

4

OFCOM BROADCASTING CODE

4A. PROTECTING UNDER 18s & HARM AND OFFENCE

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KEY POINTS

- Under 18s must be protected from potentially harmful and offensive material. One of the main ways of achieving this is through the appropriate scheduling of programmes.
- The watershed is 9 pm. Nothing unsuitable for children should, in general, be shown before 9pm or after 5.30 am. After 9 pm, there should then be a gradual transition to more adult material, not an abrupt change. Generally, the more adult in nature a programme is, the later in the schedule it should appear.
- Potentially harmful or offensive material includes strong language, violence, sexual behaviour etc.. Its inclusion must be justified editorially and by the context i.e. taking into consideration the editorial content of the programme, its scheduling, the audience's likely expectations, any warning that has been given etc.
- Audience expectation is key. Viewers should be clearly forewarned of any potentially harmful or offensive material so they can make their own informed choices about what they and their children watch. This usually requires clear on-air pre-transmission warnings.
- Programmes must be true and accurate. It is the responsibility of programme-makers and broadcasters to ensure that viewers are not misled.
- Programmes should not condone or glamorise violent, dangerous or seriously anti-social behaviour, especially where it is likely to encourage others to copy such behaviour.
- Any discriminatory treatment or language e.g. on grounds of age, disability, gender, race, religion, beliefs and sexuality must be justified by the context. Nothing transmitted should be intended to stir up racial hatred or, taking into account the circumstances, be likely to do so.
- Programmes should show respect for human dignity. In news and factual programmes, showing people in distress and in sensitive situations requires clear editorial justification. Similarly, in entertainment programmes, careful consideration must be given to humour based on the plight or misfortune of individuals, which again must be justifiable editorially and by the context.
- Programmes including exorcism, the occult and the paranormal will require careful handling.

INTRODUCTION

We aim to provide challenging, distinctive, quality programmes to serve our audiences and are constantly looking for new ways in which to inform and entertain viewers. Inevitably, therefore, some of our programmes will deal with difficult or controversial subjects which will not be to the tastes of all viewers and may cause offence to some members of the audience.

Ofcom's Code is designed to ensure that generally accepted standards are upheld in television programmes in order to protect members of the public from harmful or offensive material. Section 1 of the Ofcom Broadcasting Code ("the Code") deals specifically with protecting under 18s whilst Section 2 deals with issues of "harm and offence" generally. This replaces the old concept of "taste and decency". Since these two sections of the Code must be read together, they have been combined in this Handbook into one chapter, although the rules relating to the protection of under 18s are highlighted at the start.

As responsible broadcasters, our primary aim is to protect viewers appropriately, particularly under 18s, from potentially harmful and offensive material, whilst recognising the importance of freedom of expression, together with the right of our audience to receive information and ideas as freely as possible. We seek to follow the principles and comply with the rules in the Code and the key to this is assessing audience expectations. This includes scheduling material responsibly, providing viewers with information about potentially harmful or offensive material through the use of clear and specific warnings, to enable viewers to make informed choices, and ensuring that the broadcast of difficult and challenging material can be justified editorially and by the context.

PROTECTING UNDER 18s

[See Section 1 of the Code at page 8]

The Code places particular emphasis and importance on protecting under 18s i.e. both viewers and those involved in programme-making. Below is a summary of the relevant rules, some of which are considered in more detail later in the chapter. Key amongst these is the proper application of the 9pm watershed.

SUMMARY OF RULES

Material that might seriously impair the physical, mental or moral development of people under 18 must not be broadcast

This rule prohibits the broadcast of the most potentially harmful and offensive material at any time e.g. very explicit sexual practices, obscene material, very graphic violence, etc.

Broadcasters must take all reasonable precautions to protect people under 18

This rule reflects the importance given to protecting non-adult viewers, a reminder to broadcasters that they must always consider carefully the potential effect of their programming on younger viewers.

Programmes should be scheduled appropriately

In addition to the above, programming must be appropriately scheduled in order to protect children. Children are defined in the Code as those under 15 years of age. For more on 'appropriate scheduling' see 'Scheduling & the Watershed' below.

Alcohol, smoking and drugs

These must not be featured in children's programmes without strong editorial justification. In other programmes before the watershed, they should generally be avoided and, in any case, should not be condoned or glamorised unless there is

editorial justification. In programmes likely to be seen widely by under 18s at any time, alcohol, smoking and drugs should not be condoned, encouraged or glamorised unless there is editorial justification.

Violence and dangerous behaviour

Violence must be limited appropriately before the watershed. If it is easily imitable and potentially harmful or dangerous, it must not be included in children's programmes unless there is strong editorial justification. In other programmes before the watershed, such behaviour must not be included unless there is editorial justification. Similar rules apply to dangerous behaviour that is easily imitable and potentially harmful. For further explanation see 'Violence and Dangerous Behaviour' later in this chapter.

Offensive language

The most offensive language e.g. "cunt", "motherfucker", "fuck" or derivatives of these words must never be included in programmes (including in written form) before the watershed. Other potentially offensive language and gestures (e.g. the 'V' sign) must always be justifiable by the context. However, children's programmes should not include offensive language except in the most exceptional circumstances. For further explanation see 'Offensive Language' later in this chapter.

Sex and nudity

Representations of sexual intercourse should not be included before the watershed unless there is a serious educational purpose. Any other portrayal of sexual behaviour or discussion about sex before the watershed should be editorially justified and appropriately limited and inexplicit. Nudity before the watershed must be justified by the context. For further explanation see 'Sex and Nudity' later in this chapter.

Exorcism, the occult and the paranormal
Demonstrations of these practices must not be shown before the watershed.

Paranormal practices which are for entertainment purposes, as opposed to those which purport to be real, can be shown before the watershed but not when significant numbers of children are likely to be watching. These rules don't apply to drama, film and comedy. For further explanation see 'Programmes Including Exorcism, the Occult and the Paranormal' later in this chapter.

Acquired films

There are specific rules relating to the scheduling of films that have been classified (or refused classification) by the British Board of Film Classification. For further explanation see 'Acquired Material' later in this chapter.

Under 18s involved in legal proceedings

Where programmes make references, whether directly or indirectly, to legal proceedings involving people under 18 and there are statutory or other legal restrictions preventing their identification, broadcasters must ensure that they do not inadvertently, or otherwise, give clues which may lead to their identification. In addition, when referring to pre-trial investigations into alleged criminal offences, broadcasters must pay particular regard to any potentially vulnerable under 18s that may be involved, before a decision is made to identify them or to divulge certain details about them. This applies not only to defendants or potential defendants but also to victims and potential witnesses.

Under 18s in Programmes

Due care must be taken over the physical and emotional welfare and dignity of people under 18 taking part in programmes, irrespective of their parents' consent. People under 18 should not be caused unnecessary distress or anxiety by their

involvement in programmes or by their broadcast.

Prizes in children's competitions must be appropriate to the age range of both the target audience and participants.

See 'Programmes Involving Under 18s' Checklist at chapter 6.

SCHEDULING AND THE WATERSHED

The main way in which under 18s may be protected from potentially harmful and offensive material is through the appropriate scheduling of programming. In practice this means that, as a general rule, the more adult in nature the content is, the later it should be broadcast, with the 9pm watershed being the crucial point in time before which material unsuitable for children (defined in the Code as those under 15) should not generally be broadcast. Leading up to and after the watershed, parents are expected to take increasing responsibility for their children's viewing.

Some content may be considered so potentially harmful and offensive (e.g. material that "...might seriously impair the physical, mental or moral development of people under 18") that it should never be broadcast on television e.g. scenes condoning sexual violence, very explicit sado-masochistic practices.

SUMMARY OF RULES

● Children should be protected from unsuitable material by appropriate scheduling (see below).

● The watershed is 9pm. Nothing unsuitable for children should, in general, be shown before 9pm or after 5.30am.

● There should be a gradual transition to more adult material from the watershed, not an abrupt change.

● Broadcasters should clearly 'flag-up' or warn audiences when programmes before the watershed contain material that might distress some children e.g. surgical procedures. Note, however, this is not a substitute for appropriate scheduling.

Appropriate Scheduling

The Code acknowledges that there are a number of factors which determine whether a programme is appropriately scheduled or not. These factors include:

● the nature of the content e.g. whether it's frightening, distressing, gory, sexually explicit, contains strong language etc.;

● the nature of the particular programme e.g. it might well be appropriate to schedule a futuristic, science-fiction series containing comic book violence at a time when large numbers of young children are watching but not to schedule a soap opera containing domestic violence which is more realistic and 'close to home';

● the likely number and age range of children watching, taking into account school time, weekends and holidays e.g. a discussion about sexual matters that might be inappropriate in a breakfast or teatime show, when large numbers of young children are likely to be watching, might well be defensible during term time, in a mid-morning or mid-afternoon discussion programme, when most children are at school;

● the start and finish time of the programme e.g. a movie scheduled to start at 8pm and end at 9.30pm, which had generally mild content throughout until the final scene, which contained very graphic violence would be unlikely to be appropriately scheduled. Although this

scene would not transmit until after the watershed, because the film started well before, it would be likely to have attracted a significant number of younger viewers, including children, who would stay with the film until its conclusion;

● the likely expectations of the audience for a channel at a particular time on a particular day e.g. to schedule a drama about teenage sexuality in a slot normally reserved for cartoons aimed at very young children, may surprise and upset audiences. Furthermore, Channel 4 and Five audiences may expect to see stronger material at, say, 9pm than is shown on BBC1 or ITV1 at the same time.

Gradual Transition

The Code stipulates that in evening television schedules there must be a gradual progression towards more adult material. To coin a well-used phrase: "9pm is a watershed, not a waterfall". The most adult material, therefore, should be reserved for well after the watershed. Content that might still be problematic at 9:30pm might be perfectly acceptable at 11pm or even earlier e.g. at 10.00pm.

There is no requirement that there should be a gradual progression towards less adult content as schedules approach 05:30 am. However, it is advisable not to show the most adult material immediately before 5:30am as, immediately thereafter, programmes must be suitable for family viewing. Please note that Channel 4, E4, More4 and Film4 all have time shifted (+ 1) versions. This means that effectively the watershed will end at 04:30 am.

Programmes Starting at 9pm

Care needs to be taken with programmes that start actually on the watershed, at 9pm, particularly towards the beginning of the programme. Sometimes programmes scheduled to start at 9pm actually transmit a couple of minutes early which might

mean that some adult content (e.g. use of the strongest language) is technically broadcast before the watershed. For this reason, any programmes containing adult material in the opening minutes and scheduled to start at 9pm should be flagged up to the Presentation Department, so that it can ensure that the programme does not start before the watershed.

Flagging Up Content Pre-Watershed

At first sight, this provision might appear to be inconsistent with the principle that, in general, nothing unsuitable for children should be shown before 9pm. However, it merely anticipates that there will be occasions where some content which is not unsuitable for children generally may nevertheless still cause distress to some e.g. younger children may be upset by scenes of an injured animal having to be put down or scenes in a daytime programme showing a surgical procedure.

On-Air Warnings

Prior warning about challenging and potentially offensive content in programmes will have a bearing on the audience's expectations and, in turn, whether viewers consider particular material to be justified (see 'Context' below). Whether or not a particular programme requires an on-air warning e.g. for strong language, violence or sexual content, depends on a number of factors, in particular the time at which the programme is transmitted.

Wherever it is considered that an on-air warning is required (which may be following advice from the programme lawyer), the commissioning editor responsible for the programme should seek advice from the programme lawyer and arrange with the presentation department for a suitable warning to be given. For some stronger or more exceptional material, a flagging or warning into each part may be helpful. Also see

Channel 4's and Five's Compliance Procedures above at chapters 2 and 3 respectively.

Where a programme starts before the watershed but continues after it, it may be necessary to broadcast a warning into the first part after the watershed and, if appropriate, any following parts, if they contain adult material it is considered necessary to warn audiences about.

Programme Trailers & Promotions

Like advertisements, audiences normally come across trailers and promotions without any prior warning and, therefore, any expectation of what they are about to see. For this reason and because viewers can't generally be forewarned about the content of promotional material e.g. that it contains strong language or sexual content, particular care is required both in relation to the content and the scheduling of such material. Potentially offensive material in trailers and promotions is more likely to surprise and therefore offend viewers and should generally be avoided. If in doubt about the suitability of any content of programme trailers or promotional material, please seek advice from a programme lawyer. Channel 4 has a protocol for the clearance of trails and promos. Copies are available from the legal and compliance department.

HARM & OFFENCE

[See Section 2 of the Code at page 16]

GENERAL PRINCIPLES

Editorial Justification & Context

In relation to issues of 'harm and offence', regulation has moved away from the more prescriptive approach of old. Rather than attempting to dictate to broadcasters what is and what is not acceptable, broadcasters are now encouraged to think more carefully about the expectations of their audiences and providing viewers with more information, so they are able to make their own informed choices about what they watch.

Material that may be harmful or cause offence must be justified editorially and by the context, which is determined by a number of factors, including:

- the editorial content of the programme(s) or series - literally, what it is the viewer is seeing and hearing, the tone, the genre etc.
- what channel the material is on - generally viewers expect to see more challenging material on Channel 4 and Five than on say BBC1 or ITV but their expectations of, for example, MTV may be different.
- when the material is broadcast - is it after the watershed, well after the watershed or before? Is it during school time or not, or on a day of particular religious or cultural significance?
- what programme precedes or follows the programme in question - for example, does the programme in question follow an animation, which is likely to have attracted large numbers of young children?

● the degree of harm or offence likely to be caused by the material - this, of course, is not an exact science but editorial and legal & compliance department staff must take a view, based on experience, precedent and common sense.

● the likely size and composition of the potential audience - this can be estimated from both research and experience.

● what the audience's expectations are likely to be - again, estimated from experience, research and common sense.

● the extent to which viewers can and have been informed of the content in advance - clear on-air announcements are the best way of forewarning viewers about difficult or potentially offensive content, though pre-publicity and listings may also be taken into account.

● the effect of the material on viewers who come across it unawares - no matter how clearly viewers are warned, some are always going to switch on their television sets with no prior knowledge of what they are watching and not having seen any on-air warnings or announcements.

Where specific regulatory rules do exist in relation to potentially harmful or offensive material, these tend to relate to programmes broadcast before the watershed, specifically in order to protect younger viewers in the audience. See "Protecting Under 18s" and "Scheduling and the watershed" earlier in this chapter.

Viewer Trust: Truth, Accuracy & the Importance of not Misleading the Audience

Channel 4 and Five take the issue of viewer trust very seriously. Viewers are entitled to expect that programmes are accurate and true and the audience must not be misled.

This obligation applies to all types of programming – including entertainment, with factual elements. Portraying real events, whether in documentary, features, factual entertainment, drama or any other programme, which the viewer is entitled to take at face value, must respect truth and accuracy.

Programme-making is a creative rather than literal medium and has always been more sophisticated than the simple recording of action in real time. However, though the editing process will inevitably condense events which have occurred over a period of time, this must not be at the expense of distorting reality and misleading viewers.

The accuracy and truthfulness of programmes has been the subject of significant media and regulatory scrutiny and raises issues of the utmost importance. If it is claimed or suggested that footage is actuality, then that is what it should be; if it is not, then that should be made clear to viewers.

It is never acceptable to represent as having happened something that did not. It is the responsibility of broadcasters and producers to ensure that viewers are not misled. Ofcom can impose the most serious sanctions for programmes that materially mislead audiences and Channel 4 and Five will not hesitate to take appropriate action against programme-makers who mislead our viewers.

Never stage, construct, reconstruct, re-enact or otherwise fake any scenes of actuality and pass them off to the broadcaster and/or viewers as the real thing.

Accuracy in relation to all aspects of factual programming is vital to ensure we maintain viewers' trust. For example, in addition to scrupulous fact checking and labelling, where necessary, the qualifications, experience and other

credentials of contributors, presenters and experts who appear in factual programmes must be checked and properly verified. Potential contributors should not be taken at face value. If they claim to have particular qualifications or expertise this must be corroborated.

All of Channel 4's and Five's programme-makers are contractually obliged to read and follow the broadcasters' Viewer Trust Guidelines – see Appendices.

Not Condoning or Glamourising Violent, Dangerous or Seriously Anti-social Behaviour

Programmes must not include material that, taking into account the context, condones or glamorises violent, dangerous or seriously anti-social behaviour and is likely to encourage others to copy such behaviour.

VIOLENCE & DANGEROUS BEHAVIOUR

Violence can take many forms and be present in all types of programming e.g. in news programmes, documentaries, in television dramas, in movies, in clips of movies that are being reviewed on magazine shows, even in live or pre-recorded talk shows where contributors lose their tempers. In all cases, whether or not material is suitable for inclusion will depend largely upon the context in which it is shown.

Before the Watershed

● Before the watershed, scenes in programmes showing violence and its after-effects, including verbal descriptions of violence and sound effects, must be "appropriately limited" to reflect the fact that children may be watching.

● Any violence should also be justifiable by the context, based on the factors

described above. For example, is it historical or fantasy-style violence e.g. pirates or space ships being blown up, or more realistic e.g. contemporary people being attacked in their home, that viewers are likely to find more disturbing? Is the violence real or acted, or even animated? Does it feel gratuitous? Is any pain and suffering shown and, if so, to what extent? Is the material being broadcast when large numbers of young children are likely to be watching?

● The inclusion of any scenes of violence that are "... easily imitable by children in a manner that is harmful or dangerous..." before the watershed is prohibited unless there is "editorial justification" and, in the case of children's programmes, i.e. those made primarily for children, must not be broadcast unless there is "strong editorial justification". Often such justification will be that the storyline makes it clear that the violent actions or behaviour that are included are unacceptable, with the perpetrators getting their just rewards.

● Similarly, in relation to "dangerous behaviour", any dangerous behaviour before the watershed which is "... easily imitable by children in a manner that is harmful ..." must not be included unless there is "editorial justification" and, again, in the case of children's programmes, unless there is "strong editorial justification". Often such justification will be that the storyline makes it clear just how dangerous the particular activity is and, therefore, is more likely to deter children from copying the acts, rather than encourage them. However, this may not always be enough and great care should be taken where the potentially dangerous behaviour involves readily accessible domestic items or appliances e.g. knives, tools, washing machines or microwaves.

● For obvious reasons, scenes of violence, particularly of a severe nature, tend to be

reserved until after the watershed. However, viewers are accustomed to and do not generally object to seeing mild violence in programmes before the watershed, if it is handled responsibly.

Violence in many forms is regularly included in some of the most popular pre-watershed programmes e.g. arguments, fights, domestic violence, violent crime and murder all regularly feature in many popular pre-watershed soaps. However, images of actual physical violence in such programmes are invariably kept brief and non-graphic. Normally, it is the lead up to the violence and the resolution that is shown rather than the actual violent acts. Showing pain and suffering is generally avoided in pre-watershed programmes or is strictly limited, as this tends to distress viewers most. Understandably, blood and gore, especially in a violent context, are kept to a minimum before 9pm.

After the Watershed

● The inclusion of scenes of violence (real or simulated) should always be justifiable by the context, based on the factors outlined earlier in this chapter.

● Violence can take many forms with some having an increased potential to cause offence. For example, real violence in a documentary may shock or offend an audience more than the same act being portrayed in a fictional drama. Similarly, violence occurring in a setting that viewers are accustomed to and normally regard as safe e.g. in the home, at school etc. may increase its impact.

● Violent scenes, whether real or simulated, which focus on the pain and suffering of the victim, particularly if graphic and prolonged, are likely to be more distressing and potentially offensive than violent scenes that are more action-based, as in so-called 'action films'. At the same time, normally a balance should be

struck between showing the after effects of violence and not showing unduly distressing scenes of pain and suffering, as it may be irresponsible to show some violent acts without showing the consequences i.e. the injury, damage or suffering.

- Scenes of violence where there is some disparity of power between the perpetrator and the victim or where the victim is vulnerable and unable to fight back or protect him/herself for some reason e.g. male violence against women or children, or group violence against an individual, are likely to have a greater impact on audiences and potentially cause more offence and distress to viewers than violence between equals.

Sexual Violence

- Verbal references to sexual violence e.g. in news or factual programming, both before and after the watershed are unlikely to be problematic if handled responsibly and justified by context.

- The visual representation of sexual violence requires special care and only rarely will it be appropriate for inclusion in programmes before the watershed. Where it is, scenes and images should be appropriately limited and non-graphic.

- Even well after the watershed, the subject of sexual violence requires very careful handling. What is included must be justified editorially and by the context and viewers should be clearly forewarned about what they are about to see. Programmes should never appear to condone or excuse sexual violence.

Any programmes featuring or referring to sexual violence, particularly those scheduled to transmit before the watershed should be referred to the legal and compliance department as early as possible and, in the case of drama, certainly before the scenes in question have been shot.

Suicide & Self-Harm

Depictions of and references to suicide and self-harm (verbal or visual) require careful thought and handling. Particular care must be taken if the method of committing suicide is shown. The Code states that "...methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context".

For programmes dealing with the subject of suicide, careful thought should be given as to whether it would be appropriate to seek professional advice on how it is being handled and how it might be perceived by vulnerable viewers. Thought should also be given as to whether or not certain information, such as a helpline number, should accompany the programme.

Any such programmes, particularly those scheduled to transmit before the watershed should be referred to the legal and compliance department as early as possible and, in the case of drama, before any scenes portraying suicide have been shot.

