

## Your response

Question	Your response
<p>1. Do you agree with our proposed approach to the:</p> <ul style="list-style-type: none"> <li>a) additional measure of informed consent set out in Practice 7.3;</li> <li>b) new Practice 7.15; and</li> <li>c) new Rule 2.17?</li> </ul> <p>Please give reasons for your answer.</p>	<p><b>Introduction</b></p> <p>ITN welcomes the opportunity to comment on Ofcom’s revised proposals in relation to the protection of participants in television programmes. ITN recognises that the Code must develop and adapt to meet changes in society and programme genres and address public concerns on the issue of due care and participation of individuals in television programmes.</p> <p>ITN makes and produces the news programmes for ITV , Channel 4 and Channel 5 News and longer form documentary and current affairs programmes and political debates ( such as Party Leader Debates at the time of an election). It takes the issue of participation in news programmes very seriously applying careful editorial judgment to every contributor. As well as complying with the Code, ITN has its own internal editorial guidelines, procedures and standards which are in many cases stricter than in the Code.</p> <p>Ofcom will be aware that in the first consultation ITN argued for a full exemption for news programmes to the changes in the rules. Our points in summary were:</p> <ul style="list-style-type: none"> <li>• There is no evidence of any problem regarding the protection of participants in news programming.</li> <li>• News is fundamentally different to other forms of programmes, in particular the inherent public interest in the public receiving up-to-date, accurate and impartial news and to the importance of editorial discretion and editorial freedoms in news programmes.</li> <li>• The methodology for making news programmes is fundamentally different to</li> </ul>

other programmes. For example, release or consent forms are commonplace in non-news programmes but not in news. Adding such processes will slow the speed of news and alter good practices in broadcast news.

- The nature of news coverage – reporting real events - limits the scope on selection, vetting and oversight of participants. That contrasts to, for example, reality or immersive genres where producers have complete control on participants and time to consider background of participants.
- Working at speed does not always allow for in-depth analysis of issues such as personal circumstances of the interviewee. Detailed assessments of individuals prior to broadcast in news - for example, individuals interviewed at the scene of a terrorist attack or crime, natural disaster or at a demonstration - is wholly unrealistic.
- The Code already requires Fairness (a regulation unique to broadcast news to other forms of news). Every day news programmes have to act fairly to participants e.g. interviewing the victims of crime, individuals caught up in terror incidents or subjects such as sexual / domestic abuse. There is no evidence of a shortfall in the Code in the context of news.
- Extra controls / bureaucracy would have a “chilling effect” slowing down the news gathering process, discouraging coverage of sensitive subject matter and narrowing the range of contributors. It is less likely people in a vulnerable, distressed or difficult position will be interviewed in news, sensitive subjects may be avoided and the range and diversity of people and voices heard narrowed.
- Broadcast news should be viewed in the context of competing against other media formats - such as online digital reporting, newspapers. Any change increases the regulatory burden on broadcast news services and disadvantage

them against non-broadcast competitors. At a time when “Fake News “ is a central concern of the public it is a backward step to impose an extra burden in the most reliable and regulated area of broadcast news – particularly with no evidence to justify the change.

- News is treated differently in many areas of the Code and should be on this issue. News stands in many areas of statutory and regulatory control outside and distinct in its own right, separate from other types of programming. For example on due accuracy and due impartiality, elections, door-stepping, newsgathering.
- News is ephemeral. The notion of ongoing care will be a new and unusual regulatory requirement unique to broadcast news.

In the light of the above we are disappointed the changes proposed do not provide an exemption for news.

We ask for this to be reconsidered. News is different. All major news programme-makers in the UK ( BBC, Sky and ITN) have strong editorial processes. We believe it is dangerous territory for news programmes to be given extra regulatory burden that goes against the established and sound practices of news providers.

In the event there is not a special exemption for news we would make the following comments about the proposed changes.

#### **Rule 2.17 Protecting viewers**

We do not accept the new Rule 2.17 is necessary or proportionate.

The Code under Section 2.3 already allows viewers to complain about programme content if they feel harmed or offended by how a participant has been treated or that programme makers have not protected an individual. Ofcom has investigated many complaints under 2.3 on many occasions and there is no apparent shortfall in the present Code.

What is really in issue here in this area is the individual participant's rights and treatment and due care towards them, not offence caused to viewers. The individual shown may be entirely happy with their treatment, including their own distress being shown but may be entirely unhappy Ofcom adjudicating on a (possibly misplaced) perception of their treatment.

Showing the truth is particularly important in news and sometimes news stories will cause offence. Often news events can distress viewers – because the event itself is traumatic. Presenting a sanitised view of the world is not consistent with news and informing the public interest. Creating this new right to viewers will do nothing to promote reporting accurately and may well interfere with editorial independence reducing individuals being seen in distress.

We question the reference to 7.3 or a new 7.15 or section 8 in the new wording. "Harm and offence" and "Fairness and Privacy" have different statutory starting points - Communications Act 2003 and Broadcasting Act 1996 - and should be kept separate. One is about protection for members of the public from the inclusion in such services of offensive and harmful material, the other about unjust or unfair treatment of individuals or organisations in programmes and unwarranted infringements of privacy. It would be contrary to the Code and statute to assess viewer complaints under Section Two in the same way as contributor complaints.

