

Your response

Question	Your response
<p>Question 1: Do you agree with our rationale for proposed new Rules 2.17 and 2.18? Please give reasons for your answer.</p>	<p>There have been some regrettable recent incidents which have necessitated a renewed look at the rules around protection for participants in some programme genres, especially in the light of growing understanding and concern regarding mental health issues.</p> <p>We agree that there is a need for appropriate rules, not just to ensure an ongoing trust in TV broadcasting but also and crucially, to protect audiences and the public.</p> <p>Equally, Ofcom’s statement that there is the need to take a “proportionate and flexible approach” (para 1.7) is very welcome, not just for the reasons given in the document, but also to ensure that any obligations do not become overly burdensome to the extent that they affect the ability of production companies to fulfil their contracts and to present innovative programmes for broadcasters..</p> <p>We note that in the Impact Assessment section of the document, para 2.12 lists those who would benefit: participants, broadcasters and viewers.</p> <p>We would like to see greater clarity on how these matters would be beneficial to programme makers in understanding the scope of their duty of care.</p> <p>Our members are clearly concerned to avoid situations where the rules are judged not to have been strictly adhered to, and in which blame may be laid at the door of any production company concerned. In instances where this is unmerited, this could cause both unnecessary reputational damage to the company and also a possibility of failing to be contracted by that broadcaster again.</p> <p>We therefore welcome the statement (para 3.14) that: “Broadcasters would therefore need to have clear processes in place, and to ensure production companies have clear processes in place and retain records of any actions taken in the due care of adult participants for a reasonable time period.”</p>

	<p>Producers are already paying for some elements of safeguarding, as it is a shared responsibility. However, it is very important that any additional cost should be discussed by the production company and commissioning broadcaster as a result of these rule changes, in order that a disproportionate cost is not expected to be met by the production company.</p> <p>We would also like Ofcom to note that producers have a need to be respectful of data protection law and GDPR when it comes to sharing sensitive and personal information about vulnerable participants with broadcasters, as may well be the case.</p>
<p>Question 2: Do you agree with the proposed meaning of ‘participant’ for the purpose of these rules? Please give reasons for your answer.</p>	<p>We note the definition relates to ‘adults who have agreed to take part in a programme’ and the programme may include news and current affairs programmes in particular.</p> <p>Such programmes on occasion invite individuals to take part, and those individuals agree to take part, often in an attempt to justify their, or their employers’ (or other organisation of which they are associated) activities which may be the subject of a news, current affairs or consumer affairs investigation. Participation in the programme may expose wrongdoing, poor practice, failures in the duty of care or unlawful activities with subsequent negative repercussions to those individuals.</p> <p>We would like to see clarification as to what extent these rules are intended to place an obligation on broadcasters (and by extension programme makers) to maintain a duty of care over such individuals.</p> <p>We would also like to see greater clarity on whether or not this would be deemed as an example of ‘justifiable distress or anxiety’ under Rule 2.18 or whether this would be overridden by the duty of care under Rule 2.17.</p>
<p>Question 3: Do you agree with the proposed scope of these rules? Please give reasons.</p>	<p>We broadly agree with the proposed scope.</p>
<p>Question 4: Do you agree with the proposed wording for the new Rules 2.17 and 2.18?</p>	<p>We agree with the proposed wording with the proviso that any key terms are given clear accompanying definitions in the guidance. Specifically, given it represents the sole change to Rule 2.18, a clear definition of the term ‘unjustified’ needs to be provided.</p>

<p>Please give reasons for your answer.</p>	
<p>Question 5: Do you agree that Rule 1.28 should be amended in this way? Please give reasons for your answer.</p>	<p>We agree with the proposed wording with the proviso that any key terms are given clear accompanying definitions in the guidance.</p>
<p>Question 6: Do you agree that Rule 1.29 should be amended in this way? Please give reasons for your answer.</p>	<p>We agree with the proposed wording with the proviso that any key terms are given clear accompanying definitions in the guidance. Specifically, given it represents the sole change to Rule 1.29, a clear definition of the term 'unjustified' needs to be provided.</p>
<p>Question 7: Do you agree with the proposed approach to the Code guidance? Please give reasons.</p>	<p>We agree with the proposed approach, and in particular that Ofcom will take into account any specific examples where the rules may not apply in some circumstances, e.g. people being recorded surreptitiously in the public interest, and that a practical and proportionate approach will be taken when deciding on such cases.</p> <p>The guidance should provide clear definitions of all of the key words in the guidance, such as "unjustified", as used in Rule 1.29 and Rule 2.18.</p>
<p>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.</p>	