OFFENSIVE LANGUAGE

Many people are offended by the use of strong language, particularly if its use appears gratuitous. Whether or not audiences consider such language to be justified again turns on a consideration of the context in which it appears, based on the usual factors. In addition, the Code contains some specific rules in relation to offensive language within programmes before the watershed. See also 'Programme Trailers and Promotions' earlier in this chapter and Channel 4's and Five's Compliance Procedures at chapters 2 and 3 respectively.

Before the Watershed

- It is a well-established rule that "the most offensive language" must not be

broadcast before the 9pm watershed. This means the words "cunt", "motherfucker" and "fuck" and derivatives of these words e.g. "fucking". They must, therefore, be edited out, bleeped or the sound dipped so that the word is completely obscured. Exceptionally, it may also be necessary to obscure the speaker's mouth where the word is very clearly mouthed straight to camera.

- Other less offensive language e.g. "shit", "bugger" etc. must not be used before the watershed unless it is justified by the context and would not exceed viewers' expectations but, in any event, "...the frequent use of such language before the watershed should be avoided".

- In programmes aimed specifically at younger children, offensive language should only be included in the most "exceptional circumstances".

There exists an unofficial but well-known classification of words which have been ranked according to their potential to cause offence. This was based on research carried out by previous television industry regulators. For example, research showed that the word "bastard" is generally deemed to be offensive and thus, if it is to be included in programmes before 9pm, which it occasionally may be, its use must be clearly justifiable.

A word like "bloody", on the other hand, is generally deemed to be relatively inoffensive and its inclusion, even in a programme watched by large numbers of children, would be unlikely to offend most viewers. However, as noted above, broadcasters must have regard to the 'cumulative effect' of casual swearing. For example, the inclusion of two or three instances of relatively inoffensive words in a half-hour show at teatime might be considered acceptable, but add to that a couple more within the same programme

and that may well cross the line - not because any one individual word is, in itself, unacceptable but because, cumulatively, the frequency of such language would exceed viewers' expectations.

After the Watershed

- After 9pm, whether or not offensive language is justified will depend largely on the audience's expectations and the context e.g. the word in question (how offensive it is), how it's being used (descriptively, as an insult, aggressively, as vernacular etc.), the nature of the programme, time of broadcast etc..

- Generally, frequent use of very strong language e.g. "cunt" or "motherfucker" should be reserved for later in the schedule. However, use of the word "fuck", including its liberal use, is less likely to cause widespread offence even in programmes starting right on the watershed, as long as there is strong editorial justification and viewers are properly forewarned. For programmes that are scheduled to start actually at 9pm, it may be preferable that the use of strong language is avoided in the opening minutes of the programme. See 'Scheduling and the Watershed' earlier in this chapter.

- Because of its potential to cause widespread offence, use of the word "cunt" requires exceptional justification. In practice, its inclusion is rarely justifiable in any programme close to the watershed and, in particular, before 10pm. Even later in the schedule, it requires exceptional justification.

- Profanities e.g. "Jesus", "Christ Almighty," cause offence to many at whatever time of day they are broadcast and, if included, should be editorially justified bearing in mind the context.

- Profanities coupled with other highly offensive language e.g. "Jesus fucking

Christ” tend to cause widespread and serious offence. In the vast majority of cases, such expressions will be unacceptable at any time and will need to be removed either by ‘dipping’, ‘bleeping’ or editing out the sequence altogether.

● When ‘bleeping’ or ‘dipping’ the sound to disguise an offensive word, generally the entire word should be obscured, not just part of it. In addition, if the programme in question is transmitting before the watershed and, in spite of the fact that offensive language has been ‘bleeped’ or ‘dipped’, it is still very clear what the person is saying, it might, in exceptional circumstances, be appropriate to cover the mouth of the person uttering the offensive language with some sort of visual device. Note: this will rarely be necessary and should only be considered where the word is clearly mouthed straight to camera.

SEX & NUDITY

The inclusion of nudity, sexual behaviour, sexual imagery and references to sex should be editorially justified and defensible by the context in which they appear.

Before The Watershed

● Visual and verbal references to sex and matters related to sex should be editorially justified and appropriately limited and inexplicit.

● Representations of sexual intercourse must not be shown unless there is “... a serious educational purpose”. This means the actual act of sexual intercourse, both real and where it’s portrayed i.e. acted, as opposed to other sexual behaviour.

● The inclusion of nudity and all references to sexual acts, verbal and visual, must be justifiable by the context. What is acceptable in a mid-afternoon,

discussion programme aimed at adult women may well not be suitable for inclusion in a Saturday morning magazine show, which attracts large numbers of children. In addition, the way in which material is presented i.e. serious, flippant, crude etc. is likely to be a major factor in determining whether it is suitable or not.

It is most unlikely that any graphic sexual images or any explicit descriptions of sexual activity will be acceptable in pre-watershed programmes unless the programme has a serious educational purpose and, even then, any such material would require very careful thought and care.

So whilst, for example, showing inexplicit acts of foreplay e.g. kissing, is unlikely to be problematic in most pre-watershed programming, more overtly sexual activities e.g. foreplay involving genitalia or showing nudity, oral sex, masturbation, intercourse etc. is very unlikely to be suitable for a family audience. Even if the sexual activity is happening off camera and so out of view to the audience, it may still be too suggestive for transmission before 9pm, if it is clear what is happening.

Before the watershed, verbal references to sexual activity should be kept relatively inexplicit. Mild innuendo and oblique references to sex are more likely to be acceptable than comments or descriptions that leave little to the imagination or are merely crude.

Nudity in a sexual context is unlikely to be acceptable before the watershed unless strictly limited, whereas nudity in the context of an item about health or education e.g. a beauty treatment or medical examination, is less likely to exceed viewers’ expectations, for obvious reasons, although a flagging should be considered. Full frontal nudity (both male and female), even in a non-sexual context, is unlikely to be acceptable before the watershed, unless

there is a serious educational reason for showing it. Less explicit nudity, however, e.g. above waist nudity, catching a brief glimpse of someone from behind getting out of the shower, naturism, topless sunbathing etc. is unlikely to be problematic as long as it is editorially justified.

After the Watershed

● The inclusion of nudity and all references to sexual acts, verbal and visual, must be justifiable by the context.

After the watershed, it may be possible to justify the broadcast of explicit nudity and scenes of an explicit sexual nature, with the most explicit material being transmitted later in the schedule i.e. well after the watershed. Again, viewers’ expectations will be determined largely by the context in which the material appears and whether they have been properly forewarned.

However, even the most explicit material on terrestrial channels like Channel 4 and Five will not be as graphic or explicit as that which can legitimately be seen on video (particularly material classified by the BBFC as ‘R18’), on specialist PIN-encrypted television channels and at adult cinemas, because of the different make-up and expectations of their respective audiences.

Again, nudity after the watershed depends heavily on context. The vast majority of viewers, for example, do not object to seeing even the most explicit nudity e.g. close-ups of male and female genitalia, in the context of medical procedures such as cosmetic surgery, as long as it’s shown well after the watershed and they are properly forewarned. However, the same shots might not be acceptable if presented in a sexual context.

Blurring or pixelation, both before and after the watershed, is one way in which

otherwise unacceptably graphic and explicit material may be rendered acceptable. However, there may be circumstances where, even following pixelation, scenes remain too suggestive or graphic.

When considering the suitability of sexual material in a particular context, no distinction is made based on sexual orientation i.e. the considerations when deciding whether sexual material is suitable in any particular programme, at any particular time of day, are the same regardless of whether the sex is homosexual or heterosexual.

Sexual violence in programmes, as noted above, requires special care. See ‘Sexual Violence’ earlier in this chapter.

‘Sex & Children’

Sex between adults and children is illegal. Any depiction of such activity e.g. in a dramatic context or where real images are being obscured would require strong editorial justification and extremely careful handling.

The Protection of Children Act 1978 (as subsequently amended) makes it a criminal offence to take or show an indecent photograph (which includes filming for television) of a minor under the age of 18 and even to involve a minor in a photograph or television image that is itself indecent, even where the child’s role in it is not e.g. to have a child present or to broadcast an image where a child’s picture had been superimposed onto a pornographic image would be an offence. This also means that in drama, any actors that are required to be filmed in scenes of an explicit sexual nature must be at least 18 years old, regardless of the age of the character they are playing. If in any doubt about an actor’s age, producers must seek confirmation e.g. request to see his/her passport and take a copy to be held on file.

If your programme concerns children who are the victims of sexual offences this can raise difficult issues. Programme-makers who are intending filming or incorporating into their programme any sexually explicit material, particularly if it involves people under 18, should consult with their commissioning editor and assigned programme lawyer at an early stage and certainly before any filming takes place or before any such material is acquired or accessed to ensure that it complies with UK law and will be transmittable.

See 'Programmes Involving Under 18s' Checklist at chapter 6.

ACQUIRED MATERIAL

The Code contains the following rules in relation to acquired material that is already the subject of a BBFC (British Board of Film Classification) certification.

- No film refused classification by the BBFC may be broadcast unless it has subsequently been classified or the BBFC has confirmed it would not be rejected according to standards currently operating.
- If the BBFC has classified a film subject to certain cuts, then no version of the film can be shown on television which includes that cut material unless: a) the BBFC has confirmed the material was only cut in order for the film to be classified at a lower category e.g. for younger viewers; or, b) the cuts were required in the past and the BBFC has confirmed that such cuts would no longer be required under current operating standards.
- '18' Certificate films must never start before 9pm on Channel 4 and Five. Even then, such films should comply with other provisions of the Code and may well only be suitable for a later transmission.

- Films with a BBFC 'R18' certification cannot be broadcast on any television channel at any time.

DISCRIMINATORY TREATMENT OR LANGUAGE

Broadcasting discriminatory comments or showing the discriminatory treatment of minorities, particularly of those that are vulnerable, may give rise to widespread offence, at any time of day. The Code states that any such discriminatory treatment or language "... e.g. on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation ..." must be justified by the context. You should note that material of this nature could also be subject to other legal restrictions (including the criminal law). If you have any queries, please contact your commissioning editor and programme lawyer at the earliest opportunity. Below are some of the more common areas where problems can arise.

Ethnic Minorities

- Nothing transmitted should be intended to stir up racial hatred or, taking into account the circumstances, be likely to do so.
- Racist terms should be avoided, as should insensitive comments or stereotypical portrayals of particular ethnic groups, unless there is editorial justification and they can be justified within the context of the programme. For example, viewers are likely to accept footage of racist behaviour and language in a current affairs programme exposing and clearly condemning racism but, perhaps, less so in a reality show or discussion programme where an individual is effectively seen as having a platform to promote racist views without being properly challenged.

- Some viewers find the use of the most racially offensive words such as 'nigger' and 'paki' unacceptable and offensive in any context. Viewers may still be caused considerable offence, even where the person who uses the word has no racist intent, e.g. the use of the 'n-word' in a rap song.

- Even where editorially justified an appropriate flagging or warning that a programme contains racially offensive behaviour or language may be necessary.

Disabilities

- Comments or jokes at the expense of people's disabilities are likely to cause widespread offence and be unacceptable. Such humour can be offensive to many, even where no malice is present.
- Unless editorially justified, patronising or outdated derogatory expressions relating to disability e.g. cripple, spastic, midget etc. should also be avoided and replaced with more neutral terms e.g. disabled person, person with cerebral palsy, dwarf etc.

- Stereotyping disabilities or medical conditions is likely to be problematic e.g. stereotyping people with the condition Tourettes as constantly swearing; or the casual use of words like "schizophrenic" to mean "in two minds" can also cause offence. The inclusion of material at the expense of people with disabilities must be justified editorially and by the context.

Sexual Orientation

- As with ethnic minorities and the disabled, the casual or insensitive use of offensive terms, such as 'poof' or 'queer', can cause serious offence, regardless of intention. In addition, use of word 'gay' as a negative adjective can cause offence, even where none is intended.

Religion

Religion and religious beliefs are very important to many viewers and care should be taken with any material that might amount to an abusive or derogatory treatment of the religious views and beliefs of those belonging to a particular religion.

There is, of course, scope for valid criticism, negative comment and humour based on or concerning many aspects of religion but it should always be justifiable editorially and by the context. Care needs to be taken not simply to undermine or ridicule central religious beliefs. See also "Religious Programming" at subchapter chapter 4E.

Other Minorities

Similar considerations apply to the treatment of other minority groups within programmes e.g. older people and minority language groups. As with race, disability, sexuality or religion, there is some latitude for comments or humour based on or around these groups but where comments are made, programme-makers and broadcasters must consider the potential of the comments to cause real offence. Any offence should be justifiable on editorial grounds and by the context.

PRESERVING HUMAN DIGNITY, SCENES SHOWING HUMILIATION AND DISTRESS

Care needs to be taken when showing or portraying people in circumstances where they are being humiliated or are in a state of distress, even where they have consented, as this, in turn, may cause distress and offence to viewers. Such scenes are most likely to be included in news and factual programmes, although of course they may also be portrayed in drama and film and still have the potential to cause serious upset and offence. In all

cases, the inclusion of such scenes needs careful thought and must be justified editorially and by the context.

News & Factual Programming

Many stories in the news, by their very nature, involve people who are victims of one kind or another e.g. victims of war, terrorism, crime, natural disaster, illness or accident. Any references to such stories require care and sensitivity and must have regard to the feelings not only of the victims and their families (who may or may not be watching) but also of the wider viewing public. For example, broadcasting images of seriously injured, identifiable people in the immediate aftermath of a terrorist attack may well cause serious offence to many viewers who may consider such images to be intrusive, not to mention distressing. Programme-makers and broadcasters must also have regard to the individual privacy rights of those they film. See Chapter 4D, Privacy. See also Chapter 5C, Privacy, Confidence and Data Protection'.

Footage that actually shows individuals about to die or dying, being killed or murdered i.e. around or at the actual point of death, require exceptional justification for obvious reasons. The inclusion of any such material will require reference up in accordance with Channel 4's and Five's internal compliance procedures and flagging in advance to viewers.

Entertainment Programming and Topical Humour

Many entertainment programmes base humour on and around stories in the news. Such programmes are entirely legitimate but, again, where stories involve victims, programme-makers must have regard to the feelings not only of the victims and their families (who may or may not be watching) but also to the general viewing public who are likely both to empathise and sympathise with the

victim(s) and those close to them.

Obviously there will be certain news stories in respect of which any attempt at humour will be problematic e.g. a joke about hostage taking around the time that British citizens were being held hostage and murdered in Iraq would almost certainly cause widespread offence and be unacceptable. Similarly, jokes concerning major natural disasters or serious accidents that involve loss of life, around the time of these events, would also be problematic.

However, there will be other stories in the news involving victims which are not so clear-cut. Generally, the more serious the plight of the victim(s), the less likely that humour or flippant comment based on the story will be permissible. For example, common sense dictates that it would be much more difficult to base humour on or around a story about the brutal mugging of a pensioner than it would be about a story concerning a businesswoman who managed to fight off or outwit her attackers. In addition, some stories that involve a victim may be so absurd that some humour is acceptable e.g. many tabloid stories.

When considering whether it is acceptable to refer to or base humour on such stories, programme-makers and broadcasters should also have regard to the amount of time that has lapsed between the event in question and the comments being made. Similarly, geographical location may also play a part in deciding whether particular comments can be broadcast. For example, viewers are likely to be much more tolerant of humour based on a story about someone who has been the victim of a crime in a country on the other side of the world, than they would about a similar story involving a victim in the UK. With the latter, not only may the victim or his/her friends and family be watching but the

British viewing public are more likely to feel empathy and sympathy for a victim that is close to home.

Similar considerations apply when people in the public eye die. The vast majority of viewers expect broadcasters to display a degree of respect for those that have recently died and for those close to them left behind. Consequently, humour based around a recent death is unlikely to be acceptable.

Intervening Events

Real life events, or 'intervening events' as they are often referred to, which could not reasonably have been anticipated when a programme was commissioned or scheduled, may render a programme inappropriate for its planned transmission and, accordingly, the programme may have to be edited or postponed to a later date.

Intervening events are generally real-life tragedies generating widespread public concern. Examples of intervening events might include:

- a terrorist attack involving loss of life or limb, especially if it is close to the UK or significantly involves British people;
- a large scale accident such as a plane crash or a natural disaster like an earthquake or tsunami involving substantial loss of life, again especially if it is close to the UK or significantly involves British people;
- the recent death or serious illness of an individual featured in, referred to or criticised in a programme, who may be but is not necessarily a celebrity or in the public eye.

For example, it may well be appropriate to postpone a disaster movie about a plane crash (which is a piece of entertainment) in the days following a real life domestic plane crash, or to re-edit an earlier

recorded programme which features humour at the expense of an individual who by the time of intended transmission is seriously ill or has just died.

Decisions about whether or not to re-edit or postpone the broadcast of programmes because of 'intervening events' are dependent on the particular circumstances and are rarely clear cut. For this reason they should be referred up in accordance with Channel 4's and Five's internal compliance procedures.

More generally, programme-makers and commissioning editors should always keep an eye on what is happening in the news and consider carefully whether that could have any effect on the suitability of their programmes for broadcast.

Note: intervening events may also render programmes unsuitable for broadcast for legal reasons. See Chapter 5A, 'Defamation' and Chapter 5B, Contempt and Reporting Legal Proceedings.

DRUGS, SMOKING, SOLVENTS AND ALCOHOL

Before the Watershed

● The use of illegal drugs, drug abuse, smoking, solvent abuse and the misuse of alcohol must never be condoned, encouraged or glamorised and scenes showing such material should generally be avoided unless there is editorial justification. They must not be featured in children's programmes unless there is strong editorial justification.

After the Watershed

● These activities should not be condoned, encouraged or glamorised in programmes likely to be widely seen by under 18s unless there is editorial justification.

PROGRAMMES INCLUDING EXORCISM, THE OCCULT & THE PARANORMAL

The Code states that *“Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real) must not be shown before the watershed”*.

This rule does not apply to drama, film or comedy.

The word “demonstration” implies some sort of physical activity and an actual attempt to undertake these practices, as opposed merely to a discussion of the issues or what’s involved.

Note: Ofcom Code guidance provides the following definitions:

“Exorcism” means the banishing of unwanted forces or entities from a person, place or thing and may be done in the name of religion or otherwise.

“Occult practices” means practices involving secret knowledge or a secret activity usually of a religious, spiritual or mythical nature that invoke unknown powers or forces and risks a negative outcome. It includes most spells, especially those that appear to be aimed at interfering with another person’s rights. Tarot is regarded as an occult practice, although insight into the future by means of other types of cards generally falls within the “paranormal”.

The “paranormal” is unexplained psychic phenomena which is intended to lead to positive outcomes. It includes clairvoyance (seeing what is out of sight), clairaudience (perceiving, as if by hearing, what is inaudible), extra sensory perception and mediumship (communication with the spirits of the dead). However, ouija, given that it is generally deemed to risk a

negative outcome, is likely to be classed as occult.

The Code also states that: *“Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching”*.

and,

“Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity”.

Thus entertainment programmes which feature paranormal practices i.e. programmes where viewers know that what they’re seeing is some sort of illusion, as opposed to being the result of some supernatural, unknown force, can be broadcast before the watershed, but not when significant numbers of children may be watching i.e. before and after school up until about 8pm on weekdays and throughout the day at weekends and during school holidays.

In addition, there is a requirement that when the above practices are purporting to be real in post-watershed programmes (they could not be shown before), they must be treated with due objectivity, meaning that programmes should not simply accept at face value what is happening as some sort of psychic phenomena but question and explore what alternative explanations might exist.

“Divination” means foretelling the future using magical, religious or supernatural means. There are many forms e.g. astrology, dice, crystal balls, tarot, tea leaves etc. Some e.g. tarot are deemed to be part of the occult, although most are classed as merely paranormal activities.

When astrology is not based on any religious or paranormal belief system, such as in the case of most daily horoscopes, then it will be suitable for broadcast at any time of day and is not deemed to be a paranormal practice within the definition of the Code. However, when it is based on a paranormal belief system, then it falls within the definition of paranormal practices and the restrictions as outlined above would apply.

The Code also states that:

“If a demonstration of exorcism, the occult, the paranormal, divination or practices related to any of these is for entertainment purposes, this must be made clear to viewers”.

and

“Demonstrations of exorcism, the occult, the paranormal, divination or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life changing advice directed at individuals”.

“Life changing advice” is defined as *“... direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships”*. So a clairvoyant telling someone to invest in a particular company or leave their job or their partner is prohibited at any time of day.

HYPNOSIS

Hypnosis can be presented purely as entertainment (stage hypnosis) or as a means of helping individuals overcome particular problems or anxieties e.g. phobias. In all cases, the Code requires that broadcasters must *“...exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers ...”* and *“... the hypnotist must*

not broadcast his/her full verbal routine or be shown performing straight to camera”. In addition, hypnotists must ensure that they are complying with The Hypnotism Act 1952. Programme-makers should refer to the legal and compliance department for advice if hypnotism is to be included within a programme.

SUBLIMINAL MESSAGES

The Code states that techniques must not be used which *“... exploit the possibility of conveying a message to viewers ... or of otherwise influencing their minds, without their being fully aware of what has occurred...”*. In other words, if an image is deliberately included that is so brief that the average viewer would not realise that they’d seen it, then that would be unacceptable.

SIMULATED NEWS

Sometimes entertainment shows and dramas, even documentaries, include fake news items within them, which can seem authentic. The Code states that broadcasters must ensure that there is no reasonable possibility of viewers being misled into believing they are watching real news items in such circumstances.

PHOTOSENSITIVE EPILEPSY

Some viewers with photosensitive epilepsy are sensitive to flashing lights and certain repetitive visual patterns, many of whom don’t even know they have this sensitivity.

