

Protecting participants in TV and radio programmes

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.

1. We welcome Ofcom's consultation as an opportunity to ensure a clear, transparent, consistent and proportionate approach to the way in which broadcasters and programme makers exercise due care towards contributors; to build upon existing industry best practice; and to ensure that the new rules and guidance provide the appropriate balance between protecting potentially vulnerable contributors and protecting the right to freedom of expression of broadcasters and programme makers; the audiences' right to receive information and ideas; and the right of the participants to impart their story to the audience. We agree that attitudes in society to welfare, including in particular mental health, change over time and that the industry needs to adapt accordingly. We take these issues, and the treatment of those that are involved in our programmes, seriously.
2. At the same time, we agree with Ofcom's concern to avoid the potential for unintended consequences of additional obligations in this area, and that care needs to be taken to avoid disproportionate and unjustifiable requirements on broadcasters and programme makers. We recommend that a careful balancing exercise should be adopted to appropriately care for and support those that may be vulnerable whilst avoiding unnecessarily burdensome requirements that could unjustifiably inhibit programme making and freedom of expression more generally. It would therefore be helpful to establish an accepted standard of care and guidance that can better inform the judgements that programme makers and broadcasters dealing with these issues have to make. We welcome the clarity that Ofcom can bring.
3. We agree with the broad rationale for the proposed new Rules 2.17 and 2.18, to better protect potentially vulnerable people, by ensuring that broadcasters and programme makers are applying a generally accepted standard of care. Duty of care procedures already operate within broadcasters and production companies and they would benefit from the sharing of wider industry best practice and a consistent approach to how these procedures are applied. However, we consider that further articulation and clarity of definition in the rules and guidance, together with certain procedural thresholds, are necessary in the interests of proportionality.
4. We accept that issues of duty of care can extend across a variety of programme genres. However different genres and programmes give rise to very different challenges over the application of due care depending on the degree of control that a programme maker and broadcaster has over the selection, vetting and oversight of a participant. These very real differences should be recognised in any rules and guidance to avoid the danger of a one size fits all approach. Such an approach would

in our view seriously and unnecessarily fetter the production of programmes, be unworkable in practice and could result in unfairness.

5. In general, children are more vulnerable than adults, and adults are more capable of giving informed consent than children. While for children, therefore, assessment of due care should come from a starting point or assumption of vulnerability, with perhaps a greater reliance on expert intervention, for adults any assessment of a participant's vulnerability should be weighed against the participant's own views and resilience to deal with the consequences. In making any assessment of due care in the adult context, the participant's wishes should be given due weight and we should take care to not come from a starting point or assumption of vulnerability. Assessment of vulnerability issues, whether arising from the nature of the programme or the contributors involved in it, should be considered at an early stage. However, over-reliance on expert intervention should be avoided as described below. If expert advice is taken and issues are raised concerning a participant's vulnerability this should be carefully weighed up against the participant's own views and resilience to cope and his/her decision to deal with the consequences (with or without additional support). If a participant declines to take up support or chooses to ignore advice about how to deal with social media, for example, these factors should be taken into account when assessing whether a broadcaster has complied with the new rules.
6. Our overriding concern is that the new rules and guidance together with Ofcom's application of them, should not be disproportionate and inflexible with the unintended consequence of too harshly impacting freedom of expression, inhibiting creative programme making and making broadcasters and programme makers responsible for matters beyond their reasonable control. We are conscious that some programmes or formats are likely to be particularly impacted by the rules in this area, as may the development of new programmes and formats in the future.
7. We note that the new rules are modelled on the existing rules protecting under eighteens and we agree that applying the principle of "due" care is essential to ensure that the new rules are flexible and proportionate. However, we believe that in the case of adult participants (which includes a wider class of participants that are not inherently vulnerable) the principle of due care should not be open-ended. We therefore propose that the introduction to the rules should make it clear from the outset that broadcasters can only be responsible for matters within their reasonable control. Our suggested wording is as follows:
8. *The word "due" is an important way of ensuring that the requirement in Rule 2.17 is flexible and proportionate. It means that the care provided to adult participants should be adequate or appropriate for the person concerned and for the subject and nature of the programme. It does not mean that Broadcasters will be held accountable for all matters arising from their duty of care to the participant, only those matters within their reasonable control. The rule therefore reflects the important need for broadcasters to make judgements on what care is appropriate in*

each case, taking account of the person involved, the nature of their participation, and the type of programme.

