



# **PRODUCERS HANDBOOK**

**October 2021**

# ITV PRODUCER'S HANDBOOK

<b>ITV's Editorial and Compliance Policies and Procedures</b>	<b>Page 4</b>
Introduction	4
Viewer Trust in ITV	5
Taking Part in Programmes	11
Protecting Programme Participants	15
Children in Programmes	25
Live Programmes	32
Interactivity	36
Covert Filming/Recording	38
Commercial References, Sponsorship and Product Placement	39
Offensive Language	45
Internet Material	49
Charity Related Content	50
Compliance, Commissioning & Referral Up	51
 <b>Ofcom Broadcast Code and Guidance</b>	 <b>52</b>
Section 1 - Protecting the Under-Eighteens	
Section 2 - Harm and Offence	
Section 3 – Crime, Disorder, Hatred and Abuse	
Section 4 - Religion	
Section 5 - Due Impartiality and Due Accuracy, and Undue Prominence of Views and Opinions	
Section 6 - Elections and Referendums	
Section 7 - Fairness	
Section 8 - Privacy	
Section 9 - Commercial References in Programmes	
 <b>Ofcom On Demand Service Rules</b>	 <b>66</b>
 <b>Media Law</b>	 <b>70</b>
Introduction	70
Defamation	71
Privacy	74
Contempt	76
Copyright and Fair Dealing	78
Data Protection	84
Confidentiality	91

## **Industry Codes and Guidance**

Ofcom Broadcasting Code (including the Cross-Promotion Code):

<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>

Ofcom Broadcasting Code Guidance:

<https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>

Phone-paid Services Authority:

<https://psauthority.org.uk/for-business/code-guidance-and-compliance>

# **ITV'S EDITORIAL AND COMPLIANCE POLICIES AND PROCEDURES**

## **Introduction**

Welcome to the ITV Producer's Handbook.

This Handbook sets out editorial and compliance standards expected by ITV of all the producers that create content for us. It contains:

- a) Practical guidance on ITV compliance best practice and procedures;
- b) A summary of the main provisions of the Ofcom Broadcasting Code and the On Demand Programme Service Rules;
- c) A summary of the main areas of law that routinely concern ITV programming;

ITV prides itself on being a responsible broadcaster showcasing the best of British television and film, and we therefore expect our commissioned programmes to comply with both relevant broadcast and on-demand regulatory obligations.

Compliance at ITV is not about mechanical form filling and box ticking. We expect all our producers to embrace our creative culture, which has compliance embedded as a collaborative and shared responsibility. But every commission has an allocated compliance lawyer or advisor who can provide advice and help throughout the production process, and will review the content on delivery.

The aim of this Handbook is therefore to provide a convenient reference guide and resource for producers. The Handbook won't answer all the questions that arise during the making of a programme. Compliance requires experience and judgment in considering the endless variety of challenges that programme-making creates. Often editorial judgments overlap with compliance judgments, and the resolution of editorial and compliance issues should always be a process of constructive dialogue between producers, commissioners and compliance. We are all collectively responsible for the original content on ITV.

**Chris Wissun**  
**Director of Content Compliance**  
**October 2019**

## VIEWER TRUST IN ITV

***The most senior production executive with editorial responsibility for a commissioned programme on any ITV channel or service should ensure that this guidance is circulated to every member of their production team, and that all team members understand and follow its requirements.***

ITV has a relationship of trust with our viewers. In the era of “fake news” and “post-truth”, it is a key foundation of ITV’s editorial values that our programmes should retain our viewers’ trust. We have a duty not to materially mislead or deliberately deceive them.

If programmes fall short of our high standards, this can damage our reputation and our relationship with our viewers. We therefore expect all producers to be honest and open with us at all times. No individual producer, production team or production company should ever take or conceal from us a deliberate decision to deceive or mislead the viewer.

ITV places great trust in the integrity and honesty of its programme makers. Openness should be at the heart of the commissioning process. We will always seek to enable programme makers to deliver the best programme possible, and the most difficult issues can usually be resolved by collaborative discussion between commissioners, producers and compliance.

It is never acceptable to withhold significant information from the commissioner or the compliance team. ITV will take action against any programme maker or production company found to have knowingly deceived us, or the viewer, and we may decline to work with them again.

Therefore it is the responsibility of the Executive Producer (or Series/Programme Producer where there is no EP) on every programme to ensure that:

- The production team is adequately staffed and resourced to deal with the demands of the programme – including appropriate training and supervision. Inexperienced team members must be properly managed, especially if they are dealing directly with contributors or other members of the public. Important tasks must be entrusted to people with suitable skills or experience.
- The production team is aware of the importance of compliance with the Ofcom Broadcasting Code and these Viewer Trust guidelines.
- The production company has in place effective procedures to ensure that any concerns about viewer trust or other important editorial issues are escalated quickly within the team to the Executive Producer, and then to ITV. These procedures must be understood by the production team, and be capable of being evidenced or explained to ITV on request.

*What are we watching?*

Whatever the genre of programme, it should always be clear to viewers what it is they are watching, and truth must not be sacrificed to make programmes more entertaining or impactful.

There are many different ways to tell a story. All TV programmes are constructed to create a narrative, and material is always selected and edited to tell that story in the most effective way. But programmes must not invent or fake events, or pass them off as being actuality, or present dramatised reconstructions of events as being actual events. The source and authenticity of any third-party footage being used must be verified.

Anyone involved in a production who is concerned that their programme is putting viewer trust at risk should voice those concerns to their Executive Producer. ITV will always respect individuals who are prepared to voice concerns. “It’s always done like that” or “the show didn’t work without it” are not acceptable excuses for a viewer trust issue to be concealed from us.

Viewer trust issues can arise in all sorts of programmes, and not only in current affairs or “hard” factual programming. Respect for the viewer is essential in every genre, and the viewer should be able to trust the integrity of all of our programmes. For example:

“Reality” and other Entertainment formats involving real people living in controlled environments, and competing with each other in performing tasks or displaying talents, will compress many hours of filming into short dramatic sequences. This editing process should reflect fairly how the participants behaved, and why they behaved that way.

“Constructed reality” formats involve real people interacting in their real lives but in directed situations, and then often commenting directly to camera on each other’s behaviour. These formats are now well established with viewers, and although they are highly “produced” rather than simply observational, they will generally not violate viewer trust principles where the genre and the conventions being deployed are sufficiently clear to viewers.

“Factual drama” (ie dramas based upon real events and real individuals) will almost always invent certain events or characters, and change or simplify chronology, in the interests of dramatic effect and narrative clarity. Real life is usually far more complex than any dramatic story arc. But factual drama should still be based upon careful research, and should not distort important facts in a way that is unfair to any identifiable real people being portrayed.

### *Editing*

Editing is the basic tool of programme making. Many editing devices are familiar to viewers – the cutaway, the reverse, the fade, the sound overlay – even though they may not always be consciously aware of these narrative techniques.

Regardless of the technique used, the underlying narrative must not distort or misrepresent facts, comments, reactions or context. It must not give a misleading impression that would lead viewers to a significantly different conclusion about events or the individuals portrayed. If an edit improves the flow of the narrative structure, or makes events more coherent and entertaining, without doing harm to the truth, it is legitimate. If it distorts the impression given of a person, or misleads the viewer as to the meaning they will take away from the programme, then it is wrong. This applies to factual entertainment and reality TV as well as traditional documentary.

Interviews must be edited fairly and must not misrepresent the person's views. An answer to a specific question must not be used so as to appear to be responding to a different question. Consider what is to be left out in terms of its significance, and well as what is left in.

### *Actuality*

If a programme presents footage as being "actuality", ie real events recorded in real time, then the footage should be just that. Faking actuality, ie inventing things that did not happen and presenting them as actual events, is not acceptable, whether it is done during filming or in the edit suite. Presenting footage so ambiguously that the viewer will conclude, wrongly, that it is actuality, is not acceptable.

This does not affect standard programme-making conventions. For example, it is ok to ask a contributor to repeat everyday actions for the camera to use as establishers, "wallpaper" shots or illustrative cutaways, or for interviewers to record "noddie" reaction shots or "pick-ups" to cut into an interview sequence during editing. If someone enters their house by walking up the path to the front door, it is ok to ask them to do that for the benefit of the camera. A presenter piece to camera filmed later than actuality filming to clarify the narrative for viewers is ok, providing it does not actively mislead viewers as to when it was shot.

In reality and formatted factual entertainment shows, participants are often shown responding to situations or challenges that are created by the programme makers – they will be doing things because we have asked them to. This is not a viewer trust problem when the viewer knows that they are watching something that is contrived or directed by the producers, or required by the nature of the show format.

But having a programme participant act out significant actions and events, particularly those they would not have done but for the camera's presence, and passing this off as actuality, is not acceptable. Provoking or encouraging atypical or "bad" behavior by participants, which would not have otherwise happened, without showing the audience what had provoked that behavior, is not acceptable.

If in doubt, ask yourself: would you be worried if any aspect of the programme's construction was revealed in public and in the press? If there is something that we would be unwilling or uncomfortable to have to defend or explain, then query whether it should be included at all.

### *Chronology and compression of time*

Chronology – factual programmes and factual dramas sometimes need to simplify the chronology of events for narrative clarity, which is usually unproblematic. In a factual programme it may also sometimes be reasonable to portray a slightly different order of events to that of the strict chronology of filming, perhaps to tell a story more clearly, where to do so makes no material difference to the overall meaning for viewers.

Compression of time – devices like the fade or wipe are common means of signalling the passage of time. But if the programme's narrative or format depends on the importance of a particular time scale, then care is needed to avoid the audience being misled. Likewise, if time shifts are significant but are not obvious to the viewer in the programme, the actual chronology should be shared with the commissioners and compliance to consider.

### *Interactivity*

In all programmes involving viewer interactivity, it is essential that when decisions are placed in the hands of the viewer (eg in a viewer vote, or when they are invited to take part in a competition), then we ensure there is a robust and verifiable process that delivers the outcome fairly, and which is not distorted by editorial preferences. All programmes with interactive elements are subject to ITV's Interactive Guidelines, and these elements will be overseen by ITV Interactive and compliance staff.

### *Hoaxes*

There will always be people who want to fool us. They may provide faked footage, or try to become show participants with the intention of gaining celebrity or notoriety, or simply to embarrass us.

We therefore cannot always take what people tell us at face value. If what they say sounds too good to be true, it probably is. Producers must make careful checks to ensure that people are who they say they are, and have done what they claim to have done.

Any serious doubts about participants or acquired third party footage should be referred to the Executive Producer and discussed with the commissioner and compliance before a decision is taken to include the individual or footage.

### *Covert Recording*

ITV treats covert recording very seriously, and never undertakes it lightly or without careful consideration.

Covert recording for investigative purposes usually involves some breach of privacy, and is usually broadcast without the consent of those filmed. It therefore should only be carried out when it is warranted, such as where it is necessary and likely to provide evidence for a story in the public interest, and that this public interest outweighs privacy considerations. Approval is required from the Director of Legal & Content Compliance (or an authorised alternate) at two stages: the decision whether to record covertly at all, and then the decision whether to include the material in the programme. The same approval is required for the use of acquired third-party covert recordings, which again generally should reveal matters of public interest.

In contrast to investigative filming, British TV has a long history of carrying out secret camera "set ups" on members of the public and celebrities for entertainment purposes. ITV requires post-filming consent to be obtained from the subjects including covert recording in such entertainment set-ups.

### *Due Accuracy*

Programmes should not get factual information wrong, either deliberately or by poor research.

Respect for due factual accuracy is essential. Due means adequate or appropriate to the nature and subject matter. We should never be economical with the truth simply to make a show more entertaining or convincing.

Stated facts and figures must therefore be checked, and producers must be able to provide credible sources for them. They should not always rely on statements made simply because an interviewee, even an "expert", has made them. It may make for a



good soundbite, but is it right? If assertions of fact are not capable of corroboration, and/or fly in the face of other known evidence, this should be flagged and discussed fully at the offline stage with commissioners and compliance.

Fact checking is also important when any criticism of a third party is involved. It is not enough simply to give the third party an opportunity to reply, if the criticism itself is being made on the basis of factual claims that are demonstrably wrong.

### *Crime and Anti-social Behaviour*

Filming crimes, or people talking about crimes, raises issues of ITV's social responsibility as well as Ofcom Broadcasting Code issues, and always requires advice. Someone admitting to carrying out a criminal act may be investigated and prosecuted after transmission. A police inquiry may involve a production team being identified, questioned, and possibly even required to give evidence in court. Footage, including all relevant rushes, can be ordered by the court to be handed over to the police. Everyone involved – including the individual filmed – has to be aware of these potential consequences at the outset. All decisions and rules of engagement must be well documented.

ITV will not broadcast material that would incite or encourage crime or lead to disorder, or condone criminal behaviour. We will not demonstrate detailed criminal techniques, such as how to make a bomb or steal a car. There must always be a careful distinction drawn between observation and participation. Producers must never provoke or encourage criminal actions that would not otherwise have occurred. No production team member should be put at unnecessary risk of harm when dealing with criminals.

It is generally not permitted to make a payment to a criminal to talk about their crimes; advice must be taken before any such payment is agreed or made.

If a producer may potentially commit a criminal offence for the purpose of an ITV programme (for example in the course of an investigation in the public interest, such as the purchase of drugs or the obtaining of confidential information) they must have the prior agreement of the commissioner and a senior compliance lawyer. Similarly, if producers intend to visit illicit destinations for the purposes of programme research (whether online or in the real world), they should seek prior agreement from commissioner and compliance.

### *Taking compliance and legal advice*

Compliance at ITV is not a box-ticking process. It is a responsibility shared between programme makers, commissioners, and compliance and legal advisors.

Our ITV compliance advisors and lawyers are committed to help the programme makers that ITV has commissioned deliver the editorial goals of that commission, and can offer advice and support from the earliest stages of a programme's production. They will take the lead in defending our programmes after broadcast if subject to viewer complaints, Ofcom investigation, or litigation.

But no one working in compliance is a mind reader, or a lie detector. They can only help to resolve an issue if they are told about it. Anyone in doubt about any aspect of ITV's editorial and compliance expectations should seek advice from the compliance advisor or lawyer working with the relevant production team.

ITV legal and compliance advice can never be simply ignored by a programme maker. It can always be discussed, and creative compromises can nearly always be reached. But ultimately, legal and compliance decisions about ITV programmes will be taken by ITV, not by an individual producer or production company (or by their own legal advisors). Very occasionally a programme maker may feel unwilling to accept this advice or to find a compromise. In those circumstances, ITV has a clear process of referral up, through its respective commissioning and compliance chains of command.

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## TAKING PART IN PROGRAMMES

Most TV shows are focused on the people who take part in them. They might be centre stage as the subject of a documentary, or as a contestant in a game show or talent show. They may be one of many interviewees included in a current affairs programme, or a more fleeting presence in a voxpop.

Certain basic editorial principles should be applied to all of these varieties of contribution. These are reflected in the requirements of the Ofcom Broadcasting Code, and include:

- 1) Fairness – we expect producers to treat all our contributors fairly.
- 2) Informed consent – when someone is invited to take part in a programme, they should be told the nature of the programme and their likely contribution to it.
- 3) Changes – if a programme changes significantly in editorial terms between the time when they were filmed and the final form of the broadcast, it may be necessary to tell them, to ensure their consent is still properly informed.
- 4) Promises – if producers make promises to contributors to secure their consent to take part (eg anonymity), they should keep them. They should not make promises that cannot be kept.
- 5) Welfare – the steps producers must take, taking due care regarding the welfare of the participant will vary, depending on who the participant is and what the programme is asking them to do. The highest degree of care is required when dealing with participants under the age of eighteen. See the later Handbook chapters on children and protecting participants.

## Background Checks

Every programme will have different requirements for assessing the suitability of participants and making inquiries about their background. The information that is collected about individuals during that assessment should always be proportionate. A reality show like *Love Island* will need to find out much more about the background of participants prior to filming than a daytime quiz show like *The Chase*.

Contestants in non-scripted entertainment shows (such as reality shows, talent shows, dating shows, etc) will inevitably come under close scrutiny from the press and social media. It is important that participants are made aware of this, and that ITV is made aware of anything that might bring the show into disrepute, or might constitute any risk to other participants. ITV takes extremely seriously any participant giving untrue, incomplete or misleading information to the production team at the application stage.

Possession of a criminal record does not of itself mean that people cannot or should not take part in ITV programmes, nor would the fact of minor criminal offences in someone's past lead to the rejection of an applicant. There are however some circumstances where ITV could take the view that serious previous offences make that person unsuitable to take part.

The extent of the background checks necessary for each production should be agreed in advance between the producers and commissioners, taking into account factors such as the size of the potential participant pool, the production timescale,

and any auditioning process. Not all programmes automatically require criminal records to be checked for all participants. A senior member of the production team should have responsibility for oversight of the assessment of contestant applications, and ensuring any relevant information regarding prior convictions is conveyed to commissioners prior to confirmation of the participant taking part.

Background checks mean more than simply past criminal records. The production team may use online tools to confirm identity and the details provided by applicants – Google, Tracesmart, Factiva, Lexus/Nexus etc. Any risks flagged through searches on potential contributors should be assessed by the producers and discussed with commissioners and compliance. All data obtained throughout the process should be processed in accordance with DPA and GDPR.

If at any stage a potential contestant is found to have lied to producers, this should be notified to ITV, and they may have to be withdrawn from the programme. The contestant rules in any game or quiz show should provide for forfeiture of any prize won, if dishonesty is later discovered in the contestants' disclosure to the producers.

### **Conduct & Inappropriate Behaviour**

All participants should be briefed by the production team before the start of the series on the particular rules of the show and what is expected from them during their participation in the series. In fixed rig programmes all participants should be briefed on the location of cameras, and that the production team has an obligation to consider any inappropriate behaviour that is captured on camera, whether or not it is actually broadcast.

Participants may be asked to leave the show if they display inappropriate behaviour that, in the opinion of the producers, might be harmful or distressing to other participants, or might bring the programme into disrepute (for example by causing viewer offence).

Such behaviour may include:

- Any bullying or aggressive behaviour or language towards participants or production staff;
- Any assault (including any non-consensual touching);
- Any use of racist, homophobic or other discriminatory or offensive language, especially if directed towards other participants;
- Any consumption of non-prescribed or illegal drugs;
- Any behaviour which in the opinion of the producers is inappropriate or may be distressing to other participants, eg romantic or sexual advances which are not desired or returned by the subject, or might cause them distress;
- Any other behaviour deemed by the producers to be inappropriate in the circumstances.

### **Drugs and other Criminal Activities**

Participants invited to talk about drug taking, or to unburden themselves about past drug taking or any other criminal activities, should be reminded that making admissions about past criminal behaviour could have serious repercussions for them after the programme is broadcast, and these will not be in ITV's control.

### **Libel, Privacy and Fairness**

There may be occasions when participants will talk about other people who are not taking part in the programme. The production team must be alert to whether such material could infringe the privacy of others, could be unfair to them, or could be defamatory of them, and take compliance advice accordingly (see the Media Law sections of the Handbook).

## **Consent**

Generally we include people in our programmes with their informed consent. Only in certain situations will consent not be required.

A signed release form or on-camera recording of consent is always desirable, but such consent must be “informed” ie the contributor must be given the information necessary for them to make an informed decision. The amount of information given will depend on the nature of the programme, and the contribution itself. Informed consent is likely to be achieved where contributors know:

- the nature and purpose of the programme eg format, subject matter etc;
- what kind of contribution they are expected to make, and if it will be edited;
- for interviews, the areas of questioning likely to be covered and the nature of other potential contributions;
- when the programme is expected to be available on ITV.