All programmes should comply with Ofcom’s guidelines referred to in Rule 2.13 of the Code. Programmes that do not comply are likely to fail their technical review and sequences may have to be altered or removed. The guidelines

can be found on Ofcom’s website (www.ofcom.org.uk), annexed to the guidance notes accompanying Section 2 of the Code.

As a very basic guide, if a sequence of flashes occurs more than 3 times per second and covers more than a quarter of the screen, it is likely to be problematic.

On occasions the Code anticipates that it may not be possible to follow this guidance and where that is the case and where broadcasters can demonstrate that the broadcasting of such flashing lights and/or patterns is editorially justified, alerting viewers in advance will suffice e.g. flash photography in a live or fast turn around news item at a film premiere or some other similar event. The warning should be given verbally and, where appropriate, in text, at the start of the programme or particular item. Before this is done, producers should always seek the advice and consent of their commissioning editor.

PROTECTING UNDER 18s FAQs

Q. What is meant by the term “children”?

A. In compliance terms, “children” are individuals under the age of 15, so when the Code states that material before the watershed should not, in general, be unsuitable for children, this means viewers under 15. The Code contains a number of rules that relate specifically to children and others that relate to anyone under 18, which of course includes children.

In terms of the law, however, ‘15’ has little significance. In law, ‘18’ is the most significant age in this context, as this is the age at which an individual reaches ‘majority’ or adulthood. However, note that in relation to some areas of the law, once an individual reaches 16, this is significant e.g. young people can legally marry, and waive their legal right to anonymity in some circumstances.

The Code says that parental consent should normally be obtained for under 16’s taking part in programmes.

Q. Does everything before 9pm have to be suitable for young children?

A. The Code states that “material unsuitable for children (those under 15) should not, in general, be shown before 9pm or after 5.30am”. However, what is suitable or unsuitable will depend on a number of factors, so material should always be judged on the basis of the particular context and the likely audience. The Code anticipates that there may be material broadcast before the watershed which potentially could distress children and that, in such circumstances, broadcasters should flag this up to viewers with clear information about the programme’s content. See ‘Scheduling and the Watershed’ above.

Q. Can the word “fuck” ever be included in programmes before 9pm?

A. No. The Code states that the “most offensive language”, which includes the word “fuck”, should never be broadcast before 9pm. It does not matter what the context is or how strong the editorial justification is: if the word “fuck” or any derivative is included within a programme before 9pm, it will amount to a breach of the Code. See ‘Offensive Language’ above.

Q. ‘Bleeped’ or ‘dipped’? And does a person’s mouth also have to be pixelated?

A. It generally makes no difference whether a potentially offensive word is cut, ‘bleeped’ or ‘dipped’; the important point is that no part of the offensive word is audible. However, some viewers find numerous bleeps in a pre-watershed programme annoying. It is best to check with your commissioning editor, as they may have a preference from a stylistic point of view. Taking the further precaution of pixelating a person’s mouth will only be necessary in very rare cases e.g. when it is patently clear that a person or character is using the most offensive language e.g. someone mouthing “cunt”, “motherfucker” or “fuck” directly to camera, at a time when large numbers of children may be expected to be watching. See ‘Offensive Language’ above.

Q. Does nudity always have to be pixelated? What about when it's non-sexual?

A. Whether or not nudity will need to be pixelated will depend on the context in which it appears e.g. the time of transmission, whether it is in a sexual context or not. Before the watershed, nudity in a sexual context is likely to require pixelation although mild non-sexual nudity may be acceptable e.g. topless sunbathing, a brief shot of a naked person from behind. After the watershed, nudity in a non-sexual context, even full-frontal nudity, is unlikely to be problematic or require pixelation. Whether nudity in a sexual context will need to be pixelated again will turn on the level of explicitness and whether it is justified editorially and by the context. See 'Sex and Nudity' above.

Q. Can dangerous behaviour ever be included in programmes before 9pm?

A. All dangerous or potentially dangerous behaviour must, of course, be judged in context and be justifiable. Often such behaviour will be justifiable - for example car chases, people jumping out of aeroplanes, extreme sports etc. are all included in many programmes and films that are broadcast before the watershed. The sort of material that is likely to be problematic is dangerous behaviour that is capable of easy imitation by children and which would lead to harm e.g. showing a child playing 'hide and seek' and hiding in the drum of a washing machine; including a stunt with knives or matches in a programme before the watershed i.e. behaviour involving items found in the home which children are likely to be able to get their hands on and might copy. See 'Violence and Dangerous Behaviour' above.

Q. In what circumstances is it acceptable to show the drinking of alcohol or smoking before the watershed?

A. The featuring of alcohol within programmes before the watershed is commonplace e.g. in soaps, television drama, movies, televised events, some entertainment show formats, cooking programmes etc. In all cases, however, it should be justified by the context in which it appears and not be unduly prominent.

However, the misuse of alcohol i.e. heavy or reckless drinking, should generally be avoided in programmes before the watershed and must not be encouraged, condoned or glamorised unless there is editorial justification (and very strong editorial justification for programmes made primarily for children) e.g. the storyline taken as a whole highlights the perils of misusing alcohol by including the negative consequences.

The same principles apply to smoking as the misuse of alcohol i.e. it should generally be avoided before 9pm and not condoned, encouraged or glamorised unless there is editorial justification (and very strong editorial justification in programmes made primarily for children). Gratuitous smoking shots, such as prolonged dragging on a cigarette, should be removed from pre-watershed programmes where possible. See 'Drugs, Smoking, Solvents & Alcohol' above.

Q. Do special rules apply when under 18s are involved in the making of programmes?

A. The Code contains a number of rules specifically aimed at protecting those young people who are involved in the making of programmes e.g. interviewees, actors,

contestants etc. The Code states that parental consent should normally be obtained for under 16's taking part in programmes. In addition, programme-makers and broadcasters must ensure that: a) due care is taken over the physical and emotional welfare of under 18s and their dignity is respected, irrespective of whatever the young person or their parents have consented to; b) people under 18 are not caused unnecessary distress or anxiety by taking part in programmes; and, c) prizes aimed at children are appropriate to the age range of the target audience and the participants. See generally 'Programmes Involving Under 18s Checklist' at chapter 6.

HARM & OFFENCE FAQs

Q. What does it mean to say that something “...is justified by the context”?

A. Decisions about whether potentially harmful or offensive material is justified by the context in which it appears will often be subjective and there are always likely to be some viewers that disagree with the choices made by broadcasters. However, by carefully considering a number of particular factors, programme-makers and broadcasters aim to ensure that the content of their programmes does not exceed the expectations of the vast majority of viewers. Whilst not an exhaustive list, factors which determine the context include: the particular nature of the potentially harmful or offensive material (the tone, how explicit/graphic it is); when the material is scheduled (late night, pre-watershed, in school time, at times when large numbers of children are likely to be watching); the type/genre of the programme (factual, drama, entertainment, educational, intelligent, artistic, comedic); the audience’s expectations (prior knowledge, whether an on-air warning was given); the nature of the Channel on which the material appears (specialist Channel or mainstream terrestrial broadcaster).

Q. Can very adult material be shown straight after the 9pm watershed.

A. After 9pm adult material may be shown as long as it is justified by the context, but the Code makes clear that there must be a gradual progression towards more adult material i.e. “9pm is a watershed, not a waterfall”. Very adult material, therefore, should be reserved for well after the watershed.

Family viewing resumes from 5.30am. Whilst there is no regulatory requirement that there should be a gradual progression towards less adult content as schedules approach 5.30am, it is advisable not to show the most adult material immediately before then. Immediately thereafter, of course, programmes must be entirely suitable for family viewing. See ‘Scheduling and the Watershed’ above.

Q. Does the word “cunt” always have to be bleeped or edited out?

A. Before the watershed, yes. After the watershed, not always. Like any other potentially offensive word “cunt” can be included in programmes after the watershed, if it is justified editorially and by the context. However, to the vast majority of people it is considered to be by far the most offensive word and, thus, requires exceptional justification and an on-air warning for “very strong language”. See ‘Offensive Language’ above.

Q. Do special rules apply to trailers for programmes?

A. As audiences are likely to come across most trailers and promotions for programmes without any prior warning and, therefore, any expectations of what they are about to see, they cannot generally be forewarned about the content e.g. that it contains strong language or adult sexual content. Furthermore, the context is unlikely to justify the inclusion of such material. Particular care is required, therefore, both in relation to the content and the scheduling of such material. On rare occasions, where trailers do

contain more challenging material, they should be scheduled appropriately and they may exceptionally be preceded by an appropriate content warning. See ‘Programme Trailers & Promotions’ above.

Q. What sorts of things should viewers be warned about? What should on-air warnings say?

A. Viewers should be forewarned at the start of a programme of any material that may cause significant offence e.g. strong language, sex, violence, etc.. Whether or not a warning is appropriate will of course depend to a large extent on the context in which the material appears e.g. we may warn viewers about use of the word “fuck” in a programme at 9pm, but not one starting at 10:30pm where there are only a few instances. Warnings should be clear and unambiguous e.g. “This programme contains strong language from the start”; “This programme contains lots of very strong language from the start and throughout, scenes of a violent, sexual nature and is for adults only”. Occasionally, we may decide it is appropriate to warn both at the start of a programme and again going into the programme part containing the potentially offensive material e.g. “Now we return to [name of programme] which contains scenes of graphic violence which some viewers may find disturbing”. See ‘On-Air Warnings’ above and, for Channel 4 programmes, see also Channel 4’s Compliance Procedures at Chapter 2.

Q. Can you warn audiences about the content of pre-watershed programmes?

A. Since programmes before the watershed should, as a rule, be suitable for children, warnings of the type given above should not be necessary i.e. programmes before the watershed should not contain such material. However, there may be times where we may be justified in broadcasting challenging or unexpected material before the watershed e.g. showing scenes of war or disaster in news programmes, which some viewers may find distressing. In such circumstances, clear ‘flaggings’ should be given e.g. “the following report contains scenes of famine and death which some viewers may find distressing”. In addition, there may be scenes which, again, whilst justified may distress or surprise some viewers, including children, e.g. a medical examination, surgical procedure or an animal having to be put to sleep. Again, such material should be clearly flagged up to viewers in advance, including into the programme part containing the material if necessary.

Q. When dramatising real events do all reconstructions need to be labelled?

A. No, it is only necessary to label reconstructions as such where there is a real risk that viewers may be misled i.e. not realise that what they are watching is a reconstruction. Reconstructions may also be made apparent by the way the film looks or is treated. See ‘Viewer Trust: Truth, Accuracy and the Importance of not Misleading the Audience’ above.

Q. Does accuracy really matter in a ‘formatted’ or entertaining documentary or ‘life style’ show?

A. Absolutely. Viewer trust is of paramount importance. Programmes must not mislead viewers and programmes must be true, accurate and fair. The importance of viewer

trust is not limited to current affairs, documentaries or conventional factual programmes. Simply because a programme is primarily designed to entertain or is 'formatted' does not mean that there is a licence to mislead the audience. Please refer to and follow the Channel 4 Viewer Trust Guidelines at Appendix 7A and Five's Viewer Trust Guidelines at Appendix 8A. Also, see 'Viewer Trust: Truth, Accuracy and the Importance of not Misleading the Audience' above.

Q. What does it mean to 'mislead viewers'? Doesn't all television mislead the audience to a degree?

A. Our viewers are entitled to respect and that means they must feel confident that they can take what they see or are told in a programme at face value. Programme-makers must never stage, construct, reconstruct, re-enact or otherwise fake any scenes of actuality and pass them off to our viewers or to Channel 4 or Five as the real thing. Please refer to and follow the Channel 4 Viewer Trust Guidelines at Appendix 7A or Five's Viewer Trust Guidelines at Appendix 8A. See also 'Viewer Trust: Truth, Accuracy and the Importance of not Misleading the Audience' above.

Q. Can exorcisms be shown on television?

A. Yes but the Code contains specific rules in relation to the content and scheduling of such programmes, as it also does with programmes that include occult practices and paranormal behaviour. See 'Programmes Involving Exorcism, the Occult and the Paranormal' above.

Q. Can programmes portray someone committing suicide?

A. Yes but programmes that make reference to suicide, particularly those that show visual demonstrations of methods of suicide, require very careful thought and handling. Scenes showing the techniques of suicide should only be included if justified editorially and by the context. In addition, it may be appropriate to seek professional, expert advice on how the matter is being handled within a particular programme and how it is likely to be perceived by vulnerable viewers. See 'Suicide & Self Harm' above.

Q. Can someone actually be shown taking drugs on television?

A. Yes. Provided it is justified by context, appropriately scheduled and where necessary there is a warning. There must be no detailed description of 'how to' take drugs and drug taking must not be shown as problem-free or glamorous. If the person shown on camera taking drugs is a real person, programme makers should consider the potential consequences of showing this on television. See 'Drugs, Smoking, Solvent & Alcohol' above. See also Chapter 4B, 'Crime' and 'Programmes Involving or Concerning Crime' Checklist at Chapter 6F.

4B. CRIME

| | |
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KEY POINTS

Encouraging or Inciting Crime

- Programmes must not contain material that is likely to encourage or incite crime, or lead to disorder.

- Programmes should not contain detailed descriptions of criminal techniques that could enable the commission of the crime, unless there is editorial justification.

Payments

- Confessed or convicted criminals should not be paid (or benefit financially in some other way) for interviews about their crimes unless it is in the public interest to do so.

- Any programmes featuring convicted or confessed criminals should be referred to the legal and compliance department for early advice. No payment or commitment to pay a criminal should be made before this has been approved by the commissioning editor and programme lawyer.

- In criminal legal proceedings, no payment or promise of payment must be made to a witness or potential witness until proceedings have ceased i.e. the defendant has been convicted or acquitted. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

- Where criminal legal proceedings have not commenced but are likely and foreseeable e.g. following an undercover investigation into criminal activity, payments to those who reasonably may be expected to become a witness should only be made if it is in the public interest e.g. the criminal activity could not reasonably have been uncovered without the payment being made.

Under 18s

- When reporting on legal proceedings, any under 18s involved must not be identified, even indirectly, where to do so would breach the law. Even when reporting on pre-trial investigations where there is no legal prohibition on identifying under 18s, careful consideration should be given to the position of potentially vulnerable young people and children before identifying them or broadcasting personal details about them. See also 'Contempt and Reporting Legal Proceedings' at Chapter 5B.

CRIME

[See Section 3 of the Code at page 20]

Many programmes, including the news, feature or deal with criminals and/or criminal behaviour in one way or another. It is a regular feature of popular drama and can crop up in a variety of ways in virtually any factual programme.

For obvious reasons, any programmes dealing with or touching upon criminal behaviour need to be handled with care and are likely to require advice from the programme lawyer from an early stage and throughout.

Below is a summary of the regulatory rules in relation to dealing with crime in programmes. This should be read in conjunction with Chapter 5B, Contempt and Reporting Legal Proceedings; Chapter 5F, Programmes Involving Criminal Activity; and, Chapter 6F, Programmes Involving or Concerning Crime' Checklist.

MATERIAL LIKELY TO ENCOURAGE OR INCITE CRIME OR LEAD TO DISORDER

Material likely to encourage or incite crime or lead to disorder must not be included in programmes.

- This applies to all crime i.e. criminal law offences punishable by a fine or imprisonment.

- "Disorder" relates to the criminal offence of 'civil disorder', but also more generic acts "... that might lead to or provoke the commission of an offence".

- Whether material is "likely" to encourage or incite crime or lead to disorder will depend on a number of factors. Merely filming and broadcasting criminal activity will not generally, in itself,

amount to encouragement or incitement to commit that offence. However, featuring criminal activity and presenting it in a way which arguably glorifies or glamorises it, or which fails to show the negative consequences i.e. for both victim or perpetrator, might well be problematic. Direct calls or deliberate provocation to viewers to commit crimes which are left unchallenged in the programme e.g. giving air time to a religious extremist actively calling for violent acts to be carried out against members of other faiths, would almost certainly be likely to breach this rule and potentially the criminal law.

- Where criminal activity is featured in programmes, it should normally be made clear that the activity in question is indeed criminal, if it is not obvious, in case some viewers mistakenly believe such behaviour is legal and, therefore, acceptable.

- In relation to certain types of crime featured in programmes, it may be appropriate to ensure that the negative consequences of the criminal activity are included (over and above the fact that it's an offence), if there is a risk that the activity might appear glamorous or problem free e.g. drug abuse.

DESCRIPTIONS OR DEMONSTRATIONS OF CRIMINAL TECHNIQUES

Descriptions or demonstrations of criminal techniques containing essential details that could enable the commission of a crime should not be included unless editorially justified.

- This rule is more likely to apply to those crimes that involve generally unknown methods and techniques, that members of the viewing public would be unlikely to be aware of e.g. how to commit ingenious types of fraud.

● Even in programmes the very subject of which is to examine these types of crime in detail, it will not normally be necessary to show each and every step and technique involved in the commission of the offence. In those rare cases where it is, thus potentially enabling criminally inclined viewers to copy such behaviour, there should be strong editorial justification e.g. it might be essential to show all the elements of a crime in order for viewers to be able to understand it properly and, thereby, be able to guard against such crime themselves.

PAYMENTS

Payments to Criminals

No payment, promise of payment or payment in kind may be made to convicted or confessed criminals for interviews or some other contribution to the programme in relation to their crimes, the only exception being where it is in the public interest.

● Generally payments cannot be made to criminals, whether they have been convicted or not, for interviews about their crimes. The public policy reason for this is to prevent criminals profiting from their crimes.

● The Code refers to “payment”, “promise of payment” and “payment in kind”. This covers making (or promising to make at some future time) cash payments or any other kind of payment e.g. a gift, paying off a debt etc., to the criminal for whatever reason. Only actual and necessarily incurred out of pocket expenses may be reimbursed.

● The payment must be for an interview or some other contribution to the programme related to the crime. Thus it would not be a breach of this section to pay a convicted criminal for taking part in a programme, if the contribution was not based upon the crime he/she had committed e.g. in theory, a convicted burglar could be paid for taking part in a reality game show (but

there might be other reasons why that would be inappropriate).

● The words “some other contribution” are included to prevent circumvention of the rule. For example, it would prevent programme-makers paying a licence fee to a criminal for photographs relating to the crime that he/she owns and supplies to the programme.

● Family members or associates of the criminal can be paid if they themselves make a contribution to the programme, as long as that payment does not benefit the criminal in any way e.g. the family member may be the criminal’s victim. Where family members or associates do not themselves actually make a contribution to the programme, it is unlikely that payments to them will be acceptable, as this is likely to be seen as benefiting the criminal. Decisions about whether or not to pay family members or individuals close to criminals rather than the criminal him/herself should always be referred to the commissioning editor and programme lawyer.

● Payments, promises of payment and payments in kind can be made to criminals for interviews and other contributions about their crimes, where it is in the public interest. Whether or not there is a public interest will depend on a number of factors including: whether a payment is necessary i.e. would the criminal agree to be interviewed regardless of payment?; the purpose of the interview or contribution to the programme; what benefits there might be in the interview going ahead; the nature and seriousness of the crime; the likely feelings of/the effect on the victims, if any; the time elapsed since the commission of the offence and the programme etc.. Where, after careful consideration, such a payment is made in the public interest, Ofcom states in its guidance that it may be appropriate to inform viewers in the

programme that a payment has been made and the reasons why.

Any programmes featuring convicted or confessed criminals should be referred to the legal and compliance department for early advice. No payment or commitment to pay a criminal should be made before this has been agreed to by the commissioning editor and programme lawyer. In the case of serious criminal behaviour, the matter should be referred up for approval in accordance with Channel 4’s and Five’s internal compliance procedures.

Where Proceedings are Active

Proceedings become active when someone is arrested or charged with an offence. See Chapter 5B, ‘Contempt and Reporting Legal Proceedings’.

Payments to Witnesses in Legal Proceedings

No payment or promise of payment may be made, directly or indirectly, to any witness or any person reasonably expected to be called as a witness.

● Payments or promises of payment must not be made to witnesses or those likely to become witnesses. There is no ‘editorial justification’ or public interest exception. Clearly this rule only prohibits payments to witnesses/potential witnesses where their contribution to the programme is connected to the legal proceedings in which they are or may become a witness.

● Again, this provision covers direct and indirect payments i.e. that is anything of monetary value to the witness/potential witness or those connected to them that would be of benefit to the witness/potential witness.

Payments Made Dependent on the Outcome of a Trial

No payment to any witness or any person reasonably expected to be called as a witness may be suggested or made dependent on the outcome of a trial.

● This rule is designed to prevent those sorts of deals that have occurred in the past, where media organisations have promised to pay witnesses a sum of money for their story, on the condition that the defendant is found innocent or guilty, more commonly the latter. There are obvious public interest reasons for outlawing this practice, not least that it may call into question the motives of those giving evidence. Will a witness feel pressured to embellish their evidence in order to secure a conviction, thus enabling them to collect their ‘reward’? Whether or not a witness actually does fabricate or exaggerate his/her evidence in order to benefit from the promised sum is not the key issue; the problem arises from the doubt the promise of payment sows in the minds of the jury.

Reimbursing Expenditure and Loss of Earnings

Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

● Payments can be made to witnesses/potential witnesses you are filming with in order to reimburse them for actual expenditure they’ve incurred e.g. travel costs, loss of earnings as a direct result of the recording.

