed by the reactions of the participants during the production.

Throughout the three stages of safeguarding, before, during and after production, the psychologist(s) involved will ensure that producers agree to follow the advice and guidance of the psychologist(s) to protect the best interests of the participant, to mitigate as far as possible psychological risks identified by the psychologist(s) and to put in place procedures such as provision for immediate mood restoration if participants show signs of distress during production or for more extended support if needed after the production. For aftercare that may involve psychological treatments, for example for anxiety or depression, appropriately qualified and experienced psychologists need be involved, and the aftercare needs to be adequately resourced. Psychologists will advocate for and support valid consent and withdrawal protocols to ensure that the autonomy of contributors is protected.

*Source: BPS*

**Directors UK**  
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**[www.directors.uk.com](http://www.directors.uk.com)**

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<sup>1</sup> British Psychological Society <https://www.bps.org.uk/sites/bps.org.uk/files/News/News%20-%20Files/Media%20ethics%20guide%20FRIDAY%20FINAL%20v5.pdf>