Contributors should be made aware of material changes to the programme as it develops through the production process that might reasonably affect their original consent to participate. One common change that could affect informed consent is a change in programme title. Using the term “working title” at the time of filming does not mean you don’t then need to inform them of subsequent changes to that title. For example, a parent might consent to participate in a programme that they are told is about overweight children or what they spend on their children, but that decision might change even though the subject matter has not, if the final title chosen is *“Too Fat to Toddle”* or *“Spoilt Rotten”*.

Promises given to contributors should be honoured unless, very exceptionally, it is in the public interest to do otherwise (in which case please seek compliance advice).

If contributors tell producers prior to broadcast that they wish to withdraw their consent to take part, or to be edited out of a programme, this should always be discussed urgently with commissioners and compliance. Producers should never withhold this information on the assumption that once consent is given it cannot be revoked. It may be necessary to seek legal advice on the data protection position, in light of any revocation of a contributor’s consent to be included in the programme.

## **Consent for Children and Vulnerable Adults**

If a contributor is under 16 years of age the producer should make sure that the child freely assents to take part, as well as securing the consent of a parent or other person with parental responsibility for the child. If the child or young person is a ward of court, or is involved with social services or in local authority care, then seek compliance advice.

Likewise if a contributor is over the age of 16 but does not have the mental capacity to provide informed consent, seek compliance advice.

## **Evidence of Consent**

Consent is the individual agreeing to take part, having been suitably informed of the nature of the programme and their contribution. Ideally, particularly where the contribution is significant, producers should obtain a signed release form. But whilst a signed release form is always desirable, the lack of one does not necessarily mean they cannot be included, if they have in fact consented (for example by taking part in filming over time or on a number of occasions). The form itself does not constitute the informed consent – it is simply evidence of it, and therefore helpful in any later dispute over whether the individual consented to take part.

Where it is not possible or practicable to obtain a signed release form at time of filming, informed consent should be recorded “on camera”. Care should be taken to log such consent and keep the relevant rushes.

## **Anonymity**

When offering “anonymity”, the programme maker and contributor should agree what level of anonymity they are setting out to achieve, and the methods used to achieve it. It is important that the contributor understands it is very difficult to achieve total anonymity and still show them on camera, and there is a difference between not being identified, and not being identifiable. Participants may not understand that blurring or darkening their face, or being filmed with their back to camera, may still leave them identifiable to their families and others who know them well. The onus is on the producer to understand the level of anonymity that the contributor is expecting and then ensure that their expectations are met.

If complete anonymity is required, producers may need to consider wider issues than simply physical characteristics like faces and voice. A contributor may still be identifiable by what they say, or what is said about them. Different pieces of information together can create “jigsaw” identification. Identifying victims of sexual offences is unlawful, unless they have specifically consented in writing to be identified.

## **Deceptions and Set-ups**

There must be a public interest to justify employing deception and secret filming in the production of news, current affairs or factual programmes. The use of deception must only be employed when the material could not have reasonably been obtained through other means, and it must always be proportionate in all the circumstances.

However, in “set up” or “wind-up” situations created for entertainment programmes, it would defeat the exercise to obtain consent of the subject prior to filming. Consent will usually be required to be obtained from the individual concerned prior to broadcast. If an individual is not identified and/or incidental, it may be possible to broadcast the item without their consent, but compliance advice should be taken.

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## PROTECTING PROGRAMME PARTICIPANTS

### Background

The diversity of content commissioned and broadcast by ITV is constantly evolving. Much of that content involves members of the public taking part in programmes in a variety of genres, formats and situations. ITV has always prided itself as “the heart of popular culture”, where the lives of ordinary people are fully represented, and it is vital that non-celebrities as well as celebrities and professional performers should be able to appear in our programmes. Television remains a central communication medium in our culture, and must properly reflect our modern society and all of its diversity.

Our programmes are enjoyed by millions of viewers, and we have the creative freedom to make the programmes we want. Likewise, people should be able to express themselves or follow their own ambitions by taking part in these programmes if they want to. However, as programmes involving the public have evolved, so have the pressures on those who enter the public eye through appearing in them; from wider media interest, and in particular from the intensity of social media interest.

Whilst the practical detailed processes required to manage participant welfare in each programme must sit with producers to design themselves, ITV as a broadcaster and commissioner of content provides guidance on what we consider to be best practice: in the selection of participants before filming, in supporting them during filming, and in continued support up to and after the broadcast of the programme.

### The Ofcom Broadcasting Code

Ofcom consulted on proposed changes to the Broadcasting Code and its related Guidance on protecting participants in programmes during 2019-2020, and these changes come into force from 5 April 2021. The main new Code provisions are set out below. Central to these is the requirement to conduct a risk assessment to identify risk of significant harm to contributors, and to provide a level of care proportionate to the level of risk. ITV expects commissioned producers to be familiar with these new provisions, and our guidance is designed to assist them in making these risk assessments.

#### **Section 7 - Fairness** - there are two new "practices to be followed" -

1) Providing information to participants – the Code has always required that participants are told about the nature of the programme when they are invited to take part in it, in order that their consent to take part is informed consent; the new provision states that they should also normally *"be informed about the potential risks arising from their participation in the programme which may affect their welfare (insofar as these can be reasonably anticipated at the time) and any steps the broadcaster and/or programme maker intends to take to mitigate these"*. Many producers will already routinely give this sort of information to participants. There may be exceptions to providing such information if justified in the public interest (for example in news or investigative current affairs programmes).

2) Due care over welfare - broadcasters should take *"due care over the welfare of a contributor who might be at risk of significant harm as a result of taking part in a programme, except where the subject matter is trivial or their participation minor"*. A risk assessment to identify *"any risk of significant harm"* should be conducted *"....unless it is justified in the public interest not to do so"* (for example in relation to

news and some current affairs programming). The level of care due will be proportionate to the level of risk. Risk of significant harm might arise for reasons including (but not limited to):

- *They are considered a vulnerable person;*
- *They are not used to being in the public eye;*
- *The programme involves being filmed in an artificial or constructed environment;*
- *The programme is likely to attract a high level of press, media and social media interest;*
- *Key editorial elements include potential conflict, emotionally challenging situations, or requires them to discuss, reveal or engage with sensitive, life changing or private aspects of their lives.*

Again, such risk assessments are already standard practice for many producers.

**Section 1 – welfare of participants under 18** - there are some drafting changes to the Rules protecting younger participants, as follows:

*Rule 1.28 – Due care must be taken over the welfare and dignity of people under eighteen who take part in or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person... in loco parentis.*

*Rule 1.29 – People under eighteen must not be caused unjustified distress or anxiety by their involvement in programmes or by the broadcast of these programmes.*

**Section 2 - Harm and Offence** - Ofcom has also revised Rule 2.3, which concerns causing viewer offence, that must be justified by the context. Participants displaying distress or anxiety in a programme may cause offence to viewers, for example if it is not sufficiently clear to viewers that participants are being properly supported by the programme. The traditional list of types of material that may cause offence (such as language, sex, violence etc) now also includes: “....*treatment of people who appear to be put at risk of significant harm as a result of their participation in a programme. Appropriate information should also be broadcast where it would assist in avoiding or minimizing offence*”.

### **Mental health awareness**

ITV's focus on the mental health of our programme participants is not new; many long running ITV series have had processes in place for many years to assess and support participants' mental health throughout production. But society is now more concerned and better informed about mental health issues, and about the increasing challenges to mental health that cultural developments such as social media have created, especially for younger people. The television industry is therefore now more focused on the mental as well as the physical health and safety of people who take part in our programmes.

ITV recognises its responsibility for both in-house and independent producers to have in place appropriate procedures to identify risks to participants' mental health and welfare, and to take steps to properly mitigate those risks; to seek appropriate expert advice where necessary when casting or selecting participants, and in supporting them whilst taking part in our programmes; and to consider appropriate aftercare, especially if the format of the programme involves participants in



challenging situations, or may involve conflict, competition, or other activities with potential psychological impacts.

### **Informed consent**

A central foundation of television programme making and its regulation is the informed consent of participants deciding to take part. Depending on the type of participation, that informed consent may now include being properly informed about potential downsides of taking part, as well as the benefits. Television can provide people with a platform and opportunities to transform their lives (and that of others) for the good. Indeed, many thousands of people apply to take part in ITV programmes every year with these potential positive benefits in mind. It is part of our mission as a broadcaster and programme maker to enable people to have these experiences, whilst ensuring that we properly inform them and manage their expectations, and prepare them for possible negative aspects of sudden fame.

What has changed and intensified in recent years has been the ever-increasing negative, hostile and even hateful comment directly from the public, via the echo chamber of social media. Participants in higher profile programmes therefore need to be made aware that (for example) appearing on TV might lead to intrusive scrutiny of their past lives or their social media history, or that people who know them may provide stories about them (true or otherwise) to the press, or on social media.

### **ITV's commitment and expectations**

Broadcasters and producers both have responsibilities as a matter of general health and safety law towards participants. ITV is committed to having in place in all commissioned programmes suitable processes to protect the mental health and welfare of programme participants, so far as reasonably practicable. These processes must be proportionate to the likely risks, given the programme format and the individuals concerned, and considered at the point of commission.

We therefore expect all producers of our commissioned programmes to have in place appropriate and proportionate procedures to look after the mental health of programme participants as well as their physical safety, so far as reasonably practicable. ITV will seek confirmation from our producers, as part of the commissioning and compliance process, that they have performed an appropriate risk assessment, and have appropriate procedures in place throughout the pre-production, production, and post-production stages.

Producers should consider both the potential impact on participants' welfare of taking part in the programme and the potential impact of the broadcast of the programme. We should consider each participant as an individual; some may have vulnerabilities prior to the programme, some may encounter situations during the making of the programme that might make them more vulnerable.

### **Risk assessment of participant welfare**

This guidance sets out what we (and Ofcom) consider to be examples of best practice in assessing and managing welfare risks to participants. All commissioned producers should of course develop their own processes reflecting best practice and suitable to their particular production and its participants. ITV considers it helpful in medium and higher risk programmes for these processes to be in written form, for production staff to refer to during production, and where possible records should be retained of support offered and provided. Specialist expert advice may be required at

different stages by producers, or to provide independent support directly to participants.

## **A. Identifying potential risks**

The following general factors should be considered during the development of each production and its participant welfare procedures:

### **Control:**

- Are participants being filmed observationally, or directed in staged or “constructed reality” situations?
- Is the participants’ environment being created or largely controlled by production teams, with continuous filming?

### **Format:**

- Will key editorial elements include potential confrontation and conflict, emotionally challenging situations, or disclosure of private or sensitive aspects of their lives?

### **Profile:**

- Are high levels of press/media interest and social media interest in the show and its participants anticipated?

### **Location/Duration:**

- Are participants required to be away from home during filming?
- Will participants not have contact with their usual support network (family or friends) during filming?
- How long are participants required to be separated from their normal lives?

### **Residence:**

- Are participants required to share accommodation for a period of time?
- Do the arrangements include living in close proximity to others? Could they potentially impact on mental health, for example if they impact on participants’ usual sleeping habits?

### **Type of participant:**

- Are participants not used to being in the public eye?
- Are participants considered more likely to be vulnerable, due to disclosed vulnerabilities, or due to the format of the programme involving potential confrontation and conflict, emotionally challenging situations, or disclosure of private or sensitive aspects of their lives?
- Do elements of the programme engage with particular vulnerabilities of any participants?

## **B. Assessing potential risks**

Having considered the factors above, an evaluation of ‘lower’, ‘medium’ or ‘higher’ may be applied by the production team to these risk factors on a programme.

The following table provides guidance by way of illustration of factors producers may consider to be categorised as lower, medium and higher risk in assessing the production overall. This list is not exhaustive.

	Lower	Medium	Higher
Control	Documentary portrayal of a real situation (ie largely observational and unstaged).	Directed or “produced” scenarios or discussions.	Artificial environment (eg location or activity).  Producers have near total control of the environment and activities of the participants.
Format	Generally does not include emotionally challenging situations.	May include some emotionally challenging situations or increased anxiety, but these are not central to the format.	Key editorial elements or devices include potential confrontation, emotionally challenging situations, increased anxiety, or disclosure of private or sensitive aspects of participants’ lives.
Profile	Relatively low degree of media interest/social media interest in the programme and individuals in the programme is anticipated.	Some media interest/ social media interest in the programme and individuals in the programme is anticipated.	High level of media interest/social media interest in the programme and individuals in the programme is anticipated.
Location and duration	No need for participants to travel far from home or be filmed for long periods.  Filming normal day to day activities of participants.	Participants are required to be away from home, although not in a remote location.  Participants able to maintain contact with usual support network.	Participants required to be far away from home, in a potentially “alien” environment.  No contact with their usual support network during filming.
Residence	Time away from home is short and not significant (eg a few hours in a studio, or overnight in a hotel).	Filming for a short period away from home.  Accommodation is shared, but by a small number of people, or	24/7 shared accommodation for a sustained period of time.  Accommodation could have a potential impact

Participants		people who already know each other.	on participants' sleep.
	<p>Participants are celebrities.</p> <p>Participants already have a public image or a large following on social media.</p> <p>Participants have access to personal management, advice and representation before, during and after the production.</p>	<p>Participants are not used to being widely known in the public eye.</p> <p>Participants may have or used to have some public profile, and are seeking to increase or revive that profile.</p> <p>Participants have disclosed, or are suspected to be, pre-disposed to poor mental health, although currently displaying good mental health.</p>	<p>Participants are not used to being in the public eye.</p> <p>Participants have disclosed recent or current mental health issues.</p> <p>Participants are considered to be vulnerable due to personal circumstances or experiences.</p> <p>Specific elements of a production engage with particular vulnerabilities of participants.</p>

### C. Managing the risks

Having identified risks, producers should then consider what measures can reduce those risks (so far as they are reasonably able). Where productions have medium or higher risk elements, producers should discuss participant protection processes with the ITV compliance lawyer or advisor allocated to their programme and their ITV commissioner. The production may require expert psychological advice and support.

Significant risks (those identified as medium or higher) should be recorded, along with the processes in place to manage them. These productions should therefore have a written risk management plan with processes/protocols for protecting the welfare and mental health of programme participants. ITV will require producers to provide written details of their risk management plan and processes, prior to the casting of participants, to ITV compliance and commissioners. Risk management plans and processes will be shared with ITV's risk management team in relation to medium or higher risks. Regular reporting of risk in programmes and the control measures introduced is a key element of risk reporting within ITV.

If the proposed measures are not agreed to be sufficient to mitigate any medium or higher risks, ITV and the producers may need to consider and agree changes to the content, programme set up, casting or format etc.

The Appendix below provides guidance on the steps that ITV suggests producers should consider, depending on whether the risks identified are lower, medium or higher.

## **D. Review**

Participant risk factors may change in an established programme or series over time, as a result of new features and the evolution of the content, the type of participants that apply, and changes in viewer attitudes.

Participant welfare processes should therefore be reviewed periodically, and in particular when there is a change in the programme set up or format. In the event a returning/re-commissioned programme contains potentially medium or higher risk elements, this review could be annual, or undertaken prior to pre-production/casting.

### **Further help & guidance for Producers**

This guidance is part of ITV's wider risk management framework and health and safety management system, which underpins ITV's Duty of Care Charter.

ITV's compliance team ([compliance@itv.com](mailto:compliance@itv.com)) and the Risk/DOC team ([care@itv.com](mailto:care@itv.com)) can provide advice and support to all ITV commissioned productions. For example, they can advise producers on the experience, expertise and qualifications that are desirable for independent expert psychological advisors supporting a production.

## **Appendix**

### **Lower risk programmes**

Producers should consider the following:

#### Pre-production and casting

- obtain informed consent from participants;
- provide information about the nature and purpose of the programme and their contribution, and potential risks of taking part;
- seek to identify health issues and/or vulnerabilities which might influence ability to give informed consent or to take part, and consider reasonable adjustments, where relevant.

#### During Filming

- monitor for signs of stress, anxiety or other mental health issues, and act on concerns;
- advise ITV's compliance team and/or central risk team if concerns arise;
- ensure any adjustments identified during casting are in place, and monitored.

#### Aftercare

- provide participants with a production contact (who will not become unavailable once the production team has dispersed after filming), and a backup contact;
- make clear to participants they can seek advice or support for an appropriate period after broadcast;
- provide advice on handling potential hostile social media comment post-broadcast, if relevant.

### **Medium risk programmes**

Producers should consider the following:

#### Pre-production and casting

- obtain informed consent from participants;
- provide information about the nature and purpose of the programme and their contribution, and potential risks of taking part;
- seek disclosure of mental or physical health conditions that may be relevant, for example via a health and background questionnaire;
- seek to identify any vulnerabilities which might influence ability to give informed consent, or to take part, and consider reasonable adjustments;
- where mental health issues or other vulnerabilities are identified, refer the assessment of the participant's suitability to an expert psychological advisor.

#### During Filming

- monitor for signs of stress or other mental health issues, and act on any concerns; this might be achieved by having trained mental health first aiders in the production team, to identify significant changes in behaviour;
- have a single point of contact for participants, and have expert psychological support available and on call during filming (eg by phone);
- seek advice from the expert psychological advisor, and/or ITV's compliance team and/or central risk team, if concerns arise;
- ensure any adjustments identified during casting are in place, and monitored.

#### Aftercare

- provide participants with a production contact (who will not become unavailable once the production team has dispersed after filming), and a backup contact;
- make clear to participants they can seek advice or support for an appropriate period after broadcast;
- provide advice on potential hostile social media comment post-broadcast, and adjusting to life outside production;
- contact participants immediately before transmission to ask about their post-filming experiences, and after broadcast to check on their wellbeing; this could be achieved by a formal "debrief" with the production team, and/or the expert psychological advisor.

### **Higher risk programmes**

In addition to the medium risk steps above, producers should also consider:

#### Pre-production and casting

- discuss with potential participants the potential risks of taking part, including potential downsides of participation – for example press intrusion, social media negative comment and "trolling", people they know giving stories to the press about them, examination of their past social media history etc; record the outcome of these discussions and steps intended to mitigate these risks;
- encourage participants to discuss with their families/ friends/ personal support network before making any final decision to participate;
- give participants appropriate time to consider before committing to take part;
- assessment of suitability of all participants by relevant appropriately qualified experts;
- have a single production point of contact for participants from casting to aftercare.

#### During filming

- have expert psychological advice accessible 24/7;
- have dedicated individuals (eg a Welfare Producer or team) overseeing the physical and psychological health of participants (including monitoring their sleeping, eating etc);
- consider the programme narrative and whether it is likely to generate negative media or social media comment, and whether any steps can be taken to minimise impact on participants;

- If significant concerns are raised, consider whether the participant should leave the production.

This could be achieved by:

- having a dedicated mental health professional on site or on call with ready access to the site if necessary; and/or
- having a welfare producer who will:
  - oversee participant welfare and provide support throughout production;
  - be a single point of contact for participants, from casting to aftercare;
  - liaise with expert advisors and the production team to ensure adjustments and medical provision are in place.

### Aftercare

- provide a psychological debrief;
- provide training to help with transition to home life or increased media presence;
- undertake follow up assessments;
- provide a proactive programme of formal aftercare support eg counselling.

This could be achieved by:

- ensuring all participants undergo a debrief soon after they have finished filming, and before returning home. The debrief should include:
  - a psychological assessment;
  - details of how the participant has been portrayed; and if already broadcast, encouragement to watch the programme or series;
  - details of press and social media interest in the production and the individual;
  - social media training (for example setting privacy controls);
  - financial awareness training.

Ongoing support - this can be tailored to the individual for an appropriate period after broadcast, but a minimum level of support for all participants should be agreed with the expert psychological advisor. This might include access to psychological support, or signposting to public services.

**March 2021**



## **CHILDREN IN PROGRAMMES: ITV's Child Protection Guidelines**

### **Introduction**

ITV believes children should have the opportunity to take part in television programmes, and that there are clear benefits for them and for our audiences in them doing so.