Programme-makers should refer to the legal and compliance department for advice wherever a witness or potential witness in legal proceedings is taking part in a programme. Any payments to such contributors to cover expenditure or loss of earnings must be approved by the commissioning editor on the advice of the programme lawyer and referred up in accordance with Channel 4’s and Five’s

internal compliance procedures where necessary before any payment is offered or made.

Criminal Legal Proceedings which are “Likely and Foreseeable”

Payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest e.g. investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Such payments should be disclosed to the prosecution and defence if the person does become a witness in any subsequent trial.

- Where proceedings are not actually active i.e. no-one has been arrested or charged, but where they are foreseeable and likely at some future time, then payments can be made to potential future witnesses but only if it is clearly in the public interest. For a discussion of what constitutes the “public interest” see later at Chapter 4D.

- This rule applies not only to programmes where there is an on-going police investigation but also to those which uncover previously undetected crime and lead directly to proceedings being brought. For example, in a current affairs programme investigating a criminal drugs smuggling gang, the programme-makers may need to make a payment to a business associate of the gang in order to corroborate and prove the allegations, although this would need careful consideration and advance approval from the broadcaster. The programme-makers and broadcaster may well anticipate that following transmission, this person is very likely to be called as a witness in any subsequent prosecution. In such a case, the payment is likely to be justified because without it, the whole programme may fall i.e. the criminal practices being investigated will not be able to be proved. Following transmission, when handing

over material to the police, the programme-makers and broadcaster should alert the authorities to the fact that this person has been paid.

COURT REPORTING & UNDER 18s

In addition to the law [see Chapter 5B, Contempt and Reporting Legal Proceedings], the Code contains rules relating to the coverage of sexual and other offences in the UK involving under 18s, as follows:

- Where legal restrictions apply prohibiting the identification of minors involved in legal proceedings, programmes must be careful not to publish any material that would directly or indirectly lead to any of those individuals being identified, whatever their involvement in the proceedings. Where no such legal restrictions apply e.g. in the majority of cases where minors are given anti-social behaviour orders (ASBOs), then, in common with other parts of the media, there is, correspondingly, no regulatory restriction and minors can be identified, subject to the following:

- When covering pre-trial investigations into alleged offences, even where no legal restrictions apply, broadcasters should have particular regard to the vulnerability of any minor involved before broadcasting his/her name, address, identity of any school or other educational establishment, place of work or any picture of them.

PROGRAMMES INVOLVING CRIMINAL ACTIVITY

See also Chapter 5F, ‘Programmes Involving Criminal Activity’ and Chapter 6F, Programmes Involving or Concerning Crime Checklist.

In addition to the requirements of the Code, programme-makers making programmes involving criminal activity should have regard to the following.

Filming with criminals

When filming with criminals or filming criminal activity, bear in mind the following:

- Proceed with caution. Always seek appropriate legal advice from the programme lawyer before filming takes place. Criminals do not tend to be truthful and have a vested interest in their own protection, so it is advisable to keep them ‘at arm’s length’ and not to take at face value everything they tell you.

- When dealing with criminals that have a history of violence or intimidation, take appropriate precautions to ensure your team’s safety and do not give criminals home telephone numbers and addresses. If you have any safety concerns raise this with your commissioning editor and programme lawyer immediately.

- Be aware that individuals admitting criminal behaviour on camera could be investigated or even prosecuted after transmission and the film, including rushes, could be obtained by the police by a court order and used as evidence [see ‘Police Search Powers and Journalistic Material’ later at Chapter 5E]. Criminals tend to deny earlier admissions of criminality if challenged, so be appropriately wary, do not take what they say and do at face value. Be conscious of the fact they may deny what they have said later on and that they may try to blame you in some way.

See also the Channel 4 Viewer Trust Guidelines at Appendix 7A and Five’s Viewer Trust Guidelines at Appendix 8A.

Not Assisting in Criminal Activity

- If a programme-maker assists any criminal activity they too are likely to be guilty of a criminal offence.

- Whenever filming criminal activity, always remain as passive observers. Do nothing that could be deemed as encouraging, inciting or assisting criminal activity.

- Note: sometimes programme-makers may undertake activities which put them at risk of being arrested and charged with a criminal offence i.e. involve themselves in illegal activity in order ultimately to expose it. Such activities can be justifiable in the public interest. However, they require very careful consideration, research and preparation and must not be undertaken before detailed legal advice has been sought. Always refer to your commissioning editor and programme lawyer for advice before undertaking any activity which could amount to a criminal offence.

FAQs

Q. Can criminals ever be paid to take part in programmes? What about expenses?

A. Yes. If a convicted person is taking part in a programme and their contribution is unconnected with their criminal past, an appropriate payment may be made to that person. However, where a convicted person is taking part in a programme and their contribution is related to their crimes, no payment must be made to them unless it is justified by the public interest, any such payment having been approved by the broadcaster in advance. Modest expenses may be paid to criminals or those with a criminal past, whether or not there is a public interest but only on strict proof of the expenses incurred. Again, any such payment would require the consent of the broadcaster.

Q. Can payments be made to a criminal's family members or to someone close to him/her e.g. girlfriend, boyfriend?

A. If they themselves make a contribution to the programme, family members or associates of the criminal can be paid, as long as the criminal does not benefit from the payment. Where family members or associates do not themselves actually make a contribution to the programme, it is unlikely that payments to them will be acceptable. Any decision to pay family members or individuals close to criminals or those with a criminal past, rather than pay the criminal him/herself, must be approved by the broadcaster in advance.

Q. Can criminals be shown on television admitting to or committing criminal activity that they haven't yet been convicted for?

A. Yes. Criminals are often shown on camera admitting to criminal activity. Similarly, from time to time, actual criminal activity is caught on camera e.g. drug taking, violence, criminal damage etc.. The important thing to remember is that a programme-maker should not encourage, incite or assist criminal activity, otherwise they may be guilty of an offence. Programme makers should always remain as impartial, passive observers. In addition, remember not to take what you are being told at face value. Is the person who is admitting to criminal activity likely to be telling the truth? Please refer to the Channel 4 Viewer Trust Guidelines.

Q. What assurances can I give to a contributor who is willing to admit on camera to criminal activity but is worried about the potential consequences?

A. Whilst prosecutions are rare, any individual admitting to committing criminal activity on camera may be investigated and, potentially, prosecuted following transmission and the film, including any rushes, could be obtained by the police by a court order and used as evidence. For this reason, programme-makers cannot give assurances to contributors that they won't be investigated or prosecuted. It is important, therefore, that before filming takes place, they should understand the potential consequences of their actions.

Furthermore, programme-makers should always ask themselves why a person is willing to admit on camera to criminal activity. Always ask yourself, is the person telling

the truth? Do they have any reason to lie? And even if they are telling the truth, is the person likely to deny what they have said later on. Programme-makers need to consider carefully what possible implications this could have.

Q. Can witnesses in legal proceedings be interviewed? Can I pay them?

A. If you are interviewing an individual who happens to be a witness involved in legal proceedings and their contribution to the programme is unconnected with those proceedings, then interviewing that person or making a payment to him/her for their contribution should not be problematic. However, interviews with individuals who are witnesses involved in legal proceedings where the subject of the interview is connected, even indirectly, with the proceedings need to be handled very carefully. This is to ensure that the individual's evidence isn't prejudiced by their involvement with the programme. Any such interview must not be undertaken without the prior consent of the programme lawyer who will advise on exactly how the interview should be handled, if it can go ahead at all. In such circumstances, payments or promises of payments cannot be made.

Q. A contributor has been charged with a criminal offence. Does this mean we can't include him/her?

A. This will depend on what offence has been committed, the nature of the programme and of the contribution. There may be contempt issues or it may be that it would simply be inappropriate to proceed given the serious nature of the charges. The important thing to remember is to alert your programme lawyer immediately.

Q. Do I have to tell a victim of crime or, where the victim is dead, their family, if the crime is mentioned in the programme?

A. Usually, yes. In many circumstances informing the victim or their family will be appropriate, particularly if the crime is to be referred to or examined in some detail. Again, the programme lawyer will advise on what is required in this regard. See also 'Privacy' at Chapter 4D.

4C. FAIRNESS

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KEY POINTS

- The unfair treatment of individuals or organisations in programmes should be avoided.
- Informed consent. Programme-makers and broadcasters should be fair in their dealings with contributors. Contributors should take part in programmes on the basis of their informed consent. Any deviation from this rule must be justified by the public interest or otherwise.
- Parental consent will normally be required for contributors who are under 16. For individuals over 16 who are not able themselves to give informed consent, consent should be sought from an appropriate responsible adult.
- Fair editing. Programme contributors' interviews and contributions must be fairly edited and presented within programmes.
- Fairness and accuracy. Factual programmes should be fair and accurate and not cause unfairness to individuals or organisations. Similarly, dramas and dramas based on fact should not portray facts, events, individuals or organisations in a way which causes unfairness to an individual or organisation.
- Opportunity to respond. Any programme which is critical of, or alleges wrongdoing or incompetence on the part of an individual or organisation should normally give that person or organisation the opportunity to respond. Any relevant response should be included in a manner which is fair.
- Deception in factual programmes. Where any deception is used in the making of factual programmes, such deception should be necessary and be justified by and proportional to the public interest served.
- Deception in entertainment programmes. The use of deception on contributors in entertainment programmes, where there is no public interest, is acceptable subject to certain safeguards but footage cannot be broadcast without the prior informed consent of the subject.

FAIRNESS

[See Section 7 of the Code, at page 36]

Sections 7 and 8 of the Code, dealing with “Fairness” and “Privacy” respectively, are different from other sections of the Code in that they apply to how broadcasters treat individuals and organisations (who may be contributors, willing or unwilling, or non-contributors) that are directly affected by programmes, rather than to what viewers and audiences see and hear.

Since fairness and privacy issues are often closely related, this Chapter should be read in conjunction with Chapter 4D, Privacy.

GENERAL REQUIREMENT

Broadcasters “... must avoid the unjust or unfair treatment of individuals or organisations in programmes” [Rule 7.1].

‘Fairness and Privacy’ Complaints

Any individual (or organisation) who considers him/herself to have been the subject of unjust or unfair treatment or an unwarranted infringement of privacy [see ‘Privacy’ at Chapter 4D] may make a written ‘fairness’ and/or ‘privacy’ complaint to Ofcom after a programme’s broadcast.

Defending these complaints, fairness complaints in particular, is time-consuming and may involve painstaking examination and even disclosure to Ofcom of rushes, correspondence, emails and notes, as well as preparation of a detailed response to all the points raised by a complainant. This will require cooperation between the broadcaster and programme-makers.

If Ofcom entertains a complaint of unfair treatment and/or an unwarranted invasion of privacy, the complainant and broadcaster will normally be permitted to make up to

FAIRNESS & ACCURACY

In programme-making, ‘fairness’ and ‘accuracy’ go hand-in-hand. If a programme is inaccurate, the chances are it will be unfair to people featured or referred to within it. Ensuring programmes are accurate, therefore, is of paramount importance in fairness terms as well as ‘viewer trust’ terms.

Programmes, including dramas, that refer to real people, organisations or events, even indirectly, must be thoroughly and properly researched with material facts checked and, where appropriate, corroborated. In addition, programme-makers should think carefully about who the programme is likely to affect and, in turn, what the effect is likely to be. This will have a direct bearing on who should be consulted and/or approached to contribute to the programme.

two written submissions each (including the initial complaint) in support of their case, after which Ofcom will decide whether there needs to be an oral hearing, in front of the ‘Fairness Committee’; or whether the complaint can be decided simply on the basis of the written submissions. If there is a hearing then at least one of the programme-makers will be expected to attend with the broadcasters’ representatives.

Ofcom will normally publish its final adjudication on its website and if a complaint is upheld, it is also likely to direct the broadcaster to transmit on air and/or publish a summary of its Adjudication. In the case of a serious breach, a statutory sanction may be considered and imposed. The imposition of a sanction and the adverse press that it creates damages the reputation of both the broadcaster and the programme-makers.

Programme-makers must ensure that material facts are not presented, disregarded or omitted in a way that is unfair to an individual or organisation and anyone whose omission could be unfair should be offered an opportunity to contribute. See ‘Opportunity to Respond’ below.

Similarly, fact-based dramas and reconstructions of real events should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation. It should normally be made clear whether a programme lays claim to be a dramatised documentary i.e. a faithful reconstruction subject to the same journalistic rigour as a factual documentary, or whether it is merely based on or inspired by real life events.

Fairness issues (as with those relating to privacy) can roughly be divided into those relating to individuals or organisations actually taking part in programmes, i.e. “contributors”; and those not taking part but who are otherwise referred to i.e. “non-contributors”.

FAIRNESS & CONTRIBUTORS

GENERALLY

When individuals or organisations consent to take part in programmes, this does not mean that they waive their rights to being treated fairly and we should normally be fair and straightforward in our dealings with contributors, unless, exceptionally, it is justified to do otherwise, e.g. where it is in the public interest (see below).

INFORMED CONSENT

Contributors should normally take part in programmes on the basis of their informed consent. Informed consent is likely to involve providing contributors with all or some of the following information, at an appropriate stage:

- what the programme is about i.e. the nature, format and subject matter of the programme;
- why the contributor is being asked to contribute and the way in which the contribution is likely to be included;
- whether their contribution will be live, pre-recorded, edited or unedited;
- where and when (if known) the programme is likely to be shown for the first time;
- an outline of the areas of questioning and the nature of other likely contributions, if it would be unfair not to give this information;
- their contractual rights and obligations e.g. whether or not they will have the right to view the programme before transmission and suggest any changes to it; and those of the programme makers and broadcaster. Where appropriate this kind of information should normally be contained within the release form or in a letter or email.

Exactly what information will be necessary to provide to contributors will depend on the circumstances of each individual case and the nature of the programme and contribution. Clearly, a contributor whose appearance is trivial or minor e.g. a brief, spontaneous vox pop on a non-sensitive subject will not expect or require anywhere near as much information as, say, an individual who has agreed to be interviewed at length to answer serious, potentially damaging allegations made against him in the programme.

Note: sometimes programmes evolve and change during the production process. In these circumstances, contributors should be made aware of material changes if it might reasonably alter their decision to take part and cause unfairness. Such changes might include the title of the programme, if this is significant, changes to the timing and location of broadcast, or changes to others that are contributing to

the programme. If this is the case, programme-makers should seek advice from the legal and compliance department before re-approaching contributors.

RELEASE FORMS

Although it is not a requirement of the Code that any of the above information be provided to contributors *in writing*, in most cases, particularly where there is a significant contribution, programme-makers should obtain evidence of the contributor's informed consent in writing. Normally this will be in the form of a signed release form which describes the contribution and sets out the contractual rights and obligations of the parties.

In some cases, it may not be practical to obtain a signed release form and in such circumstances, evidence of informed consent should be obtained on camera i.e. that the contributor understands the nature, format and subject matter of the programme, where it will be shown and that they agree to their contribution being used. If it has only been possible to obtain evidence of consent in this way or producers anticipate this will be the case, they should seek advice immediately from the programme lawyer.

In rare cases, producers may not be able to obtain either a signed release form or have time or the ability to record consent on camera. Wherever this is the case, you must alert as soon as possible the commissioning editor and/or programme lawyer. A decision will then be made as to whether that contribution can be included in the broadcast programme.

Generally, contributors consent to being filmed and their contributions broadcast when they agree to be filmed, on the basis of the information they have been given. Release forms do not constitute the consent itself but, rather, are merely

evidence of consent having been given. To avoid confusion, it may be sensible to ask contributors to sign their release forms before filming takes place.

From time to time contributors may seek to place conditions on their contribution e.g. the interview can only be used within one specific programme; cannot be shown in a particular country, etc.. Programme-makers must be careful not to agree to any conditions they or the broadcaster may have difficulty honouring.

If a contributor places any condition on his/her contribution, which could have a material bearing on the content of the programme or its distribution or sale, this must be referred to the commissioning editor and/or programme lawyer for approval, before being agreed to.

Programme-makers must never offer or give any editorial control to a contributor or any third party.

Where a contribution is significant i.e. endures over a period of time or is likely to infringe the rights of the individual e.g. privacy rights in reality television show formats, it will normally be necessary to agree with the contributor, before filming begins, the nature of the programme and contribution, the parameters of filming and broadcast and the detail of all other contractual rights and obligations of the parties, in the form of a detailed contributor agreement letter.

CONSENT & CHILDREN AND YOUNG PEOPLE

If a contributor is under 16 years of age, programme-makers should normally obtain not only the consent of the child or young person, but also the consent of their parents.

Where parents are estranged or divorced, it will normally suffice to obtain the

consent of the natural parent with custody, depending on the circumstances of the individual case. However, in such circumstances, advice must always be sought from the programme lawyer. If a child's or young person's parents are dead or are not involved in the upbringing of the child, consent should be sought from the adult with legal responsibility for the child's welfare.

Even where a young person has reached 16 but not yet reached adulthood i.e. 18, it may still be appropriate to seek parental consent, depending on the particular circumstances of the young person in question and the nature of the programme and contribution. Depending on the circumstances, advice from your programme lawyer may be appropriate.

If a child/young person is a ward of court or there is any social services involvement, programme-makers should refer immediately to their programme lawyer for advice.

See also 'The Involvement of People Under 18 In Programmes Generally' within Chapter 4D Privacy.

CONSENT & VULNERABLE ADULTS

In the case of people over 16 who are unable themselves to give informed consent e.g. because of disability, consent should be given on their behalf by the adult who has primary care and responsibility for that person. In particular, such individuals should not be asked about matters likely to be beyond their capacity or likely to put them at risk without such consent. It may be necessary to consult with the vulnerable adult's professional adviser, e.g. GP or psychotherapist.

FAIR EDITING

Where a programme is edited, contributions should be edited fairly i.e.

they should not be edited in such a way that misrepresents what the contributor actually said or did, including by omission.

REQUESTS FOR ANONYMITY

A contributor may agree to take part in a programme on the condition that his/her identity is not revealed. It is important for the producers to have a clear agreement with the contributor(s) about how they will appear and the level of disguise required. For example, one contributor may be happy simply for his name not to be given and his face not to be shown, whilst another may require her image and voice to be changed to such an extent that she would be totally unidentifiable, even to close family members.

Some contributors may not be clear about what level of disguise is necessary to ensure their identity is protected. Where this is the case and to avoid any misunderstanding, producers should assess the particular circumstances of the case before deciding what level of disguise is appropriate to protect the identity of the contributor. This should then be carefully explained to the individual so they fully understand and agree how they will appear in the programme and the level to which their identity will be protected. If possible discuss this on camera with the contributor and even show them how they will appear.

A person's identity may be revealed just as easily by what they (or others) say, as by how they look or sound, so it is vitally important that the final programme as a whole achieves the required level of anonymity that has been agreed with the contributor. It may be necessary to edit out certain bits of information i.e. things said by the contributor or others, that inadvertently identify the contributor either on their own or when different bits of information are pieced together (jigsaw identification).

HONOURING GUARANTEES

Guarantees that are given to contributors e.g. relating to programme content, confidentiality or anonymity should normally be honoured. Any deviation should be justified by the public interest or otherwise. Where conditions or guarantees have been stipulated, programme-makers should be clear about exactly what the contributor expects e.g. if a contributor asks for anonymity, do they expect total anonymity i.e. so they are not even recognisable by those that know them well, or simply a disguise that would prevent the wider viewing public from recognising them? Are they concerned about their real voice being heard, for example? It should not be assumed that contributors understand such techniques or how the television production process works. Best practice is to discuss and agree the specifics of this with the contributor on camera and show them an example of how they would appear, if possible.

DECEPTION & SET-UPS

Factual Programmes

There may be rare occasions in factual programme-making where there is justification for being less than totally honest and upfront with contributors. However, this is only likely to be acceptable where it is in the public interest (see 'Public Interest' within Chapter 4D) and the material could not reasonably have been obtained through other means.

As a general rule, the minimum amount of deception should be employed in order to achieve the programme's goals i.e. the deception should be proportionate in all the circumstances. Programme-makers must seek advice and approval from their commissioning editor and programme lawyer before undertaking any such activity. See also 'Surreptitious or Secret

Filming' within Chapter 4D, Privacy.

Entertainment Programmes

Many entertainment programmes involve some sort of deceit or 'set-up' situation, where members of the public or celebrities are filmed without their knowledge e.g. 'candid camera' type stunts, or are filmed for a purpose different to that which they agreed to. In many cases, there will not be any public interest in broadcasting the footage. For this reason, full consent should generally be obtained from the individual or organisation deceived, before the material is broadcast i.e. the material may be filmed but cannot be broadcast without the informed consent of the subject.

Consider the effect of the stunt in advance to determine if the individual's family, partner or friend should be consulted beforehand in order to consider any unforeseen circumstances or to assess the risks associated with filming. [For celebrities/people in the public eye, see below].

Note: in both factual and entertainment programmes, if the person or organisation deceived is not identifiable, it will not normally be necessary to obtain their consent before broadcast.

Ordinary Members of the Public –v– Celebrities

The Code sensibly makes a distinction between ordinary members of the public and celebrities/people in the public eye. In relation to members of the public, broadcasters must obtain the full, informed consent of the person filmed before the footage can be broadcast (unless, of course, there is some public interest justification in broadcasting the material). However, with celebrities and people in the public eye, footage of them can be broadcast without consent and without any public interest justification provided they have not been secretly filmed and as long as the filming

is unlikely to result in "unjustified public ridicule" or "personal distress".