9. In addition, the guidance accompanying the new rules should clearly set out what Ofcom considers to be the parameters of reasonable control, with examples to assist both programme makers and broadcasters. In this regard, we have concerns about the applicability of the proposed principles and guidelines to repeat broadcasts that may take place years after first transmission, acquired content and programmes which include archive or third party materials which have living individuals in them but where the relationship between broadcasters and participants is very far removed (perhaps also removed from the original production company), knowledge of their circumstances may well be unknown. In certain circumstances, any duty of care or causal connection is perhaps remote, tenuous or non-existent. We reiterate that duty of care should not be an open-ended requirement and welcome acknowledgement that, in particular, once a programme is broadcast the nature of any duty of care owed to participants fundamentally shifts and reduces. Any scoping and parameter decisions in this area could have serious ramifications and if these are areas that Ofcom wishes to address we would welcome the ability to make further representations if appropriate. Whilst we anticipate that all broadcasters will already have measures in place to mitigate risks in relation to these matters, we consider that caution and guidance is needed and that examples of 'reasonable control' and the length of the applicability in terms of duty of care are clarified.
10. We are also concerned at the extent to which the new rules and guidance could be open to abuse by disgruntled participants who previously agreed to participate and who are not vulnerable, their advisors or third-parties hostile to the media. In our experience it is not uncommon for such participants or their advisors to claim that their client is potentially vulnerable as a means to exert editorial control, to secure their withdrawal from a programme or to prevent a programme being broadcast.
11. It is for this reason that we believe that a number of procedural safeguards should be introduced. Firstly, we believe that a material harm threshold should be adopted by Ofcom to help ensure that trivial, malicious or vexatious complaints are not entertained. Our proposed wording, which should be added to the end of the introduction to the new rules, is as follows:
12. *If Ofcom decides to assess any complaints or investigate any potential issue under Rule 2.17 and 2.18 it shall only proceed if the broadcast of the programme or the taking part in the programme has caused or is likely to cause material harm to the participant.*
13. We acknowledge that in the case of child participants there is no material harm threshold. However, as Ofcom recognises children are more vulnerable due to their age and the duty of care required for a consenting adult who is capable of giving informed consent is very different. A material harm threshold would ensure that the

new rules do not have the unintended consequence of opening broadcasters and programme makers to complaints that are frivolous where no harm has been caused or is likely to have been caused to the participant.

14. Secondly where complaints are to be investigated by Ofcom under Rules 2.17 and 2.18 these should only be entertained if made by the “the person affected” or by a person authorised by “the person affected”. “The person affected” means the participant as defined under Rules 2.17 and 2.18. Our proposal mirrors the criteria set out in Ofcom’s Procedures for the consideration and adjudication of Fairness and Privacy complaints.
15. Thirdly, the introduction of the new rules also increases the potential risk of legal and regulatory proceedings (similar to those that have arisen in relation to section 8 of the Ofcom Broadcasting Code). However, Ofcom’s Procedures for investigating breaches of content standards do not include any provisions which allow Ofcom to exercise a discretion over whether it would be an abuse of process to entertain the complaint. These provisions are included in Ofcom’s Procedures for the consideration and adjudication of Fairness and Privacy complaints. We therefore believe that in relation to the new rules, Ofcom’s standards procedures should be updated to mirror the statutory grounds laid down under Ofcom’s Procedures for the consideration and adjudication of Fairness and Privacy complaints which state that:

“Ofcom is under a duty not to entertain a complaint where it appears to Ofcom that:

- *The matter complained of is the subject of proceedings in a court of law in the UK; or*
 - *The matter complained of is a matter in respect of which the complainant or the person affected has a remedy by way of proceedings in a court of law in the UK, and that in the particular circumstances it is not appropriate for Ofcom to consider a complaint about it; or*
 - *the complaint is frivolous; or*
 - *for any other reason it is inappropriate for Ofcom to entertain or proceed with consideration of the complaint.*
- (If any of the above matters become apparent to Ofcom in the course of considering a complaint, it may cease to proceed with consideration of the complaint).”*

We believe that the introduction of these procedural safeguards are appropriate and proportionate to the increased risk of legal and regulatory proceedings that broadcasters and programme makers now face.