ITV has a duty to safeguard all children and young people who take part or are otherwise involved in our programmes from harm, and also to protect children that watch our programmes, and interact with them.

ITV is therefore committed:

- To take all necessary steps to protect children and young people who take part or are otherwise involved in ITV programmes or other ITV content;
- To ensure that whenever they are involved in filming, due care is taken over their physical and emotional welfare and dignity, and that they are not caused unnecessary distress or anxiety either by their involvement in the programme, or by its broadcast;
- To ensure that children can take part in programmes in a safe, reassuring and welcoming environment, with appropriate supervision at all times;
- To ensure all children are treated with respect as individuals, and offered equality of opportunity;
- To have a single consistent point of contact with whom the child and their parent can liaise throughout the production, as far as this is practicable;
- Where children are "performing" in any programme, to ensure they are licensed and accompanied by parents/guardians or suitably registered and trained chaperones;
- To ensure viewers under 18 are not harmed or misled by programmes aimed at them, particularly when being asked to interact with the programme or take part in online interactivity;
- To hold any personal information obtained from children securely.

Consideration of children's welfare should therefore be at the heart of any production, and should be our priority at all times over other editorial considerations.

There is no single legal definition of a child, although for the purpose of this guidance "child" refers to someone under the age of 16, and "young people" refers to those under the age of 18.

### **Parental Consent**

Generally, before children take part in programmes, consent will need to be obtained from either a parent or guardian, and will usually be obtained in writing.

Parents/guardians must sign all releases and contracts on behalf of under 16s. Any exceptions to this rule should be discussed with Compliance beforehand. Any decision to feature children (other than incidentally) without parental consent is normally only editorially justified on the basis of a clear and overriding public interest.

Young people aged 16 or 17 can consent on their own behalf and sign consent forms themselves, although parental agreement may be desirable (but is not compulsory). Programme makers should make clear to children that it is acceptable for them to disagree with their parent's decision to give consent, and they should not be pressured to participate against their wishes. A child's reluctance to participate should be respected. Meaningful, child-friendly information about the programme should be given to children when discussing their possible participation.

It is not necessary to obtain the consent of two parents, but where producers are aware that one parent consents and another is actively opposed to the child's participation, this should be discussed with Compliance, and any potential impact on the child's welfare considered.

Parental consent is an important pre-condition for children taking part, but it is not a substitute for making our own independent assessment of any potential risks to the welfare of the child, both during filming and after transmission. The ability of the child to give informed assent to taking part, and to understand the likely consequences is important, and not just obtaining the parent's written consent.

### **Duty of Care and Risk Assessment**

ITV is obliged by the Ofcom Broadcasting Code to take due care towards all programme participants under the age of 18. Producers should have regard to the Guidance Notes to Section 1 of the Code. An appropriate risk assessment should be made by the production, whether or not a child's participation is to be licensed by a local authority, to mitigate any risks to children in relation to the activities they will be carrying out. Depending on the type of production, producers may wish to create specific written guidelines for their team for working with children, in addition to this general policy.

Consideration of how best to safeguard a child's welfare will vary depending on the type of programme being made, and the level of care must be appropriate to the circumstances, and to the individual child. Their age, maturity and capacity to make judgments about their participation will all be relevant to the steps taken. Other issues such as gender, cultural, ethnic and religious background, personal circumstances and previous life experiences may all impact on a child's vulnerability and/or resilience. Children are often eager to take part in our programmes, but may lack the maturity necessary to assess any longer-term impact on their lives. We must consider carefully any potential impact and possible consequences to the child of broadcast of the programme, and how much personal information to disclose about them.

In some cases aftercare is important, and it may be necessary to arrange access to appropriate professional help (eg counselling) and for a nominated production team member to keep in contact with the child's family in the period immediately following transmission.

Some genres and formats focus on conflict and crisis and may cause distress and anxiety. We should consider carefully in such circumstances whether those aged under 18 should be involved. The Ofcom Code does not require the elimination of all

distress and anxiety, and there are editorial contexts in which a degree of anxiety is inevitable and justified, but it should not be caused unnecessarily.

Compliance advice should be sought in advance of filming where children and young people are interviewed in sensitive situations, or in programmes of a controversial nature, so that safeguards can be agreed and put in place. Children should not be asked for views about matters beyond their capacity or maturity to answer, and parents should be made aware of and consent to interviews and proposed areas of questioning.

Background checks may need to be made on social, family, health and educational circumstances, as part of the risk assessment regarding physical health and safety and emotional and mental wellbeing.

Care should be taken where a child is new to performance, or participating in a production the subject matter of which might exceed their emotional maturity or experience.

Staff should normally avoid initiating physical contact with children, except for reasons of health and safety or normal supervision, and should seek to work in an open environment. Everyone working with children (whether production staff, or on screen presenters) should behave in an appropriate manner towards and around children and young people at all times.

### **Expert advice**

Many non-scripted programmes involve some physical or emotional challenges to child participants. Producers may therefore need to take appropriate expert advice (for example from suitably qualified psychologists, social workers, teachers, doctors or counsellors) before, during and after filming. This is particularly so when the programme is dealing with anti-social, harmful or illegal activities (such as crime, drug use, physical and sexual abuse, bullying etc), or psychological and medical problems (such as eating disorders and self-harm etc). We may need to seek expert advice about the best way of approaching interviews on sensitive subjects to mitigate the risk of potential distress, and have those experts review the recorded material relating to children prior to broadcast.

### **Anonymity**

Difficult ethical and legal issues arise when we are dealing with children involved in anti-social or criminal behaviour. Queries about whether it is possible to identify a child in these circumstances should be referred to Compliance. We should not normally identify children when featuring such behavior unless there is a clear editorial justification and strong public interest.

The decision to feature children whose parents are engaged in anti-social or criminal activity should only be made where we are satisfied the welfare of the child will not be harmed, and if it is editorially justified. This is particularly important when children may be at risk because, for example, they are living with an alcoholic or drug-abusing parent, or being forced to take part in illegal activities.

Do not assume that simply blurring a child's (or adult's) face will be sufficient to avoid identifying that child. There is a difference between not identifying an individual and rendering them unidentifiable. Advice should be taken from Compliance before carrying out "anonymous" interviews, to ensure that where promises are made to

parents or children about anonymity, the techniques employed will achieve the required result.

## **Child Licensing**

A licence will ordinarily be required where a child is performing on television, or participating in a programme where the activity is manipulated or directed for the purpose of entertainment, presenting, modelling, or taking part in sport for payment. A licence may not be required for observational documentaries, news reporting, consumer and current affairs, vox pops, or being filmed as part of an audience.

Where a licence is required, this must be applied for at least 21 days before filming begins (and earlier if possible). The licensing authority may impose conditions on the license, which must be adhered to.

Regulations set out maximum hours per day for which children of certain ages can be present on set, and minimum requirements for breaks depending on the age of the child. Chaperones may in addition request additional breaks or longer periods between performances if the child's welfare demands. Children should not be required to be on set before 7am and must leave the set by 11pm if over 5 years of age, and 10pm if younger, unless the consent of the Licensing Authority has been sought. Specific consent must also be sought for any night work.

Producers must ensure that where licensing is necessary, children have an appropriate performance licence and appropriate supervision, ie by a parent/guardian or a registered chaperone. A registered chaperone means one recognised by the appropriate Licensing Authority. Registered chaperones should have also had Criminal Record checks carried out by their Licensing Authority.

Please refer to ITV's Child Licensing Guidelines, the advice issued in the relevant nation of the UK, and any guidelines that apply to the area in which the child resides:

England: <https://www.gov.uk/government/publications/child-performance-and-activities-licensing-legislation>

Scotland: <https://www.gov.scot/publications/young-performers-guide-parents-guardians/>

Wales: <https://gov.wales/keeping-young-performers-safe-performance-licences-children>

Children travelling to our production bases should be accompanied by a parent or guardian, or by a chaperone. Any conditions that the Licensing Authority has made relating to travel, accommodation (including facilities available on set) and meals must be observed, as must any requirements relating to the child's education.

ITV expects chaperones to operate in accordance with its Guidelines for Chaperones. See ITV's Guidance on Child Licensing for further details.

Where a licence is required for a child to perform other than on school premises, requirements for permission from the child's school differ for England, Scotland and Wales. See ITV's Guidance on Child Licensing for details. Permission should always be obtained from the head teacher for filming or interviewing on school premises, whether or not a licence is required.

## **Competitions**

Prizes aimed at children must be appropriate to the age range of both the target audience and the participants. Generally it will not be appropriate to encourage children to compete for significant cash prizes in programme competitions. In talent competitions a successful child competitor may win a career opportunity that has a significant cash value. Care should be taken that they are not placed under undue pressure either by parents or others to succeed at all costs.

## **Online Content and Links**

We aim to ensure that children and young people taking advantage of new technologies understand the possible risks they face and how to minimise them. The online protection of children in relation to our programmes is a shared responsibility between ITV and parents/guardians.

We should ensure that programme websites or apps likely to appeal to a high proportion of children and young people carry appropriate content. Any material on the website home page must be suitable for a general audience.

When we ask children for personal information online we need to consider what degree of parental consent is appropriate. Online space where strangers can routinely meet and exchange personal information will not be suitable for use by children.

## **Privacy and Consent Online**

When we publish any information about children online, we should ensure it is editorially appropriate, and should be sensitive to concerns that publication of too much information could put a child at risk. Combinations of written and visual information are a particularly sensitive area.

- Where we invite children to send us information about themselves, for example a name and email address to enter a competition, we should explain why we need it in language they can understand.
- It is particularly important that younger children should not get into the habit of easily revealing personal details about themselves or their family on the internet.
- Any information children send to us should only be used for the purpose for which it was sent.
- It should be retained securely and only as long as we need it.
- It should not be revealed to a third party. Competitions for children online should include a statement to the effect that children should always get their parent's or guardian's permission before entering their personal details (name, email address etc) onto the competition entry form.

## **Abuse**

If anyone working with children suspects that a child may be at risk either in the workplace or outside of it, the situation should be referred to an appropriate manager responsible for child protection, who will normally be either the Head of Production, the Head of Health And Safety, or the Director of Programme Compliance. They will then refer the matter, where relevant, to the HR and/or Legal Department. An internal investigation will be carried under the Disciplinary Policy where the alleged abuse

concerns a member of staff.

Child abuse is where any child suffers harm because of physical, emotional or sexual abuse or neglect by an adult.

Physical abuse includes deliberate acts causing physical harm and failing to act to protect a child from such harm, or fabricating or inducing illnesses in a child.

Emotional abuse is the persistent emotional ill treatment of a child, which is likely to cause serious harm to their emotional and behavioural development. It may involve suggesting to a child that they are worthless, inadequate or unloved, or placing inappropriate expectations or responsibilities upon them.

Sexual abuse involves forcing or enticing a child/young person to take part in sexual activities, whether or not they are aware of what is happening. It may include physical contact or non-contact activities, including online grooming, or involving children in looking at pornographic material or sexual activity, or encouraging inappropriate sexual behaviour by children.

Neglect is the persistent failure to meet a child's basic physical and psychological needs, which is likely to result in serious impairment to their health and development. It may involve failure to provide adequate food, shelter or clothing, or failure to protect them from physical danger.

### **If you have a concern**

Staff may become concerned through observation of:

- Bruises or injuries that are unusual, for example on a part of the body that is not prone to such injuries.
- Injuries that require but have not received medical attention.
- Cigarette burns or bite marks.
- Unexplained changes in behaviour, for example becoming aggressive or withdrawn.
- Inability to trust certain adults with whom you would usually expect the child to have a close relationship.
- Signs of self harm or attempted self harm.
- Age inappropriate sexual knowledge or behaviour.
- Running away from home.
- Non-attendance at school.

It is not the responsibility of ITV to decide whether or not abuse has taken place. It is the responsibility of staff at ITV to act if there is cause for concern, in order that the appropriate agencies can investigate and take action necessary to protect a child or young person.

In the event that any member of staff suspects that a child or young person involved in one of our programmes may be experiencing, or be at risk from, some form of abuse, they should inform the relevant manager. Whilst staff may not be qualified to manage the responsibility of the child's welfare themselves, ITV recognises that there must be an appropriate response to concerns about a child's welfare. Staff should therefore make suspicions of abuse known to a designated manager for child protection.

Children or young persons may disclose to staff that they are experiencing abuse. A third party – parent, relative, or friend might also share areas of concern. Staff should be clear that they cannot keep such information confidential and must take action if they think the child or young person has been or is being harmed. Staff should make a note as soon as possible of what they have been told, using the child's own words, and report to the designated manager.

Likewise if a child makes an allegation of abuse against a member of staff it must be reported as a matter of urgency to a designated manager for child protection. The alleged perpetrator should not be made aware of the allegation at this point. The manager may decide to refer the matter to the relevant Social Services department and/or the police. Matters reported and actions taken must be recorded and shared only with those staff members (i.e. Legal and HR) who absolutely need to know.

### **Relevant Legislation, Regulation and Guidance**

Children's Act 1989 and 2004

The Children (Performance and Activities)(England) Regulations 2014, the Children (Performances and Activities)(Scotland) Regulations 2014 and the Children (Performances and Activities) (Wales) Regulations 2015

The Ofcom Broadcasting Code and Code Guidance

#### **Ofcom Broadcasting Code : Section 1 key Rules on child participants**

*1.28 Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.*

*1.29 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.*

#### **Ofcom Guidance Notes**

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0017/24704/section1.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0017/24704/section1.pdf)

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0030/86781/watershed-on-tv.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0030/86781/watershed-on-tv.pdf)

**November 2020**

## **LIVE PROGRAMMES**

Live programming presents many editorial and compliance challenges, which must be addressed by effective planning before the live event, and by effective contingency plans to respond to any problems during it.

### **Pre-broadcast**

Producers should discuss the format of all live programmes with compliance advisors well in advance of broadcast. Not all programmes require a compliance presence in the studio - the likely content, scheduling and participants will determine whether a compliance lawyer or advisor is required to attend. For a new programme, it may be useful for the presenters and production staff to have a compliance briefing during pre-production. Established and long running programmes should conduct regular compliance refresher courses to ensure staff are made aware of any recent developments in compliance issues.

Where a programme includes live viewer voting, compliance and interactive personnel will generally attend at the studio or location, to ensure that this element is conducted in accordance with ITV's Interactive Guidelines. In other cases, producers should ensure that they have direct out of office numbers for compliance advisors to take advice whilst the programme is on air, if necessary. All pre-recorded and pre-prepared material (eg V/T inserts, on screen graphics, scripts, etc) should be seen and cleared by compliance before transmission.

Contingency planning is essential for all live programmes, and built into scripts and running orders. For viewer vote programmes the contingency plan is likely to be involved, and discussion about it should therefore commence well before transmission – see ITV's Interactive Guidelines for further information.

Producers must ensure that all relevant staff are fully aware of compliance procedures for their programme, and that all compliance advice is properly communicated to relevant members of the production team. Where producers become aware that a programme item may present legal or compliance risks, they should ensure advice is taken from compliance lawyers or advisors before transmission, and that this advice has been acted upon before the item goes ahead.

Producers must ensure that guests and presenters are properly briefed before they appear, for example to avoid making defamatory or unfair statements about identifiable people, using offensive language, or promoting commercial products. Producers should not assume that just because a guest is an entertainment or media professional they will always be aware of these requirements without being told.

Some content may require information or an explicit warning to be given by the programme presenter immediately before it is shown (eg "some viewers may find this footage upsetting", or "this report includes flashing lights").

### **During broadcast**

There should be effective communication between gallery and presenters to deal with any problems that arise during broadcast. Generally presenters should wear earpieces, unless an equally effective method of communication is available.



Apologies & Corrections – it is very important to address problems immediately if they arise, by way of an appropriate apology or correction from the presenter or commentator. Every incident is different, and some may require advice and discussion, but the most obvious issues are discussed below.

Legal - If any comment is made which could lead to a legal claim against ITV, for example a libel claim, a compliance lawyer must be notified immediately, and where necessary an appropriate apology drafted and delivered to camera by the presenter on air later in the same programme.

Language – if offensive language is used unexpectedly before the watershed, an apology should be made as soon as possible by the presenter (eg “*apologies for the language used just now/earlier*”).

Accuracy – in Breakfast and Daytime live news or magazine shows, and in regional news programmes, producers must take all reasonable steps to research and check the facts of a story before inviting a guest to discuss it. If significant factual mistakes are made, a factual correction should be made as soon as this is discovered.

In any case where inappropriate content has been broadcast, that content should be edited by blanking for the +1 channel broadcast, via contact with the compliance advisor and the ITV Broadcast Operations Duty Manager (“DMO”), who will liaise with transmission controllers. An edited version must also be created for any broadcast repeat, and for Catch Up on all VOD platforms. It is essential that compliance is alerted to such incidents promptly from the gallery.

Where an invited guest is not known personally to the producers, and is not a celebrity, then adequate identity checks must be made, and documentation proving identity must be provided (eg photo ID such as passport or driving licence).

Where a programme is interviewing a celebrity, it is commonplace for them to wish to promote their latest project/film/record etc. Producers must ensure that in so doing the following is avoided -

- promotion of products and services
- undue prominence of products and services
- product placement

Promotion - it is more justifiable to talk about a genuinely artistic/creative project than one where a celebrity is simply endorsing a product unconnected to their career. Interviews will be more likely to be seen to be promotional where there is a clear “sell” by the guest, and/or an endorsement by the presenter. The more prominent the references to the product, the more likely the programme will be seen to be promotional of it.

Undue prominence - is where the product is featured in a way that is not justified by the context, eg calls to action to purchase the product, repeated references to brand names or commercial website URLs, etc.

Product placement – is where the reference to the product is made as a result of a payment to the broadcaster, producer, or connected person (such as the interviewee).

Celebrity guests should not be invited simply to promote or endorse a commercial product, eg their new perfume or an appearance in a new advert as a brand ambassador. In the context of a broader ranging interview about their creative/artistic activities and career, it may be reasonable editorially to mention *in passing* that they are currently involved in a commercial venture, but the interview should not focus on such ventures, and should include more than that subject, eg career history, other things they are currently doing, etc. Brief the guest explicitly against repeated name checking of any product or giving out website addresses or any text/phone numbers.

The guests and their agents must understand and agree in advance how we are going to handle the interview. Producers should not negotiate the exact manner of how any product will be featured in the programme as a condition of the guest appearing. If someone is making unreasonable demands, then refer to the programme's executive producer or editor.

Presenters should be briefed to move the interview on if the guest makes repeated references to commercial interests, and should terminate the item early if the guest appears to be intent on undue promotion. Likewise they should be instructed by the gallery to terminate the interview, if the guest appears to be intent on using strong language after having been warned to stop, or makes other offensive or defamatory comments.

TV shows/films/DVD releases - If a guest is discussing a new TV show, film or DVD, it is justified to play a clip or clips from it, as long as it is relevant to the guest's involvement. Likewise it may be editorially justified to show a new book or CD that the guest is talking about, but it should not be kept deliberately in shot prominently throughout the interview. If there is any concern about the guest adhering to our guidelines, then rostrum the book or CD cover rather than using a physical copy on set, and run the shot in and out during the chat.

Factual claims (eg that an exercise regime can make you lose a stone a month) need to be independently researched, and presenters need to be briefed to make clear to viewers that unverified claims are not necessarily proven. Just because something is already published in the press, or on the internet, that does not make it true or safe legally – check any statements about other people or that might defame them or infringe the privacy with a compliance lawyer. Note that people can still be *identifiable* even if they are not named.