Example. There may be no significant public interest in broadcasting an entertaining sequence showing a particular celebrity who has consented to being filmed but is unaware that they are being duped into endorsing some patently absurd, fictional, charitable cause. The sequence may make the celebrity look naïve, even stupid but so long as broadcasting the footage is unlikely to result in "unjustified public ridicule" or "personal distress" for the celebrity concerned, the footage can be shown. Any "public ridicule" might be justified on the basis that the celebrity in question should have known better. As to what might constitute "personal distress", this means something over and above mere annoyance or upset.

If the person duped was an ordinary member of the public, however, the footage could not be shown without full consent or a public interest justification, regardless of whether the subject of filming should have known better or the likely effect on the subject of broadcasting the material in question.

FAIRNESS & NON- CONTRIBUTORS

GENERALLY

Care needs to be taken with all references within programmes to identifiable individuals and organisations, to ensure they do not cause unfairness. As noted above, allegations or statements of fact need to be accurate, otherwise they are likely to result in unfairness.

OPPORTUNITY TO RESPOND

Seeking an appropriate response from individuals and organisations who are the

subject of significant allegations or criticism is an essential part of the fact-checking process and ensuring accuracy and is a cornerstone of responsible journalism. It is also a regulatory obligation. Section 7.11 of the Code states:

"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".

[See also 'Defamation' at Chapter 5A].

Programme-makers should always seek advice from their programme lawyer when seeking a response on contentious matters.

Method

A response can be sought in a number of different ways e.g. by seeking an on-camera interview; by requesting a written response for inclusion in the programme; or even simply by telephoning the subject, noting the response and fairly including it in the programme. The important points to note are that they are given sufficient information about the arguments and allegations in order to respond properly; all material allegations are put to them; they are given a proper opportunity in which to respond and what they say of relevance is fairly included in the programme. Advice on the content of the letter sent to the subject of the allegations must be sought in advance from the programme lawyer.

In some circumstances, it may be appropriate to seek a response by 'doorstepping' an individual or a representative of an organisation. [see 'Doorstepping' within Chapter 4D, Privacy].

Information

When seeking a response, in most cases, the subject of the allegations should be given:

- a summary of the nature, format and content of the programme (including the title or working title if that is significant);
- information about where the programme is to be broadcast and when (if known);
- a summary of all material allegations and/or criticisms or statements to be included in the programme that could result in unfairness to them; and,
- an invitation to respond by a particular date.

Generally, approaches for a response do not need to set out or explain all the evidence upon which the allegations or criticisms are being made, although in some circumstances it may be appropriate to include some or all of this information and certainly in cases where it would be unfair not to. Note: there is no obligation actually to hand over evidence or, in the case of secret filming for example, to show it to the subject of the allegations, prior to transmission. A proper description of the evidence and the allegations it gives rise to will be acceptable.

Timing

There is no set amount of time that individuals or organisations must be given in which to respond to allegations that are made about them, other than it should be fair, taking into consideration all the circumstances. When deciding how long that should be, the following factors may be considered:

- the nature of the programme and how long the producer has known what the allegations are. Is it a programme that's been many months in the making or a daily news programme reacting to a very recent story?;
- the nature of the allegations and their complexity. Obviously the more detailed and complex the allegations, the longer the subject may need to be able to respond properly; and,
- the resources of the subject to respond to the particular allegations – an ordinary

member of the public may need longer than a large organisation with many personnel at its disposal.

Including a Response within a Programme

Where a 'right of reply' has been offered and a response provided, programme-makers and broadcasters are not obliged to include everything the subject of the allegations says in that response. Clearly, to be fair, it is only necessary to include what is relevant to the allegation(s) or criticism(s) being made. Irrelevant material can be disregarded. Exactly what is included in the final programme is a matter for the programme-makers and broadcaster on the basis of fairness.

Often the best way to represent a response within a programme will be to pick out key quotes and reproduce them either orally, visually or both, rather than paraphrasing, although the latter is perfectly acceptable as long as the meaning is fairly represented.

Where an individual or organisation submits but then withdraws their proposed response, there is still an obligation on the broadcaster to ensure fairness. This does not mean that the response should be included against the person's or organisation's wishes. However, if known, the programme should reflect any material facts about the position of the subject of the allegations and explain the absence of a formal contribution, if it would be unfair not to do so.

NON-APPEARANCES

Individuals or organisations that are approached for a contribution to a programme, whether or not specifically in order to provide a response (see below), may choose to make no comment or refuse to appear. That is their right and

programmes should make clear that the individual or organisation concerned has chosen not to appear and should give their explanation for not appearing, if it would be unfair not to do so.

The refusal of any individual or organisation to take part would not normally prevent a programme or programme item from going ahead.

Representing the Views of Third Parties

Where programmes are representing the views of individuals or organisations that are not actually participating, this must be done fairly i.e. it should be accurate and not be misrepresentative.

Re-Use of Material

When incorporating into a programme archive footage or material which has been filmed or recorded for another programme or purpose, programme-makers must ensure that this does not result in unfairness or an unwarranted infringement of privacy.

Example. If a programme makes potentially damaging allegations about an individual and that individual chooses not to appear or make a comment, the audience may draw an adverse inference e.g. that they have something to hide. However, the person may have a perfectly good reason not to participate, such as that the allegations are the subject of legal proceedings. In such circumstances, the reason for not contributing should be made clear.

Example. It would be unfair to use footage of identifiable teenagers, originally recorded for a news item about GCSE pass rates, in a later item about the problem of teen pregnancies, for obvious reasons. In some circumstances, obscuring people's identities e.g. blurring faces, will suffice in removing any risk of unfairness or infringement of privacy; in others, this may not be sufficient and different footage should be sourced. See also 'Accidental Defamation' with Chapter 5A, Defamation.

FAQs

Q. Does consent always have to be in writing?

A. A signed release form is normally good evidence of a contributor having agreed to take part in a programme but does not remove the need to explain properly the nature of the programme to the contributor. It also is a written record of the terms of the consent e.g. setting out what use the broadcaster can make of the contribution. Wherever possible, therefore, consent should be sought in writing, in the form of a signed release form. However, there may be occasions where this is not possible or impractical. In such circumstances, consent on camera may be sufficient. The best way to approach this is for the producer/director to ask the contributor on camera whether they consent to take part and describe the programme e.g. "Do you consent to your contribution/ interview being included in this programme, called [insert], about [insert] to be broadcast on one of Channel 4/Five's channels and internationally in any media". If you intend in advance to seek consent on camera and dispense with release forms, you must seek the advice and consent of your programme lawyer. See 'Release Forms' above.

Q. When should the contributor sign their release form?

A. The release form may be signed before an individual's contribution or immediately after. It makes no real difference. However, it is generally not good practice to leave it until sometime after a contribution has been given before asking for the release form to be signed. See 'Release Forms' above.

Q. How much do I have to tell a contributor about the programme?

A. This depends on the exact nature of the programme but, generally, contributors should take part in programmes on the basis of their informed consent, that is they should be told everything they need to know to ensure they can make a properly informed choice about whether or not to take part. There may be occasions where programme-makers are allowed to be less than upfront and totally honest with contributors, the most extreme example of this of course being secret filming. However, any use of deception or the withholding of information must be justifiable e.g. by the public interest, and be proportionate. See 'Informed Consent' above.

Q. What does the 'public interest' mean?

A. The 'public interest' means more than simply what the public are or might be interested in. The public may well be interested in the private sexual habits of a famous celebrity but whether it is "in the public interest" for such facts to be disclosed is another matter.

- If an act is done e.g. facts are disclosed in a television programme, and it is said to be "in the public interest" what it means is that it serves beneficially the well-being or interests of the public, or society generally.
- There is no exhaustive definition of what constitutes the 'public interest', but it is generally accepted to include the following:

- Exposing or detecting crime, corruption, antisocial behaviour or injustice;
- Exposing lies, hypocrisy or misleading claims made by individuals or organisations;
- Protecting public health or safety;
- Disclosing incompetence, negligence or dereliction of duty, that affects others;
- Exposing dangerous or exploitative behaviour that could harm others.

See 'Deception and Set-Ups' above and 'Chapter 4D, Privacy.'

Q. Can I agree to allow a contributor to see the programme before transmission and to make changes to his/her contribution?

A. Only very rarely are contributors permitted to see previews of our programmes. Any exception to this rule, for whatever reason, must be approved in advance by the commissioning editor who should seek the advice of the programme lawyer. Where a preview is granted, the terms upon which it is agreed should normally be put in writing – possibly on the release form - to avoid any confusion and it must be made clear that final editorial control remains with the broadcaster. Please refer to the legal and compliance department for advice regarding the exact wording of any promise to show contributors previews of their contribution. Normally, we will only agree to make changes to a programme or a contributor's contribution if he/she can demonstrate that the programme, as it stands, is factually inaccurate.

Note: it is sometimes appropriate to consider allowing a contributor to see a programme made with their full cooperation ahead of broadcast, where it concerns personal matters relating to their life but even then this is not required to achieve fairness.

Q. A contributor is refusing to sign his/her release form. What should I do?

A. The first thing to do is to seek advice from the programme lawyer who will consider carefully all the circumstances, including the arguments of the contributor as to why they are refusing to sign. However, as noted above, release forms do not constitute the consent itself but are merely evidence of consent having been given. If a contributor does not have a good reason for wishing to withdraw and it appears they have merely changed their mind, we are likely to take a robust line and include the contribution without a signed release form.

Q. A contributor is trying to place conditions on taking part in the programme? What should I do?

A. Seek advice from the programme lawyer immediately. You must not agree to any significant conditions e.g. anonymity, or that the programme won't be shown in a certain country, etc. unless the condition(s) asked for are so trivial you feel confident you can agree to them without first seeking the advice of the programme lawyer. It may well be that we will be able to accommodate the contributor's requests but you must check. See 'Release Forms' above.

Q. A contributor has asked to remain anonymous? What can I promise them?

A. First of all, you should ascertain exactly what the contributor means by 'anonymous', as there are degrees of anonymity e.g. not identifiable to the general public or to anyone at all, even close family members? Once this is clear, you must seek the advice and consent of your commissioning editor and programme lawyer, before agreeing to anything.

See 'Requests for Anonymity' above.

Q. Is blurring a contributor's face enough to ensure they are anonymous?

A. It depends on what level of anonymity the contributor requests or the circumstances dictate. In some circumstances, it may be appropriate to alter the individual's voice, change certain characteristics e.g. wear a wig, or even to film the contributor in silhouette. Recently two newspapers were convicted of breaching the Sexual Offences Act (which protects the anonymity of victims of sexual offences) for identifying a woman who was the victim of a sexual assault, even though the photograph they used showed her only from behind, the reason being that her distinctive appearance rendered her identifiable to those that she knew and worked with. A third newspaper, however, which published the same photograph but altered the woman's hair colour was found not to have identified her. This demonstrates that in each case where a contributor requests to remain anonymous (or this is required by law) we should carefully consider what particular measures are necessary to ensure the required level of anonymity. See 'Requests for Anonymity' and 'Honouring Guarantees' above.

Q. Is it necessary to offer a "right of reply"?

A. It will be necessary to seek an appropriate response from a person or organisation whenever there are significant allegations or criticisms or any sort of damaging critique of an identifiable individual or organisation. This is likely to be necessary for accuracy, fairness and also potentially for legal reasons e.g. to help defend any threat of libel proceedings. See 'Opportunity to Respond' above. See also 'Defamation' at Chapter 5A.

Q. Do I need to offer an interview (where a person or organisation is criticised)?

A. No, not in every case. It is the broadcaster's final decision how a person or organisation is given the opportunity to respond to allegations or criticisms in a programme and how their response is included within the programme. As noted above, what is important is that the subject is given sufficient information about the programme, is told what the allegations are and is given a proper and timely opportunity to respond and that any response is fairly included in the programme to reflect fairly their position. See 'Opportunity to Respond' above.

Q. Do I need to include everything they say (where a right to reply has been sought and received)?

A. No. We only need include what is relevant and what fairness dictates should be included. Often programme-makers will receive page after page of irrelevant material in answer to a particular allegation. Your programme lawyer will advise you on what needs to be included. See 'Opportunity to Respond' above.

4D. PRIVACY

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KEY POINTS

- Any infringement of privacy of an individual or organisation in programmes, or in connection with obtaining material included in programmes, must be warranted. Normally such justification will either be that the individual/organisation has consented or that the public interest 'outweighs' the privacy infringement.
- Consent. Most filming (in addition to the broadcast of the material) involves an infringement of privacy and, therefore, should normally be done with the consent of the subject, either evidenced in a signed release form, or recorded on camera. Even when filming in public and semi-public places, individuals caught on camera may have a reasonable expectation of privacy if their actions are of a private nature or, for example, they are in a state of distress.
- Suffering and distress. When reporting or referring to emergencies, accidents or moments of personal tragedy, the public interest in full, open and accurate reporting and right to freedom of expression must be carefully balanced with the need to be compassionate and the privacy rights of those involved, so as to avoid any unwarranted invasion of privacy.
- 'Doorstepping' or interviews without prior arrangement are likely to amount to a serious infringement of privacy and should not take place unless an interview has been refused, it hasn't been possible to request an interview or it's likely that contacting the subject will frustrate the purpose of the programme. Programme-makers must seek advice from their programme lawyer before attempting a doorstep.
- Secret filming and recordings. All secret filming and recording (except for entertainment purposes) must comply with rule 8.13 of the Code and be justifiable by the public interest. There are detailed rules which all programme-makers must follow, having taken early advice from their designated programme lawyer.
- Secret filming for entertainment purposes where there is no public interest should only be undertaken where it is editorially justified and unlikely to cause annoyance, distress or embarrassment. In addition, informed consent must be given by the subject of the filming before the material can be broadcast. Programme-makers must seek advice from their programme lawyer before undertaking any such filming.
- Revealing private information about an individual or organisation without consent, whether or not they have taken part in a programme, is likely to infringe privacy and is only likely to be justifiable if the public interest in revealing the information 'outweighs' the privacy infringement.
- Broadcasters must pay particular regard to the privacy of people under 16. Those under 16 do not lose their right to privacy because of the fame or notoriety of their parents.

PRIVACY

[See Section 8 of the Code, at page 41]

As noted above, Sections 7 and 8 of the Code, dealing with "Fairness" and "Privacy" respectively, are different from other sections of the Code in that they apply to how broadcasters treat individuals and organisations (who may be contributors, willing or unwilling, or non-contributors) that are directly affected by programmes, rather than to what viewers and audiences see and hear.

Since fairness and privacy issues are often closely related, this Chapter should be read in conjunction with Chapter 4C, Fairness.

GENERAL REQUIREMENT

The Code contains the following rule: *"Any infringement of privacy in programmes or in connection with obtaining material included in programmes,*

Fairness and Privacy Complaints

Any individual (or organisation) who considers him/herself to have been the subject of unjust or unfair treatment [see Fairness at Chapter 4C] or an unwarranted infringement of privacy may make a written 'fairness' and/or 'privacy' complaint to Ofcom after a programme's broadcast.

Defending these complaints, fairness complaints in particular, is time-consuming and may involve painstaking examination and even disclosure to Ofcom of rushes, correspondence, emails and notes as well as preparation of a detailed response to all the points raised by a complainant. This will require cooperation between the broadcaster and programme-makers. If Ofcom entertains a complaint of unfair treatment and/or an unwarranted invasion of privacy, the complainant and broadcaster will normally be permitted to make up to two written submissions each

must be warranted" [Rule 8.1].

Thus, broadcasters must be able to demonstrate why any infringement of privacy is justified. In most cases, such justification will either be that the individual has consented or that the public interest outweighs the privacy infringement.

CONSENT

Most contributors take part in programmes on the basis of their informed consent (see Chapter 4D, Fairness, 'Informed Consent'). Often, as part of that consent, contributors agree to their privacy being infringed in some way e.g. when they agree to have a camera pointed at them, allow cameras into their homes or, in the case of some reality shows, agree to be filmed 24 hours a day.

However, in many cases, individuals will not have consented to any infringement of their privacy and, in some cases, may

(including the initial complaint) in support of their case, after which Ofcom will decide whether there needs to be an oral hearing, in front of the 'Fairness Committee'; or whether the complaint can be decided simply on the basis of the written submissions. If there is a hearing then at least one of the programme-makers will be expected to attend with the broadcasters' representatives.

Ofcom will normally publish its final adjudication on its website and if a complaint is upheld, it is also likely to direct the broadcaster to transmit on air and/or publish a summary of its Adjudication. In the case of a serious breach, a statutory sanction may be considered and imposed. The imposition of a sanction and the adverse press that it creates damages the reputation of both the broadcaster and the programme-makers.

vigorously oppose it e.g. where individuals are secretly filmed or recorded [see 'Surreptitious or Secret Filming below] and are exposed doing some criminal or antisocial act; or, in relation to programmes that delve into individuals' private lives and reveal information of a private nature (see 'Revealing Private Information' below). In such cases i.e. where there is an infringement of privacy but no consent, the filming and broadcasting of such material should be justified by the public interest. Similarly, any decision to withhold information from contributors or to act other than in a totally honest and upfront way, should be justified by the public interest. See Chapter 4C, Fairness, 'Deception and Set-Ups'.

Note: some contributors may consent to take part in programmes but place conditions on their contribution e.g. they wish to remain anonymous. It is important that producers do not agree to conditions that they or the broadcaster may have difficulty in complying with. In addition, where conditions in relation to a contribution are agreed to, it is vitally important that all parties are clear about the exact nature of the condition. See 'Honouring Guarantees' and 'Requests for Anonymity' at Chapter 4C, Fairness.

PUBLIC INTEREST

If the broadcast of a television programme is said to be "in the public interest" it means that it serves beneficially the well-being or interests of the public or society generally. There is no exhaustive definition of what constitutes the public interest, but it is generally accepted to include the following:

- Exposing or detecting crime, corruption, antisocial behaviour or injustice;
- Exposing lies, hypocrisy or misleading claims made by individuals or organisations;

- Protecting public health or safety;
- Disclosing incompetence, negligence or dereliction of duty, that affects others;
- Exposing dangerous or exploitative behaviour that could harm others.

Any act that relies for its justification on the public interest should be proportionate to the interest served i.e. in relation to privacy, the more significant the infringement, the greater the public interest will need to be in order to justify it.

Privacy issues (as with issues of fairness) can roughly be divided into those relating to individuals or organisations actually taking part or featured in programmes, i.e. "contributors"; and those not taking part but who are otherwise referred to i.e. "non-contributors".

PRIVACY & CONTRIBUTORS

GENERALLY

The extent to which contributors waive their rights to privacy when consenting to take part in programmes clearly depends on the nature of the contribution. However, it should always be made clear to potential contributors before they agree to take part the extent to which filming will or is likely to infringe upon their privacy. For example, in some reality programmes, where contributors are filmed 24 hours a day, there is a very significant infringement of privacy so this is always made absolutely clear to potential contributors in advance and they expressly agree to it.

WHEN IS EXPLICIT CONSENT NECESSARY?

As noted above, contributors should normally take part in programmes on the basis of their informed consent and, in most cases, should sign a release form evidencing their consent. See Chapter 4C,

Fairness, 'Informed Consent'. However, there will be situations, particularly when shooting on location, where individuals other than the main contributors will inadvertently be caught on camera. The question then arises whether or not there is an obligation to seek the explicit consent of those filmed, as an individual's privacy could be infringed by being filmed in certain circumstances and broadcasting that footage may be a further and separate infringement. This will generally depend on a number of factors including: the location where the filming takes place; the nature of what is caught on camera i.e. the actions, behaviour or words that are recorded; and, sometimes, who the individual concerned is e.g. whether they're a member of the public or someone in the public eye.

FILMING IN PUBLIC AND SEMI-PUBLIC PLACES

When filming in public places e.g. on the streets, in parks, on public highways, and semi-public places e.g. shops, bars, institutions, programme-makers are only likely to need to obtain the express consent of those that make a significant contribution e.g. those that the camera is following or that speak to camera or whose words are caught on camera, unless what they say is trivial and inconsequential. Generally, you will not need to obtain the express consent of random people that are merely passing by or who are caught on camera in the background unless they are to be shown in a negative or pejorative context, thereby requiring consent or the concealing of identities e.g. by pixelation.

However, there will be circumstances where individuals, even in public places, have a legitimate expectation of privacy e.g. when they are in distress or receiving medical treatment, and to film and, furthermore, to broadcast such footage would amount to an unwarranted infringement of their privacy. In such

circumstances, in the absence of any public interest justification, it is unlikely that the footage could be broadcast without the express consent of those filmed or their identity being obscured.

If an individual's or organisation's privacy is being infringed by filming and they ask that filming or recording stop, film-makers should normally comply, unless it is warranted to continue e.g. it is in the public interest.

When filming on private property, even where it is open to the public e.g. shops, bars, shopping malls etc., programme-makers should, wherever possible, first obtain the consent of the legal owner or person in charge of the location to film there, unless there is justification for not doing so. Often consent may be granted but subject to certain conditions e.g. seeking the individual consent of staff or members of the public caught on camera, which if agreed to should be honoured.

When filming on private property, if the owner or person in charge requests that filming stop, this should normally be complied with unless there is good reason not to e.g. the public interest justifies continuing. Where this occurs, inform the programme lawyer as soon as possible thereafter as a trespass may have been committed.

In some semi-public places, where there is a greater expectation of privacy and particularly where people may not wish to be caught on camera e.g. doctors' waiting rooms, it may be appropriate (and, as above, it may be a condition of filming there) to alert members of the public to the fact that filming is taking place e.g. by erecting a sign (or making an announcement) stating that filming is taking place, explaining briefly what the programme is about and advising anyone that does not wish to be filmed to avoid

the camera or alert a member of the production team.

