

## Your response

Question	Your response
<p><b>Question 1: Do you agree with our rationale for proposed new Rules 2.17 and 2.18? Please give reasons for your answer.</b></p>	<p>Yes. We welcome the Broadcasting Code placing responsibilities on broadcasters around programme participants and extending guidelines on the 'due care' required for minors who take part in programmes to all adults. Many individuals who apply or are approached to take part in television and radio programmes are vulnerable, whether due to mental or physical illness, personality disorder or social circumstances. It is essential that their welfare is prioritised and they are well-informed about the nature of the programme and their inclusion in it, as well as the risks and benefits of taking part. It is important that a balance is struck to enable those with mental health difficulties to participate on an equal basis with others and to be fully supported in doing so.</p>
<p><b>Question 2: Do you agree with the proposed meaning of 'participant' for the purpose of these rules? Please give reasons for your answer.</b></p>	<p>The definition of "participant" is broad but needs to be clarified. The definition of "participants" given in the consultation is "adults who have agreed to take part in a programme in any way, except presenters and reporters". This does not address those individuals who cannot consent, and thereby do not "agree" to take part. This would be due to a disorder of their mind or brain impairing their capacity to make that decision. We recommend using the framework of the Mental Capacity Act 2005 to address how best to deal with those individuals who lack capacity to consent for themselves.</p> <p>The definition of participant also does not address individuals who are discussed or featured in some way, but do not "participate" (e.g. the child of a participant whose personal details are discussed by a parent, and vice versa, or those who are in the background of filming). There needs to be clarity as to whether the duty of care extends to those who feature indirectly in programmes.</p> <p>There should also be guidance for programmes filmed in vulnerable settings or featuring</p>

	<p>criminal behaviours, including hospitals, prisons and care settings, to ensure participants are protected. This is especially the case where the programme may lead to direct risk to the individual or the victims of offences.</p>
<p><b>Question 3: Do you agree with the proposed scope of these rules? Please give reasons.</b></p>	<p>It is important that broadcasters protect the health, safety and well-being of all of their employees, as any employer would. If this is covered by other policies then it is not required in the Ofcom rules. However, it is important that actors, reporters and presenters are also protected by broadcasters, especially if they experience vulnerabilities such as mental health difficulties. In particular, there needs to be clarity regarding to what extent actors and presenters are covered by the guidance when they are taking part in documentaries or reality TV shows (i.e. not as part of their usual employment). For example, programmes featuring celebrities such as Strictly Come Dancing or I'm a Celebrity, Get Me Out of Here should demonstrate the same duty of care to their "celebrity" participants as they would to any other and ensure those with mental health difficulties are supported and not harmed throughout the filming and broadcast process.</p>
<p><b>Question 4: Do you agree with the proposed wording for the new Rules 2.17 and 2.18? Please give reasons for your answer.</b></p>	<p>The wording for 2.17 states "Due care must be taken over the welfare, wellbeing and dignity of participants in programmes". This is broad and allows for flexibility when determining what level of assessment/intervention is required. There needs to be clear accompanying guidance which spells out what broadcasters need to do to comply with this.</p> <p>Welfare and well-being are synonymous, and it may be more appropriate to use the terms "health, safety and wellbeing" as these reflect an employer's duty of care to their employees, which is what broadcasters should be striving for with contributors.</p> <p>2.18 states "Participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes". This wording is open to interpretation, especially the use of the term "unjustified". This implies it can sometimes be justified to cause distress, and if so, it is very</p>

difficult to draw the line regarding what is unjustified.

The term "anxiety" is not particularly useful here. It is one of many mental disorders that could occur as a result of participating on TV or radio programmes. "Stress" would be a better term, as it is broader and tends to describe a reaction to an event which could in turn lead to anxiety (or another mental disorder such as psychosis or depression), although this is also synonymous with distress.

The wording does not include instances in which a programme causes a contributor harm which is not perceived as distress (such as loss of a job, break up of a relationship). The term "harm" is used in other places in the document and it would be appropriate to include it in this statement.