Charities – guests can discuss their involvement in charities and their work, but we generally do not include formal calls to action to donate involving phone numbers or text details, unless the programme is an ITV charity appeal programme (eg *Soccer Aid*). The programme can however state where more details about the charity and donation can be obtained. The general exception is an emergency disaster appeal (Tsunami, famine, earthquake, etc) being run by an umbrella organisation such as the Disaster Emergency Committee. It may be justifiable to run direct donation line details in these circumstances. Call cost details must be checked and made clear.

Regular guests – participants appearing regularly to give expert advice or commentary (eg doctors, chefs, consumer finance, entertainment correspondents, etc) must not promote their own commercial interests. This is because there should be no suggestion they are using their position on the show to influence the editorial. Likewise, as a general rule, we do not feature references to our own presenters' books, products or commercial projects, to avoid any suggestion they are using their position to influence the editorial or promote products.

## Live Sports coverage

Use of offensive language by spectators and players is a common issue, particularly in football and rugby matches. Where ITV has control of the production of the coverage, the following protocols should be followed to minimise the risk of offence:

On arrival at the venue:

- Try to avoid placing microphones near the team benches (where swearing/offensive language is more likely to be picked up) or in parts of the ground where swearing/offensive language is likely to be audible, eg if a particular part of the home end is near the away supporters, and is known as a place where lots of insults are exchanged.

Pre match production briefing:

- Brief the sound operator to dip the audio on a microphone if a confrontation develops close by it, either involving players or fans, and in particular if any swearing/offensive language occurs.
- Brief everyone in the OB truck that they need to be vigilant about swearing/offensive language, that they must report it immediately to the producer or director if they hear it, and that they should not assume someone else has picked up the language and reported it.

During the match:

- If any swearing/offensive language occurs, it must be reported to the producer or director immediately.
- The producer or director must then:
  - Direct the commentator to apologise immediately to viewers for the language used (eg *"we're sorry for the bad language earlier"*). It is important that we apologise as opposed to simply referring to it or acknowledging it.
  - Contact the compliance contact on call for the match to inform them of the words used and the approximate timecode. The compliance team member will (i) arrange for the word to be dipped by transmission in the +1 programme and (ii) discuss repeats on-air and online with the producer, and what edits need to be made for them.

Interviews post match:

- Remind all interviewees beforehand that they are being interviewed live and cannot use offensive language.

**October 2019**

## **INTERACTIVITY**

All producers of programmes and other content for ITV that includes interactivity are required to comply with ITV's Guidelines, available on the ITV website, which will be included in all commissioning agreements and should also be appended to telephony supplier agreements. Adherence to these guidelines is therefore a contractual requirement. ITV will have the right to monitor adherence to these policies and procedures (whether through on-site oversight, spot check or formal audit).

ITV's Interactive Principles underpin all interactive services delivered by ITV regardless of channel or platform. These principles should be foremost in the considerations of everyone involved in the delivery of interactive elements in programming and should underpin all decision-making. ITV requires:

- Honesty and integrity: producers must act honestly at all times, and with integrity and consistency.
- Transparency, accuracy and fairness:
  - to offer transparency to the viewer of cost and process;
  - to be accurate in compiling and reporting results;
  - to be fair to our viewers, talent, contestants and to all parties involved in the interactive process.
- Editorial relevance: to provide interactive services that are entertaining and appealing to our viewers and aim to be relevant to the editorial context.

Producers of programmes including any interactive elements such as voting or competitions will work closely with ITV Interactive and Compliance to ensure the Principles are adhered to at all times. An ITV Interactive Producer will be assigned to oversee the interactive elements and work with the Producer and Compliance.

### **ITV Interactive**

Following widespread problems in the broadcasting industry around interactivity in 2007/2008, and resulting fines of £5.67M for ITV and £2M for GMTV, ITV implemented strict processes around all interactivity (both broadcast and off-air) to help ensure that similar failures (whether premium rate or free) should never happen again. Under its broadcast licence, ITV is responsible for ensuring that on air communications to viewers are not misleading, and that the trust of viewers is maintained.

ITV Interactive is the business division responsible for making sure that our processes are followed. In order to ensure a consistent approach, any interactivity with a broadcast element which is promoted in-show, or where there is a result announced in-show, must be run or at least approved in advance by ITV Interactive.

For example, this will include:

- All on-air competitions (whether premium rate or free) or off-air competitions where the winner is announced on-air;
- On-air voting (whether premium rate or free) or off-air voting where the result is announced on-air;

- All premium rate services promoted via any ITV platform, including any phone or SMS comment lines;
- Pre-approval of all playalong or similar mobile applications promoted in-show or where the results are announced in-show;
- Pre-approval of polling software, if poll results are announced or promoted on-air.

References in programmes for viewers to comment on the programme via Twitter/Facebook or similar social media platforms will be at the discretion of the production team, working with Compliance. Before including on air calls to action please ensure that relevant social media platforms include a notice to users that their comments may be used on-air, with a link to standard terms and conditions.

### **Online & Mobile (including ITV social media pages or applications)**

In addition, ITV Interactive will:

- Run all off-air competitions (whether premium rate or free) promoted from ITV platforms;
- Run all off-air voting (whether premium rate or free) promoted from any ITV platforms;
- Approve any polling software used for off air opinion polls. Please inform ITV Interactive of the event (except for VOD or broadcast advertising cleared by Clearcast) so that they can assess and flag any risks.

Please see the ITV Interactive Services Guidelines and the ITV Social Media Guidelines in the Appendix for more detailed guidance on programme interactive elements.

**October 2019**

## **COVERT FILMING/RECORDING**

Covert filming/recording is a powerful weapon in the arsenal of investigative journalism. By its nature, it usually involves the infringement of someone's privacy. Therefore it can only be used where it is strictly warranted, and where the public interest in the story under investigation outweighs other interests such as an individual's right of privacy.

ITV has strict protocols for prior authorisation for secret recording. Normally, it will only be warranted where the following criteria are all met:

- There is already some prima facie evidence of a story in the public interest in the possession of the producers. It will not be acceptable to secretly record simply in the hope of obtaining evidence, if none currently exists;
- There are reasonable grounds to suspect that further evidence could be obtained by secret recording;
- It is necessary to the credibility and authenticity of the programme.

Before any secret filming/recording is commenced, producers should seek written authorisation from the Director of Content Compliance (or in their absence from one of the Heads of Legal Compliance), also copied to the compliance lawyer allocated to the programme, setting out in detail the relevant facts supporting the criteria above. There is a standard form available on request for this purpose. The ITV Commissioner responsible for the programme should also be aware of this request. Any requests should normally be sent at least 48 hours before the intended secret filming/recording is to commence, and need to be approved before filming/recording takes place. Likewise, specific authorisation is required again before the broadcast of any material.

### **Entertainment set-ups**

There is a long tradition of covert filming for the purposes of entertainment from *Candid Camera* to the present day. Unlike investigative filming, this has no overriding public interest. It therefore needs to be carefully considered and planned, to minimise the risk of incidental breaches of privacy of individuals who are not the main "target" of the set up. It will require the consent of the subject to be obtained before any of the footage can be included in the programme. Proposed set ups for entertainment purposes should be discussed with the relevant Head of Compliance before any such filming takes place.

**October 2019**

## COMMERCIAL REFERENCES, SPONSORSHIP AND PRODUCT PLACEMENT

### Key Principles and Issues

- ITV must maintain editorial independence and control over programming;
- There must be a distinction between editorial content and advertising;
- Audiences must be protected from surreptitious advertising;
- Audiences must be protected from the risk of financial harm;
- Products or services cannot be promoted in programmes, other than in limited circumstances (eg programme related material, cross-promotions and some premium rate telephony services - see below);
- Undue prominence of products, services and brands in programmes is not allowed; references to them must be justified by the editorial requirements of the programme;
- Unsuitable sponsorship must be avoided; sponsorship cannot involve any editorial control by the sponsor, and cannot lead to the creation of content that is a vehicle for promoting the sponsor and its interests. Sponsorship credits cannot contain advertising messages or calls to action;
- Product placement is only permitted in certain programme genres and for certain products/services/brands. Programmes cannot become a vehicle for the purpose of featuring placed products, services or brands. Programmes cannot contain promotional or unduly prominent references to placed products/services/brands.

### 1. Commercial references in programmes

#### Promotion and undue prominence of products and services

Promotion - Products, services and trademarks are an intrinsic part of everyday life, and can be referred to in programmes. But programmes cannot promote them. Generally speaking, products and services should therefore not be referred to in unduly favourable or superlative language.

Undue prominence – this is a difficult judgment, and may often require compliance advice prior to filming, to avoid difficulties when editing. Undue prominence may result simply from the presence of a product/service/brand in a programme without sufficient editorial justification, or from the manner in which it appears in the programme visually or verbally (eg the number of times it appears, or the tone in which it is discussed). If a reference creates the impression that there has been any external commercial influence on the editorial process (ie if it looks artificially prominent or distracting, rather than having a “natural fit” within the programme) then it is likely to be unduly prominent. Lingering shots of products or logos should be avoided.

Consumer advice programmes – in programmes or programme items that involve product reviews or consumer tips, then a greater degree of information about products (including pricing and availability) and favourable references to them may be editorially justified. In consumer items, reference to a range of products/brands is usually preferable to focussing on one brand/product.

Chat shows - Ofcom recognises that guests on chat/magazine programmes will often appear to promote their latest venture. Where this venture is an artistic endeavour linked to their profession (eg an actor discussing their latest film, a singer discussing their latest release or tour) it is likely to be acceptable, as long as references are not unduly prominent and within the context of a wider interview. However where the venture is not directly linked to the guest's profession or creative talents (eg an actor or singer paid to be the brand ambassador for a product in which they have had no real creative input), it will be much harder to justify.

Competition prizes – competition V/Ts may feature some product information about the prize, to assist the viewer in deciding whether to enter, but this should not be unduly promotional in tone.

Clothing - presenters should not wear prominently branded clothing. Interviewees and guests should generally also not wear branded clothing, although this may be more acceptable where the broadcaster does not fully control the environment of the filming (eg sporting events).

Events - When covering events such as awards ceremonies or sporting events, the inclusion of incidental branding in the background of a shot should not raise undue prominence issues. Prominent branding positioned for the purpose of media coverage should be avoided where possible.

### **Programme-related material**

Programme-related material (PRM) is defined as “products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or interact with, that programme”. Examples include directly related editorial content available on programme websites and apps, downloads or streaming of music performances from a programme, DVDs of the programme or series, or CDs or downloads of the soundtrack music. PRM can only be promoted during or around the programme it is derived from, where it is editorially justified.

PRM can be free or paid for by viewers. Where it is paid for, any promotion must be kept “distinct” from the rest of the programme, eg via a text strap or V/T, rather than announced by presenters.

### **Premium rate services (PRS)**

PRS can only be promoted where they:

- Enable viewers to participate directly in or contribute to the editorial content of programme; or
- They fall within the definition of programme-related material.

The primary purpose of the programme must be clearly editorial, and the promotion of PRS must be clearly subsidiary to that purpose. A talent or reality show where viewers can pay to vote for their preferred winner is the most obvious example of this. But programmes that are effectively promotional vehicles for premium rate services are not acceptable as editorial content. The cost of using the PRS must be made clear to viewers (and text used must be legible) and use of PRS must comply both with the Ofcom Broadcasting Code and the Phone-paid Services Authority Code of Practice.



Generally, a viewer can only be charged to participate or interact with programmes by means of premium rate telephone services, or other telephony services based on similar revenue-sharing arrangements.

Programme Apps can be promoted where they allow audience participation in programmes and qualify as PRM.

### **Reference to social networking sites (e.g. Facebook, Twitter) in programmes**

Such references may be editorially acceptable, provided:

- Use of the site must attract no charge to viewers;
- References should not result from product placement;
- References, including use of logos for ease of identification, should not be unduly prominent.

### **Credits for suppliers of goods and services for a programme**

A brief basic credit for the supplier may be included in the end credits of the programme where their contribution has been substantial. End credits must not contain logos.

### **Brand references in viewer competitions**

References to brands within viewer competitions must be brief and secondary. Competitions cannot be used as advertising platforms for the prizes or prize donors. The content of a viewer competition (scripts, questions, reference to prize etc) cannot be guaranteed or negotiated with the prize provider.

### **Use of adverts in programmes**

Extracts from advertisements, both recent or historic, can appear in programmes, if their inclusion is editorially justified, but must not be the result of any payment or other valuable consideration to the broadcaster or programme-maker. Generally logos, contact details and straplines should be avoided.

## **2. Sponsorship**

### **What is sponsorship?**

A sponsored programme is one that has some or all of its costs met by a sponsor with a view to promoting its own or another's name, brand, product or service. This includes advertiser-funded programming.

### **Who cannot sponsor programmes?**

Advertisers who cannot advertise on television also cannot sponsor programmes or channels, eg any political body, tobacco brands, etc.

### **Identification of sponsorship and sponsor credits**

Sponsored programmes must be clearly identified by reference to the name of the sponsor and the fact they are sponsoring the programme, at the beginning and/or end of the programme. A sponsored programme must therefore have either a front

or end credit, and will usually have both. It may also have credits at the end and start of each part. Sponsorship credits may include separate sponsor “bumpers” (which do not form part of the programme’s running time) or integrated title sequences and credits within the programme.

In a sponsorship credit, the relationship between the sponsor and the sponsored programme must be transparent. The sponsorship arrangement must be the primary focus of the credit, and advertising messages and calls to action for the sponsor’s products are not allowed. Acceptable sponsorship messages include “sponsored by X”, “in association with X”, and “supported by X”. “Brought to you by X” is also permitted, but is generally only used by ITV for advertiser-funded programmes.

Sponsorship credits within programmes are permitted, as long as they are not unduly prominent, and the sponsor is not prohibited from product placing in the programme (see “product placement” below). Credits within programmes can only contain a brief, neutral visual or verbal statement identifying the sponsorship arrangement and a static graphic of the name, logo or any other distinctive symbol of the sponsor.

### **References to the sponsor in sponsored programmes**

Whenever the programme contains a reference to the sponsor or its products/services/brands/interests, this may create a presumption of editorial influence by the sponsor.

Sponsored or advertiser-funded programmes are commissioned by ITV and producers must bear in mind that they are being made for ITV, not for the sponsor/advertiser. The content of the sponsored programme cannot be a vehicle for the purpose of promoting the sponsor, its products, services, brands or interests. The ultimate arbiter of all programme content is ITV.

There are limited circumstances in which a sponsor (or its products, services or interests) may be referred to in the sponsored programme:

- A sponsor can place products in the programme. Placement will be subject to the rules on product placement (see below) and in particular the prohibition of promotional and unduly prominent references. In an AFP, where the sponsor has been involved in the creation of the programme, any reference to it or its interests are likely to be considered as product placement.
- Where an incidental reference to the sponsor is made that is not the result of the commercial arrangement, the reference will be subject to the general rules on commercial references (see above) in particular regarding promotion and undue prominence.

### **3. Product placement**

#### **What is product placement?**

Product placement is the inclusion in a programme of a product, service or trade mark or a reference to it, where the inclusion is for a commercial purpose and is in return for payment or other valuable consideration to ITV, the producer or anyone connected with them. Payment for inclusion of references by a non-commercial organisation (eg a charity) will also be product placement.

The placement of certain products, services and trademarks in certain genres of programming is now allowed. However, paid-for placement of references to a funder's aims, objectives, beliefs, etc (sometimes called "thematic placement") is not.

Prop placement is different to product placement. Prop placement is the inclusion of a product, service or trademark in a programme without any payment to ITV, the producer or any person connected with them. Both prop and product placement can be used in the same programme.

Any proposed product placement arrangement must be notified to ITV Commercial and compliance in advance of filming.

### **Which programmes can include product placement?**

Product placement is allowed in films (this includes single dramas and single documentaries), series made for television (includes serials), sports programmes and light entertainment programmes.

Product placement is not allowed in the following genres - news, current affairs, children's programmes, religious programmes, consumer advice programmes (or consumer advice items in other programmes).

Magazine shows may contain product placement even where the show includes elements of restricted genre content (eg news bulletins/items, consumer affairs strands) provided that restricted genre content does not form the majority of the content and any product placement does not influence that content.

### **Which products/brands cannot be placed?**

Cigarettes/tobacco products and brands, medicinal products, alcohol, foods and drinks high in fat, salt or sugar (HFSS), gambling, infant formula (baby milk, includes follow-on formula), electronic or smokeless cigarettes, cigarette lighters, cigarette papers or pipes intended for smoking, and any product, service or trademark that cannot be advertised on television.

### **References to placed products/brands in the programme**

Product placement must not influence the content or scheduling of a programme in a way that affects the responsibility and editorial independence of ITV. Programmes must not be created or distorted to become a vehicle for the purpose of featuring placed products, services or trademarks.

References to placed products, services and trademarks must not be:

- Promotional – the following are likely to be considered promotional: encouragement to purchase, advertising claims, price or availability information, references to positive attributes or benefits of the product, slogans associated with the product and endorsements (whether explicit or implicit). Great care is required if a presenter/actor has an existing relationship with a placed brand. The rule on promotional references also means that:
  - Product placement of competition prizes in viewer competitions is unlikely to comply with the rule.

- Any product placement of programme-related material will mean the promotion for it has to sit outside the main body of the programme (eg during or after the end credits) or within a distinct short VT within it.
- Unduly prominent – the extent and nature of references will need to be judged against the editorial requirements of the programme.

### **Signalling of product placement**

Product placement in a programme needs to be signalled clearly to viewers by the universal neutral “P” logo for three seconds at the beginning of the programme, when the programme resumes after a break and at the end of the programme. The logo used must conform to Ofcom’s specifications.

**October 2019**

## ITV OFFENSIVE LANGUAGE GUIDELINES

The Ofcom Broadcasting Code requires that broadcasters apply “generally accepted standards” to offensive language in programmes, to ensure that:

- material that may cause offence is justified by context
- children are protected from unsuitable material by appropriate scheduling

There are no “banned” words in the Code, and there is no absolute right for viewers not to be offended by language used in TV programmes. Ofcom’s most recent research on audience attitudes suggests viewers accept offensive language being used for dramatic impact, for humour, to reflect real life, or to inform and educate. The research also shows increasingly relaxed attitudes about the use of swear words, as long as the strongest language is only broadcast after the watershed, and parents are given sufficient information to inform decisions about what their children watch. But they are increasingly concerned about discriminatory language, particularly around race.

Context is all-important, and the use of offensive language must be justified by its context eg why it appears in the programme, the nature of the likely audience given the scheduling, what warnings were given, who is speaking and who is being spoken to, the perceived intention or purpose of programme-makers, presenters or contributors, and what the audience expectations are for the schedule slot, the genre of programme, and the channel.

Offensive language is a part of British culture, and ITV is proud that its programmes are at the heart of that culture, and reflect British society. This guidance is informed by research on viewer attitudes published by Ofcom, and by previous Ofcom adjudications. It provides general guidance for all programmes on ITV channels, and the examples of offensive words are not exhaustive – within the last decade some words have largely dropped out of use, whilst new ones are constantly arriving.

Any use of offensive language is always both an editorial and a compliance issue, and should be considered carefully and discussed with commissioners and compliance advisors. Producers should not assume that a post-watershed slot of itself makes *any* amount of offensive language acceptable. After 21:00, the transition to more adult material must not be too abrupt, so focus should be given especially to the early part of those programmes starting at 21:00.

Producers should also not assume that any offensive language can be dealt with for pre-watershed broadcast simply by “bleeping” or “dipping” that language. Excessive or repeated language, even masked, may still render the tone of some programming unsuitable for pre-watershed broadcast, and further editing (ie completely removing some dialogue or images) may be required.