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

1. We agree in principle with the use of the term 'participant' as a proportionality test in this area but consider the current definition "*The*
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3. *and it allows the scope of the definition to be extended arbitrarily.* In our view, the vulnerability of participants is the focus of Ofcom's concern and this should be amplified and elaborated on in its definition of 'participants'. We consider that further clarity is needed on what 'in any way' means, so that programme makers and broadcasters are able to better understand what agreement means in this context and make further representations if appropriate.
4. Ofcom have said that the term 'agree to take part' is broader than the meaning of 'informed consent'. We are concerned that this is an amorphous concept which programme makers and broadcasters will have great difficulty applying in a practical way and risks confusion and uncertainty. It appears that rather than focus on specific vulnerabilities Ofcom is indicating that 'active' participation is required to meet the definition of a participant but that 'passive' or 'incidental' inclusion would not. For example, a studio audience watching a panel show or general views of people on the street or in the background of shots, where those filmed are essentially anonymous members of the public, should not fall within the definition of a participant as they play no active role in the programme. However, the use of filming notices for those that may appear incidentally in certain programmes and which are commonly used for the purpose of consent, including in fly on the wall and fixed-rig programmes, is less clear cut. Current practice can involve the individual 'opting out' if they do not wish to be filmed. Under the new rules would Ofcom now treat such individuals as participants on the basis that by not 'opting out' they had in effect 'opted in'? Our concern is the danger of a proliferation of complaints by those whose presence in a programme is uncontroversial, fleeting or incidental.
5. We are also concerned about the practicalities of applying this broad definition to programmes which include archive or third-party material which includes living individuals who agreed to take part in the original programme but where there is no direct relationship between the current programme maker or broadcaster and the participant, and no knowledge of their circumstances.
6. The definition of participant should we believe also exclude people caught up in current event news coverage e.g. the filming of a climate change demonstration, the close down of Heathrow airport by a drone or an unfolding terrorist attack on the basis that those filmed as part of the news coverage have not agreed to take part in the programme. We believe that the current provisions covering suffering and distress under Section 8 of the Code are more appropriate in these cases.
7. We agree that the definition of participant should exclude any individual/s who have not agreed to take part such as those who do not consent to take part (but it is nevertheless otherwise warranted or in the public interest to include them); filmed covertly under Rule 8.13; a recorded telephone call where it is warranted not to seek the consent of the individual before broadcast under Rule 8.12; and a doorstep under Rule 8.11.

