

Submission to Ofcom consultation on  
Protecting Participants in TV and Radio  
Programmes

**pact.**

July 2020

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## Introduction

- 1) Pact is the UK trade association representing and promoting the commercial interests of independent feature film, television, digital, children's and animation media companies.
- 2) The UK independent television sector is now one of the biggest in the world. In 2018, UK independent television sector revenues stood at over £3 billion.<sup>1</sup>
- 3) Pact takes the health and welfare of all participants and employees in broadcasting and production seriously. This is why Pact welcomes the opportunity to respond to Ofcom's consultation on the new broadcasting rules to protect TV programmes' participants.
- 4) For further information, please contact Pact's Head of Policy, Emily Oyama, at [emily@pact.co.uk](mailto:emily@pact.co.uk) or on 020 7380 8232.

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<sup>1</sup> Pact Census 2019

## Consultation Questions

### Question 1: Do you agree with our proposed approach to the:

- a) **Additional measure of informed consent set out in Practice 7.3;**
- b) **New Practice 7.15; and**
- c) **New Rule 2.17?**

*Additional measure in 7.3 and new Practice 7.15*

1. Pact agrees in principle with the proposed approach set out in Practice 7.3 and 7.15 as we highlighted in our previous submission on this subject matter. Pact considers that proposals must not place rules that place a 'disproportionate and unjustified burden on broadcasters' and must not hamper either 'freedom of expression or programme-making' as stated in 4.9 of the previous consultation on this subject matter. This is why any accompanying guidance will be critical as some feedback we received from producers included how prescriptive some of the measures will be in terms of paperwork – clarity on this will help producers understand what is required.
2. As we have previously stated Producers have had a strong track record of having a high quality of due care with participants in programmes including entire casting, production and post-transmission/streaming stages.
3. We reiterate again that any appropriate duty of care steps for each programme should be agreed between the broadcaster and independent production company – the guidance set by Ofcom should make this clear.
4. That said we would urge again that the duty of care steps outlined in both 7.3 and 7.15 especially the mitigation efforts will have a cost attached to them and these must be met by broadcasters and included in the programme tariff once the appropriate measures (if any) have been agreed between the broadcaster and the producer.
5. As Pact had already outlined in our previous response on other areas of the participant care rules, we think that certain exceptions for both these measures are necessary for news, current affairs and television audience phone-in genres. We are glad that some form of exception has been acknowledged under the considerations set out for new practice 7.15, for example when the consultation mentions that the use of vox-pops in particular have a minimal impact on due care considerations. We urge Ofcom to make clear in the forthcoming guidance that it is unequivocal that exemptions will exist for programme makers using vox-pops, live reporting and programmes that include questions from members of the public. This is because the

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welfare, well-being and dignity of the participants for these genres and sub-genres are already safeguarded by other sections of the Broadcasting Code. Namely, under Section 2 ‘Harm and offence’, Section Three ‘Crime, disorder, hatred and abuse’, Section Five: Due impartiality and due accuracy’, Section 7 ‘Fairness’ and Section 8 ‘Privacy’ of the Broadcasting Code. Pact notes that, in these genres, rules 7.3 and 7.15 will not be sufficiently flexible to be effective in protecting participants. This is because the turnaround for programmes in these genres can be a matter of hours which negates the ability of the programme-team to carry out an effective risk assessment of the individual participants’ duty of care needs.

6. Furthermore, Pact also considers that all professional employees including those who are on temporary employment or services contracts with the production company should also be added to the current list of exclusions, including for these new additions to the rules, which currently includes on-air presenters and reporters and drama production personnel.
7. Lastly, we reiterate again that the Ofcom exclusion list should be extended to all on-air television staff including game show panellists and professional performers such as comedians, musicians and dancers. This is because these participants are freelance employees of the independent production company and so are already protected by employment and health and safety legislation. Pact believes that the rules should be directed at members of the public who have agreed to be on a programme through a volunteering and casting process and not paid professionals with independent access to advice from a trade union, legal or management representative.

### *New Rule 2.17*

8. Pact previously considered that Broadcasters may also wish to inform the television audience that further duty of care is provided to participants following the transmission of the series. We considered that this would reassure the audience that vulnerable participants are receiving the care necessary to cope with their raised public profile. By providing duty of care information to the viewers, the broadcasters would avoid any public misunderstandings that the participants are under ‘unjustified’ duress during either the casting or the production process. Pact is happy to see that Ofcom listened to our suggestions and that this rule will be extended.

### **Question 2: Do you agree with the proposed wording of the:**

- 1. Additional measure of informed content set out in Practice 7.3;**
- 2. New Practice 7.15 and**
- 3. New rule 2.17?**

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1. Pact agrees with the wording under the new and additional rules in general. What will be more vital is that the accompanying Ofcom guidance takes note of the issues we raised above to make clear to broadcasters and programme makers how best to work with people who have more complex care needs. One producer mentioned that the rules are quite light touch to cover different types of participation across the genres, they commented that guidance and implementation would have to be reviewed once it was up and running as there can be widely different interpretations across the industry. There should also not be unintended negative consequences because of the new rules, especially programme makers being deterred from casting people who have more complex care needs. As we previously raised this would lead to less diversity of the participants on television and curtail these individuals' freedom of expression. This diversity will rightly be protected by the flexibility and proportionality of the Code which will enable the broadcasters and the independent production companies to frame the duty of care steps to meet individual participants' unique care needs.

### *Additional wording under 7.3*

2. Pact considers that the following wording 'and if necessary' should be added in front of the mitigation actions being carried out by broadcaster or programme maker – especially if the participant is a paid freelance professional for example on a gameshow and has their issues covered via other means i.e. employment contract . For example the additional wording should have the following words set out in red: *'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 if necessary, any steps the broadcaster and/or programme maker intends to take to mitigate these.'* Ofcom should also consider that the consultation about potential negative impacts need to be communicated with contributors at the earliest stage and revisited if the situation changes. This should be outlined in the guidance.