Ofcom’s research suggests 3 broad groupings of words –

**Mild** – unlikely to concern audiences in most circumstances and requiring limited context

**Moderate** – greater potential for offence, and a higher level of context required, based on audience expectations

**Strong** – highly offensive, and clear contextual justification required.

In summary, ITV's expectations pre and post-watershed are as follows:

## Pre-watershed

- The strongest language (see below) should not appear in any programme, and other offensive language only exceptionally
- Moderate and mild language (see below) should only be used where editorially justified by the context
- No offensive language should appear in children's programmes

## Post-watershed

- The strongest language should generally be avoided in programmes likely to still attract a significant "family" audience (eg *I'm a Celebrity Get Me Out Of Here*, *Britain's Got Talent*)
- For programmes starting at 21:00, the strongest language should generally be avoided in pre-title and recap sequences, and in the early part of the programme
- Offensive language should only be included if editorially justified by context

### Post Watershed only (21:00)

Motherfucker, Cunt	These words are regarded as the “strongest” offensive language, and should never be used before the watershed. They require clear editorial justification even post-watershed.
Fuck, Fucking	In programmes starting at 21:00, “fuck” and “fucking” should generally be avoided in pre-titles sequences and recaps, and used only sparingly in early scenes.  Specific advice should be sought from a senior compliance manager for the use of “cunt”.
Gash, Flaps, Beef-curtains, Punani, Pussy Hole, Jap’s eye, Cocksucker, Cum, Nonce, Prickteaser, Slut, Raped (depending on context)	These words are regarded as “strong” and are generally unacceptable before the watershed.
Beaver, Clunge, Fanny, Milf, Minge, Ho, Pussy, Slag, Slapper, Skank, Snatch, Whore, Sket, Bloodclaat, Bumberclat, Cock, Dick, Dickhead, Wanker, Prick, Knob, Knob-head, Shag, Tossler, Tool, Twat, Bukkake, Dildo, Jizz, Spunk, Rapey	These words are regarded as “moderate” but are generally inappropriate before the watershed (unless there was particularly strong editorial and contextual justification).

## Discriminatory Language (generally Post Watershed)

<p>Nigger, Paki, Chink, Chinky, Ching Chong, Slope, Pikey, Gippo, Gyppo, Raghead, Towelhead, Coon, Darky, Dago, Wog, Golliwog, Golly, Coloured, Negro, Sambo, Spade, Choc Ice, Nig-nog, Gook, Honky, Jap, Kraut, Spic, Wop, Taff, Fenian, Prod, Taig, Polack, Sheeny, Kike, Yid, Heeb, Kafir/Kuffar, Papist, Half-Caste, Jungle Bunny, Uncle Tom, Chinaman, Bud bud, Coconut, Curry Muncher, Monkey, Paddy, Sheep-Shagger, Tinker, Cracker, Freshy, Jock, Nazi, Oriental, Taff, Uppity, Bible Basher, Hun, Muzzie, Tarrier, Jew</p> <p>Faggot, Homo, Queer, Poof, Ponce, Batty Boy, Nancy, Pansy, Fairy, Bender, Bent, Shirt Lifter, Queer, Queen, Bum Boy, Bumclat, Bummer, Faggot, Fag, Fudge-Packer, Chi-Chi Man, Butt Bandit, Mincing, "that's Gay"</p> <p>Lezzie, Lezza, Lesbo, Dyke, Muff Diver, Carpet Muncher, Rug Muncher</p> <p>Tranny, Gender Bender, He-She, Chick with a Dick, Shemale, Transsexual</p> <p>Retard, Mong, Schizo, Spastic, Spaz, Spakka, Cretin, Cripple, Special, Window-licker, Vegetable, Div, Mental, Loony, Nutter, Moron, Psycho, Invalid, Deaf and Dumb, Dwarf, Midget, Flid, Handicapped, Mentally Challenged, Tone Deaf, "Wheelchair bound"</p>	<p>Derogatory racial and religious terms, or those derived from historical racial terms, or those about LGBT or disabled people, require strong editorial and contextual justification at <u>any</u> time.</p> <p>Specific advice should be sought from a senior compliance manager for any inclusion of "Nigger".</p> <p>Pre-watershed, the use of discriminatory language is acceptable only exceptionally with strong editorial and contextual justification (eg in factual or drama programmes dealing with racism, homophobia or disability as a discussion topic or theme).</p> <p>Some terms may cause more or less offence depending on the user, and the purpose/context. Some language may be deemed less offensive if used in a "reclaimed" context, rather than as a derogatory term eg "Queer" or "Dyke" as used by some LGBT people.</p> <p>Some terms (eg "mental", "nutter", "loony") may cause less offence if used lightheartedly and/or without intention to insult, but not if applied to people with learning difficulties.</p>
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## Pre-Watershed

<p>Frigging, Frickin', Shit, Shite, Bullshit</p> <p>Shag, Screw, Tits, Bollocks</p> <p>Arsehole, Bastard, Bellend, Tart, Munter, Slapper, Son of a Bitch, Twat, Femi-nazi, Yoon</p>	<p>This language is considered "moderate" but compliance advice should always be sought on inclusion pre-watershed.</p> <p>Some terms may be less acceptable where there is less audience expectation of this language appearing in the particular genre of programme.</p>
<p>Arse, Ass, Balls, Bawbag, Bum, Boobs, Bloody, Bugger, Crap, Damn, Goddamn, Piss, Pissed, Pissed off, Sod, Sod off, Effing, Feckin', Feck</p> <p>Bint, Bitch, Cow, Minger, Git, Old Bag, Ginger, Coffin Dodger, Chav, Choad, Uppity</p> <p>Gammon, Libtard, Karen, Boomer, Nat, Remoaner, Snowflake, Terf</p>	<p>There is more viewer tolerance towards occasional use of this mild language before 21:00.</p> <p>Note repetition and cumulative effect – one-off use of a mild term may be acceptable, but repeated uses in the same programme may not be.</p> <p>These recent "political" derogatory terms are generally regarded as mild.</p>

<p>God, Goddamn, OMG, Jesus, Jesus Christ</p>	<p>“God”, “Oh My God” or “OMG” are generally seen as innocent and inoffensive expressions of emotion or surprise.</p> <p>“Jesus” or “Christ” used as exclamations may still offend some religious people, but are generally viewed as acceptable pre-watershed where the use by the speaker is spontaneous and not intentionally offensive.</p> <p>Religious names combined with other expletives are more offensive, and unlikely to be editorially justified eg “Jesus fucking Christ”.</p>
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**September 2021**



## INTERNET MATERIAL

The internet is an invaluable resource for information and video material, but it is essential that all programme makers take the greatest care when obtaining material from it. Producers should always consider the following issues:

- Is it true? - Material and information on the internet may be untrue, defamatory or even malicious. It may be inaccurate, unconfirmed or simply repeating speculation. Video footage may be deliberately faked.
- How credible is the source? – What is the website source and who is posting the material? A major public service broadcaster or a broadsheet newspaper is likely to carry reports subject to journalistic processes; tabloid or gossip websites are less reliable; YouTube and social media is entirely unreliable.
- Can you verify the content? - Try and corroborate the content of the material with at least one reliable source and with what is in the public domain and has been reported in the past elsewhere. If the material purports to be a version of another piece of material – or you think it is - always cross-check it with the original material.
- Remaining concerns about authenticity – after following the above checks, if any concerns remain over the authenticity or veracity of the material, make those concerns (and the source of the material) known to the commissioner and compliance. Sometimes unverified material might still be included with suitable qualification or warnings. This needs to be judged on a case-by-case basis.
- Copyright - There is a common misconception that because something is available and free to access online, it is therefore free to reproduce. Material online is still protected by copyright, and therefore use in our programmes needs to be cleared with the copyright owner by the production team, unless fair dealing or another copyright defence is available. Always seek advice from an ITV compliance lawyer if you wish to use any material without prior clearance of copyright or other rights (eg music or performance rights).

All producers of ITV current affairs and “hard” factual programmes should complete an Archive Source List to be submitted to the ITV compliance lawyer with the programme script, prior to delivery of the final version of the programme.

**October 2019**

## **CHARITY RELATED CONTENT**

Our programmes give us the opportunity to raise awareness of social topics, and to champion good causes to millions of viewers.

Many programmes refer to particular charities in passing, when justified editorially by the context (for example chat shows where guests reference their involvement with particular good causes).

However, all producers who wish to include a direct call to action onscreen for viewers to donate to charities must comply with ITV's governance process around charity related content.

Producers must also be aware of the Ofcom Broadcasting Code Rules on Charity appeals – see in particular Rules 9.33 and 9.34. A range of charities should benefit from broadcast appeals over time. Charity appeals must be broadcast free of charge (ie charities cannot offer consideration for the inclusion of an appeal on their behalf). Broadcasters have to consider evidence of the status of the charity or emergency fund.

Therefore, no charitable donation platforms, eg text codes, telephone numbers, etc, can be promoted either on air or online (ie on ITV's programme websites) unless this has been approved by ITV Social Purpose and ITV Interactive, as well as ITV Compliance.

If your programme is supporting an ITV approved appeal and has been provided with approved donation platforms, then please make your relevant Compliance contact aware.

For more information see ITV's Charities and Causes Policy on our website.

For further information on how ITV supports communities and causes see [www.itvplc.com/socialpurpose](http://www.itvplc.com/socialpurpose)

**October 2019**

## COMPLIANCE, COMMISSIONING & REFERRAL UP

Many compliance decisions inevitably overlap with editorial decisions, and are a matter of careful judgment and risk assessment. On the very rare occasions when agreement cannot be reached between the compliance team, producers and commissioners, or where content related issues arise that require high level management decision making, there is a clear referral up process. The diagram below describes how these issues should be escalated within ITV's organisation, which includes compliance issues involving programme interactivity.

CEO						
Group Counsel & Company Secretary						
<i>If not agreed, escalate up</i>						
Director of Content Compliance	<agree>	MD ITV Studios or COO/CEO of independent producer	<agree>	Director of Television	<agree>	Director of Interactive and Viewer Services
		<i>If not agreed, escalate up</i>		<i>If not agreed, escalate up</i>		
Director of Content Compliance	<agree>	Creative Director of ITV Studios or Independent Producer management	<agree>	Programme Commissioner	<agree>	Director of Interactive and Viewer Services
<i>If not agreed, escalate up</i>		<i>If not agreed, escalate up</i>				<i>If not agreed, escalate up</i>
Compliance Head or Compliance Lawyer or Compliance Advisor	<agree>	Executive Producer or producer		<agree>		Interactive Operations Manager or Interactive Producer
<b>COMPLIANCE</b>		<b>PRODUCTION</b>		<b>COMMISSIONING</b>		<b>INTERACTIVE</b>

October 2019

## **OFCOM BROADCASTING CODE AND GUIDANCE**

All ITV producers are expected to be familiar with the Ofcom Broadcasting Code (the Code). This Handbook is no substitute for reading the Code and the Guidance on the Code available at [ofcom.org.uk](http://ofcom.org.uk). The summary below is designed simply to provide a very brief outline reminder of the main areas covered in the Code.

### **Section 1 - Protecting the Under Eighteens**

A key Principle is that people under 18 are protected from harmful material, primarily by appropriate scheduling and adherence to the 21:00 watershed. Before 21:00, content in general should be suitable for younger viewers. Even after the watershed, the transition to more adult material after 21:00 should not be too abrupt.

Rules with a view to protecting children include:

Illegal drugs, smoking, solvents and alcohol – pre watershed the use of these must not be condoned, encouraged or glamourised, unless there is editorial justification.

Violence – must be appropriately limited pre-watershed. Whether verbal or physical, violence or dangerous behaviour that is easily imitable by children in a manner that is harmful should be avoided, unless there is editorial justification.

Language – the most offensive language cannot be broadcast pre-watershed, and any other offensive language must be justified editorially (see the guidance notes in the Handbook).

Sex – intercourse cannot be represented pre-watershed unless there is a serious educational purpose. Discussion and portrayal of sexual behavior must be appropriately limited.

Nudity – must be justified by the context.

Exorcism, the occult and the paranormal – demonstrations (which purport to be real) must not be shown pre-watershed. Paranormal practices for entertainment purposes (other than in drama, film or comedy) should not be shown when significant numbers of children can be expected to be watching.

Under 18s involved in programmes – due care must be taken regarding their welfare and dignity, irrespective of the consent of parents or guardians. Programmes must not cause them unnecessary distress or anxiety. See ITV's Child Protection Policy in the Handbook.

### **Section 2 - Harm and Offence**

The Rules in this section are designed to protect adults and children from harmful or offensive content.

A key Principle is that “generally accepted standards” should be applied to content. Material that might cause offence must be justified by the context, which includes the type of programme and channel on which it is broadcast, the scheduling of the programme and surrounding programmes, the type and size of the audience and their expectations, and the information given to viewers about the content (through continuity announcements, etc).

Violence and dangerous behavior – programmes must not include material which condones or glamourises violent, dangerous or seriously anti-social behaviour and is likely to encourage others to copy it.

Suicide – inclusion of methods of suicide and self-harm must be editorially justified by the context.

Exorcism, the occult and the paranormal – demonstrations that purport to be real must be treated with due objectivity. If they are included for entertainment purposes, this must be made clear. No life changing advice (ie about health, finance, employment or relationships) must be directed at individuals.

Hypnotism – cannot be directed at the viewing audience, ie hypnotists cannot perform straight to camera and the programme should not include their full routine.

Simulated news – the viewer must not be misled by simulated news in drama or documentaries into believing they are watching actual news.

Subliminal messages – are not allowed.

Flashing lights and patterns – broadcasters must maintain a low level of risk to viewers with photosensitive epilepsy. Where it is not reasonably practical to follow Ofcom's detailed technical guidance, but editorially justified to include flashing lights/patterns, viewers should be given a warning.

Competitions and voting – must be conducted fairly and must not materially mislead viewers. Rules must be clear and significant conditions must be stated on air, and competition prizes must be described accurately. There are detailed rules around the use of premium rate services (see Section 9 and ITV's Interactive Guidelines).

### **Section 3 – Crime, Disorder, Hatred and Abuse**

Programmes must not encourage or incite the commission of crime or disorder.

This would include material such as calls to criminal action, material promoting or encouraging engagement in terrorism, and/or hate speech likely to encourage criminal activity or lead to disorder.

This does not mean that such material can never be broadcast. Significant contextual factors include:

- the editorial purpose of the programme;
- the status or position of those featured;
- whether sufficient challenge is provided (ie challenge to the expression of views that might encourage or incite crime).

Descriptions of criminal techniques that could enable the commission of crime must not be included, unless editorially justified. This covers both the material itself and also the manner in which it is presented, eg glamourising of crime or criminal lifestyle, or failing to show the consequences for criminal and victim. Editorial justification might include the protection of viewers from such crime, eg by showing them how it works and how to avoid becoming a victim of it.

Payments – programmes must not pay criminals for programme contributions relating to their crime, unless it is in the public interest. Factors to take into account include: the benefit to viewers of seeing the interview; the purpose of the interview; the seriousness of the crime; and the likely feelings of the victim. Payment includes payments in kind, promises of payment and indirect payments, for example to friends or family members if in fact the criminal may benefit (eg making the payment to someone to whom the criminal owes money, or in respect of whom it saves the criminal from paying money such as dependents). Criminals (for these purposes) include those that have acknowledged they have committed a crime, even if they have not been prosecuted for it.

If criminal proceedings are active, no payment can be made to a witness, nor someone who may reasonably be expected to be called as a witness, for a programme contribution. This is to prevent any risk of influencing witnesses' testimony. Note there is no public interest exception in this case.

If criminal proceedings are not yet active but likely, no payment can be made to a likely witness, unless it is clearly in the public interest and payment is necessary to elicit the information.

Kidnappings/hijacks – we must not transmit material that would endanger lives or prejudice attempts to resolve such a situation.

#### **Section 4 - Religion**

These rules only apply to “religious programmes”, which are programmes dealing with matters of religion as the central subject or significant part, as opposed to references to religion in other types of programme. Such programmes:

- Must exercise a proper degree of responsibility – they must take into account the sensitivity around religion, particularly to believers, and ensure treatment is fair, accurate and balanced;
- Must not treat religious views abusively - any religion can be criticised, but that criticism should be balanced and objective;
- Must make clear the identity of the particular religion being referred to;
- Must not promote religious views by stealth;
- Must not seek recruits;
- Must not improperly exploit the audience's susceptibilities, and must treat with objectivity any claims that a living person or group of people has special powers. Content with such claims cannot be scheduled when significant numbers of children may be expected to be viewing. Improper exploitation would include the suggestion that some negative consequences might result from failure to adopt the beliefs being promulgated.

#### **Section 5 - Due Impartiality, Due Accuracy and Undue Prominence of Views and Opinions**

This Section reflects statutory requirements for impartiality in news reports and the reporting of certain issues in non-news programmes.

News - must be:

- Reported with due accuracy
- Presented with due impartiality

Programmes other than news - Due impartiality is also required for coverage of matters of political or industrial controversy or relating to current public policy. These are issues on which politicians, industry and the media are in debate. Examples include grievances giving rise to industrial action, or matters of economic policy, eg tax rises.

Undue prominence of views and opinions – Broadcasters should not give undue prominence to the views of particular individuals on matters of political or industrial controversy, and matters relating to current public policy. This relates to all programmes taken as a whole, and means a “significant imbalance” of views aired.

Major matters – In addition, where such matters are considered to be ‘major’ (eg of national/international importance, or of equal significance within a small broadcast area), then an appropriately wide range of significant views must be included and given due weight in each programme or across several linked programmes.

Mistakes - Any mistakes in news reporting that affect due accuracy should be corrected on air quickly, and at a time when viewers who heard the mistake are likely to hear the correction.

Meaning of due impartiality – Impartiality means not favouring one side over another. “Due” does not mean giving equal time to every view or argument, but appropriate to the subject and nature of the programme. Other factors to take into account include the type of channel, the expectations of the audience and the extent to which the content and approach is signalled to the audience.

Linked programmes – where due impartiality is going to be observed over several programmes rather than within one programme, it must be made clear to the audience prior to the start of each programme that it is one of several on that subject. The linked programmes should be shown at times when the same audience is likely to be watching.

Personal interests of reporters - reporters must make clear if they have a personal interest in the subject matter.

## **Section 6 - Elections and Referendums**

The rules in Section 5 on due impartiality also apply to coverage of elections and referendums, which are classed as issues of major political or industrial controversy and major current public policy.

During election periods:

- Due weight must to be given to coverage of parties and independent candidates, and broadcasters must take into account evidence of past electoral support and current support. Broadcasters must also consider giving appropriate coverage to those parties and candidates with significant views.

- Discussion and analysis of election issues must stop when polling stations open.
- No opinion poll results should be broadcast on polling day until the poll closes.
- Election candidates cannot act as news presenters, interviewers or presenters of any type of programme during the election period, but appearances on non-political programmes that were scheduled prior to the election period can still go ahead.

Rules for constituency/electoral area coverage during elections:

- When a candidate takes part in an item about their constituency/electoral area, all candidates with significant past or current support must be offered the chance to take part (but the item can still proceed if they refuse, or are unavailable to participate);
- The item must include a list of all candidates standing after nominations close;
- If a candidate is appearing in a programme they must not be allowed to raise constituency/electoral area issues, as other candidates would not have the opportunity to give their views on those issues.

## **Section 7 – Fairness**

Section 7 deals with how broadcasters treat and depict contributors and others “directly affected” by programmes.

The single general Principle is that broadcasters must “avoid unjust or unfair treatment of individuals or organisations in programmes”. The section then sets out various practices to be followed.

Obviously fairness is an area where compliance and editorial judgments overlap, and each programme must be considered on a case by case basis.

Fairness and privacy issues often require similar considerations. Privacy is dealt with in the next section and in the Media Law chapter.

## **Accuracy**

As responsible broadcasters and professional journalists it is of the utmost importance that programmes that refer to real people, organisations or events are properly researched. Accuracy and fairness is not the same thing, but an inaccurate report is more likely to be unfair than an accurate one.