### **7.3: Being informed about negative consequences of participating**

It is agreed that rules to protect contributors are more appropriately placed in Section Seven of the Code than in Section Two as in the first consultation. However, the wording in section 7 should state the proposed new practices in 7 apply to contributors and participants – not everyone or anyone “directly affected” such as any individual or organisations referred to in the programme. If the wording remains complaints will come from those who are directly affected but are not participants/contributors – for example the subject of investigation, those referred to or discussed in a news programme, those who are secretly filmed in news.

We suggest there should be express wording in the section reflecting the following passage in the Ofcom consultation:

*“in relation to the vast majority of the participants who take part in news and current affairs programming we anticipate that...it would be highly unlikely that any specific measures would need to be put in place by broadcasters”*

If it is the case the new rules will only rarely apply to news, *this needs to be said in the Code. We would suggest the following wording (underlined) is added to 7.3 which adopts the wording in the Consultation :*

*“be informed about potential negative consequences arising from their participation in the programme which may affect their welfare (insofar as these can be reasonably anticipated at*

the time) and any steps the broadcaster and/or programme maker intends to take to mitigate these. Specific measures are highly unlikely to be needed for participants in news and current affairs programming

The rule as it is presently written is not practical and unrealistic for news programmes. For the vast majority of cases the reporter or editorial team on the ground ( for example, at a breaking news event, speaking to people in the street, carrying out an investigation, reporting from the scene of a crime or at a press conference on a sensitive matter) will *not* be in any position to advise or inform an interviewee on the potential negative consequences of their participation.

#### **7.15: Details on due care**

As stated in the response to 7.3, we repeat that if it is the case the new rules will only rarely apply to news as suggested in the consultation *this needs to be said*.

*We would suggest the following wording (underlined) is added to 7.15:*

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

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

The measures set out in 7.13 are wholly unrealistic and inapplicable for news programmes. In a news story reporters and editorial teams will simply not be able go into details of a contributor's personal background, mental health position, vulnerabilities, risk of harm, whether they have any experience of being in the public eye, whether a report will attract a high level of press, media and social media interest, the level of emotional challenge or conflict. They will also not be able to do a risk assessment of all potential risks and how to manage these potential risks at each stage of the production process.

There is the practical point that individuals caught up in new events are rarely willing or in a position to give reporters comprehensive accounts of their personal circumstances or to receive well-intentioned advice – which is not the case in other programmes made over a long time frame.

There is also concern that if these rules apply without an exception to news it could restrict the diversity of voices in news. Unlike other forms of programme, time is of the essence in news. A chilling effect consequence of increased procedures in a fast moving news story is that it will be easier to interview those without any vulnerabilities – a result we definitely wish to avoid.

We believe Ofcom should expressly state that news is different. This would respect the importance of editorial decisions and judgment as to the required level of care.

#### **The risk matrix**

We consider that the present wording relating to a news or current affairs programme item is unrealistic and not helpful. We believe that the

Matrix needs to be changed to reflect the practical reality of news.

We do not accept that reporters/ editorial teams will be in a position to provide:

- Information about potential risks
- Intended steps to mitigate the risk
- A check on anxiety /stress during production
- In many cases e.g. vox pops/ filming at events such as scenes of crime/ demonstrations it may not be appropriate to leave details of production contact
- Offer advice and support
- Provide advice on social media

**Suggested changes:**

LOW RISK For example: an interviewee taking part in a news item or current affairs programme item

Before production: • Depending on the circumstances, informed consent, including information about the nature and purpose of the programme and the nature of their contribution,

DELETE providing the person with information about potential risks arising from taking part in the programme (if any and insofar as they can be reasonably anticipated) and any intended steps to mitigate these.

During production: • Check on participant for any signs of stress or anxiety. After production: • Provide participant with a production contact and advise on details of transmission. • Offer advice and support if required (depending on nature of contribution). • Provide advice on potential negative social media (if risk of any).  
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It is simply impossible and disproportionate to provide the level of information, care and after



	<p>care to those interviewed in most news stories or to assess such individuals and provide information about potential risks of taking part.</p> <p><b>Guidance</b></p> <p>We note in paragraph 1.1 of the second consultation that Ofcom are issuing detailed new Guidance for both Section Two and Section Seven are planned to be issued <i>alongside the outcome of this consultation</i>.</p> <p>We hope that we have the chance to comment on the Guidance before it is issued and look forward to working with Ofcom to ensure best practice to protect news and current affairs programmes.</p> <p><b>ENDS</b></p>
<p>2. Do you agree with the proposed wording of the:</p> <ul style="list-style-type: none"> <li>a) additional measure of informed consent set out in Practice 7.3;</li> <li>b) new Practice 7.15; and</li> <li>c) new Rule 2.17?</li> </ul> <p>Please give reasons for your answer.</p>	<p><b>Introduction</b></p> <p>ITN welcomes the opportunity to comment on Ofcom’s revised proposals in relation to the protection of participants in television programmes. ITN recognises that the Code must develop and adapt to meet changes in society and programme genres and address public concerns on the issue of due care and participation of individuals in television programmes.</p> <p>ITN makes and produces the news programmes for ITV , Channel 4 and Channel 5 News and longer form documentary and current affairs programmes and political debates ( such as Party Leader Debates at the time of an election). It takes the issue of participation in news</p>

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- The nature of news coverage – reporting real events - limits the scope on selection, vetting and oversight of participants. That contrasts to, for example, reality or immersive genres where producers have complete control on participants and time to consider background of participants.
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### **Guidance**

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