8. However, we would question whether this would also exclude secret filming, doorstepping or recorded “wind-up” calls for entertainment purposes where the individual’s consent to broadcast has not been obtained but they are not identifiable in the programme; and entertainment set-ups involving celebrities and those in the public eye who have agreed to take part on the basis of a deception, for example they have agreed to take part in a fictitious campaign, but are unaware they are taking part in a programme.
9. We also believe that where there is an overarching public interest justification for including participants in a programme where they have been filmed openly but they have not consented to taking part, these participants should also fall outside the new rules. This would include programmes that reveal or detect crime, that protect public health or safety, expose misleading claims by individuals or disclose incompetence that affects the public. For example, programmes featuring the work of the police and emergency services which include individuals who have committed criminal offences or serious acts of anti-social behaviour; the broadcast of a convicted murderer’s interview from prison; exposing unscrupulous landlords and anti-social tenants; or exposing racism or other unlawful or anti-social behaviour on public transport. Any decision to broadcast would be warranted by the public interest and in our view any complaint should be dealt with under Sections 7 and/or 8 of the Code (Fairness & Privacy).
10. We also believe that the filming of people in the news without prior warning in a public place and the use of vox-pop interviews in many programmes should in terms of proportionality also be excluded from the meaning of participant and dealt with more appropriately under Sections 7 and/or 8 of the Code (Fairness & Privacy).
11. We note that presenters and reporters are excluded from the definition of participants on the basis that their circumstances are very different from other adults who participate. We would, however, propose that this class of exception is extended to professional participants such as experts and those who hold public office, professional panellists and talking heads. For example, an interview in a news programme involving an MP or other public or professional figure discussing current Government policy, or a factual programme interviewing an expert on their professional opinion or a comedy panel show featuring stand-up comics. These are just a few examples of the type of people who are professional participants and who are either paid to appear or whose job involves engaging with the media and who often have their own media/PR advisors or agents representing their interests. Their knowledge and understanding of programme production sets them apart from other participants and they should therefore be excluded from the definition of participants.
12. We agree with Ofcom’s proposal to exclude drama (including sitcoms and soaps) from the types of content impacted in this area. We assume that feature films would also be excluded for the same reasons but would be grateful for clarification. In addition, music videos which are often dramatised and feature professional artists

and other participants who are paid to perform also falls within this category in our view and so should also be excluded.

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

1. As we have stated above whilst we welcome the clarity and consistency in this area, we are concerned that the scope of the rules potentially makes broadcasters and programme makers responsible for all eventualities, notwithstanding the qualification of “due” care. We believe that the scope of the rules should be appropriately limited, to ensure that when assessing due care broadcasters and programme makers are only held accountable for those matters within their reasonable control.
2. It is important that the guidance accompanying the new rules should clearly set out what Ofcom considers to be the parameters of reasonable control, with examples to assist both programme makers and broadcasters.
3. The ability of broadcasters and programme makers to evaluate a participant’s potential vulnerability and resilience will often be key to the application of these new rules. In reality shows where the programme makers control the selection, vetting and oversight of participants, they would have access to the participant’s medical history and they can use an expert psychologist to independently assess the participant (all taking place with the consent of the participants). However, in other genres, for example an observational documentary, access to such information may be limited or controlled by a third party such as social services or a GP and access to the information would require the consent of the individual concerned. It is also not uncommon for some participants to withhold or conceal information about their welfare history for fear it would result in their exclusion as a participant. The scope of the evaluation of the participant’s vulnerability and resilience may therefore vary significantly between different genres of programmes. It is for this reason that we believe the rules should acknowledge that access to welfare information on the participant, may be a key factor in our decision-making processes. In addition, the guidance should acknowledge that judgements around due care may be more finely balanced where the programme makers and broadcaster have only limited information available to them. Our proposed wording, to be added to end of the second paragraph of the introduction to the rules, is as follows:
4. *“The rule therefore reflects the important need for broadcasters to make judgements on what care is appropriate in each case, taking account of the person involved, the nature of their participation, the type of programme and the availability of welfare information about the participant.”*
5. We believe that the use of experts and other vetting procedures, in some programmes, can play an important role in assisting programme makers and broadcasters to fulfil their duty of care obligations. However, there is a danger of

over-reliance on experts and deference to their views when it is the responsibility of the programme maker and broadcaster to evaluate the risk, if any, to the participant. Requiring potential participants to undergo psychological assessment should not become the norm. It can be viewed as invasive and deter people from taking part in programmes where an individual's participation will be benign and/or the subject matter or format of the programme is uncontroversial and do not of their nature raise duty of care issues.

6. There will also be situations where participants decline to undergo psychological assessment, or it is impracticable to seek to psychologically assess participants. In observational documentaries or programmes that are following individuals and events that are unfolding, it would not be practicable to put in place psychological assessment or other detailed duty of care measures envisaged by the current guidance. For example, when filming programmes where individuals are caught up in vulnerable situations involving drugs, prostitution or crime more generally, but where they are featured incidentally. Where they have given their informed consent to take part, it would be unduly onerous and unrealistic to require programme makers and broadcasters to adopt the highest level of duty of care procedures such as those used in reality shows. In these circumstances, programme makers and broadcasters should be allowed a wide degree of editorial discretion to decide what, if any, step should be taken. This may include the decision to take no action under Rules 2.17 and 2.18 on the basis that compliance with sections 7 and 8 of the Code is the more appropriate way of exercising due care over the participant.
7. We have also raised above our proposal to introduce a material harm threshold to ensure that the new rules are not open to abuse by frivolous or vexatious complaints.