## **Fair Editing**

Care must be taken not to unfairly portray or misrepresent a contributor. Common examples of unfair editing are omitting to include a relevant key point from an interview, by an unfair juxtaposition of pictures with commentary or other contributions, or by unfairly using footage obtained for one purpose for another.

## **Opportunity to Contribute and Right of Reply**

Factual producers must satisfy themselves that material facts have not been unfairly omitted from their programmes, and whether as a matter of fairness any person or



organisation should be offered an opportunity to contribute. This has a bearing on whether someone should be consulted, or approached to take part in the programme, or at least notified prior to transmission about it.

It is a basic cornerstone of professional journalism to offer those against whom significant allegations are made an opportunity to respond. It is also often a requirement for the legal defence of a libel claim (see the Media Law chapter).

Practice 7.11 says “if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond”.

When offering that opportunity, producers must provide sufficient information about the content of the programme and in particular of all of the material allegations made against the person or organisation to enable them to respond. You should also always give a date by which you expect a response.

There is no requirement to provide all of the actual evidence you have collected against them, for example covertly filmed footage. In most cases it will be sufficient to give a full, fair and accurate summary of the allegations to be made and a full explanation of the evidence you have supporting them.

Consideration needs to be given to the amount of time that should be given to respond. There is no specific period of time that is considered to be adequate, but this will depend on:

- the nature of the allegations – whether or not they are of a complex nature or might require investigation before responding;
- whether they are addressed to an individual or a large organisation – the latter has greater resources to prepare their response more quickly;
- the type of programme – whether it is a topical news story (where timescales for response are generally much shorter) or a factual programme that has been many weeks or months in production;

It should be remembered that seeking responses is often part of the fact-checking process, and programmes sometimes can and must change significantly as a result of responses received. Therefore producers should not complete editing before receiving these responses, and should not leave sending out “right of reply” letters too late in the production process.

Where a response to significant allegations has been provided, care must be taken to reflect that response fairly in the programme. That does not mean that the response has to appear verbatim, nor that material irrelevant to the issues needs to be included. But the gist of the response, insofar as it is relevant to the issues and allegations made, must be reflected fairly.

Where an invitation to respond is refused there is still an obligation to be fair. If a reason is given why no response will be forthcoming – eg “I have been advised by my lawyers not to respond whilst the police investigation is in progress”, then that reason should be reflected in the programme. Even on occasions where a plain “no comment” answer is received, it may still be necessary to reflect fairly any known material facts, such as previous denials.

## **Consent**

Generally we include people in programmes only with their consent. Only in certain situations will consent not be required for those featuring in a programme.

Consent must be “informed”, ie the contributor must be given all the information necessary for them to make an informed decision whether or not to take part. The amount of information given depends on the nature of the programme and the contribution itself. Consent for a vox pop to be included in a light-hearted item is likely to require little more than an explanation saying just that. An in-depth current affairs investigation will obviously require more information about the subject matter being provided.

Informed consent is likely to be achieved in circumstances where contributors have been told:

- the nature and purpose of the programme – ie its format and what it is about;
- what kind of contribution they are expected to make, and whether it will be edited;
- areas of questioning likely to be covered and, where appropriate, the nature of other potential contributions;
- when it is expected that the programme will be broadcast;
- the parties’ respective contractual rights and obligations;
- whether they will have an opportunity to view the programme prior to transmission, and whether they will be able to suggest any changes to it.

Contributors should be made aware of any material changes made to the programme as it develops through the production process that may reasonably affect their original consent to participate. One common change that might affect consent is a change in title. Using the word “working” when informing them of the title does not mean you do not need to inform them of subsequent changes to that title. A parent might happily consent to participate in a programme provisionally called “*Britain’s Biggest Babies*”, but that decision might be different once they are told its final title is to be “*Too Fat to Toddle*”.

### **Consent for Children and Vulnerable Adults**

If a contributor is under 16 years of age you should make sure that the child freely assents to take part, and that you have the consent of a parent or other person with parental responsibility for the child.

If the child or young person is a ward of court or is involved with social services in any way, then you should seek compliance advice.

If a contributor over the age of 16 does not have the capacity to provide informed consent, consent should be obtained from the adult who is primarily responsible for them.

### **Evidence of Consent**

Consent means the individual has agreed to take part. The lack of a signed piece of paper does not mean they cannot be included. But ideally, particularly where the contribution is significant, producers should obtain a signed release form, which itself does not constitute consent, but is good evidence of it.

However, it may not be possible or practicable in all cases to prepare and obtain a signature on a release form. In such cases evidence of informed consent should be recorded on camera. Care should be taken to log the consent and keep the relevant rushes.

Contributors, particularly the emergency services, may seek to place conditions on their contribution. For example, they may wish to view the programme before it is broadcast and suggest edits. Under no circumstances must a programme-maker give over any editorial control to a third party. Should a contributor seek to place material conditions on their contribution, please seek compliance advice.

### **Promises of Anonymity**

Promises given to contributors must be honoured unless, very exceptionally, it is in the public interest to do otherwise (in which case please seek compliance advice). Generally, a broken promise or guarantee on the part of the broadcaster will be considered to be unjust or unfair treatment.

When providing such promises as to anonymity, the programme maker and contributor should discuss and agree what level of anonymity they are setting out to achieve, and the methods best used to achieve it. The important thing is that the contributor understands what to expect after transmission. It is much more difficult to achieve total anonymity than many members of the public appreciate. They may not understand, for example, that blurring or darkening their face might not identify them to strangers, but that they may well still be identifiable to their families and others who know them well. The onus is on the producer to ensure that the contributor understands the level of anonymity that will be achieved, and that their expectations are met.

There is an important distinction between being identified and being identifiable. If the contributor is seeking complete anonymity, producers may need to consider wider issues than the physical characteristics of a contributor like their voice or face. A contributor may be identifiable by what they say or what is said about them, either on its own, or when different pieces of information are put together to effect “jigsaw” identification.

There are also occasions when identifying an individual would break the law or the terms of a court order (eg victims of sexual offences). If the individual is identified or identifiable there may be very serious consequences for the broadcaster. In such cases please seek compliance advice.

### **Deceptions and Set-ups**

There must be a strong public interest to justify employing deception in the production of factual programmes.

If you wish to employ any kind of deception with a contributor or potential contributor, you should seek early compliance advice as well as approval from the Director of Programme Compliance before you take any steps to do so.

The use of deception must only be employed in the public interest when the material could not have reasonably been obtained through other means and it must always be proportionate in all the circumstances. It must be kept to the minimum necessary to achieve the programme’s aims.

The most common form of deception employed in factual programmes is secret/covert/undercover filming. Please see the Covert Filming guidance in the Handbook. That guidance explains the requirements for permission in this respect as well as ITV's procedures to be followed to obtain it. Please note separate filming and broadcasting permissions are required. Permission is required to broadcast any covertly filmed footage regardless of who shot it.

In set up or wind-up situations for entertainment programmes (such as *Ant and Dec's Saturday Night Takeaway*) it would defeat the object of the exercise to obtain consent of the subject prior to filming. Consent should however be obtained from the individual concerned prior to broadcast. If an individual is not identified and/or incidental in such footage it may be possible to broadcast the item without their consent, but compliance advice should be taken.

Where the person set-up is a celebrity, it may be justified to broadcast such an item without their consent, but only if it will not result in unjustified public ridicule or personal distress. Should you wish to include such an item without the consent of the person filmed, you should seek compliance advice prior to broadcast.

## **Section 8 – Privacy**

Like Section 7 on Fairness, Section 8 concerns how broadcasters treat individuals and organisations “directly affected” by programmes. There is one basic Principle – to avoid any unwarranted infringement of privacy in programmes, and in connection with the obtaining of material included in programmes – and a number of practices to be followed.

There is a good deal of overlap between our Code obligations and the law of privacy. If Ofcom finds a breach of this section of the Code following broadcast, it is possible that a legal claim may also follow, hence it is particularly important for producers to take legal advice on privacy issues throughout the production process.

Any infringement of privacy in programmes must be warranted, ie the broadcaster must be able to demonstrate why, in the circumstances, it was justified. Usually that will involve arguing that the public interest in the programme outweighs the individual's right to privacy.

Public interest is difficult to define, but examples would be revealing crime, protecting public health or safety, exposing misleading claims, or disclosing incompetence that affects the public.

Expectations of privacy – these will vary, according to the place where people are filmed, the nature of the activity in which they are involved at the time, and whether they are already in the public eye. Note that people can still expect privacy even in public places in some circumstances, if the activities being filmed are of a private nature.

Homes – generally the location of someone's home or family should not be disclosed, unless it is warranted, ie directly relevant to the story.

Newsworthy events - even people caught up in newsworthy events such as natural or man made disasters have a right of privacy both at the time and in later programmes.

Consent – if material that would infringe a person's privacy is being broadcast without their consent, the infringement must be warranted. If someone asks that filming be

stopped, the producer should do so, unless it is warranted to continue (eg in a doorstep interview – see below).

Places – filming in institutions requires permission from the relevant authority unless it is warranted to film without permission. Sensitive places, eg hospitals, ambulances, schools, prisons, police stations, etc, normally require consent for filming, although if the individual will not be identifiable then separate consent for broadcast will not be required. Often obtaining consent will be a pre-requisite of access to such institutions in any event.

Doorstepping – this means an attempted interview without prior warning. It should not be attempted unless:

- A prior request for interview has been made and refused, or
- It has not been possible to request an interview, or
- There is good reason to believe an investigation will be frustrated if the subject is approached openly beforehand.

However generally broadcasters can approach people in the news (eg politicians) when in public places without notice.

Surreptitious filming or recording – this includes long lens filming from public property and leaving unattended cameras on private property. Normally this will only be warranted if:

- There is prima facie evidence of a story in the public interest, and
- There are reasonable grounds to suspect that further material evidence could be obtained, and
- It is necessary to the credibility and authenticity of the programme.

ITV has detailed compliance and editorial processes governing covert filming and recording – see the relevant chapter of the Handbook.

Set ups for entertainment purposes – should not cause significant annoyance, distress or embarrassment, and should only be broadcast with the consent of the subjects obtained after filming.

Suffering and distress – broadcasters should only record footage or audio of people caught up in emergencies, victims of accidents, or those caught up in personal tragedies without consent, or pressure people in a state of distress to provide interviews or take part in programmes, where it is warranted to do so.

Past events – broadcasters should try to reduce potential distress to victims and relatives when programmes such as factual dramas and documentaries examine past events. Surviving victims and families of those featured should be informed of plans for the programme and intended broadcast details.

Under 16s and vulnerable people – particular attention should be paid to their privacy. They should not be questioned about private matters without the consent of a parent, guardian or other person with primary responsibility for their care, unless it is warranted to do so.

## **Section 9 – Commercial References in Programmes**

This is one of the lengthiest and most complex sections of the Code, and the Guidance to it runs to over 60 pages. See the Handbook chapter on commercial references and sponsorship. Set out below is only a brief summary of the main Principles and Rules.

- Broadcasters must maintain editorial independence and control over programming.
- There must be a distinction between editorial content and advertising.
- Audiences must be protected from surreptitious advertising.
- Audiences must be protected from the risk of financial harm.
- Products or services cannot be promoted in programmes, other than in very limited circumstances.
- Undue prominence of products, services and brands is not allowed, and any reference to them must be justified by the editorial requirements of the programme.
- Unsuitable sponsorship must be avoided. Sponsorship cannot involve any editorial control and cannot lead to the creation of content that is the vehicle for the purpose of promoting the sponsor and its interests. Sponsorship credits cannot contain advertising messages or calls to action.
- Product placement is permitted in certain programme genres and for certain products/services/brands. Product placement cannot influence the content and scheduling of a programme - programmes cannot be created or distorted so that they become a vehicle for the purpose of featuring placed products/services/ brands.
- Programmes cannot contain promotional or unduly prominent references to placed products/services/brands.

### **Programme-related material**

Programme-related material (PRM) is defined as “products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or interact with, that programme”. PRM can only be promoted during or around the programme it is derived from, where it is editorially justified.

PRM can be free or paid for. Where it is paid for, any promotion must be kept “distinct” from the rest of the programme (eg via a text strap or V/T).

### **Premium rate services (PRS)**

PRS can only be promoted where they:

- Enable viewers to participate directly in or contribute to the editorial content of programme; or
- They fall within the definition of programme-related material.

The primary purpose of the programme must be clearly editorial and the promotion of PRS must be clearly subsidiary to that purpose. The cost of using the PRS must be made clear to viewers and use of PRS must comply with the Phone-paid Services Authority Code of Practice.

### **Sponsorship**

A sponsored programme is one that has some or all of its costs met by a sponsor with a view to promoting its own or another’s name, brand, product or service. This

includes advertiser-funded and advertiser-supplied programming. It also includes programmes that are “deficit funded” by a third party.

Sponsorship is allowed for a programme or series, for programme strands or segments, or for a themed block of programming. Whole channels can also be sponsored. News and current affairs programmes cannot be sponsored, although short specialist reports (eg weather, travel and sport) can be, as long as they are distinct from the rest of the news. Other elements of the programme service (eg continuity announcements) cannot be sponsored.

### **Who can and cannot sponsor programmes?**

Advertisers who cannot advertise on television also cannot sponsor programmes or channels, eg any political body, tobacco brands, etc.

An advertiser cannot sponsor a programme or channel at a time in the schedule when it could not advertise. Television sponsorship must comply with the Ofcom/BCAP advertising content and scheduling rules. This issue is most likely to arise in relation to HFSS, alcohol and gambling sponsors. Detailed rules exist regarding what times these brands can sponsor programmes, and what their sponsorship credits can contain, and the proposed sponsorship needs to be assessed against the programme’s audience index.

### **Identification of sponsorship and sponsor credits**

Sponsored/adfunded programmes must be clearly identified by reference to the name of the sponsor and the fact they are sponsoring the programme, at the beginning and/or end of the programme. A sponsored programme must have either a front or end credit, and will usually have both. It may also have credits at the end and start of each part. Sponsorship credits include bumpers and integrated title sequences.

In the sponsorship credit, the relationship between the sponsor and the sponsored programme must be transparent. A sponsorship message needs to be included in every credit. The sponsorship arrangement must be the primary focus of the credit, and advertising messages and calls to action for the sponsor’s products are not allowed. Acceptable sponsorship messages include “sponsored by X”, “in association with X”, and “supported by X”. “Brought to you by X” is also permitted, but is only used by ITV for advertiser-funded programmes.

Sponsorship credits within programmes are now also permitted, as long as they are not unduly prominent, and the sponsor is not prohibited from product placing in the programme (see “product placement” below). Credits within programmes can only contain a brief, neutral visual or verbal statement identifying the sponsorship arrangement and a static graphic of the name, logo or any other distinctive symbol of the sponsor.

Sponsorship credits are permitted in programme trailers as long as the credit is “brief and secondary”. Brief and secondary credits for the sponsors of PRM are also permitted, when details of how to obtain the PRM are given, but any such credits need to be separate from any credit for the programme sponsor.

### **References to the sponsor in the sponsored programme**

Sponsored or advertiser-funded programmes are commissioned by ITV and producers should bear in mind that these are being made for ITV, not the sponsor/advertiser. Whilst it is accepted that there will be some discussion of the programme content between the producer and the advertiser in fully funded programmes, the advertiser cannot influence the content or scheduling of the sponsored programme/channel in such a way as to affect the responsibility and editorial independence of the broadcaster. The content of the sponsored programme cannot be a vehicle for the purpose of promoting the sponsor, its products, services, brands or interests. The ultimate arbiter of all programme content is ITV.

There are limited circumstances in which a sponsor (or its products, services or interests) may be referred to in the sponsored programme:

- A sponsor can place products in the programme. Placement will be subject to the rules on product placement (see below) and in particular the prohibition on promotional and unduly prominent references. In an AFP, where the sponsor has been involved in the creation of the programme, any reference to it or its interest is likely to be considered as product placement.
- Where an incidental reference to the sponsor is made that is not the result of the commercial arrangement, the reference will be subject to the general rules on commercial references (see above) and in particular regarding promotion and undue prominence.

Whenever the programme contains a reference to the sponsor or its products/services/brands/interests, this may create a higher presumption of editorial influence by the sponsor. References to the sponsor or its products, which are not the result of a product placement deal, may nevertheless be deemed to be product placement, without evidence to the contrary, and unless those references are incidental. This is particularly problematic if the sponsor or its products are in a category that cannot be product placed.

### **Product placement**

Product placement is the inclusion in a programme of a product, service or trade mark or a reference to it, where the inclusion is for a commercial purpose and is in return for payment or other valuable consideration to the broadcaster, producer or anyone connected with them. Payment for inclusion of references by a non-commercial organisation (eg a charity) will also be product placement.

Under the Ofcom Code, the placement of certain products, services and trademarks in certain genres of programming is allowed. However, paid-for placement of references to a funder's aims, objectives, beliefs, etc (sometimes called "thematic placement") is not.

Prop placement is different to product placement. Prop placement is the inclusion of a product, service or trademark in a programme without any payment to the broadcaster, producer or any person connected with them. Both prop and product placement can be used in the same programme.

Product placement is allowed in:

- films (this includes single dramas and single documentaries)
- series made for television (includes serials)



- sports programmes, and
- light entertainment programmes.

Product placement is not allowed in the following genres:

- news
- children's programmes
- religious programmes
- consumer advice programmes, and
- current affairs programmes.

Magazine shows may contain product placement even where the show includes elements of restricted genre content (eg news bulletins/items, consumer affairs strands) provided that restricted genre content does not form the majority of the content and any product placement does not influence that content.

The Code contains a list of products/brands that cannot be product placed:

- cigarettes/tobacco products and brands
- medicinal products
- alcohol
- foods and drinks high in fat, salt or sugar (HFSS)
- gambling
- infant formula (baby milk, includes follow-on formula)
- electronic or smokeless cigarettes, cigarette lighters, cigarette papers or pipes intended for smoking, and
- any product, service or trademark that cannot be advertised on television.

### **References to placed products/brands in the programme**

Product placement must not influence the content or scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster. There must always be sufficient editorial justification for the placement, and programmes must not be created or distorted to become a vehicle for the purpose of featuring placed products, services or trademarks.

References to placed products, services and trademarks must not be:

- Promotional – the following are likely to be considered promotional – encouragement to purchase, advertising claims, price or availability information, references to positive attributes or benefits of the product, slogans associated with the product and endorsements (whether explicit or implicit). Great care is required if a presenter/actor has an existing relationship with a placed brand. The rule on promotional references also means that:
  - Product placement of competition prizes in viewer competitions is unlikely to comply with the rule.
  - Any product placement of programme-related material will mean the promotion for it has to sit outside the main body of the programme (eg during or after the end credits) or within a distinct short VT within it.
- Unduly prominent – broadcasters need to ensure that there is a clear and sufficient editorial justification for the inclusion of placed products, especially where they are integral to a storyline/theme of a new programme or format.

The extent and nature of references will need to be judged against the editorial requirements of the programme.

### **Signalling of product placement**

Product placement needs to be signalled clearly to viewers, by a universal neutral “P” logo for three seconds at the beginning of the programme, when the programme resumes after a break, and at the end of the programme. The logo used must conform to Ofcom’s specification.

**October 2019**

## **OFCOM ON DEMAND PROGRAMME SERVICE RULES**

### **Editorial rules**

The statutory Rules for ODPS programming concerned with editorial content are relatively limited. Below is a very brief summary of the main rules.

#### **Rule 10: Harmful Material: Material Likely to Incite Hatred**

An ODPS must not contain any material likely to incite hatred based on race, sex, religion or nationality.