'SENSITIVE' PLACES/SITUATIONS

Filming in sensitive places e.g. in hospital wards, ambulances, A&Es, schools, prisons, police stations etc., (unless undercover in which case see 'Deception and Set-Ups' at Chapter 4C, Fairness, and 'Surreptitious or Secret Filming' below) is only likely to be possible after negotiation with the person or organisation in charge of the location in question. However, even where consent is granted, careful consideration must be given to the

Example. You are filming with a group of young men who are having a night out on the town and you are following them as they visit city centre bars on a Friday night. All of the group are filmed extensively, including interacting with others whilst out and about. The filming is unplanned and you don't know where they are going next. What consents are you likely to need?

You will need the express consent of all the members of your main group, preferably in the form of a signed release form. If they meet up with any other friends who tag along, then it is likely you will need to obtain their express consent too, as they are likely to be filmed extensively.

Say, for example, the group interacts with some passing girls on the street, perhaps chatting them up. If the exchange is fleeting you probably will not need the girls' express consent. If the exchange is more prolonged or is of a more private or sensitive nature e.g. sexual, then express consent is likely to be advisable, either in a release form or consent on camera.

People seeing the camera may come up and shout something or make a rude gesture. In the majority of such cases, you

individual fairness and privacy rights of those that are caught on film. The fact that general permission to film has been given does not necessarily mean that individuals have consented to being filmed in any way and that footage can be broadcast.

Depending on the circumstances, it may be that alerting individuals or members of the public through the use of signs or announcements, as above, will suffice but, in certain circumstances, where there is a greater expectation of privacy, it may be appropriate or essential to seek the individual consent of each and every person shown or, if that is not possible, conceal their identities on broadcast.

would not need express consent, as you are filming in a public place and they have knowingly put themselves in the position of being filmed.

Perhaps the group enter a bar or a fast food takeaway restaurant. Can you film inside? You should first try to obtain consent to film from the owner or person in charge. If they refuse, then you cannot film inside but you could continue to film outside. If you are able to film inside, try to obtain the explicit consent of anyone you film speaking to camera or of those whose words are caught on camera, unless what they say is trivial. As above, you are unlikely to need to obtain express consent from those in the background.

Note: if the filming had been planned in advance, then it would be advisable to contact locations in advance to clear all filming. In addition, this sort of filming might be the sort that would favour seeking consents on camera, rather than trying to get people to sign release forms.

Also note that if any of the contributors are under 16 (and sometimes under 18), parental consent is normally also likely to be required.

Wherever there is an intention to film in a sensitive place or there is doubt about whether or not individual consents are required, please seek early advice from the programme lawyer.

If a programme is of a sensitive nature, clearly contributors will need to be made aware of the context in which they will appear e.g. if a programme is about date rape, those filmed should be informed when they are giving consent.

THE INVOLVEMENT OF UNDER 18S IN PROGRAMMES GENERALLY

The Code states that due care must be taken over *"the physical and emotional welfare and the dignity of people under 18"* who take part in or are otherwise involved in programmes, irrespective of parental or other consent and that they must not be caused *"unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes"*.

In other words, just because parents may be willing to allow their child to take part in a particular programme, in a particular way, does not absolve the programme-makers and broadcaster from their responsibility to ensure that those under 18 are not put at unnecessary risk and do not suffer harm as a result of taking part in programmes.

OFCOM GUIDANCE ON THE PARTICIPATION OF UNDER 18S IN PROGRAMMES

In December 2007, following widespread consultation, Ofcom published guidance to broadcasters about the participation of young people in programmes, to help ensure that their welfare *"... is at the heart of editorial and production decisions"*. The guidance in full can be found on Ofcom's website (www.ofcom.gov.uk). It reflects already established protocols and procedures put in place by both Channel 4 and Five

when commissioning programmes featuring young people.

As with other guidance Ofcom publishes in relation to its Code, the guidance does not itself form a set of rules which broadcasters are obliged to follow. In its own words: *"... this guidance is non-binding. It is provided to assist broadcasters interpret and apply the Broadcasting Code ... Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case"*. However, when deciding whether the Code has been breached in relation to the participation of under 18s within programmes, Ofcom will consider whether this guidance is relevant and, if it is, will look to see whether the guidance has been followed and, if it has not, will consider why not. A summary of the guidance follows.

Depending on the genre of the programme, the subject matter, the level of participation and, of course, the particular child or young person involved, recommended steps may include:

- The development of clear guidelines for programme-makers on projects that involve under 18s;
- Making appropriate background checks on the under 18s' social, family, health and educational circumstances (which may include a detailed risk assessment);
- Ensuring there is appropriate communication to under 18s to ensure they are fully informed about the likely outcomes of participation;
- Highlighting to parents/guardians the positive and negative outcomes of participation in the programme e.g. risk of bullying at school, so that they can better help their child to understand what participation means;

- Seeking advice from appropriately qualified professionals e.g. a counsellor, psychologist;
- Providing a single, consistent point of contact to liaise throughout the production (and beyond, as appropriate) to oversee the child's welfare;
- A careful consideration of the programme's format and its likely impact on the individual child/young person.

Thus it is important that wherever under 18s are to feature prominently within programmes, particularly where their participation may involve a significant infringement of privacy, or where the subject matter of the programme or contribution could be deemed to be sensitive, that early advice is sought from the programme lawyer.

PRIVACY OF PEOPLE UNDER 16

Broadcasters are required to pay particular regard to the privacy of people under 16 (see s.8.20 of the Code), whether they are a contributor to a programme or not. They do not lose their rights to privacy because of who their parents are i.e. the child of a very famous celebrity should be accorded the same rights to privacy as the child of an ordinary member of the public, unless the child has courted publicity or is a celebrity in his/her own right.

Unless it is warranted to proceed otherwise, parental consent must be sought where an individual under 16 is featured in a programme in a way that infringes his/her privacy. The explicit consent of the individual concerned should also be obtained where possible.

Ideally, both parents' consents should be sought for the child's contribution. However, this will not always be possible or practicable. If a young person's parents

are divorced or separated, parental consent should, in the first instance, be sought from the parent the child resides with and who has 'parental responsibility'. As to whether or not consent should be sought from the other parent as well, seek advice from the programme lawyer. Child performance licences, issued by the local authority where the child resides, may also be required. See 'Child Performance Licences', Chapter 6E.

VULNERABLE ADULTS

The same principles apply to vulnerable people, in such circumstances, consent should be sought from that person's primary adult carer.

Furthermore, people under 16 and vulnerable people should not normally be asked questions about private matters without the consent of one of their parents or guardian; or, in the case of a vulnerable person, without the consent of their primary adult carer, unless it is warranted to proceed without such consent.

Note: the Code also contains a specific provision that prizes aimed at children in competitions must be appropriate to the age range of both the target audience and the participants. This rule exists to prevent children being placed under an inappropriate amount of stress e.g. young children competing to win large cash prizes for their parents.

See also Chapter 4H, *Commercial References & Sponsorship*, 'Competitions'.

PRIVACY & NON-CONTRIBUTORS

REVEALING PRIVATE INFORMATION

An individual's privacy may be infringed by revealing to a wider audience private information about them e.g. details of their sex life or family life, regardless of whether

or not they are filmed. For example, a divorced spouse who is talking about intimate details of his/her former marriage may be infringing the privacy of his/her former spouse and any infringement must be warranted. Once again, any infringement of privacy must be justifiable in the public interest. The right to freedom of expression coupled with the public interest should 'outweigh' the privacy right that is being infringed.

What amounts to "private information" and whether revealing it, or repeating it, would constitute an unwarranted infringement of privacy depends on a number of factors, which normally would include: the nature of the information; whether or to what extent the information is already in the public domain and, if it is, how it got there; and whether the individual concerned is an ordinary member of the public or is a celebrity or someone in the public eye.

The Code recognises that people under investigation and those in the public eye and their immediate family and friends retain the right to a private life although private behaviour can raise issues of legitimate public interest e.g. there may be an overriding public interest in exposing and exploring publicly in a television programme the private life of a politician, if that conflicts with, adversely affects or raises serious questions about his/her public life.

'DOORSTEPPING'

In Factual Programmes

'Doorstepping' means filming or recording an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast, without any prior warning. Inevitably, it will involve an infringement of the privacy of the person being approached and should only be undertaken after careful thought and in

the following circumstances, where:

- an interview has been refused repeatedly; or
- it hasn't been possible to request an interview; or
- there's good reason to believe that contacting the subject will frustrate the purpose of the programme; and,
- in all the circumstances doorstepping is justified i.e. the public interest outweighs the infringement of privacy.

Programme-makers should always seek advice from their programme lawyer before attempting to 'doorstep' anyone. Careful consideration needs to be given to exactly how the 'doorstep' should be carried out. For example, the security of the crew must be considered, as should the risk of infringing the privacy of innocent third parties e.g. family members. For this reason, it will generally be preferable not to 'doorstep' people at their homes.

The above rules do not generally apply to attempts to interview or interviews with people in the news in public places e.g. approaching a politician on camera outside Parliament, situations involving media scrums.

In Entertainment Programmes

In entertainment programmes, the above rules do not need to be followed. However, safeguards should be put in place in order to avoid offence and any unwarranted infringement of privacy. In addition, the material will not be able to be broadcast without the full informed consent of the individual 'doorstepped' or filmed.

IDENTIFYING WHERE PEOPLE LIVE

Information which discloses the precise location of where people live, including celebrities, should not normally be revealed unless it is warranted to do so

e.g. they have consented, the information is already widely known, or it is in the public interest to do so.

Note: it may be possible to show the house where a particular individual lives without actually identifying where it is i.e. not giving the house number or naming the street.

RE-USE OF MATERIAL

When incorporating into a programme archive footage or material which has been filmed or recorded for another programme or purpose, programme-makers must ensure that this does not result in an unwarranted infringement of privacy, or cause any unfairness.

RECORDING TELEPHONE CALLS

It is generally accepted that programme-makers may record telephone calls, without telling the person they are speaking to that the call is being recorded, for research or evidential purposes. However, if the call is being recorded with a view to it being broadcast, the following rules apply:

- Recorded telephone calls may be broadcast as long as, at the start of the call, the programme-maker has identified who they are (e.g. given the name of the person calling, the programme and broadcaster), explained the purpose of the call and stated that the call is being recorded for possible broadcast. At this point, the person has the choice to terminate the call if they wish, so if they continue to talk, it may be assumed they have consented to the call being broadcast.
- Some or all of the above information may be withheld and the recorded call still broadcast if, in all the circumstances, it is warranted e.g. it's justified by the public interest

[see 'Surreptitious or Secret Filming' below].

- If a call has been recorded and the other party was not told because, at the time, it was not intended for broadcast but it later transpires the programme-makers do wish to broadcast it, consent should be sought from the other party unless it is warranted to broadcast the call without consent e.g. it is justified by the public interest or the person is not reasonably identifiable.

SURREPTITIOUS OR SECRET FILMING

The following detailed rules must be followed. In addition, seek advice from your programme lawyer from the earliest stage secret filming is contemplated.

All secret filming and recording (including recording telephone conversations and also where a subject does not realise that a visible camera is actually recording) must comply with section 8.13 of the Code and be warranted, unless it is for entertainment purposes, in which case see 'Secret Filming for Entertainment Purposes' below.

The term "secret filming" will be used for ease of reference but it is intended to cover all covert or surreptitious filming or recording.

What constitutes secret filming?

Secret filming includes the following:

- filming or recording material through the use of hidden cameras and microphones;
- filming or recording material through cameras and/or microphones of which the subject is unaware e.g. using long lenses, small cameras, radio microphones, filming from across the street.
- continuing to film or record when the subject of filming believes the camera/microphone is switched off or not going

to be used for broadcast.

- recording telephone conversations for broadcast without consent.

How secret filming is used

Secret filming is generally used in one of two ways:

- in factual programmes, as a journalistic, investigative tool, exposing and evidencing issues which are in the public interest; or,
- in entertainment programmes, where the secret filming is an integral part of the programme providing the comedy/entertainment e.g. a 'candid camera' style programme.

Secret filming of itself, is an infringement of the privacy of the individual or organisation recorded. There will be an infringement of privacy both when the filming takes place and a separate, additional infringement if and when the material is broadcast.

In the case of factual, investigative programmes, such infringements must be warranted, which generally means in the public interest. In entertainment programmes, where no public interest exists, broadcast can only go ahead and broadcast with the informed consent of the individual secretly recorded.

Secret filming for non-entertainment purposes

Programme-makers making programmes for Channel 4 should refer to and follow Channel 4's Secret Filming Rules at Appendix 7C. Programme-makers making programmes for Five should refer to and follow Five's Secret Filming Rules, at Appendix 8C.

Broadcasting secretly recorded material for **non-entertainment purposes** is a two-stage process:

1. Before filming takes place.

- The programme-makers must identify who is to be secretly filmed and why.
- The purpose of the secret filming should not be a 'fishing expedition' i.e. there should already be some evidence which suggests behaviour or actions of the proposed subject that it is in the public interest to expose or uncover by secretly filming.
- There should be reasonable grounds to suspect that secretly filming will reveal further material evidence.
- Secret filming should be necessary i.e. the material could not reasonably be obtained through other means e.g. by filming openly.
- All secret filming must be approved in advance in writing by the broadcaster unless there are exceptional circumstances. Requests should be made in reasonable time with each broadcaster's rules on secret filming – see Appendices. If the commissioning editor and programme lawyer consider the request to be acceptable, the commissioning editor will submit it for approval to the relevant senior programming executive. Programme-makers will then be informed whether or not their request has been approved and they can go ahead and secretly record and whether there are any conditions attached.

2. After filming has taken place.

- Material obtained through secret filming must be carefully considered and evaluated. It can only be broadcast if there is an overriding public interest. Often it will be in the public interest and the material will be able to be broadcast. However, there will be occasions where, although originally carrying out the secret filming was justified, it did not reveal what was anticipated and there will be no public interest in

broadcasting what was recorded. In such cases the material must be stored securely or destroyed.

● Before any secretly filmed footage can be broadcast, this must be approved in writing in accordance with Channel 4's and Five's internal compliance procedures. Again, requests should be made in plenty of time. The request to broadcast secretly filmed material should comply with each broadcaster's rules on secret filming – see Appendices 7C and 8C. If the commissioning editor and programme lawyer consider that there is justification for including the secretly recorded material in the broadcast programme, the commissioning editor will submit the request to the relevant senior programming executive for approval. Programme-makers will then be informed whether or not their request has been approved and the footage can be included in the broadcast programme.

Note: the same procedures will be followed where secretly recorded material has been undertaken by others (including CCTV footage). Where there are privacy issues, broadcast must still be justified by the public interest.

Secret Filming for Entertainment Purposes

Secret filming for entertainment purposes, where there is no public interest, can be undertaken where it is editorially justified and is unlikely to cause "significant annoyance, distress or embarrassment". However, it cannot be broadcast without the informed consent of the subject. If they refuse consent, the material will not be able to be broadcast.

Where a person so filmed is unidentifiable, consent will not normally be required.

Care must be taken where individuals are to be secretly recorded for entertainment programmes within a live programme and

safeguards must be put in place in order to avoid offence and prevent unwarranted infringements of privacy.

Any proposal to secretly record someone for entertainment purposes must be approved in advance by the commissioning editor and programme lawyer. In the case of live programmes, any proposal to secretly record will be referred up in accordance with Channel 4's and Five's internal compliance procedures.

Where a subject who is being secretly filmed for entertainment purposes realises he/she is being secretly filmed and asks for filming to cease, this should be complied with.

SUFFERING & DISTRESS

EMERGENCIES, ACCIDENTS & PERSONAL TRAGEDY

When reporting on emergencies, accidents and/or personal tragedy or making references to such events within programmes, the public interest in full, open and accurate reporting and the right to freedom of expression must be carefully balanced with the need to be compassionate and the privacy rights of those involved, so as to avoid any unwarranted infringement of privacy or unjustified offence.

People caught up in such events e.g. victims, should only be shown where there is strong editorial justification and broadcast is in the public interest, or those filmed have consented to be filmed for broadcast.

People in distress e.g. victims or the grieving relatives of victims, should not be placed under any pressure to be interviewed or to be filmed. It may be appropriate to make any requests for

interviews through an intermediary e.g. a relative, friend or advisor.

Showing people dying, being killed or murdered, particularly the point of death, will require exceptional justification and must be justified editorially, by the public interest and, in relation to the potential effect on viewers, by the context. See Chapter 4A, Harm and Offence, 'Context'.

Where people have died or are the victims of accident or violent crime, programmes should be careful not to reveal their identity, unless and until it is clear that their next of kin have been informed. Any exception to this rule must be justified by the public interest or otherwise e.g. if immediate publication of the deceased's identity might help in the apprehension of a criminal; or, identification was necessary in order to properly identify the deceased.

REVISITING PAST EVENTS

When making and broadcasting programmes, including dramatisations, that concern real, past events that have involved trauma to individuals e.g. natural disaster, accident, human violence, crime etc., programme-makers and broadcasters should always carefully consider the likely impact on those involved e.g. any victims or their close relatives.

Where reasonably practicable, those whose experience is to feature, or their close family, should normally be informed of the plans to make such a programme, including when it will be broadcast, even where the events or material to be broadcast are in the public domain and are widely known and where victims are not named but would be recognisable from the events.

FAQs

Q. Is explicit consent needed from people inadvertently caught on camera e.g. passers-by?

A. Generally not but it depends where you are filming. If you are filming in a public place e.g. on the street, it is most unlikely you will need to seek the specific consent of passers by caught on camera. The only circumstances where consent would be required is if the actions or words of the person caught on camera indicate that person would have a reasonable expectation of privacy and to broadcast their image/words would amount to an unwarranted infringement of their privacy. In semi-public places e.g. shops, malls, bars etc. similar considerations apply. In locations where people would have a greater expectation of privacy e.g. a hospital ward, doctor's waiting room, police station etc., consent may well be advisable and even necessary. If in doubt, seek advice from the programme lawyer.

Q. Can I record telephone conversations?

A. It is generally accepted that programme-makers may record telephone calls, without telling the person they are speaking to that the call is being recorded, for research or evidential purposes. However, if the call is being recorded with a view to it being broadcast, then special rules apply.

If you intend to include the recording within a programme you should tell the person you are speaking to at the start of the call that you are recording it with the intention of including it within a broadcast television programme. You should give sufficient information for them to be able to make an informed choice about whether they wish to continue with the call. Always seek advice from your programme lawyer wherever you intend to record a telephone conversation with a view to including it within a programme.

If you record a telephone conversation covertly with the intention of including it in a broadcast programme, then this will constitute secret filming and you must comply with Channel 4's and Five's rules and procedures relating to secret filming – see Appendices. [See also 'Surreptitious or Secret Filming' above.](#)

Q. What does the public interest mean?

A. The 'public interest' means more than simply what the public are or might be interested in. The public may well be interested in the private sexual habits of a famous celebrity but whether it is in the 'public interest' for such facts to be disclosed is another matter.

If something is done e.g. facts are disclosed in a television programme, and it is said to be "in the public interest" what it means is that it serves beneficially the well-being or interests of the public, or society generally.

There is no exhaustive definition of what constitutes the public interest, but it is generally accepted to include the following:

- Exposing or detecting crime, corruption, antisocial behaviour or injustice;
- Exposing lies, hypocrisy or misleading claims made by individuals or organisations;
- Protecting public health or safety;
- Disclosing incompetence, negligence or dereliction of duty, that affects others;
- Exposing dangerous or exploitative behaviour that could harm others.

4E. RELIGION

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KEY POINTS

- Fairness and accuracy. Religious programmes require careful and responsible handling. They must always be fair and accurate.
- 'Abusive treatment'. The beliefs and practices of any religious groups featured in programmes must not be misrepresented or abused.
- Transparency. The identity of any religion featured and the purpose of the programme or any programme item should be clear to viewers. Religious views must not be promoted by stealth.
- 'Special powers and abilities'. Claims that living individuals or groups have special powers or abilities should be considered with due objectivity and avoided in programmes when significant numbers of children are likely to be watching.
- 'Direct appeals'. Religious programmes should not make direct appeals to viewers to join a particular religion i.e. directly seek recruits.
- 'Exploitation'. Religious programmes should not improperly exploit any susceptibilities of the audience.

RELIGION

[See Section 4 of the Code – Religion, page 22]

The following rules apply to religious programming only, i.e. any programme where religion is the main subject, or amounts to a significant part of it, which could include, but is not limited to current affairs, documentary or history programmes. It does not include comedy programmes or drama or general entertainment programmes which are clearly non-religious in nature.

Religion is central to many people's lives and is capable of arousing strong views and emotions. Thus, religious programming will always need careful and responsible handling.

Religious programmes should always be fair and accurate and the beliefs and practices of any religious groups featured must not be misrepresented or abused.

In addition, the following rules apply to religious programming:

TRANSPARENCY

Religious programmes should make clear to viewers the identity of any religion featured and the purpose of the programme. Religious views must not be promoted by stealth.

Viewers should be clear about what they are seeing, i.e. what the programme is about and who is appearing or addressing them and what their purpose is so there can be no suspicion that a programme is attempting to promote subversively the views or beliefs of any particular religion.

DUE OBJECTIVITY

Religious programmes should treat claims that living individuals or groups have special powers or abilities with due objectivity.

In any event, such programmes must not be broadcast when significant numbers of children are likely to be watching. This rule exists to protect the vulnerable, particularly from those that might claim to have special powers or abilities in order to encourage people to support them, e.g. financially. This rule does not apply to the founders of recognised religions and/or belief systems, e.g. Jesus Christ, Mohammed, Buddha.