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

1. We understand the justification for the inclusion of "welfare" and "dignity", which are existing terms within the Code that can be objectively measured and assessed. However, we are concerned about the introduction of the term "wellbeing" which is an amorphous concept and one that involves a more subjective evaluation which is currently unclear and has the potential to unjustifiably widen the scope of any assessment of participants' states of mind. It is unclear whether Ofcom wishes this term to include such factors as a participant's support network, their livelihood and home life and therefore if the term is to be introduced it should be defined. We also think that the term welfare should be defined with reference to the physical and mental health of the participant, so that the two terms are clearly understood.
2. We agree with the introduction of the term "unjustified" which is a more appropriate test than "unnecessary" and indicates that the assessment should be based on the relevant context which would benefit from further analysis in the guidance to the relevant Code provisions.

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

1. We agree with the amendments to Rule 1.28 but as above we believe that the terms “welfare” and “wellbeing” should be defined so that they are clearly understood.

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

1. We agree with the amendment to Rule 1.29 on the basis that the term “unjustified” is a more appropriate test than “unnecessary” as above.

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

1. We agree in principle with the Code guidance to assist broadcasters and programme makers in interpreting Rules 2.17 and 2.18. We welcome the opportunity to contribute to a consistent and robust guidance framework that is proportionate and flexible across a range of different programme genres. However, we have concerns about the proportionality and scope of the level of intervention by programme makers as currently envisaged by the guidance at each stage before, during and after production. We consider that care should be taken to avoid a one size fits all approach and creating guidance that is cumbersome and counterproductive. While the current guidance framework may work well for reality shows it is not practicable with many factual programmes. The guidance should therefore acknowledge that there will be a sliding scale in terms of what is appropriate and realistic across different programme genres.
2. The guidance should in our view make clear that there may well be some types of participation where very limited steps are required in relation to duty of care matters, and that certain steps may not be appropriate, practicable or necessary at all three stages set out in the guidance. A high level of intervention and support may be appropriate in constructed reality shows but it would not be appropriate in many factual programming where we are following and observing situations or people whose activities are not within our control, or uncontroversial programmes where contributors are not being exposed by the programme makers to situations which may create or exacerbate vulnerabilities. The obligation imposed on programme makers and broadcasters must not be open-ended and realistic parameters should be set by Ofcom. As we have highlighted above, there are very real practical problems in how Rules 2.17 and 2.18 are applied to archive material featuring living participants; to acquired programme content featuring participants from overseas; and repeat broadcasts. Ofcom should provide guidance on what is reasonable and

practicable in such situations otherwise the rules will very quickly become unworkable.

3. We note the four key principles and have set out above our comments in relation to principles 1-3.
4. In relation to principle 4 we accept that the broadcaster must judge what is appropriate in each case and that as the licence holder is ultimately accountable to Ofcom. However, this principle should reflect the reality that it is the programme maker rather than the broadcaster who will have day to day oversight and often the direct (or indirect) relationship with the participant. This is not to absolve the broadcaster of responsibility but is to underline the importance that both have a part to play in terms of protecting the participant.
5. In addition, principle 4 should also include reference to our proposed wording concerning the availability of welfare information:

***The broadcaster must judge what is appropriate in each case:** the guidance would explain that whether specific recommendations set out within it, or alternative measures, are the most appropriate will vary depending on: the participant themselves, the programme, the nature and degree of the participant's involvement, and the availability of welfare information about the participant. Other relevant factors may include, for example – where appropriate – the participant's ability to make judgements about their participation and its likely consequences. Broadcasters should be able to demonstrate that they gave careful consideration to the circumstances and that the actions or steps taken in each case were appropriate.*