#### **Rule 11: Harmful Material: Protection of Under-18s (Specially Restricted Material)**

An ODPS must not contain any specially restricted material unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it.

“Specially restricted material” means:

- a) a video work in respect of which the video works authority has issued a R18 classification certificate;
- b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would issue a R18 classification certificate; or
- c) other material that might seriously impair the physical, mental or moral development of persons under the age of 18.

#### **Rule 12: Sponsorship**

#### **Rule 13: Prohibition of Product Placement and Exceptions**

The Sponsorship Rules and the Product Placement Rules are broadly based on and similar to (but not in all respects identical) those in Ofcom’s Broadcasting Code.

Product placement is prohibited in ODPS if:

- (a) it is of cigarettes or other tobacco products;
- (b) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products;
- (c) it is of prescription-only medicines; or
- (d) it is of electronic cigarettes or refill containers.

#### **Permitted Product Placement**

Subject to the above, product placement is otherwise permitted in programmes included in on-demand programme services provided that:

- a) conditions A to F below are met; and

- b) where the programme featuring the product placement has been produced or commissioned by the ODPS provider or any connected person, condition G is also met.

#### Condition A

The programme is:

- a) a film made for cinema;
- b) a film or series made for a television programme service or for an on-demand programme service;
- c) a sports programme; or
- d) a light entertainment programme.

#### Condition B

The product placement has not influenced the content of the programme in a way that affects the editorial independence of the provider of the service.

#### Condition C

The product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

#### Condition D

The programme does not give undue prominence to the products, services or trade-marks concerned.

#### Condition E

The product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

#### Condition F

The way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not:

- a) prejudice respect for human dignity;
- b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- c) encourage behaviour prejudicial to health or safety;
- d) encourage behaviour grossly prejudicial to the protection of the environment;
- e) cause harm to persons under the age of eighteen;
- f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- g) exploit the trust of such persons in parents, teachers or others; or
- h) unreasonably show such persons in dangerous situations.

#### Condition G

The ODPS in question signals appropriately the fact that product placement is contained in a programme, no less frequently than:

- a) at the start and end of such a programme; and
- b) in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

Note: Condition G applies only where the programme featuring the product placement has been produced or commissioned by the provider of the service or any connected person.

“Product placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion is:

- a) for a commercial purpose;
- b) in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person; and
- c) not prop placement.

“Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where:

- a) the provision of the product, service or trade mark has no significant value; and
- b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

#### **Rule 14: Harmful Material: Prohibited material**

An ODPS must not contain any prohibited material.

“Prohibited material” means:

- a) a video work which the video works authority has determined for the purposes of the 1984 Act not to be suitable for a classification certificate to be issued in respect of it; or
- b) material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.

**October 2019**

## MEDIA LAW

### Introduction

Producers are not expected to be lawyers, but they are expected to recognise when they need to take legal advice. The ITV Compliance team includes specialist lawyers who can advise producers at every step of production.

The main areas of law that affect programmes most regularly are:

- **Libel:** protects the reputation of individuals and companies, and provides legal remedies to those whose reputation has been damaged by a publication or broadcast. The law in England and Wales was revised in the Defamation Act 2013.
- **Privacy:** protects individuals against unjustified intrusions into their private life. The law is constantly developing, but derives primarily from the Human Rights Act 1998.
- **Contempt of court:** protects the administration of justice, and seeks to ensure that defendants in criminal proceedings can receive a fair trial that is not prejudiced by media reporting. The law derives primarily from the Contempt of Court Act 1981.
- **Copyright:** protects the creators of artistic works such as film footage, photographs, books and artworks by preventing others from copying and exploiting these works without permission. The law derives primarily from the Copyright Designs and Patents Act 1988.
- **Data Protection:** protects use of personal data. The law derives primarily from the Data Protection Act 2018 and the GDPR.
- **Confidentiality:** protects disclosure of confidential information. The law derives primarily from past cases, although there is some overlap with privacy rights under the HRA 1998.

Whilst all producers are required to have Media Liability insurance in place (sometimes referred to as E&O insurance), that insurance cover is usually predicated on ITV's competent specialist media lawyers (such as ITV's in-house compliance legal team) having advised and cleared the production.

Independent producers making programmes for ITV can of course take their own legal advice if they wish. But all final decisions relating to legal and compliance matters will be taken by ITV and its compliance lawyers, whatever other advice has been taken.

## DEFAMATION

### Introduction

A defamatory statement gives rise to a civil claim for damages. A defamatory statement is one that tends to lower the reputation of a living person or a company.

This could be almost anything that is negative about them, eg that attacks their integrity or motives, or accuses them of wrongdoing. Dead people, the Government, political parties or other public bodies cannot sue for defamation. But individual officers or employees of such bodies may be able to sue as individuals.

Libel actions in England and Wales are usually complex, and usually now heard by a judge. Defending a libel action is expensive, whichever side is eventually successful, and very demanding and time consuming for the producers, reporters and participants involved in the programme, who may be called to give evidence.

The law in England and Wales was significantly revised in the Defamation Act 2013.

### Definition

A statement is defamatory if:

- It would be likely to make reasonable people think less of an identifiable person or company; and
- It has caused or is likely to cause serious harm to their reputation (companies are required to show that the statement has caused or is likely to cause serious financial loss).

### Meaning

Many libel actions turn on the meaning attributed to the words complained about. Authorial intention is irrelevant, and the meaning attributed by the court to the programme may be very different to the meaning intended by the author.

Care should be taken to avoid accidentally defaming an innocent person by showing their image juxtaposed with words that do not apply to them. A headline or strap in the wrong place may give a totally different meaning to a story. An inference or innuendo understood by the viewer can make a statement defamatory, even though the bare words themselves are not. Repetition of a rumour can be defamatory, where the meaning conveyed is “no smoke without fire”.

It is possible to defame a person even if they are not expressly identified, if they are identifiable. This is important if referring for example to a small group of unnamed people without specifying which particular individual. It is possible to defame a real person by the depiction of a fictional character in a drama, if reasonable people would believe that character to refer or be based upon the real person, and that the actions of the character were true of the real person.

A fundamental principle of responsible journalism is that if a defamatory allegation is made, the subject is given an opportunity to respond.

Tone is often important – serious critical terms like “*con*”, “*rip-off*”, “*dangerous*”, etc, should not be employed loosely where the underlying facts do not justify them.

When reporting a dispute, it is important to consider whether the programme is adopting allegations as true, or merely reporting that they have been made and are denied. Simply repeating a libel made elsewhere can render the programme liable to a libel claim, especially if the programme itself does not have all the information or evidence on which the allegation was based.

## **Defences**

There are several possible defences to a libel action, and usually a defendant will try to rely on several of them:

### **Truth**

This is the most common defence to an action for defamation, ie that the statements made are true or substantially true. This replaces the previously used term "*justification*".

The burden is on the Defendant (the author/publisher/broadcaster of the defamatory words) to prove that on the balance of probabilities the allegations are true, not for the claimant to prove that they are false. The more serious the allegation, the more convincing the evidence should be. Where a programme relies on witnesses, it is important to consider whether the witness is willing to give evidence at court in the event of a claim, whether their evidence is corroborated, whether the witness is credible, and whether they "have an axe to grind" or their own agenda or motive.

### **Honest Opinion**

This defence (previously known as "*fair comment*") is available where a statement is:

- A statement of opinion (not fact);
- Indicates in general or specific terms the basis of that opinion (eg the facts on which the opinion is formed); and
- An honest person could reasonably hold that opinion on the facts existing at the time; and
- The person who makes the comment did hold the opinion.

Note that the line between statements of fact and statements of opinion is not easy to draw.

### **Privilege**

The defence of privilege is available for reporting some areas of public life, which allows for freedom of speech without risk of defamation proceedings, even when what is said turns out to be untrue.

There are two forms of privilege:

- absolute privilege - which provides a complete defence, and
- qualified privilege - which only applies if the report is made without malice (ie some improper motive, or that the publisher did not believe what was published).



Absolute privilege applies if what is published or broadcast is a fair and accurate report of judicial proceedings held in public and published contemporaneously, or Parliamentary proceedings.

Qualified privilege applies if what is published or broadcast is a fair and accurate report of information given in various specific circumstances (such as public meetings).

### **Public Interest**

Since the *Reynolds* case in 1998 the court has recognised that journalists, where they are reporting a story of public interest, and are performing that function responsibly, should enjoy a defence to an action for libel, even if the story turns out not to be true. This is now a statutory defence in the Defamation Act 2013.

The defence requires the defendant to show that:

- the statement complained of was on a matter of public interest; and
- the defendant reasonably believed that publishing or broadcasting the statement was in the public interest

If the statement was an accurate and impartial account of a dispute, the court will not require the defendant to have sought to verify the truth of the imputation conveyed in the statement.

The court must make allowance for editorial judgment when deciding whether the defendant's belief in the public interest of publication was reasonable.

### **Live Programmes**

There is a defence, where someone makes an unexpected defamatory statement during a live programme, if:

- the broadcaster/producer had no effective control over the statement being made; and
- they took "reasonable care", and did not know or have reason they were contributing to the statement being made.

A claimant has one year in which to bring an action. So it is very important for producers to preserve all evidence, notes, etc, after broadcast

### **October 2019**

## PRIVACY

The Human Rights Act 1998 incorporates the European Convention on Human Rights (ECHR) into English law. In particular, the right to freedom of expression in Article 10 of the Convention, which encompasses the television audience's right to receive creative material, information and ideas, is balanced against Article 8, the right to a person's private and family life. Neither right is absolute.

Article 8 states -

*1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

The rights of privacy and freedom of speech are often in conflict. A balancing exercise needs to be carried out between the right of the public to receive and of the media to impart information, and the right of an individual to privacy.

In 2004 the House of Lords in the case of *Naomi Campbell v MGN Ltd* effectively created a new action of "unjustified disclosure of private information". The courts apply a two stage test:

1. Is the information private? ie is it information about which the individual has a reasonable expectation of privacy?
2. If so, in the circumstances, does the public interest in the broadcasting of this information outweigh the right to privacy of the individual?

The key question is therefore whether there is a sufficiently strong public interest in the publication of the private information to warrant the infringement of privacy. It has been much debated in different judgments that what may be of interest to the public is not the same as what is in the public interest.

"The public interest" is broadly categorised as contributing to an important public debate of general interest. Examples would include a report which:

- Promotes or protects public safety or health
- Prevents or exposes serious wrongdoing, public disorder or crime
- Discloses significant incompetence in public life
- Prevents the public being misled
- Discloses information the public is entitled to know

The extent to which the information is already in the public domain may also be significant. The more widely the information has already been published, the less likely further broadcast will amount to a breach of privacy. However, the mere fact that information has at one time been made public somewhere does not mean that it is incapable of breaching privacy when republished.

For example, material that has been shared with only a few individuals on social media may still infringe privacy if broadcast to millions of people without consent, particularly if it relates to tragic or distressing events.

Everyone is entitled to privacy. This includes individuals and private companies. A public figure such as a politician or celebrity who has placed their private life in the public domain by talking about it publicly may have less justification to claim a breach of privacy than a member of the public who has not sought any publicity. But even celebrities may have a reasonable expectation of privacy in some circumstances – the recent case of *Sir Cliff Richard v BBC* is an obvious reassertion of this basic principle.

Unlike libel, claimants can seek an injunction to prevent information that they consider private from being published, whether or not that information is true. Courts must assess such injunction applications in relation to the public interest, and whether the broadcaster has complied with the Ofcom Broadcasting Code.

In addition to protection of privacy, the criminal law protects individuals from certain types of conduct, for example conduct that amounts to harassment. There are no specific defences for journalists to harassment.

Please see the relevant guidance on covert filming in this Handbook before embarking on any kind of secret recording.

**October 2019**

## CONTEMPT

The law of contempt applies to both criminal and civil legal proceedings in the courts. Its aim is to ensure that the court and juries decide a case only on the evidence presented in court, not on information published in the media. But contempt is more likely to be an issue in criminal cases in the Crown Court where a jury will determine the outcome, or in inquests where the coroner may be hearing evidence with a jury. A jury made up of random members of the public is more likely to be influenced (and thereby prejudiced) by what they have seen in the media than a judge, coroner or magistrate.

The law therefore seeks to avoid “trial by media” and to ensure that jurors decide cases with an open mind on the evidence presented at court, not with preconceived opinions or prejudices about a defendant or case.

In criminal cases contempt usually becomes an issue from the moment of an arrest or when a warrant for arrest is issued, and it remains an issue until a verdict is given.

The most common contempt is the publication of information that causes a “substantial risk of serious prejudice” or impediment to the proceedings. This can lead to a criminal prosecution of the media organization responsible, and of individual editors or journalists.

The possible consequences of contempt are therefore very significant, and could include the collapse or delay of a criminal trial, and significant fines for the publisher. Where a trial has been adversely affected, the court also has the power to order the legal costs of the abortive trial to be paid by the publisher.

“Common law” contempt applies even before an arrest has taken place or a warrant for arrest has been issued, but when criminal proceedings are “imminent”. Common law contempt requires proof that the media organisation intended (or was recklessly indifferent) as to whether the publication prejudiced the proceedings. Prosecution for common law contempt is rare.

“Strict liability” contempt is governed by the Contempt of Court Act 1981. “Strict liability” means that the lack of intention to prejudice the trial is irrelevant. What matters is whether publication creates a substantial risk that the course of justice will be seriously impeded or prejudiced.

After arrest or the issue of a warrant for arrest, proceedings are deemed to be “active”, and ignorance of the active proceedings or simple error is not a defence. From that point on until the end of the trial (or discontinuance of the proceedings), it is a criminal offence to publish or broadcast anything that creates a substantial risk of serious prejudice or impediment to the proceedings.

Danger areas when criminal proceedings are active:

Previous convictions - A jury will not normally be told about a defendant’s previous convictions during the trial. Therefore, as a rule, no reference should be made to any previous convictions, until the verdict has been given.

Photographs where identity is in issue - A suspect’s photograph must not be published where identity is in issue, for example where a witness identity parade may have been held, or a defendant is being identified from video footage and denies that

he is the person in the footage. If identity remains an issue at trial, a defendant's photograph should not be published during the proceedings.

Prejudicial information – Generally the following information should not be published before the trial is completed, unless it is in the context of a contemporaneous report of evidence that has already been heard by the jury in court:

- A motive for the crime
- Detailed eye witness accounts of what a suspect did
- Details of a defendant's bad character
- A detailed description of the evidence against the defendant
- Images of the defendant that may be prejudicial
- Whether or not the defendant has made admissions or a confession

Commenting on evidence or predicting the outcome of a trial - This must be avoided, since it is for the jury not the media to decide what evidence is relevant, to interpret the evidence given in court, and to consider whether it should lead to conviction.

Interviews with witnesses - The media should not interview a witness or the defendant) before the witness or defendant has given their evidence at trial. In some cases this could amount to contempt, even if it was only intended for publication after the proceedings have concluded.

Legal argument in court in the absence of the jury - should not be reported until after trial.

Filming at court - The law prohibits the filming or taking of photographs of any juror, witness, party or judge in the court or its precincts, or recording proceedings in court. The courts do now sometimes allow contemporaneous written reporting by journalists in court via social media.

Jury deliberations – the law prohibits soliciting, publishing or broadcasting the deliberations of a jury even after a trial has finished ie anything said in the jury room or the reasons why the jury reached the verdict should remain confidential. Soliciting such information is an offence, even in the absence of any publication.

Civil cases - Civil proceedings are also covered by the law of contempt, and contempt becomes a live issue when the date of a trial has been fixed. However, most civil cases are now heard by judges without a jury, with a very few exceptions. In these cases similar considerations to those in criminal proceedings will apply.

**October 2019**

## **COPYRIGHT AND FAIR DEALING**

### **Introduction**

Copyright protects any original literary, dramatic, artistic or musical work, sound recording, film, broadcast or typographical arrangement, including photographs and graphics. A copyright owner has the right to prevent use of a substantial part of their work by third parties without their permission, except where there is a statutory “fair dealing” defence.

### **Infringement of copyright**

Copying a substantial part of a copyright work is likely to be an infringement of copyright unless permission has been obtained from the copyright owner. What constitutes a substantial part depends on the quantity and quality (ie significance to the work as a whole) of the extract used.

Just because material is accessible (eg it appears somewhere on the internet), that does not mean it is freely usable as “public domain” material. **There is no such thing as “public domain” in this context** – the copyright in all footage and photographs on YouTube or social media belongs to someone, unless it is so old that copyright has expired. Some material may have been widely distributed and used before without clearance or payment (eg photos of criminals or victims released by police at the time of a trial), and can therefore usually be re-used without much risk of a copyright claim. But an advertisement is not “public domain” just because you can see it everywhere on billboards or the internet – the copyright still belongs to the owner.

### **Multiple copyrights**

Multiple copyrights attach to some copyright works, eg films and television broadcasts, where there will be rights in the whole work, but also in the sound recording, music, script, etc. Extra care should be taken when dealing with these works to ensure that all relevant permissions have been obtained.

### **Duration of copyright**

In general terms copyright lasts for a period of 70 years after the author’s death.

### **Fair Dealing**

“Fair dealing” is a statutory exception to the general need to obtain permission for use of copyright material.

It covers all sorts of copyright works (eg tv programmes, films, literary and musical works, photography) subject to certain restrictions.

Different countries have different versions of the fair dealing or “fair use” defence, and some countries do not have the defence at all. It is therefore important to bear this in mind for programmes being distributed abroad.

You should avoid using non-cleared copyright material in stings, title sequences, promos or teasers, as a fair dealing defence is less likely to cover such uses.

In the following circumstances a fair dealing defence may be relied upon for UK broadcast or publication:

- for the purpose of **criticism or review**;
- for the purpose of **reporting current events**;
- for the purpose of **caricature, parody or pastiche**;
- for the purpose of **quotation**.

Note that in all cases you must use no more of the material than is needed for the purpose. The length of each extract and the number of extracts used will need to be justified in every case.

There is no requirement to inform the copyright owner in advance of your intention to fair deal material.

### **Fair Dealing for the Purposes of Criticism or Review**

This is the type of fair dealing most often invoked in factual programmes – documentary, current affairs, arts, factual entertainment etc.

Definition - S. 30(1) Copyright Designs and Patent Act 1988:

*"Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgment."*

Fair dealing is using an extract of the material to illustrate some point you are making **about** that material or another work. It protects a reviewer or commentator who wants to quote from a copyright work in the course of his review.

This comment can be reviewing/criticising the copyright work itself – eg talking about the quality of the acting, performance, lighting, directing, editing, etc. It could also be some other relevant criticism, such as the theme or philosophy behind the work.

Examples:

*Clockwork Orange* - Criticism of the treatment of violence in the film *A Clockwork Orange*, and discussion of director Stanley Kubrick's decision to withdraw its release in the UK. Channel 4 successfully used numerous extracts of the movie in a TV documentary about the film (*Time Warner Entertainment Company LP v Channel Four Television Corporation PLC*).

*Pro Sieben* - Criticism of "chequebook journalism" and the treatment by the media of a story about a woman's multiple pregnancy. Carlton successfully used a 30 second clip from German footage of a woman who lost eight babies, on the basis it was illustrative of the media treatment of her case (*Pro Sieben Media A.G. v Carlton UK Television Ltd and Twenty Twenty Television Ltd*).

But a warning – the Carlton case went to the Court of Appeal – the costs and the management time required defending a copyright action can vastly exceed the original cost of clearing the clip, or in most cases the editorial value of the clip to the programme.

## **Fair Dealing is not a copyright amnesty or 'get out of jail free card'**

Fair dealing should not be seen simply as a way of saving money on clearance costs. Clips are less likely to be fair dealt if they are used merely as illustration or as 'wallpaper' in stings, montages or title sequences. The criticism or review they are illustrating must be clear and obvious. As a minimum, your use must satisfy all the tests below:

### **1. That the intention was to criticise or review the material**

The court considers the programme as a whole ie does the programme create the impression that we genuinely included the clips for the purposes of criticism or review?