ABUSIVE TREATMENT OF RELIGIOUS VIEWS & BELIEFS

The abusive treatment of people's religious views and beliefs must be avoided.

Programmes which, deliberately or otherwise, undermine, ridicule or disparage the views and beliefs of particular religions are prohibited. This rule would not prevent programmes from questioning or even making critical or negative comments about certain aspects of religion, e.g. about the interpretation of religious doctrine, as long as the subject matter was handled responsibly and the programme or item was fair and appropriately balanced. However, any programme containing such material must be referred to an early stage to the programme lawyer for advice.

DIRECT APPEALS

Religious programmes should not make direct appeals to viewers to join a particular religion, i.e. directly seek recruits. References to the positive benefits of being a member of a particular religion are unlikely to be problematic.

AUDIENCE EXPLOITATION

Religious programmes should not improperly exploit any susceptibilities of the audience.

For example, improper exploitation would be likely to include comments that suggested that if viewers did not subscribe to a particular religion, negative consequences would follow. Generally, soliciting contact from viewers who are interested in furthering their knowledge or understanding of a religion, or a particular aspect of it, following a programme would not constitute "improper exploitation".

See also Chapter 4A, Protection of Under 18s & Harm and Offence – 'Discriminatory Treatment or Language'.

FAQs

Q. Can programmes criticise religions or religious views?

A. Yes. However, the important thing to remember is that if the content of the programme concerns religion or religious beliefs, the subject must be approached with a proper degree of responsibility and religious views and beliefs should not be subjected to an “abusive treatment”.

What amounts to a “... *proper degree of responsibility* ...” will clearly depend on the programme’s content but would include actions such as giving viewers clear information as to what they are about to watch, being clear as to who the contributors are and why they are being included, making sure views that are expressed are open to challenge and generally including an appropriate balance of opinions.

As to the question of what amounts to an “abusive treatment”, Ofcom currently gives no guidance on this but it is clear that gratuitous insults and ill-informed or denigratory comments in connection with the religious views and beliefs of individuals and groups would be problematic.

However, carefully researched, balanced programmes which seek to analyse critically religions and their associated belief systems, even if potentially controversial, are unlikely to be considered to amount to an “abusive treatment” and would not therefore be likely to breach the Code.

Q. I don’t think the contents of my programme amount to an “abusive treatment” but they are bound to cause offence to some. Is this acceptable?

A. As always with matters of offence, context is key. Any programme that takes a controversial approach to such matters as religious beliefs obviously has the potential to cause offence. Ofcom requires material which may cause offence to be justified by the context which includes, but is not limited to, the editorial content of the programme, the service on which the material is broadcast, the likely expectation of the audience and the information given to any potential viewer. See Chapter 4A, Protection of Under 18s & Harm and Offence.

Q. If a contributor talks about their religion or religious views does that mean they are being promoted?

A. What regulation in this area seeks to prevent is the promotion of religious views or beliefs by “stealth”; in other words, programming that purports to be one thing but ultimately intends to acquire converts to a belief-system by not revealing its true intention. So, as long as it is clear to viewers who is addressing them and what particular religion or denomination they represent, it is unlikely Ofcom would regard the programme as amounting to a breach of the Code.

Q. Can I make jokes about religion?

A. In short, yes, but subject to the general requirements of the Code relating to harm and offence, i.e. that material which may cause offence must be justified by the context.

Remember: the section of the Code on ‘religion’ [i.e. Section Four of the Code] is only concerned with “religious programmes”, defined as programmes containing devotional material and other types of programming where religion or religious belief is either central or amounts to a significant part of the programme. This part of the Code is not concerned with comedies, drama or general entertainment programmes even though they may make reference to aspects of religion.

4F. DUE IMPARTIALITY, DUE ACCURACY AND UNDUE PROMINENCE OF VIEWS AND OPINIONS

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KEY POINTS

In News Programmes

- News, in whatever form, must be reported with due accuracy and presented with due impartiality. Presenting a story or item with “due impartiality” means presenting it in an appropriately balanced and fair way.
- Significant mistakes in news should normally be acknowledged and corrected on air quickly. Corrections should be appropriately scheduled.
- Politicians must not be used as newsreaders, interviewers or reporters in news programmes unless, exceptionally, it is editorially justified, in which case that person’s political allegiance must be made clear to viewers.

In Non-News Programmes

- **Programmes dealing with matters of political or industrial controversy or matters relating to current public policy must be duly impartial.** Whilst in most cases individual programmes should be duly impartial in themselves, impartiality can be achieved over a series of programmes taken as a whole. However, wherever impartiality is to be achieved over two or more programmes, this should be made clear to viewers e.g. by an on-air announcement immediately prior to each programme. In addition, views and facts must not be misrepresented and should be presented with due weight over appropriate timeframes.
- Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.

- Presenters and reporters (or a chair in a discussion programme) can express their own views on matters of political or industrial controversy or matters relating to current public policy as long as alternative viewpoints are represented and due impartiality is achieved either within the programme itself or within a series of programmes taken as a whole.
- “Personal view” or “authored” programmes, which present a particular view or perspective must be clearly signalled to viewers as being so at the outset. Producers must seek advice from the programme lawyer at an early stage.
- Major matters. In addition to the above rules, in relation to major matters of political or industrial controversy and major matters relating to current public policy e.g. matters of national or international importance, a programme or clearly linked programmes must include and give due weight to an appropriately wide range of significant views and views and facts must not be misrepresented.

DUE IMPARTIALITY, DUE ACCURACY & UNDUE PROMINENCE OF VIEWS AND OPINIONS

[See Section 5 – Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions - at page 24 of the Code]

Note: Channel 4's news is produced by Independent Television News ("ITN") and Five's news is produced by Sky. All legal and compliance queries regarding Channel 4's and Five's news programmes should, in the first instance, be directed to the relevant personnel at ITN and Sky respectively.

Viewers have high expectations of television journalism, particularly in news programmes and factual programmes dealing with controversial matters e.g. politics and public policy issues. Audiences expect programmes to be accurate and to be appropriately balanced and fair.

To ensure this is achieved, Parliament has made it a statutory requirement that broadcasters ensure that news and matters of political or industrial controversy or matters relating to current public policy (in any type of programme), are reported with due accuracy and presented with due impartiality. In turn, these statutory provisions are reflected in the Code.

The Code contains a number of rules that apply specifically to news programmes and further rules that apply to all programming dealing with certain types of subject matter.

DUE IMPARTIALITY IN NEWS PROGRAMMES

DUE ACCURACY & DUE IMPARTIALITY

News, in whatever form, must be reported with due accuracy and presented with due

impartiality. In addition to traditional news programmes, "news" includes news bulletins, news flashes and daily news magazine programmes.

Clearly news programmes should be accurate i.e. factually correct. The requirement of "due" accuracy merely anticipates there may be details in relation to a story that it is acceptable to omit without adversely affecting the story's accuracy.

Presenting a story or item with "due impartiality" means presenting it in an appropriately balanced and fair way, in terms of including the various views, opinions and arguments that might exist in relation to a particular story and not favouring one side over another.

The term "due" is significant in that it means that impartiality should be adequate and appropriate in all the circumstances of the particular story. Broadcasters do not have to give equal time to each and every view or argument that might exist on a particular subject – just what is adequate and appropriate in all the circumstances.

CORRECTING MISTAKES

Significant mistakes in news should normally be acknowledged and corrected on air quickly. Corrections should be appropriately scheduled in order to reach a similar audience to the story which included the mistake. If producers become aware of a significant mistake having been broadcast because of a complaint or otherwise, they should immediately seek advice from the programme lawyer. No apology should be made without first having taken legal advice.

APPEARANCES BY POLITICIANS IN PROGRAMMES

Politicians must not be used as newsreaders, interviewers or reporters in news programmes unless, exceptionally, it is editorially justified, in which case that person's political allegiance must be made clear to viewers.

Any proposal to involve politicians in news programmes, other than as interviewees, must first be referred to the commissioning editor for approval who, in turn, should seek advice from the programme lawyer. Ofcom guidance states that the term 'politicians' includes an MP or councillor, a candidate, an applicant to be a candidate or a prospective candidate, an employee of a political party or an activist.

DUE IMPARTIALITY IN NON-NEWS PROGRAMMES

MATTERS OF POLITICAL OR INDUSTRIAL CONTROVERSY & MATTERS RELATING TO CURRENT PUBLIC POLICY

In non-news programmes, there is no general requirement of due impartiality unless the programme is dealing with "matters of political or industrial controversy" or "matters of current public policy". *The former are defined in the Code as being "... political or industrial issues on which politicians, industry and/or the media are in debate..."* e.g. the government's decision to go to war, the amount of tax charged on petrol, matters giving rise to industrial action/strikes and other similar matters. The latter i.e. matters of current public policy, are defined as being "... policies that are either under discussion or have been already decided by local, regional or national government or other organisations mandated to make such decisions ..." e.g. the introduction of

laws to deal with terrorism or extending licensing hours etc.. They need not be the subject of debate. It is worth noting that, in many cases, there will be an overlap i.e. many issues will be both matters of political or industrial controversy and at the same time matters of current public policy.

The following rules apply.

Due Impartiality

Programmes dealing with matters of political or industrial controversy or matters relating to current public policy must be duly impartial.

In most cases individual programmes should be duly impartial in themselves. However, impartiality can be achieved over a series of programmes taken as a whole i.e. where more than one programme deals with the same or similar subject e.g. a drama followed by a debate or a season of programmes.

Whenever impartiality is to be achieved over two or more programmes, this should be made clear to viewers e.g. by an on-air announcement immediately prior to each programme. Producers and editorial staff must seek early advice from the programme lawyer wherever it is intended to achieve impartiality in this way.

Note: this rule applies to both national and international matters e.g. foreign elections.

Misrepresentation & Due Weight

Views and facts must not be misrepresented and should be presented with due weight over appropriate timeframes. In each case, "due weight" will be a matter of judgment based on the particular circumstances.

REPORTERS & PRESENTERS

PERSONAL INTERESTS

Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience. For example, if a guest presenter or reporter had close connections to one political party and was reporting on a politically sensitive issue, then clearly it would be appropriate to alert viewers to the individual's political allegiances. Producers must ensure that all presenters and reporters are briefed about this requirement and that they have appropriate procedures in place to ensure that they become aware of any personal interests that could impinge upon the perceived impartiality of a programme or programme item. If in doubt, please seek advice from the programme lawyer.

VIEWS & OPINIONS

Presenters and reporters in non-news programmes (or a chair in a discussion programme) can express their own views on matters of political or industrial controversy or matters relating to current public policy as long as alternative viewpoints are represented and due impartiality is achieved either within the programme itself or within a series of programmes taken as a whole.

“PERSONAL VIEW” OR “AUTHORED” PROGRAMMES

Personal view or authored programmes which present a particular view or perspective must be clearly signalled to viewers as being so at the outset. Viewers' expectations are likely to be different if they know at the outset that what is being presented to them is acknowledged as being someone's personal view. However,

such programmes require careful handling and merely signalling a programme or programme item as being “personal view” may not be enough to discharge totally impartiality requirements. Producers must seek advice from the programme lawyer at an early stage.

UNDUE PROMINENCE OF VIEWS AND OPINIONS

Undue prominence must not be given to the views and opinions of individuals or bodies on matters of political or industrial controversy or on matters relating to current public policy, taking into consideration everything that is broadcast in relation to a particular issue, over an appropriate timeframe. This requires broadcasters and, in particular, commissioning editors and senior editorial executives to think carefully about how particular subjects are being dealt with generally by the channel with a view to ensuring, cumulatively, that output is duly impartial.

MAJOR MATTERS

In addition to the above rules, there is a further requirement that broadcasters ensure that due impartiality is preserved in relation to major matters of political or industrial controversy and major matters relating to current public policy. Such matters would include ones of national or international importance or of similar significance within a smaller broadcast area. When dealing with such major matters, a programme or clearly linked programmes must include and give due weight to an appropriately wide range of significant views. Views and facts must not be misrepresented.

PARLIAMENTARY FOOTAGE AND FOOTAGE FROM OTHER ASSEMBLIES

Although no longer a provision of the Code, there are rules which apply to the use within programmes of footage from within Parliament and certain other assemblies. In relation to Westminster and the House of Commons and House of Lords (including Committees in both Houses) these include the following:

- Footage must not be manipulated i.e. pictures or the sound altered in any way.
- Where two sections of a speech are included, it must be clear to viewers that an edit has been made and that the speech as presented is not continuous.
- Parliamentary footage may only be included in news and factual programmes and cannot be used in light entertainment (including political satire), fictional or drama programmes.

Similarly there are rules that apply in relation to footage from within the European Parliament, Scottish Parliament, Welsh Assembly and Northern Ireland Assembly. There are currently no restrictions regarding coverage of the London Assembly.

FAQs

Q. Is it only news programmes that have to be impartial?

A. No. Any programme concerning matters of political or industrial controversy or relating to current public policy must be duly impartial, either in themselves, or the broadcaster must seek to achieve impartiality in some other way e.g. by broadcasting another programme in which balancing views and opinions are expressed.

Q. On what subjects does a programme need to be impartial?

A. It is impossible to give an exhaustive list but matters of political and/or industrial controversy, or relating to current public policy would include the following: government domestic and foreign policy and all that entails e.g. the introduction of new laws, reforms etc, war, military action, defence, aid, sanctions, the economy, health, education, security, immigration, finance etc; party politics; industrial action, strikes, factory closures etc. If the subject matter can be broadly termed 'current affairs' and on which there exist opposing viewpoints, it is likely to be caught.

Q. What is a personal view programme?

A. A 'personal view programme' is just that: a programme in which the personal views or perspectives of an individual or group of individuals is propounded. Such programmes must be labelled as being a 'personal view' so viewers are clear about what they are watching. The Code acknowledges that personal view programmes can "... range from the outright expression of highly partial views, for example, by a person who is a member of a lobby group and is campaigning on the subject, to the considered "authored" opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream". Simply labelling a programme as 'personal view' does not mean that broadcasters can dispense with ensuring impartiality, where it is required. Alternative viewpoints must still adequately be represented in the programme, or in a series of programmes taken as a whole.

Q. Why do we have to be balanced when the newspapers don't?

A. Television is much more closely regulated than the print media. Impartiality provisions are imposed on television output by an act of Parliament and compliance with those provisions is an important condition of all broadcasters' licences.

Q. Can't we achieve balance in some later programme?

A. Impartiality may be achieved by broadcasting one or more later programmes, which contain balancing arguments on a particular subject, so that, taken as a whole, the broadcaster's output is duly impartial regardless of views expressed on other channels or elsewhere in the media. This needs careful thought and planning. Wherever this is intended the commissioning editor and programme-makers should seek early advice from the programme lawyer.

4G. ELECTIONS

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KEY POINTS

- The reporting of elections and referendums must be duly impartial and facts must not be misrepresented.
- Due weight must be given to coverage of the major parties and any other parties or independent candidates with significant views or opinions during the election period.
- When the election period begins will depend on the exact nature of the election but invariably ends with the close of the poll.
- On polling day, discussion and analysis of election issues must finish when polling stations open.
- From the start of the election period, candidates in UK elections must not act as presenters or interviewers unless the programme is clearly non-political in nature and the appearance was arranged before the election period, in which case it may go ahead.
- From the start of the election period, if a candidate appears in a report about his/her constituency or electoral area, all other candidates should be offered the opportunity to take part. Constituency reports should also contain a list of all candidates standing in that constituency.
- After an election has been called, politicians must not be allowed to make constituency points in any type of programme where no other candidate will have a similar opportunity.

ELECTIONS

[See Section Six – Elections and Referendums - at page 30 of the Code]

Special rules apply to election reporting and to programmes broadcast in the run-up to elections. For detailed advice on this subject, please contact your allocated programme lawyer. There are separate Ofcom rules governing Party Political and Party Election Broadcasts. In addition, at the time of elections, separate guidance will be issued by Channel 4's and Five's legal and compliance departments.

Below is a brief summary of the rules.

WHICH ELECTIONS?

The rules apply to a General Election, European elections, by-elections, Scottish Parliamentary elections and elections for the Welsh, Northern Irish and London Assembly elections.

IMPARTIALITY

Elections and referendums fall within the definition of "Major Matters" (see 'Impartiality' at Chapter 4F) and, therefore, the Impartiality rules apply i.e. reporting must be duly impartial, programmes or clearly-linked programmes must include and give due weight to an appropriately wide range of significant views and views and facts must not be misrepresented.

DUE WEIGHT TO MAJOR PARTIES

Due weight must be given to coverage of the major parties during the election period. Broadcasters must also consider giving coverage during the election period to other parties and independent candidates with significant views and opinions. The major parties in the UK are the Labour Party, the Conservative Party and the Liberal Democrats, plus the Scottish National Party in Scotland and Plaid Cymru in Wales. In Northern Ireland,

the major parties are the Democratic Unionist Party, Sinn Fein, the Social Democratic and Labour Party and the Ulster Unionist Party. When the election period begins depends on the exact nature of the election but invariably ends with the close of the poll.

ON POLLING DAY

Discussion and analysis of election issues must finish when polling stations open. In addition, the results of any opinion poll (including exit polls) must not be published on polling day until the poll has closed. For European elections, results may not be published until all polls throughout the European Union have closed. References in news programmes to the fact that elections are taking place can be made but they should not include any discussion or analysis of policies or issues relevant to the election.

APPEARANCES BY CANDIDATES

From the start of the election period, candidates in UK elections must not act as presenters or interviewers unless the programme is clearly non-political in nature and the appearance was arranged before the election period, in which case it may go ahead.

CONSTITUENCY REPORTS

In reports during an election about particular constituencies or constituency matters, special rules exist to ensure that candidates are not given any unfair advantage over other candidates. In particular:

- If a candidate appears in an item about his/her constituency or electoral area, each candidate standing for the major parties and other candidates with previous or current support should be offered the opportunity to take part.

- If a particular candidate refuses or is unable to take part, the report may still go ahead. It would normally be stated that such candidates were invited to take part but either refused or were unavailable.
- Constituency reports should contain a list of all the candidates standing giving their first and last names and the party they represent, in sound and/or vision.
- Where politicians are appearing in programmes for whatever reason after an election has been called, he/she must not be given the opportunity to make constituency points when no other candidates will have a similar opportunity.

FAQs

Q. What is the Election Period?

A. This is the period during which the special due impartiality rules [Section 6 of the Code] governing election and referendum reporting apply. In the case of a General Election, the period commences with the announcement of the dissolution of parliament and ends with the close of the poll on polling day.

Q. What is a constituency/electoral area report or discussion?

A. This is where an electoral candidate takes part in a report or discussion about his/her particular constituency or electoral area.

Q. Do all candidates within that constituency/electoral area have to agree to take part in the report or discussion?

A. No, but candidates from each of the major political parties and from other parties who have previous or current significant electoral support must be invited to take part. If they refuse or are unable to take part, the report or discussion can still go ahead, provided a list of all the candidates standing in that constituency or electoral area – full name of the candidate and party - is conveyed in sound and/or vision at the end of the report or discussion.

Q. Can a candidate take part in a non-political programme during the election period?

A. Appearances by candidates in non-political programmes planned or scheduled before the election period can continue but new appearances should not be arranged and broadcast during this period.

Q. Do special rules apply to Party Election and Party Political Broadcasts?

A. Yes. Party Election and Party Political Broadcasts are covered under separate rules - the Ofcom '*Rules on Party Political and Referendum Broadcasts*'. These rules cover the allocation, duration and scheduling of such broadcasts. Whilst editorial control of such broadcasts rests with the political parties, broadcasters remain responsible for ensuring they comply with the Code. The political parties are also required to comply with the '*Guidelines for the Production of Party Election Broadcasts*', drawn up by the broadcasters and designed to assist the parties in complying with the Code.

4H. EDITORIAL INDEPENDENCE AND COMMERCIAL REFERENCES WITHIN PROGRAMMES

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KEY POINTS

- Programme content and advertising must be kept entirely separate.
- Products and services must not be promoted within programmes. Programme-related material is excluded from this rule.
- The broadcaster must retain complete editorial control over programme content.
- Programmes must not give undue prominence to commercial products and services. Product placement is generally prohibited.
- Programme-related material e.g. factsheets, websites, helplines, premium rate telephone numbers, etc. may be promoted within programmes or around the programmes to which they relate as long as it is editorially justified to do so and the broadcaster retains responsibility for the material.
- Premium rate telephone numbers should not be included in programmes unless their inclusion is editorially justified and not promoted within programmes unless they fall within the definition of programme-related material.
- All competitions within programmes should be referred in advance to the programme lawyer for detailed advice on all matters involved, including premium rate telephone, text and red button interaction and the provisions of the Gambling Act 2005.
- Generally advertisements must be clearly separated from programmes. However, all types of programming may contain advertisements or clips from advertisements, if editorially justified. Seek advice from the programme lawyer.
- Charitable appeals within programmes are permissible. However, there are specific rules that broadcasters and programme-makers must follow.
- Television broadcasters are never allowed to broadcast appeals for donations to make programmes or fund their service.
- There are complex rules in relation to broadcasting financial promotions. Seek advice from the programme lawyer.
- News and current affairs programming may not be sponsored.
- Generally, programmes cannot be sponsored by organisations that are prohibited from advertising on television, e.g. the tobacco industry.
- Sponsored programmes must not contain any promotional references to the sponsor, its activities or products or services. Non-promotional references are permitted only where they are editorially justified and incidental.

