

**27 September 2019**

**Protecting participants in TV and radio programmes: Consultation on new broadcasting rules**

**Response from Sky UK**

**Answers to the Consultation Questions**

**Question 1: Do you agree with our rationale for proposed new Rules 2.17 and 2.18? Please give reasons for your answer.**

In principle Sky agrees and supports the rationale behind the proposed new rules 2.17 and 2.18 and welcomes their addition.

We note that Ofcom acknowledge that in most cases care of contributors is a core value for broadcasters and that the current standards are high. Ofcom's intent regarding the introduction of these rules will make this issue more transparent to the contributors themselves, production companies, broadcasters and importantly the viewers.

We believe that it is extremely important that clear and relevant guidance on these rules is given by Ofcom regarding 'due' care and proportionality to make them effective and practical; whilst still allowing programme makers to make exciting, informative and entertaining content. There is a wide breadth of ways production companies and broadcasters involve people in their content and we believe the guidance accompanying the new rules needs to reflect the differing levels of care that will be warranted. This is a vital point for Ofcom to consider when looking at cases that they believe fall under this section of the Code. We would expect Ofcom to request background information from the broadcasters, as to welfare protocols, before any formal investigation is undertaken. These protocols may not be evident to viewers when watching the final, transmission version of the programme but they will underpin the whole production.

Sky's Guiding Principle towards participants in our content is that the interests and safety of all contributors within our content, both paid and unpaid, must take priority over any editorial requirement; whether they are adults, young people or children.

We involve individuals in our programming in a variety of ways and because of this we use a flexible approach to contributor welfare to make sure it is suitable and robust for each production – the 'due care' method. As a responsible broadcaster we help and assist our content production companies in the creation of specific contributor welfare provisions, relevant to their production and their contributors; ensuring a 'best practice' approach to maintain the wellbeing of all our participants. We believe that this flexibility and 'best practice' approach should form part of Ofcom's guidance accompanying the new rules.

Sky has some concern regarding the scope of the new rules and the possibility of regulatory creep, in relation to News and Current Affairs; the details of which are being submitted in a separate response to the consultation by Sky News.

**Question 2: Do you agree with the proposed meaning of ‘participant’ for the purpose of these rules? Please give reasons for your answer.**

Ofcom acknowledges that participants and their welfare requirements can vary widely from programme to programme and therefore ‘due care’ is the appropriate test to apply to any such cases.

We believe that the definition used by Ofcom as those people ‘who agree to take part **‘in any way’** in programme content is too wide and, therefore, open to interpretation. Does this mean, for example, that people in football crowds, who know there is filming taking place, but don’t expect to be featured would fall under this new rule? If people are filmed performing anti-social acts or feel that they have been embarrassed by being shown in a programme or news report; would they have recourse under this new rule? We would have no ability to assess any welfare concerns in these cases but could still be subject to this rule outside of Section 6 and 7 of the current Code. We would urge Ofcom to drop ‘in any way’ and leave it as those people **‘who agree to take part in programme content’**.

**Question 3: Do you agree with the proposed scope of these rules? Please give reasons for your answer.**

We would suggest that in a similar way in which Ofcom has utilised the rules relating to under 18’s as a basis for the new adult safeguarding rules, they consider utilising elements of the legislation relating to Child Licencing as a basis for the scope of the rules.

To clarify: As part of the Child licencing legislation it stipulates that a Child Licence is required when children are involved in Television programmes where the activity in which the child participates is *manipulated/ controlled or directed for the purpose of entertainment*. The necessity for a child licence for this type of content ensures that the right level of care is in place for children taking part in this type of content. In a similar vein we suggest that this would be a useful basis for the new adult safeguarding rules; with the addition of content where a contributor is *discussing, demonstrating or revealing sensitive, life changing or private aspects of their lives* within a programme.

In categorising the parameters of the rules in this way it would ensure that all the relevant genres, formats and productions where comprehensive safeguarding of participants is needed i.e. reality, entertainment, competition style content, fly-on-the-wall documentaries etc were in scope. Ensuring the appropriate level of care was in place for contributors in a proportionate manner and allowing productions where there is minimal safeguarding and duty of care issues to continue to work under the current rules.

Sky does not believe that the scope should cover News and Current Affairs – see the Sky News response.

**Question 4: Do you agree with the proposed wording for the new Rules 2.17 and 2.18? Please give reasons for your answer.**

Yes – see answer to 5 for clarification.

**Question 5: Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.**

Yes - with the requirement on Ofcom to define 'welfare' and 'wellbeing' in clear and practical terms .

**Question 6: Do you agree that Rule 1.29 should be amended in this way? Please give reasons for your answer.**

Yes. The introduction of 'unjustified' rather than 'unnecessary' in the Rule links it back to requirement for editorial justification for all aspects of the programme

**Question 7: Do you agree with the proposed approach to the Code guidance? Please give reasons**

Ofcom will need to make sure that the guidance for these new sections of the Code are practical and clear for broadcasters. It is unfeasible that Ofcom will be able to give detailed guidance for all scenarios, but it should be clear regarding definitions of terms and when and where these rules will apply.

Any guidance for these new sections should be separate from any guidance regarding Section 6 and 7 of the Code. There should be no confusion as to what rule applies to any case or investigation.

It would be useful for Ofcom to conduct timely reviews of the guidance in the light of investigated cases and ensure that all broadcasters are aware of the way Ofcom wants these rules to work; not just those licensees involved in a specific case that tests these new sections. As the guidance is non-binding and will cover several scenarios, that may all have individual peculiarities, it will be helpful for this guidance to be lithe and updated as necessary.

**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.**

We can provide Ofcom with these should they require further examples in the course of this consultation.