It is *not* fatal to a fair dealing defence to seek clearance from the owner, to be refused, and then to go on and use the material anyway. If you are refused on non-monetary grounds (ie the owner simply doesn't want to licence the clip to you) – then you could still rely on fair dealing later on. But if you have spent time negotiating for the clearance of material, and you were simply not willing to pay the reasonable price asked, this may weaken your "intention to fair deal" argument.

There is **no** general "public interest" defence for breach of copyright. For example, the Sun used grabs of Princess Diana and Dodi el Fayed taken from a timecoded security video belonging to Mohammed el Fayed, as evidence to dispute his claims about their visit to a property on the day of their death. The court found against their claimed "public interest" copyright defence (*Hyde Park Residence Ltd v Yelland and Others*).

### **2. That the use of the material was fair**

To be judged as fair dealing the use must be 'fair'.

This is partly, but not solely, judged on the amount of the copyright work which is used. If you are using practically all of a work then this is likely to be unfair. You must use only "*the minimum amount necessary to convey the full flavour of the work*". The use should also not "*adversely affect the normal exploitation of the work*".

The manner in which we obtain the material is also important. We should not use deception, or misrepresent our intentions when obtaining a copy from the copyright owner or from a third party. Note also that the work must have been published, broadcast or performed in public before.

### **3. That the material is actually being criticised or reviewed**

A work is not 'reviewed' when it is reproduced without any comment or merely described.

eg "Frank Sinatra often performed at Madison Square Gardens [play clip]" – this is not fair dealing; but

"Frank's live performances were dramatic and unpredictable, as this performance in 1972 at Madison Square Gardens shows [play clip with acknowledgment of author] – this might qualify as fair dealing.



The key is *how* the clip is used in the programme - how the commentary or other contributors' comments refer to the footage or performance it records.

*"Criticism of a work need not be limited to criticism of style. It may also extend to the ideas to be found in a work and its social or moral implications"* – so said the judge in *Pro Sieben* when finding the use in Carlton's programme was "made for the purpose of criticism of works of cheque book journalism in general". So the use of the clip there was therefore acceptable as fair dealing in the context, notwithstanding the lack of specific criticism of the actual clip itself. But the clip must have more than a tenuous connection to the matters under discussion.

#### **4. Or used to criticise or review another Work**

The criticism or review does not have to be of the fair dealt copyright work itself, ie you could use an extract from work A in order to criticize or review work B.

#### **5. Sufficient acknowledgment**

You must always identify the work by its title and its author. The acknowledgment must be unequivocal and readily understood eg either via an aston on screen, long enough to be read by the viewer, or verbally in commentary when the material appears on screen. In exceptional circumstances, where this is impracticable, acknowledgment should at least appear in the end credits. This should of course NOT be stated as a "thanks to", since the owner has not given permission for its use.

Where a clip has a broadcaster's logo embedded, and they are the owners, this will usually be sufficient to identify them, and an additional aston is not required.

The '**author**' for these purposes will usually also be the copyright owner, but not in every case eg directors of feature films should always be acknowledged as well as the title of the film and the company that owns the copyright in the film.

#### **Editing**

A clip can be edited for the purposes of criticism or review, or shown in slow motion, or paused to illustrate a point. But no adaptations or manipulations should be made to change the character of the work eg by adding a soundtrack, special effects or modifying the clip for comic effect.

#### **Beware Contractual Liability**

Fair dealing does not absolve you of all contractual liabilities. How did you get the material in the first place? In most instances where audiovisual material has been obtained other than by recording it directly off air or buying a retail DVD, an agreement will exist (even if only a verbal agreement).

So for example: you obtain programme footage from source A. That footage includes footage from B (a clip contained in A's programme). An implied or express term of the agreement to supply you with the footage will usually be that you will get separate permission from the copyright owner B or any other relevant third parties before using the clip. Source A will therefore look to you to indemnify them if B complains to A about having provided the clip. Always check the terms of the agreement with A.

## Further Exploitation

Also consider fair dealing in the context of the cleared rights you are required to deliver, and not just for first UK transmission or publication. Different countries have different copyright laws. Some international sales would not be able to proceed if key material is only included on the basis of fair dealing, unless you are planning an international version without that material.

## Fair Dealing for the purpose of reporting Current Events

"Current events" covers **recent** news items. But archive news footage of an incident that happened years, months or even weeks ago might no longer qualify to be fair dealt for reporting "current" events.

**Still photographs** do not qualify for fair dealing for reporting current events.

**Sports footage** is regulated for broadcast purposes by an agreed broadcasters' code of practice, which only allows certain clips to be used in regularly scheduled news programmes.

There is **no** general "news access" provision, as is often (wrongly) assumed.

The clip must have some direct relevance to the current event being reported. So if David Beckham is in the news this week for a specific reason, this doesn't mean you could "fair deal" any old footage of David Beckham playing football in reporting this latest story.

## Fair dealing for the purpose of Caricature, Parody or Pastiche

This is a new and largely untested defence in UK law, and so should be used with caution. The defence only applies where the usage does not conflict with the normal exploitation of the work, and does not unreasonably prejudice the interests of the copyright owner.

**A caricature:** is a picture, description or imitation of a person in which certain striking characteristics are exaggerated in order to create a comic or grotesque effect, or a ludicrous or grotesque version of someone or something.

**A pastiche:** is an artistic work in a style that imitates that of another work, artist or period, or an artistic work consisting of a medley of pieces taken from various sources.

**A parody:** is a work, such as a literary composition, music, painting or film, modelled on and imitating another work, especially a composition in which the characteristic style and themes of a particular author or genre are satirised by being applied to inappropriate or unlikely subjects, or are otherwise exaggerated for comic effect.

European court precedent suggests that a parody must:

- evoke an existing work
- be noticeably different from that work
- contain an element of humour or mockery

There is no express requirement to acknowledge the source work, but the parody must either relate to the source work or else must mention the source work.

A European decision (*Deckmyn v Vandersteen*) required the court to strike a fair balance between the broadcaster of the parody and the legitimate interests of the author.

### **Fair dealing for the purpose of quotation**

There is also a new exemption for the purpose of quotation, which is again largely untested. The use of quotations is not limited to criticism or review, or reporting current events.

But the intention of the new defence is to permit uses that cause minimal harm to copyright owners.

The work must have been made available to the public, and the use of the quotation must be fair. The extent of the quotation should be no more than is required by the specific purpose for which it is used, and the author of the quotation and the title or other description of the work should be acknowledged so far as practicably possible.

**October 2019**

## DATA PROTECTION

### 1. Background

The new Data Protection Act came into force on 25 May 2018. It replaces the 1998 DPA and enacts the General Data Protection Regulation (GDPR) into domestic law.

Sanctions now available to the ICO (the regulator for information rights) include greatly increased fines of up to €20M or 4% of turnover.

This is a complex area of law, and these guidelines are only designed to be a starting point for programme producers to understand their obligations to protect the personal data of individuals, and the legal penalties and reputational damage that could result from unlawful disclosure or data breaches.

### 2. Data Protection – the basics

The 2018 Act gives the “**data subject**” (a living individual) more rights – of access (i.e. what data have we got?), of rectification (i.e. if they think what we’ve got is wrong) and of erasure of their data - and it gives “**data controllers**” and “**data processors**” more responsibilities.

We need to collect and use personal data only when there is a clear reason for doing so, and be transparent with people about what their data is being used for. It applies to all data where a person is identifiable – contributors, contacts, contractors, employees, members of the public, and colleagues.

We should take steps to ensure data is kept secure, is only shared with appropriate people, is not retained unless necessary, and is deleted safely.

#### The jargon

**Personal data:** information relating to a living individual who can be identified from that information - either directly or indirectly in conjunction with other information (‘jigsaw’). Examples: address, phone number, date of birth, IP address, e-mail address, social media profiles, employment details, still or moving images of that person.

**Data subject:** the identified or identifiable person to whom the data relates.

**Special category data:** personal data about an individual’s racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation, physical or mental health matters, genetic and biometric data.

**Criminal offence data:** includes data about arrests, charges, proceedings and convictions - and also includes personal data related to security measures.

**Processing** personal data: means any operation such as collecting, recording, storing, broadcasting, organising, altering, transferring to someone else, erasing and destroying the data.

**Data Subjects’ Rights** include:

**Right to Information:** to know who is processing their data, what kind of data, the legal basis for the processing, who it is being sent to, and other information needed

to establish the data is being processed fairly and transparently, and to be informed about decision making.

**Right of Access:** to seek disclosure of the personal data that ITV or the production company holds about them via a **Subject Access Request**.

**Right to Object** to processing.

**Right to Rectification:** if the information is inaccurate.

**Right to Erasure:** to have the information removed - sometimes referred to as a right to be forgotten.

**The Data Protection Principles** – these include that personal data must be:

- Processed fairly, lawfully and transparently;
- Obtained only for lawful purposes and not used for any conflicting purpose;
- Adequate, relevant and not excessive in relation to lawful purposes;
- Accurate and kept up-to-date;
- Kept no longer than necessary in a form where individuals are identifiable;
- Processed in a secure manner;
- Processed in accordance with the rights of data subjects;
- Not transferred outside the European Economic Area unless adequate safeguards are in place.

### 3. The 'Special Purposes' Exemption

This exemption protects freedom of expression in journalism, the arts and literature. It applies if the processing is being carried out **with a view to publication** of journalistic, academic, artistic or literary material; the controller **reasonably believes** that the publication of the material would be in the **public interest**; and the controller **reasonably believes** that the application of the data protection law provisions would be **incompatible** with journalism, etc.

In the case of 'journalism' this could include factual programmes, such as documentaries, news and current affairs. But this exemption does not necessarily apply to all activities, and journalists and producers must still comply with the Act unless doing so would be in conflict with the purpose of publication of journalistic material in the public interest.

It is the data controller who has to demonstrate a reasonable belief, not just an individual programme maker. Data controllers should take account of the special importance of the public interest in the freedom of expression and information. The controller must have regard to any of the codes of practice, such as the Ofcom Broadcasting Code, and in particular its rules on fairness and privacy.

But the exemption does **not** include simple breaches of data security. Programme makers and journalists are not exempt from the basic legal obligation to make sure personal data is kept securely.

### 4. Processing Different Types of Personal Data

#### Personal Data

Processing is **only** lawful if certain conditions are met. Most likely to be relevant to TV producers are:

**Legitimate Interests** – ie processing is **necessary** for the purposes of legitimate interests. “Legitimate interests” captures many of the reasons ITV and its programme-makers would lawfully process personal data. ITV considers it has a legitimate interest in commissioning programmes for commercial exploitation, and in journalism. Processing personal information about individuals is therefore necessary to this activity. This legitimate interest would extend to retaining rushes, clips and unused material, archiving, dealing with complaints, and retaining contacts and information in the interests of programme making. Legitimate interests must be balanced against the rights of the individual.

**Consent** - The data subject has given consent to the processing of their data for a specific purpose.

**Contract** – Processing is necessary for performance of a contract. This may for example apply if a participant has signed a release form.

### **Special Category Data**

Processing is **only** lawful if certain conditions are met. Most likely to be relevant are:

**Consent** – In most cases, contributors will have consented to sharing personal information by agreeing to take part in a programme and signing a release and consent form. It is important to have evidence of their consent to broadcast/publish if they are being interviewed about SCD. In most cases, a Special Category Privacy Notice should be provided to the contributor. Consult your business affairs team or compliance lawyer for more details.

Where personal information about X is provided by Y, we still need X’s consent to broadcast, unless another condition or the ‘special purposes’ exemption applies, or the information is trivial and broadcast would be harmless.

**Already Public** - where the information has already manifestly been made public by the individual.

**Archiving** - where processing is necessary for archiving in the public interest.

**Journalism in connection with unlawful acts** - Similar to the journalism exemption, but specifically when connected to revealing matters such as an unlawful act by a person, dishonesty, malpractice, incompetence, a failure in services etc. This is where processing is necessary for reasons of substantial public interest, it is carried out with a view to publication of the personal data, and ITV reasonably believes publication of the data is in the public interest.

**The special purposes exemption** - may mean that it is lawful to process a person’s special category personal data even if it runs counter to their other data protection rights. The data controller will need to have a reasonable belief that it is not possible to comply with the person’s rights under the Act.

A data subject can withdraw consent to processing of their data. If they do, we need to assess (i) whether we can lawfully continue to process their data under another condition and/or the journalism exemption and (ii) whether we can still use the

person's contribution/data in the programme. Please refer any such cases to Compliance immediately that consent is withdrawn.

### **Criminal Offence Data**

This includes data about criminal allegations, proceedings or convictions.

Processing is **only** lawful if certain conditions are met. Most likely to be relevant to journalists are:

**Journalism in connection with unlawful acts** – see above. This is likely to be relevant in court reporting and investigative journalism.

**Unlawful act** - processing is necessary for the purposes of preventing or detecting an unlawful act. This might overlap with some investigative journalism.

**Consent** - in most circumstances reporting criminal charges and convictions does not need consent, as one of the other conditions will apply. If we do need consent it is important to have evidence of that consent to our use of their data.

**Already public** – many criminal convictions are reported publicly and are a matter of public record. Advice should be taken on whether those convictions are now spent.

The broader journalism exemption may also apply.

However, if a conviction is spent, or there is no public interest in reporting a particular unspent conviction, refer to a Compliance lawyer for advice.

### **Criminal Background Checks**

In most instances we will seek a contributor's explicit consent and ask them to co-operate in obtaining a record of their unspent criminal convictions.

Please consult with Business Affairs before carrying out criminal background checks, as they will need to ensure an appropriate agreement is in place with a suitable check provider.

In some circumstances it may not be possible or appropriate to get the individual's consent. In that case, we might seek to rely on one of the other exemptions in the Act. For example, background checking is necessary for a reason of substantial public interest.

## **5. Privacy Notices**

Transparency is a cornerstone of the new data protection rules. We should be clear and open with contributors about how we are processing personal information. Generally, we don't necessarily need the consent of the individual for processing their data, but do need to make them aware of how their information is being used, by providing them with a Privacy Notice. This sets out how their data is processed, and their rights.

Where we are processing contributors' special category or criminal offence data - eg interviewing them about sensitive personal information (mental health, sexual orientation, etc) or criminal matters - we should provide them with a Special Category Privacy Notice.

There many are circumstances particularly in location filming where it will be challenging or impractical to provide individuals with a paper release form, a PN and/or an SCPN before filming. However, a privacy notice can be referred to in physical filming notices put up at locations, in release forms, or in email correspondence following up after filming.

Where necessary, contact your Business Affairs or Compliance lawyer for advice if you have identified a situation where providing a hard copy PN or SCPN would be problematic. It may be that an exemption applies, or there is an alternative approach.

### **Sharing information with third parties**

The potential sharing of personal data should also be set out in a Privacy Notice – another reason PNs are so important. If you have any concerns about the particular wording in a PN, relevant to your production, contact your Business Affairs lawyer.

### **Children**

GDPR gives children specific protection because they may be less aware of their rights and the risks involved in sharing their personal data.

We should explain to a child their rights in language they will understand, and allow them to exercise their rights if they wish to do so.

Normally, we will obtain parental permission to obtain any personal information from under 16s, just as the Ofcom Broadcasting Code already generally requires us to obtain parental consent where we feature an under-16 in a programme.

## **6. Practical Issues**

### **Withdrawing consent**

Under the GDPR, data subjects have the right to withdraw consent at any time. However, a withdrawal of consent does not necessarily mean we are then legally obliged not to include the contribution in the programme. When we are processing their personal data we generally rely on legitimate interests or contract. Where a contributor seeks to withdraw their consent to be featured, we would weigh up our legitimate interest (such as freedom of expression) against the individual's privacy and DP rights.

Legitimate interest does not apply to special category or criminal offence personal data, but if a person withdraws consent to the use of that material, we may rely on another exemption in the public interest. Such withdrawals of consent should therefore be referred to a compliance lawyer immediately if the intention is to still include the contributor in the programme.

### **Requests for rectification**

Individuals have the right to request that inaccurate personal data about them is rectified. If you receive such a request, you should take reasonable steps to satisfy yourself that the data is accurate, and then correct it if necessary. If we wish to consider rejecting a request, please refer to a business affairs or compliance lawyer before responding.



## **Requests from the public to take down online reports**

Often these relate to a person's previous convictions, and the person often wants to exercise what they believe to be their 'right to be forgotten'. Ask the compliance legal team for advice on these requests.

## **Subject Access Requests**

Subject Access Requests (DSARs) - if you receive a Subject Access Request, send it to Viewer Services who will log it and send it on to the Privacy Team to consider. Normally, there is one month to comply with the request, so prompt reporting is important.

## **Requests from police and other authorities for personal details relating to individuals**

ITV receives these requests frequently. Please refer any requests to the compliance legal team immediately.

## **7. Unlawful Obtaining of Personal Data**

It can be a criminal offence for a person knowingly or recklessly to **obtain or disclose** personal data without consent. This is similar to the previous offence under s55 of the DPA 1998. This section is most often relevant to private or confidential information obtained (eg through a source or a private investigator) without the permission of the relevant data controller.

Defences include: obtaining, disclosing, procuring or retaining the material was necessary for the purposes of preventing or detecting crime; or was justified in the public interest; or the person acted (a) for the special purposes of journalism (b) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and (c) in the reasonable belief that in the particular circumstances the obtaining, disclosing, procuring or retaining was justified as being in the public interest.

Always seek legal advice from compliance immediately if a claim is made that personal data has been obtained unlawfully, or if the complainant says they have referred their complaint to the ICO.

## **8. Data Security**

**"Personal data breach"** - means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Appropriate security measures must be taken against unauthorised or unlawful access to personal data and against accidental loss, destruction or damage to personal data. These security obligations apply to all personal information processed for journalistic purposes, including personal information gathered for news and programmes, and on social media, by email and online.

Personal data, and especially any Special Category Data or Criminal Offence Data – **must** be held securely, eg encrypted, or on password-protected files or computers, or in locked cupboards etc.

## **Disposal of data**

Personal data should not be retained for any longer than necessary, and should be disposed of securely (eg shredding, deletion of files, disposal in a 'confidential waste' bin).

There may be instances (relating to controversial or major stories) where it is warranted to retain data for longer than usual under the journalism exemption. Refer to the compliance legal team for advice as necessary.

**October 2019**

## **CONFIDENTIALITY**

The law of confidentiality protects confidential information, such as internal company records or documents, draft accounts, private correspondence, medical records, trade secrets, and private personal information between spouses or partners.

Where journalists are given confidential documents or information, the person or company who owns that confidential information can seek an injunction from the court to prevent publication. If confidential documents are to be used or referred to in a programme, there is always a danger that there will be an application to the court before broadcast for an injunction to stop the broadcast and retrieve the documents.

However, if the confidential documents disclose wrongdoing or information that is in the public interest, this may be relevant as to whether or not an injunction is granted, on the principle that “there is no confidence in iniquity”. An interim injunction granted against one media organisation will apply to all media organisations.

There are certain circumstances where a duty or obligation of confidence will apply because of the nature of the relationship between the parties, eg between doctor and patient, or employer and employee, or where parties have agreed not to disclose information (such as a non-disclosure agreement). But the courts have also inferred a duty of confidence to exist in circumstances where this obligation of confidence is not so obvious, eg in preventing publication of “kiss and tell” stories.

The owner of confidential documents might also complain to the police that the document has been stolen. Asking someone to carry out an unlawful act could be viewed as aiding and abetting, incitement or even as a conspiracy to commit crime. Always take advice from the compliance legal team when potentially confidential documents or information have been or are about to be obtained.

**October 2019**