6. We also believe a fifth principle should be added which acknowledges that the obligations are not open-ended and that regard will be had to the practical limitations placed on programme makers and broadcasters, in any given situation. Broadcasters and programme makers should be allowed a wide degree of editorial discretion based on the facts available to them at the time, to determine what steps, if any, are appropriate and if necessary to decide that no steps are warranted. For example, having regard to Rules 2.17 and 2.18 a broadcaster decides that compliance with sections 7 and 8 of the Code is a more appropriate way of exercising due care over the participant.
7. The guidance should also include an introduction setting out the overarching principles - to adopt a proportionate and flexible approach having regard to the protection of *vulnerable* adult participants from potential harms; the protection of the broadcasters' right to freedom of expression to feature participants who are vulnerable; and the interests of audiences.
8. The introduction should also reflect our proposed wording above relating to the scope of a broadcaster's accountability:

It does not mean that Broadcasters will be held accountable for all matters arising from their duty of care to the participant, only those matters within their reasonable control.

9. The introduction should also reflect as above our proposed material harm threshold:

If Ofcom decides to assess any complaints or investigate any potential issue under Rule 2.17 and 2.18 it shall only proceed if the broadcast of the programme or the taking part in the programme has caused or is likely to cause material harm to the participant.

10. We accept that a basic framework for guidance based around pre-production, production and post-production is a sensible approach. However, the guidance should acknowledge that this framework should not be rigidly applied and that the detailed steps envisaged are unnecessary in many programmes. While it could be applied to more complex programmes where a high level of care is required it may be disproportionate and unduly restrictive in other programmes. As Ofcom says (at para 4.8) different types of care is needed in different programmes – for example a talent show as compared to a news programme, where we consider that no aftercare would be necessary in the vast majority of situations (if at all). Any duty of care obligation should not be open-ended and we therefore urge caution when it comes to post-production responsibilities in particular. Production teams can dissipate shortly after the making and delivery of a programme and we are mindful therefore on the impact of imposing disproportionate or open-ended responsibilities on production companies and broadcasters.
11. We also agree that it is a matter for the broadcaster to decide whether any or all of the steps, and/or additional and/or alternative steps, are appropriate on a case by case basis. Comparative examples between different genres of programming to illustrate the range of potential risks should also be included. As we have stated above, the rules and guidance should not be open-ended and Ofcom should set clear and realistic parameters. We believe this may need to be a matter of further discussion with broadcasters.
12. We would seek Ofcom's confirmation that once the draft guidance is ready broadcasters will be given a reasonable opportunity to review and comment on the draft before it is published. We also welcome the opportunity to discuss the timing of the introduction of the new rules and guidance. We anticipate that a significant lead-in time will be required before they come into effect, so that appropriate amendments (if any) can be made to procedures and process to accommodate the impact.

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 have set out below some examples that illustrate current updated best practice which we think should be included in the guidance. However, it is important to emphasise that much of the focus and detailed guidance has been around high-risk programmes such as reality shows. Ofcom should therefore be cautious about adopting these examples as the starting point for all programme genres which would be burdensome and impracticable. We have included examples of how best practice procedures have been applied across other genres, which we believe are a more appropriate way of dealing with issues of due care. Inevitably where programmes are low risk the procedures are either minimal or no action is necessary.

Pre-production

1. It is important that participants' expectations are properly managed from the outset and that their informed consent to take part is obtained (such as by way of a written release form which includes the working title and agreed programme description). A participant should ordinarily be provided with the following, ideally in writing – the subject matter and format of the programme; the nature of their participation in the programme; any potential positive and/or negative consequences of taking part; and, where appropriate, what support is to be provided during and after the programme transmits and for what period of time.
2. Contemporaneous written notes or a filmed record of the programme makers discussing the potential positive and negative consequences of taking part, may be appropriate in certain cases. Broadcasters should be able to have access to those notes as required, to ensure appropriate monitoring of production.