We propose alternative wording along the lines of: "Appropriate safeguards should be put in place by broadcasters to minimise harm or distress to participants who take part in programmes, both at the time of filming and following broadcast". Such safeguards could include: providing information about what the programme entails, emphasising areas which may cause distress; identifying vulnerabilities in advance of filming; proactively following-up participants at the time of broadcast and at appropriate intervals thereafter (instead of relying on them to seek help); providing or signposting appropriate treatment (with clarification in advance about what will be provided/funded). These are considered in the accompanying guidance which is helpful.

It is more important that broadcasters identify and manage any distress or harm that occurs as a result of being in a programme, rather than having a duty to ensure no distress is caused. While distress should be minimised, it can be very difficult to predict whether an individual will develop a mental disorder in response to a situation they encounter by taking part in a TV or radio show. It is also unclear whether there is a requirement for broadcasters to stop individuals taking part if they want to (and have capacity to decide to) despite knowing that

	<p>their participation could cause them some harm/distress? In health and social care, individuals are allowed to make unwise decisions which may result in harm or distress, provided they have capacity to do so. Again, the Mental Capacity Act framework (especially considering the capacity to consent to take part in research) provides useful guidance in this respect</p>
<p><b>Question 5: Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.</b></p>	<p>The wording in Rule 1.28 should be amended to reflect the wording in 2.17. However, we prefer the wording “health, safety and wellbeing” to “welfare, wellbeing and dignity”.</p>
<p><b>Question 6: Do you agree that Rule 1.29 should be amended in this way? Please give reasons for your answer.</b></p>	<p>Rule 1.29 requires that people aged under 18 who participate in programmes are not caused “unnecessary” distress or anxiety by their involvement in programmes or by the broadcast of those programmes. As noted above, we recognise that there may be occasions where, taking into account the context, there may be editorial justification for broadcasters to show programme participants in a state of distress or anxiety. Therefore, we consider a more appropriate requirement would be to ensure distress or harm is minimised, and identified and addressed by the broadcaster. We have reflected this approach in our proposed wording for Rule 2.18 and would recommend amending Rule 1.29 to reflect this, for clarity and consistency.</p>
<p><b>Question 7: Do you agree with the proposed approach to the Code guidance? Please give reasons.</b></p>	<p>The guidance is useful at outlining the steps that should be taken at each stage of the production process. In pre-production, there should be guidance on how to take informed consent (or a recommendation that those responsible for taking informed consent are appropriately trained) and what to do in the event that a contributor is unable to consent for themselves. As noted above, the framework of the Mental Capacity Act provides useful guidance regarding how to assess whether someone has or lacks capacity to consent, and what to do in the event that they are unable to decide for themselves.</p> <p>In the production stage, the guidance should be clear that broadcasters should minimise the risk</p>

of distress and harm. As noted above, the concept of "unjustified distress" is ambiguous and subjective. It is more useful to ensure safeguards are in place if distress or harm occurs. Broadcasters should make clear to participants what care is available to them during the production process, who provides this care and how they can access it. Where there is a psychologist or doctor on site or on-call during production, the expert should make themselves known to the contributors and a clear and confidential process for accessing support should be laid out.

In post-production, it is important that broadcasters liaise with contributors' GPs, mental health teams or local support services at the point of "discharge" from the support provided by the broadcaster/production company. This will ensure healthcare providers are aware of any issues that have arisen during the course of production and appropriate follow-up is referred to locally.

The guidance provides an opportunity to clarify what is meant by an "expert", and also to provide guidance for the experts themselves. At present this level of guidance is lacking and would benefit from being clinically informed. Firstly, there needs to be guidance about who decides when an expert is needed (and how this is decided) and who the most appropriate expert is. In some cases, this will be a psychologist or psychiatrist (or other doctor), and it is not always clear to the broadcasters which is preferred or what the difference is. It is possible that other professionals should be involved, such as social workers or speech and language therapists, and guidance is required to assist broadcasters with identifying which expert to contact.

There also needs to be clear guidance for the experts outlining what expertise are required, what it is that they are expected to assess, and who has responsibility for the overall welfare of the contributor. It is unclear from both the guidance and from practice to date whether the experts can overrule the broadcasters when it comes to allowing a potential contributor to take part, or whether it is the expert's role to

	simply advise, with the onus falling on the broadcasters to ensure due care is provided.
<b>Question 8: Can you provide examples of best practice in the due care of programme participants which you think should be included in the guidance? Please share details if possible.</b>	