

Protecting participants in TV and radio programmes

Consultation on new broadcasting rules

Global response - September 2019

1. Ofcom are consulting on whether there is a requirement for new Broadcasting Code rules and guidance to offer further protection for the welfare of adults taking part in television and radio programmes. Global welcomes the opportunity to comment on the important issues raised within the consultation.
2. The consultation aims to identify whether the proposed new rules are necessary and proportionate to protect against the potential harms that might result from people's participation in programmes. Section 3 of the Communications Act 2003 (the "Act") already requires that Ofcom has specific regard to the vulnerability of children, and those with circumstances that put them in need of special protection. Section 319 of the Act also requires that Ofcom set, and from time to time review and revise, standards for the content of programmes included in television and radio programmes. In line with these duties, Ofcom propose to introduce the following new rules to the Broadcasting Code:
 - 2:17 due care must be taken over the welfare, wellbeing and dignity of participants in programmes; and
 - 2:18 participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes.
3. Ofcom makes clear in the consultation document that the new rules must be flexible enough to ensure protection but not too broad so as to stifle broadcasters' ability to create entertaining content.
4. Global has over a decade of experience in running call ins and competitions on air and we always seek to act responsibly and to the highest ethical standards when it comes to contributors. We have developed a Duty of Care policy for vulnerable contributors which covers all aspects of our output on air, competitions, social media and also care for internal staff and presenters. It sets out the practical steps that producers should follow with regards to best practice around planning content involving vulnerable

contributors. On LBC, where we receive thousands of calls each week, producers carefully pre-screen all on-air contributors. Producers are trained to handle calls sensitively and given specific guidance on providing appropriate aftercare. This process can involve directing them to our dedicated Customer Support Team for further help.

5. While we support Ofcom's overall aims in seeking to ensure that participants in TV and radio programming are protected, we are concerned that these proposals may have unintended consequences and make broadcasters responsible for matters which might also be beyond their control, such as the potential abuse of contributors on social media. We are also concerned that the way the new rules have been drafted would mean that Ofcom would have powers to investigate irrespective of whether the person involved had complained. We also have a concern that the basis for the inclusion of these new rules in the code appears to be the offence caused to viewers and listeners. While we agree with Ofcom that the public will expect broadcasters to act responsibly and have due regard for participants' wellbeing, we are concerned about a precedent being set whereby new rules can be introduced on the basis of an indirect harm or offence being caused.
6. The proposed rules don't take into account the fact that different participants, types of programme and levels of participation would require very different steps to be taken by a broadcaster. There should be an express reference to the extent of the interaction with the participant and the depth of an individual's involvement with the programme. There would also need to be careful consideration of the language and definition of the word "due" which can be subjective and where Ofcom and broadcasters may take a different view. We would also argue that broadcasters should take 'reasonable steps' to ensure that "participants must not be caused unjustified distress or anxiety" given the potential for this to occur after broadcast, on social media for example, where we have no control.
7. There should be consistency around the standard of care provided by broadcasters but within this there needs to be a recognition that the type of content produced, and interaction with, participants is very different between television and radio. It is clear from the production guidance that it is structured for television and isn't necessarily appropriate for radio.

8. There are several cases which demonstrate that there is already sufficient protection in the Ofcom Broadcasting Code for vulnerable participants, namely Section 2 covering harm and offence. Ofcom stipulates that 'generally accepted standards' "apply to where programmes invite viewers and listeners to participate in them" and are applied "so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material".
9. Ofcom found Dave Kelly's Radio City 96.7FM 'Neil or No Neil' segment 'in breach' (bulletin 236 published 27 August 2013) when the presenter repeatedly called back a woman from the United States, who had not given prior consent to appear in the programme or on air. Under code 2.3 Ofcom found Mr Kelly's treatment of the woman intimidating and abusive, and that the "clear reluctance of the recipient of the call was likely to have exceeded audience expectations"¹ and would have caused a fairly high level of offence.
10. Key 103's Heartless Hotline Competition was found 'in breach' (bulletin 310 published 1 August 2016) under code 2.3, when an Entrant named Sarah went to air to win £2,000 in order to cover her divorce costs including a court order. A second contestant called into the studio and went on air to 'steal' the £2,000. Ofcom found that Sarah was notably distressed on air, and that listeners "would have understood her desperation to receive the prize money as well as the positive impact it would have had in helping resolve the issues she was facing"². Ofcom understood that this competition had caused unnecessary distress or anxiety to Sarah, and therefore found the licensee had breached code 2.3.
11. Through these examples it is clear that Ofcom has the means and a clear history via the Broadcasting Code of holding broadcasters to account for any potential harm or offence caused to participants. The general public too are also already fully able to complain about content to Ofcom. Global therefore believes that the Broadcasting Code already offers good protection for callers and listeners would question whether the proposed new rules are really necessary for Ofcom to intervene.
12. Radio is also very different to television and without recognition of this within the guidelines it risks being overly onerous to radio broadcasters.

¹ https://www.ofcom.org.uk/data/assets/pdf_file/0025/47725/obb236.pdf

² https://www.ofcom.org.uk/data/assets/pdf_file/0022/55390/issue_310.pdf

We already take these matters very seriously and have developed a Code of Conduct to reflect this, however we wonder whether these new rules would be better managed through a Code of Conduct rather than the Broadcasting Code.