

Sky News Response to Protecting participants in TV and radio programmes: Further consultation on new broadcasting rules.

As made clear in our initial response to the consultation Sky News does not believe that there is a need for additional regulation in respect of news and current affairs programming. Our primary position remains that news and current affairs should be expressly excluded from any new rules regarding protecting participants in TV and radio programmes.

We refer you to the points raised in our previous submission and particularly the following:

- The concerns that prompted the consultation were not in any way focussed on news and current affairs.
- We are not aware of any public concern around the exercise of “duty of care” in news programming and Ofcom haven’t provided evidence to suggest otherwise.
- We believe the existing rules and internal safeguards provide appropriate protections for participants.
- We believe unnecessary additional controls and process could have the unintended consequence of limiting the range of contributors and public interest broadcast news providers feature. In some circumstances that could lead to “vulnerable” people losing the opportunity to have attention focussed on issues that are important to them.
- It will potentially disadvantage broadcast news providers as against unregulated competitors in the wider media.

In all the circumstances we would ask you to reconsider the blanket application of the proposed new rules to news and current affair programming. We believe it is a disproportionate solution for a problem that doesn’t exist.

However, should Ofcom take the view that news and current affairs should be brought within the scope of the proposed new rules we would make the following comments:

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**

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

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

Practice 7.3

We do not see how the additional measure set out in Practice 7.3 and 7.15 can practically and proportionately apply to news and current affairs and believe both should be explicitly excluded. In any event the duty to consider the welfare of “participants” should not extend to those that are subject to legitimate journalistic investigation. That should include warranted surreptitious filming, door stepping and inclusion by way of statement. This should be made clear in any guidance.

As Ofcom acknowledge in the vast majority of cases it will be “highly unlikely” that those involved in the production of news and current affairs programmes will need to put in place any additional specific measures. We believe this should be clearly reflected in any guidelines. In any case we struggle to anticipate any circumstance in our usual day to day newsgathering where it would be possible or appropriate to advise a participant caught up in the events of the day of potential negative consequences for them linked to our reporting.

Proposed new Practice to Follow 7.15 Due Care over Welfare

As currently drafted the extended definition of “vulnerable people” is so broad that it could arguably apply to any person caught up in any kind of programming. As news providers we tackle issue of legitimate public interest across a broad spectrum. It is difficult to think of many topics featuring participants that wouldn’t fall within the extended definition. However, if Ofcom take the position that the new rules and practices will be unlikely to require any specific measures with regard to news and current affairs programming then this should be made clear in the rules and guidance.

Newsgathering is generally fast paced, reactive and engagement with contributors tends to be brief, specifically related to the news event being covered and with little lasting engagement. Generally, those caught up in news events will not be willing or able to provide detailed and sensitive private information about themselves. In those circumstances it is not possible or often appropriate to assess the risk of harm as envisaged by 7.15.

We are concerned that if these rules apply to news and current affairs, as they do to all other genres, then choices made in the immediacy of the constantly evolving news agenda will tend to avoid those voices that might be problematic from a welfare perspective. This could result in a loss of agency for voices that already have difficulty being heard and also impact negatively on the range of views we are able to provide to the wider public.

There have been warm words and reassurances from Ofcom that these new Rules and Practices should not undermine the ability of news broadcasters to effectively do their jobs and serve the public interest. However, we do not believe that those reassurances are reflected in the amendments as currently drafted.

Proposed new Rule 2.17

We do not agree that the proposed new Rule is necessary or proportionate. We note that it was not contemplated in the first consultation and we are unclear why it has been introduced at this stage.

Under Rule 2.3 viewers can (and do) complain about the treatment of participants of all ages in programming. Often if we believe there might be a perceived concern about a vulnerable contributor then we will voluntarily provide the viewer with additional editorially justified

information to address some of those concerns. On many occasions the topics dealt with are sensitive and have unpleasant outcomes which accord with the expectations of those that view news programming. Whether or not additional information is provided should be an editorial decision taking account of all the circumstances.

If Ofcom remain minded to introduce this new Rule, we would ask that news and current affairs programming is expressly excluded.

Risk Matrix

Given that Ofcom have expressed the view that it is highly unlikely that any specific measures would be required under the proposed new Rules and Practice we question whether news and current affairs should be included in the matrix at all. Under the Rules as currently drafted there is already provision for obtaining informed consent. If anything is included in the risk matrix for news and current affairs programming our view is that should be limited to potentially obtaining informed consent.

Sky News and the other UK News Broadcasters already hold themselves to high standards and abide by their own editorial guidelines and safeguards that are often more onerous than those imposed by Ofcom. These proposed amends to the code were prompted by a concern completely unrelated to news and current affairs broadcasting and we don't accept that they are required for these genres. We remain concerned that there could be unintended consequences that result in a negative impact on news broadcasting in the UK. Should Ofcom proceed with the amends as currently drafted we would ask that any guidelines clearly reflect the reassurances given throughout this process and we would welcome the opportunity to work with you to ensure that is the case.

Sky News

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