
Guidance notes on Section Seven: Fairness

GUIDANCE:

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1. Overview

This guidance is provided to assist broadcasters in interpreting and applying the “Practices to be followed” in [Section Seven](#) of the Broadcasting Code.

Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

We draw broadcasters’ attention to the legislative background to the Code which explains that:

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text.”

Practice to be followed 7.3 – Dealing fairly with contributors and obtaining informed consent

It should be noted that “practice to be followed” 7.3 does not set out a definitive list of measures to ensure “informed consent” has been obtained. In particular, there may be times when it is unnecessary to follow some or all of the measures, for instance, in the production of a news item where there will likely be a public interest justification for not doing so. Similarly, there may be circumstances in which there is a public interest justification for withholding information from the contributor. For instance, in the context of an investigation into allegations of wrongdoing or incompetence or other serious allegations. Conversely, there may be circumstances where other information should be provided to the contributor.

Complaints about unjust or unfair treatment in programmes may occur sometime after the programme is made and after relevant freelance staff have left or independent production teams have been disbanded. Therefore, it may be helpful to ensure that written records of discussions with contributors before filming and/or broadcast are maintained, and that informed consent is obtained in writing. It may also be helpful for contributors to be provided with information on any areas of questioning, where feasible, in writing.

Significant changes

Significant changes may include, for instance, changes to the programme title, changes to when and where the programme is to be first broadcast (particularly if the timing and location of broadcast is sensitive), changes to the other likely contributions, or a decision to edit a contribution where assurances had been given to the contrary. However, these factors would only be relevant where not doing so might result in material unfairness.

Potential risks arising from participating in a programme (also see “Practice to be followed 7.15” below)

Where risks to a contributor have been identified in relation to their participation in a programme, they should be provided with relevant information about those risks and any steps that will be taken to mitigate them.

This information should be communicated clearly at the earliest stage of the production process in a way that is understandable to the contributor. Further information may need to be provided during subsequent stages of the production process, particularly where the risks may change significantly as the production evolves. It may be helpful for a written record of these discussions to be made and retained.

We recognise that programme makers will not be able to predict every potential risk that may affect the welfare of a contributor. We also recognise that there may be occasions when it is unnecessary or impractical to inform the contributor of potential risks, for instance in the production of many news and current affairs programmes and other programmes where it is warranted in the public interest not to do so. However, consideration should be given to carrying out a risk assessment (as explained in “Practice to be followed” 7.15) at an early stage to identify potential risks and to consider what steps can be taken to mitigate them.

Practice to be followed 7.7 – Guarantees given to contributors relating to protection of identity

Complaints in this area may arise through a lack of understanding about what was actually agreed in the first instance.

If a contributor has concerns about protecting their identity and the programme maker agrees to take steps to protect their identity, it is important that the contributor is given sufficient information to be able to understand in advance what steps the programme maker proposes to take, including the degree of protection that will result from any steps taken.

In some circumstances it may be sufficient to ensure that the contributor is simply not specifically identified (e.g. by being named). In other (more sensitive) circumstances, it may be necessary to ensure that they are not rendered identifiable to a particular person or persons, including their own family or friends (e.g. as a result of the broadcast of certain images, the divulging of personal details or characteristics etc).

It should not be assumed that a contributor will necessarily appreciate the fine distinction between not identifying them in the programme and making sure they are not identifiable. Programme makers should judge the sensitivity of the particular circumstances when considering what level of protection is appropriate to protect a participant’s identity.

To reduce the possibility of any subsequent misunderstanding, television programme makers should ensure participants understand exactly how their image and voice will be disguised (e.g. by using an actor’s voice or by blurring, pixilation or silhouetting).

Practice to be followed 7.9 – Contribute

In these circumstances, “contribute” can include an interview, live or recorded, or a report of a written or oral statement or comments.

Practice to be followed 7.10 – Factually based dramas

When dramas are based on facts and on real characters it may help avoid later complaints of unfairness if it is clear to audiences whether they are watching or listening to dramatised documentaries, presented as reconstructing actual events, or dramas more loosely-based on real-life characters or incidents.

Practice to be followed 7.11 – Opportunity to respond

An individual or organisation needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond properly. The programme should fairly represent the substance of any response but it is not normally necessary, in the interests of fairness, to reproduce a response in its entirety.

Where an individual or organisation withdraws their proposed response, there is still an obligation on the broadcaster to achieve fairness (for example broadcasters are still obliged under section 7.9 of the Broadcasting Code to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation). This does not mean that the broadcaster should transmit all or part of a withdrawn statement, nor that the broadcaster should break any pre-transmission agreements over its use. However, the broadcaster should explain the reasons for the absence of a contribution and reflect any material facts in relation to the position of the individual or organisation in the programme, if it would be unfair not to do so.

Practice to be followed 7.12 – Non-participation

Anyone has the right to refuse to participate in a programme, but the refusal of an individual or organisation to take part need not normally prevent the programme from going ahead.