Production

1. The welfare of participants should be considered throughout production, including any particular support in the run up to transmission and a single point of contact for participants.
2. An intervention policy, which sets out in advance the circumstances that would warrant programme makers intervening and/or stopping filming may be appropriate depending on the nature of the programme.

Post- production

1. Aftercare must never be open-ended to avoid the danger of a participant becoming reliant on the programme makers and broadcaster. Participants should be told from the outset what assistance they are being offered and for how long. This should be set out in writing.

Welfare Information

1. Consideration should be given to what welfare information is likely to be available and what degree of disclosure will be required from participants when assessing due care.
2. Information about a participant's welfare may come from a variety of sources including from the participant directly, from family and friends, from third parties (with the consent of the participant) such as their employer, GP, social services, support groups or from an independent expert engaged by the programme makers. What welfare information is required will depend on the format of the programme, the participant and the nature of their participation.
3. In some cases, the programme makers will have direct control over the casting, vetting and oversight of participants e.g. a reality programme and will therefore be able to access a wide range of welfare information. In other programmes they will have little or no control over participants e.g. an access or observational documentary. In these cases, the scope of welfare information available may be more limited.

Informed consent

1. Adult participants are capable of giving informed consent. Due weight should therefore be given to participants wishes and their decision to deal with the consequences (with or without additional support).
2. There may be a significant public interest in exploring participants vulnerabilities in a programme. Programme makers should therefore be wary of excluding participants simply because they are vulnerable especially if the benefits of them taking part outweigh any negative consequences and/or they can be provided with appropriate support to protect them. Reasonable adjustments should always be considered to try and accommodate a participant in a programme unless this is impractical or expert advice is that they should not participate and there is no good reason to overrule this.

Independent Experts

1. Independent experts such as psychologists can play an important role in vetting and supporting participants and advising programme makers and broadcasters. However, independent experts should only be used when it is appropriate having regard to the nature and format of the programme, the individual participants and the nature of their participation.
2. Experts are not appropriate in all programmes and due consideration should be given to the invasive nature of such assessments and other vetting procedures which can dissuade individuals from taking part. It is the responsibility of the programme maker and broadcaster to evaluate the risk, if any, to the participant. Over-reliance and deference to experts should be avoided.

3. Where an independent expert has been engaged, due consideration must always be given to their advice, it should never be rubber-stamped. The final decision on due care rests with the programme makers and ultimately the broadcasters. Expert advice can be challenged and debated, where it is appropriate to do so, but experts should never be pressured to change their advice. If an expert alters their advice in relation to a participant's suitability to take part, this should be flagged to the broadcaster and an explanation should be provided by the expert.
3. An expert's professional qualifications and experience should always be checked to ensure that they are appropriate for the programme and their engagement should be approved by the broadcaster.
4. It is recommended that any expert opinion adopts a helpful traffic light system to grade the suitability of participants to take part e.g. Red, Amber, Green or Do not Proceed, Proceed with Caution or Proceed.
5. If a participant is flagged as "proceed with caution" (or an amber light) this advice should be shared with the broadcaster if it is intended that they should still be considered for the programme. Any recommendations made by the expert to support the participant must be discussed with the broadcaster and followed. If it is intended that there should be a significant departure from an expert's advice this must be discussed and approved with the broadcaster.
6. Experts such as psychotherapists or psychologists can be engaged to provide some ongoing support/counselling to participants as and when needed during production and for after care. Participants should be reminded of the facility and how to contact the expert if support is required.
7. Some reality tv programmes will have a welfare team designated to look after a large number of participants from the outset of production and through to transmission and aftercare.
8. Depending on the nature of the programme, it may be helpful to have a welfare log that contains a contemporaneous record of a participant's on-going welfare, when they have sought additional support and any updated assessments by the programme psychologist.
9. Programme makers must have an agreed escalation procedure to senior executives within the production company to ensure that staff can refer-up any due care issues concerning participants. There must also be an agreed escalation procedure from the programme maker to the broadcaster. Programme specific protocols may be appropriate in certain cases, which include reference to and steps taken in relation to duty of care issues.