Practice to be followed 7.14 – Surreptitious filming or recording

Surreptitious filming or recording includes the use of clandestine long lenses or secret recording devices, as well as leaving an unattended camera or recording device on private property without the informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

Practice to be followed 7.15 – Due care over the welfare of contributors

As in other sections of the Code, “due” means adequate or appropriate to the subject and nature of the programme. In the context of this Practice to be followed, the level of care required will depend on the relevant circumstances in each case, particularly the contributor’s circumstances; the nature of their contribution; and the nature and genre of the programme. In applying “due care”, it will be a matter for programme makers to identify what the harmful risks are to the contributor, and to assess and take any reasonable steps to manage and/or mitigate those risks.

Programme makers should not be deterred from including certain contributors in programmes, such as those who are considered vulnerable. However, careful consideration should be given to the risk associated with a person’s participation, including risks relating to their personal circumstances, and to ensuring that the level of care they receive is proportionate to any such risk.

Risk assessment

A risk assessment, if required, should be considered at the earliest stage in the production process. Carrying out a risk assessment can be a useful way to determine what level of care is “due” in each case and which specialists, if any, are required at each stage of the production. Programme makers may find that a risk matrix, such as the example in Annex 1 to this guidance, can be an effective tool for identifying, assessing, and managing potential risks to contributors in programmes.

“Best practice”

The following list (while neither definitive nor prescriptive) aims to summarise some examples of “best practice” for ensuring the due care of contributors:

Guidelines and procedures

Written guidelines and/or compliance procedures setting out the key considerations for working with contributors in particular programmes. Production staff should be familiar with and have access to such guidelines and procedures throughout the programme making process.

Record keeping

The making and retention of records, contemporaneous notes, and/or any other documentation. This can assist in demonstrating what information and support was offered and provided to a contributor during production.

Experts

Independent expert advice may need to be sought from an appropriately qualified specialist. Depending on the nature of the production, different specialists may be required at different stages. Where appropriate, seeking specialist advice to inform the selection process can assist in identifying, before production begins, people who may be vulnerable, or may become vulnerable, therefore enabling the assessment and management of any reasonably foreseen risks in advance.

Steps to manage the welfare of contributors

There may be circumstances when it is appropriate for contributors to have direct access to specialists without having to request this through the production team. For instance, if a contributor wants to raise concerns or questions directly with a specialist, programme makers should consider how best to facilitate this in an easy and timely manner.

Where possible, contributors could be given a nominated single point of contact within the production team with whom they can liaise throughout the production process (and, where possible, for an appropriate period of time after the programme is broadcast).

When providing aftercare, programme makers should be flexible to the type of support a contributor might reasonably require or request and remain responsive to a contributor's needs for an appropriate period of time after the programme has been broadcast. For high risk programmes, programme makers may consider checking in on contributors around the time of broadcast.

A1. Risk matrix example

This matrix is not prescriptive and is only intended to provide an example to programme makers and broadcasters of a method to determine potential harmful risks to contributors in programmes.

(a) Identifying potential risks

Risks to identify	Considerations
Control	<p>How far do contributors retain control?</p> <ul style="list-style-type: none"> • Are contributors staged in a constructed reality situation? • Is the contributors' environment created or largely controlled by production teams with continuous filming?
Format	<p>What is the nature of the format?</p> <ul style="list-style-type: none"> • Will key editorial aspects of the format be likely to include potential confrontation, conflict, or emotionally challenging situations?
Profile	<p>How high profile is the programme?</p> <ul style="list-style-type: none"> • Is there likely to be a high level of media and/or social media interest in the programme and the contributors?
Location/duration	<p>Are contributors separated from normal life?</p> <ul style="list-style-type: none"> • Are contributors required to be away from home during the production? • Are contributors not able to have contact with their usual support network during the production? • If so, for how long will contributors be separated from normal life?
Residence	<p>Are contributors away for any time from their usual home?</p> <ul style="list-style-type: none"> • Are contributors required to share accommodation for a period of time? • Are contributors living in close proximity to others such that this may impact on their usual sleeping habits?
Type of contributor	<p>What type of contributors are taking part?</p> <ul style="list-style-type: none"> • Are contributors not used to being in the public eye? • Have contributors disclosed they have any inherent vulnerabilities – for example: due to their personal circumstances or experiences, or their health, whether physical or mental? • Could the programme format make the contributors vulnerable – for example: do key editorial elements of the programme include potential confrontation, conflict, emotionally challenging situations, or does the programme require them to discuss, reveal, or engage with sensitive, life changing or private aspects of their lives? • Do particular elements of the production engage with any particular vulnerabilities of any contributors?

(b) Assessing potential risks

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

	Low	Medium	High
Control	Documentary portrayal of a real situation – largely observational, unstaged.	Directed or “produced” scenarios or discussions.	Artificial environment (e.g. location or activity). Producers have near total control of the environment being filmed, and activities of the contributors.
Format	Generally does not include emotionally challenging situations.	May include some emotionally challenging situations or increased anxiety, but these are not central to the content.	Key editorial elements and/or devices (such as lie detectors), which include potential confrontation, emotionally challenging situations, or increased anxiety.
Profile	Relatively low degree of press and media interest and/or social media in the individuals featured in the programme anticipated.	Some press and media and/or social media interest in the contributors featured in the programme anticipated.	High level of press, media and/or social media interest in the programme and contributors anticipated.
Location/duration	No need for contributors to travel far from home or be filmed for long periods. Filming the normal day to day activities of contributors, for example in home or community.	Contributors are required to be away from home, although not in a remote location. Able to maintain contact with natural support network.	Contributors required to be remote from home, in a potentially “alien” environment. No contact with their natural support network during filming.

Residence	Time away from home short and not significant (e.g. a few hours in a studio, or overnight in a hotel).	Filming for a short period away from home. Accommodation shared, but by a small number of people/people who already know each other.	24/7 shared accommodation for a sustained period of time. Nature of accommodation could have a potential impact on contributors' sleep.
Contributors	Contributors are used to being in the public eye and/or already have access to personal management, advice and representation before, during and after the production.	Contributors are not used to being widely known in the public eye. Contributors may have or used to have some public profile and are seeking to increase or revive that profile. Contributors have disclosed, or are suspected to be, pre-disposed to poor mental health, although currently displaying good mental health.	Contributors are not used to being in the public eye. Contributors have disclosed recent or current mental health issues. A contributor is considered someone with a vulnerability for example - due to their personal circumstances or experiences. Specific elements of the production engage with particular vulnerabilities of the contributor.

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

Once the risks have been classified steps to mitigate the risk at each stage of production may need to be considered. The greater the potential risks to the participant, the greater the number of steps which should be considered:

Identified risk	Steps to consider <i>may</i> include:
High risk	<p>Before production:</p> <ul style="list-style-type: none"> When obtaining informed consent, consider what information should be provided about the nature and purpose of the programme and the nature of the contribution, providing the person with information about potential risks arising from taking part in the programme (insofar as they can be reasonably anticipated) and any steps intended to mitigate these. Is advice from relevant appropriately qualified experts being sought?

- Should medical history background checks be carried out?
- Is an assessment of vulnerabilities needed and has whether the programme engages with these been considered?
- Should psychological assessment of contributors be carried out by independent, appropriately qualified expert(s) before selection?
- Has discussion about participation with families and friends been encouraged?
- Can a nominated single point of contact for the contributors be provided, from casting to aftercare?
- Have the contributors been given an appropriate amount of time to consider their participation before committing?

During production:

- Should psychological advice be accessible at all times for the production team and contributors?
- Are dedicated production team members needed to oversee the welfare of contributors?
- Has monitoring for any behaviours indicating stress or mental health issues been considered; if appropriate seek assistance and advice from relevant expert and if these concerns are deemed significant, remove contributor from production.
- Is the programme narrative likely to generate negative media or social media coverage? If so, is it being monitored and can any steps be taken to minimise the impact on contributors?

After production:

- What aftercare should be provided and for how long? This could range from providing a psychological debrief after filming to devising a tailored programme of aftercare to include, for example, counselling and/or assistance in readjusting to life outside production.
- Is it helpful to explain to any contributors how they were portrayed in the programme?
- Should contributors be provided with a point of contact who will be available for an appropriate amount of time after the production?
- Has the best way to support contributors after production been considered; options to consider include access to psychologists or signposting to other public services.
- Should support and advice on managing negative social media and media interest be provided (for example, media advice and setting privacy controls)?
- Should contributors be informed of first transmission date and, if appropriate, will they be contacted before and afterwards to check on wellbeing?

Medium risk

Before production:

- When obtaining informed consent, consider what information should be provided about the nature and purpose of the programme and the nature of the contribution, providing the person with information about potential risks arising from taking part in the programme (insofar as they can be reasonably anticipated) and any steps intended to mitigate these.
- Are medical history background checks needed?
- Is an assessment of vulnerabilities required?
- Is any advice from appropriately qualified experts needed?

During production:

- Should contributors be monitored for signs of stress or other mental health issues? If so, what plans could be put in place to address any such concerns?
- To what extent should expert psychological or other support be available during filming?
- Is there a single point of contact for contributors throughout filming?

After production:

- Has providing contributors with at least one point of contact who will be available, for a reasonable length of time, once the production team has dispersed been considered?
- Has appropriate advice or support been prepared to provide to contributors if they get in touch?
- Should advice on potential hostile social media be provided?
- Has contacting contributors immediately before first transmission, and afterwards, to check on their wellbeing been considered?

Low risk

Before production:

- When obtaining informed consent, consider what information should be provided about the nature and purpose of the programme and the nature of the contribution, providing the person with information about potential risks arising from taking part in the programme (insofar as they can be reasonably anticipated) and any steps intended to mitigate these.

During production:

- Has checking on the contributors for any signs of stress or anxiety been considered?

After production:

- Has providing the contributors with a production contact and advice on details of transmission been considered?
- Has whether any advice and support may be required for contributors been considered?
- Has whether any advice on potential negative social media is required been considered?