EDITORIAL INDEPENDENCE AND COMMERCIAL REFERENCES WITHIN PROGRAMMES

[See Sections Nine and Ten of the Code: 'Sponsorship' at page 49 and 'Commercial References and Other Matters' at page 53 of the Code]

GENERAL PRINCIPLES

As commercial broadcasters, Channel 4 and Five are funded primarily through advertising. However, other than as a general means of generating revenue with which to fund our programme-making and broadcasting activities, advertisers and commercial organisations should not in any way encroach upon our editorial independence and integrity. The following rules apply.

Programme content and advertising must be kept entirely separate – for further rules relating to the separation of advertising and programming, see the 'Rules on the Amount and Distribution of Advertising' at www.ofcom.org.uk.

Products and services must not be promoted within programmes – programme-related material is excluded. See "Undue Prominence" and "Product Placement" below.

Broadcasters must retain complete editorial control over their programme content. In order to achieve this:

- programmes must always be and appear to be editorially independent;
- programmes should not promote or endorse the commercial products and services of others or appear to (see undue prominence and product placement below);

- any improper external influence on the editorial process must always be resisted e.g. by a commercial organisation, a contributor or anyone or any organisation who seeks to exercise some degree of control over programme content;

- the external activities of personnel working for us e.g. producers, presenters, must never improperly influence the editorial integrity of our programmes;

- on-air credits should always be justified.

PRODUCTS AND SERVICES WITHIN PROGRAMMES

In today's society, commercial brands, products and services are everywhere. Inevitably, therefore, this will be reflected within programmes and whilst there is no absolute prohibition on including verbal and visual references to commercial products and services within programmes, in order to maintain the editorial integrity of programming, the following rules apply.

UNDUE PROMINENCE

Programmes must not give undue prominence to commercial products and services.

Clearly, commercial products and services can be referred to in programmes i.e. both visually and orally, but their inclusion and manner of inclusion should always be editorially justified.

The frequency and manner in which a product or service appears or is referred to in a particular programme will have a direct bearing on whether or not it is being given undue prominence.

A useful practical yardstick is that no impression be created of external

commercial influence on the editorial process i.e. if viewers are left feeling a deal has been struck between the producers of a programme and an advertiser to promote a product or service by stealth or otherwise, this is very likely to amount to undue prominence of the product or service in question, regardless of whether or not such an arrangement exists (see also Product Placement below).

Generally, studio-sets should not contain 'permanent' items that are branded e.g. branded items of furniture or props.

In studio-based programmes, branded products may be brought onto the set if editorially justified for a particular programme item e.g. a consumer item but, even then, verbal and visual references to the item should be kept to what is strictly editorially justified. For example, it will not normally be necessary to name-check repeatedly products under discussion and, if branded items are brought into the studio, thought should be given as to how they are shown on camera. They should not be placed in such a way that they are unduly prominent e.g. placed directly in front of the camera and left there for an unduly long time (which may be measured in mere seconds).

Including a range of products or services of the same type is likely to reduce the impression of any commercial influence on the editorial process and, in turn, to reduce the risk of giving any one product or service undue prominence. For example, in a consumer item about DVD players, if every DVD player featured was of the same make, viewers may well suspect commercial influence on the editorial process and the brand is likely to be given undue prominence. Including a range of brands e.g. JVC, Sony, Panasonic ... is likely to reduce that impression.

Guests who are being interviewed in studio-based programmes and contributors in factual programmes should, wherever possible, be told in advance of filming not to wear prominently branded clothing. This is especially important if the guest or contributor has some commercial relationship with the brand in question e.g. a footballer, who is sponsored by Nike, should not be shown wearing prominently branded Nike sportswear in a studio based item.

Viewers are likely to have different expectations depending on the situation in which contributors are filmed. For example, athletes being interviewed trackside are likely to be wearing clothing heavily branded with the marks of their sponsors and viewers will realise that programme-makers have little or no control over this.

In film and drama where, in most cases, programme-makers have a greater degree of control over what is shown on camera, there must be strong editorial justification for deliberately including any identifiably branded products and, even then, their prominence should be strictly limited to what is necessary editorially.

In documentary and factual programme-making, producers are unlikely to have much, if any, control over the surroundings in which they are filming. However, programme-makers should always be aware of branded items around them and 'pieces to camera' and interviews should not be conducted against a backdrop with prominent commercial logos or names on it unless, exceptionally, it is editorially justified to do so e.g. the interview is part of a news report about the brand in question. If in doubt, seek advice from the programme lawyer.

PRODUCT PLACEMENT

Agreements between programme-makers or broadcasters and external companies or agencies to include or to refer to commercial products or services within programme time in return for payment or something else of value e.g. free or discounted goods, are termed “product placement” and are generally prohibited.

Editorial Justification Exception

There is an exception to the general prohibition. Where their use within a programme is editorially justified, products or services may be acquired free or at less than full cost, providing this is not conditional on any specific agreement as to the manner of their appearance in the programme. In such cases, where the identity of the product is not otherwise apparent e.g. where a camera is shown but the make, e.g. “Fuji, is not seen or mentioned verbally, a brief text acknowledgement (on-screen for no more than approximately five seconds, with no logos or special fonts) to the provider of the product or service in the end credits may be given e.g. “With thanks to X”. Note: the product may or may not give any indication of its provider e.g. a Fuji camera may be supplied by Fuji itself or a high street retailer e.g. Currys. If “Fuji” was seen on the camera in the programme or it was referred to verbally, it would not be permissible to credit Currys in the end credits.

Example

What is “editorially justified” will depend on the particular circumstances and the nature of the programme. For example, whilst it would be likely to be acceptable to receive free or discounted flights in a travel programme, as this would have a direct editorial connection to the subject of the programme, it would not be permissible to accept free or discounted designer clothes for the presenter in return either for an

incidental product mention within the programme or an acknowledgement in the end credits. In such a case, there would be no editorial justification.

In the first example (free flights), no specific agreement could be made with the airline about whether or not the name of the airline would in fact be featured or how it might be featured but it may well be that, editorially, the programme-makers would want to make such a reference, in which case that would be acceptable. If, as it turned out, the name or identity of the airline was not apparent from watching the programme, a credit to the provider could be given in the end credits, as above.

Since often it may not be clear whether or not such editorial justification exists, producers must always seek advice from the programme lawyer before accepting such products or services for free or at less than their full cost.

Purchased Programmes

In other countries, product placement or deals similar to product placement are permissible. Ofcom rules state that if UK licensed broadcasters purchase programmes that contain products or services which have been the subject of a product placement type agreement, they can be shown but only as long as the UK licensed broadcaster does not directly benefit from the arrangement e.g. financially. The same principle applies to films that are originally made only for cinema release and contain product placement. However, broadcasters must still ensure that such programmes and films do not contain undue prominence of commercial products or services, regardless of whether or not the inclusion of the product/service in question is the result of product placement. Editing may still be required.

PROGRAMME-RELATED MATERIAL

“Programme-related material” is defined as products or services that are directly derived from a specific programme and are intended to allow viewers to benefit fully from, or to interact with that programme. Programme-related material may include a book or DVD of a series; a live event directly derived from a programme; downloads of outtakes from a programme; a telephone service providing further information about issues discussed in a programme; the programme itself if available on another channel; a factsheet or website containing relevant information about the programme, premium rate telephone numbers, or SMS text services. The following rules apply:

- All such material can be promoted within programmes or around the programmes to which they relate i.e. within presentation time, as long as it is editorially justified to do so and we, as the broadcaster, retain responsibility for the material. Generally this means that we, as the broadcaster, should be in a position to exercise editorial control over the content of the programme-related material.
- To avoid giving undue prominence to programme-related material, any references to such material within programmes or in presentation time should be kept brief and confined to the name of the item, its cost and availability. In most cases, there will be no editorial justification in naming specific retailers where the material can be obtained from.

PREMIUM RATE SERVICES

At the time of publication Ofcom is consulting on proposals to amend the Code’s rules for programmes involving

participation by viewers or listeners via premium rate services. Any updates to the Code will be published on Ofcom’s website and updated to the Handbook will be published on the Handbook website.

Premium rate telephone numbers and other services should not be included in programmes unless their inclusion is editorially justified and should not be promoted within programmes unless they fall within the definition of “programme-related material” (see above), in which case:

- full control, including editorial control, of any premium line messages must be retained;
- the arrangements must comply with the PhonepayPlus (formerly ICSTIS) Code of Practice;
- the service must only convey information which is directly relevant to the programme with which it is associated and which is of benefit to viewers;
- the service must not promote any product or service, except programme-related materials; and,
- detailed rules on the provision of on-screen call charge information apply.

You must read and follow the ‘Use of Telephony Services’ Checklist, Chapter 6G.

COMPETITIONS

Viewer competitions and game shows are an established part of many types of programming and will often have brand names or commercial organisations associated with them, either in connection with the prize itself or the prize donor, or both.

To ensure that brands and commercial organisations associated with competitions do not receive undue prominence, the Code states: “References to brands within competitions must be brief and secondary”.

In practice, the following rules should be followed in order to achieve this:

- As a general rule, any one viewer competition or game show should have no more than two pairs of verbal and visual commercial references associated with it, per programme part. Advice should be sought from the programme lawyer on the cumulative effect of such references occurring in more than one part if that is intended.
- References may be verbal and/or visual e.g. *"To win a Nokia phone ..."* - the presenter or voiceover could say "Nokia" and also show the phone, with Nokia written on it. That would be one reference (i.e. one pair). Additionally, the brand or logo of the prize donor may be referred to e.g. *"To win a Nokia phone courtesy of Vodafone ..."* - here "Nokia" could be mentioned verbally and the phone (containing the word Nokia) shown (1 mention); and, Vodafone could also be named as the donor verbally and a caption with the name "Vodafone" shown (a further 1 mention). So, a total of 2 pairs of references i.e. the maximum allowed within one programme part.
- References should be kept factual and non-promotional e.g. *"To win a first class trip to New York, courtesy of British Airways, answer the following ..."* rather than: *"To win a first class trip to New York courtesy of the world's favourite airline, British Airways, answer the following ..."*. References to commercial products/ services or organisations in connection with competitions should not sound like advertisements.
- Visual references should be brief and not unduly prominent. As a general rule, a caption containing a brand name or logo should never occupy more than approximately 10% of the screen and should be on screen for no longer than

5-10 seconds.

- There may be a number of competitions within a single programme e.g. shows in the past have featured a different viewer competition around each and every ad break i.e. question before the break with the answer and the winner announced after it. However, where programmes contain more than one competition, prizes and prize donors should be different for each competition, to reduce the risk of giving undue prominence to particular commercial brands. Advice should be sought from the programme lawyer on whether the cumulative effect of all the competitions taken together is problematic.

Examples

- *"To win a holiday to Disneyland Paris (1 verbal reference) courtesy of e:bookers..." (1 verbal reference), answer the following question ...* Here there are two commercial references, both verbal.
- *"To win a year's supply of Perrier (accompanied by a picture of bottles of Perrier with the logo and name shown) (1 pair, verbal and visual) courtesy of Nestle, (accompanied with caption showing company logo), (1 pair of verbal and visual) - total 2 references, which is acceptable.*

Note: if the method of entering a viewer competition generates revenue and involves a premium above the normal rate for that mode of communication e.g. in the case of entry by telephone, the call costs more than what the user pays for any call to any other non-commercial user, the competition must either involve a significant element of skill e.g. the viewer must answer a question at a level of skill sufficiently rigorous to meet legal requirements (on which advice should be sought from the programme lawyer) or the competition must have free means of entry e.g. by post and/or via a website, and those free means of entry must be

promoted with due prominence when compared to the premium rate paying routes in terms of size, frequency and duration, otherwise the competition may be classed as an "illegal lottery". This would be a criminal offence.

Legal advice must be sought at an early stage to ensure competitions comply with the provisions of the Gambling Act 2005, which came into effect on 1 September 2007. Finally, note that in children's competitions, prizes must be appropriate to the age range of both the target audience and the participants. For example, young children should not be competing for large cash prizes.

All competitions within programmes must be referred in advance to the programme lawyer for advice on the above matters.

ADVERTISEMENTS WITHIN PROGRAMMES

Generally advertisements must be clearly separated from programmes. However, all types of programming including news, current affairs, factual and entertainment programmes, may contain advertisements or clips from advertisements, if there is sufficient editorial justification.

For example, it may be editorially justified to show a clip of an advertisement for a brand in a news or factual programme, perhaps as part of a report about the commercial fortunes of the brand in question, particularly if the ad campaign referred to is particularly relevant.

Only as much of the advertisement should be shown as is justified by the editorial requirements of the programme. In most cases it is likely to be appropriate to remove the 'pack shot' i.e. the shot normally at the end of an advertisement where the product or brand is named and shown for a number of seconds.

If the producer intends to include an advertisement or any part of one within a programme, particularly if it is current and is being transmitted within paid-for advertising time, advice must be sought from the programme lawyer at an early stage.

APPEALS FOR CHARITY

Broadcasters are able to make appeals for charities within programmes, as long as they do not charge the charities to do so and provided that the broadcaster has satisfied itself that:

- the charity can produce satisfactory evidence of charitable status;
- in the case of an emergency appeal, that a responsible public fund has been set up to deal with donations; and
- the organisation concerned is not prohibited from advertising on television.

In addition, there is a general requirement that, where possible, appeals, either individually or over time should benefit a wide range of charities i.e. repeated appeals for one or a small number of the same charities would be unacceptable.

FUNDS FOR PROGRAMMES

Television broadcasters are never allowed to broadcast appeals for donations to make programmes or to fund their services.

FINANCIAL PROMOTIONS

There are complex rules in relation to broadcasting financial promotions i.e. an invitation or inducement to engage in investment activity and investment recommendations, in relation to a specific investment decision e.g. to buy or sell particular shares.

For further information on this complex area, please refer to the programme lawyer. Such financial promotions must never be broadcast without having sought and acted upon the advice of the programme lawyer.

VIRTUAL ADVERTISING

Any intention to employ ‘virtual advertising’ i.e. altering pictures to replace existing advertising at an event with other advertising e.g. for geographical reasons, must comply with Section 10.18 of the Code. In addition, please refer to the programme lawyer for further advice.

SPONSORSHIP

[See Section Nine of the Code – page 49]

A sponsored programme (which includes advertiser supplied programmes) is one which has had some or all of its costs met by a ‘sponsor’ with a view to promoting itself or its products or services, or those of another. A sponsor may be any public or private undertaking, including charities (but see below for prohibited and restricted sponsors).

Sponsorship deals are now commonplace and are a legitimate way for commercial broadcasters to increase revenue for their programme-making activities. However, to ensure that programmes remain editorially independent and that sponsors do not encroach upon the editorial integrity of the programmes they are sponsoring, the following rules apply.

CONTENT WHICH CANNOT BE SPONSORED

Only news and current affairs programming may not be sponsored. The Code defines “current affairs programming” as programming which “... contains

explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

PROHIBITED AND RESTRICTED SPONSORS

Programmes cannot be sponsored at all by organisations that are prohibited from advertising on television e.g. the tobacco and pornography industries. For further details see the TV Advertising Standards Code at www.asa.org.uk.

EDITORIAL INDEPENDENCE

Broadcasters must retain editorial control of all their programmes including sponsored programmes.

PROMOTIONAL REFERENCES TO SPONSOR PROHIBITED

Sponsored programmes must not contain any promotional references (i.e. references which would encourage or are intended to encourage the purchase or rental of a product or service) to the sponsor, its activities or products or services, including generic references to a type of product or service. In addition, the sponsor must also not have any other direct or indirect interest in the editorial content of the sponsored programme. References that are non-promotional are permitted but only where they are editorially justified and incidental.

Programme-makers and editorial staff at the broadcaster should always ascertain whether the programme they are making is to be sponsored. No references to the sponsor or its products or services should be made within any sponsored programme without first seeking advice from the programme lawyer.

SPONSORSHIP CREDITS

Sponsored programmes must be

identified as such either at the beginning or end of the programme. This can be done visually, verbally or both. The relationship between the sponsor and the sponsored programme must be transparent. Sponsorship credits and/or integrated title sequences must be clearly separated from programmes and from advertising. Sponsorship credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. If a trail for a programme contains a reference to the sponsor, it must remain brief and secondary.

COVERAGE OF A SPONSORED EVENT

If a programme is covering a sponsored event e.g. the Orange British Film Academy Awards, The Brit Awards with Mastercard, Shockwaves NME Awards, or a sporting occasion e.g. the Artois Championships (tennis), the Carling Cup (football), there must be no undue prominence given to the event sponsor, its products or services (see ‘Undue Prominence’ above). The appearance of any logos must arise naturally and incidentally from coverage of the event itself, e.g. participants’ branded clothing, hoardings, advertising, banners. Any other editorial content associated with the event but which occurs away from the event should not generally include visual or verbal references to the event sponsor. Furthermore, the programme’s presenters should never wear any clothing which is branded with the event sponsor’s name or logo.

Any plans to include the event sponsor’s name or logo in the programme’s titles sequences, break bumpers, or in captions/astons should be referred to the programme lawyer for advice. All references must be editorially justified and regard must be had to the cumulative effect

when all references are taken together.

Where the event sponsor is also the programme sponsor (i.e. the event sponsor has also contributed to the programme’s production costs with a view to promoting itself) e.g. Swarovski’s Fashion Rocks, the following additional rules also apply:

- Any reference (actual or generic) to the programme sponsor or the programme sponsor’s products or services must be incidental, non-promotional and there must be editorial justification for its inclusion. This does not preclude incidental shots of the sponsor’s on-location branding that occur as a result of filming the event, but there should be no branding, or references to the programme’s sponsor, outside of coverage of the actual event itself without editorial justification. A reference to the sponsor within a programme may create a higher presumption of editorial influence by the sponsor.

- The programme/event sponsor’s name may appear in the title of the programme and in title sequences, break bumpers and in caption/astons. However, advice should be sought in advance from the programme lawyer to avoid giving the brand in question undue prominence.

- Reference to the sponsor within a programme must not be a condition of the sponsorship arrangement, otherwise this would amount to product placement, which is prohibited (see ‘Product Placement’ above).

- The sponsor cannot ‘place’ their branding within programmes they are funding. Programme-makers/broadcasters must keep sole control of the way in which the event is filmed and the way in which references to the sponsor are included in the broadcast programme.

To avoid problems and having to edit or pixelate footage, programme-makers should seek early advice from the programme lawyer on what will be and what will not be acceptable.

Note: a sponsored event cannot be 'created' for television and covered in the way described above. The event must exist independently of the television coverage i.e. it would happen regardless of whether the event was to be televised. For example, it could be argued that the Big Brother finale is 'an event' in itself. However, whilst the Big Brother series could be sponsored in the normal way (with sponsorship titles, credits and part bumpers), the 'event' that is the final programme could not i.e. a sponsor would not be able to have its name or branding on set in and around the Big Brother studio. This rule is to prevent advertisers simply creating events solely in order to get their name and branding within programme time. If in doubt, seek advice from the programme lawyer.

FAQs

Q. What's the difference between undue prominence and product placement?

A. "Undue prominence" occurs when there is insufficient editorial justification for the degree of prominence (verbal and/or visual) given to a commercial name, logo, product or service in a programme e.g. viewers get the impression that a programme is plugging a particular commercial product or service. "Product placement" is an even more serious breach, which occurs when a producer or broadcaster receives a payment or benefit (in cash or in kind) to include a verbal and/or visual reference(s) to a commercial name, logo, product or service in a programme.

Q. How can I stop guests wearing branded clothing, particularly celebrities?

A. This can be a sensitive matter, which needs to be raised diplomatically but clearly at an early stage. Programme-makers should explain the broadcaster's obligation under the Code to avoid undue prominence. If all else fails, creative shooting and editing, with close-ups on the face, framing logos out of shot, pixelation and even editing material out may be required.

Q. A company is willing to supply the programme with 'freebies'. Can they be given a programme credit?

A. This depends on the nature of the programme and what the items are. If they are unusual and expensive objects or services which are editorially important to the programme, then a simple "*with thanks to*" credit at the end of the programme is likely to be permissible or, alternatively, identification of the items or the company providing them within the programme may be allowed, if editorially justified and not too prominent. However, both cannot be given. It is also usually permissible to give a "with thanks to" end credit to, for example, tourist boards or public bodies who have assisted with filming.

Q. Can advertisements be included in programmes?

A. Yes, providing it is clearly understood to be an advertisement or extract from an advertisement, its inclusion is editorially justified in the particular context and undue prominence to the product or service is avoided.

Q. What is a sponsored programme and why does it matter?

A. A programme is considered to be sponsored if a third party has contributed towards the cost of making or broadcasting the programme. That can either be by paying the broadcaster or producer a significant sum of money for the privilege of elaborate sponsor credits before and after the programme (and in and out of the ad breaks as well); or it can arise from an informal contribution to the programme producer's budget (this should be discussed first with the department at the broadcaster which deals with sponsorship). In both cases, there is an obligation for that sponsorship to be made clear to viewers and there must be no promotional reference (verbal or visual) to the sponsor in the programme. Sponsors may be credited as prize donors or have their products/services as prizes in viewer competitions in programmes they are sponsoring, but

particular care needs to be taken to ensure that the degree of prominence is justified. Advice should be sought at an early stage.

Q. Is it permissible to mention that the presenter of a programme has a book published which is “available in all good bookshops”?

A. It depends on the connection between the programme and the book, and what role the broadcaster has had in its production. Programme-related material (books, magazines, DVD’s, web sites etc.) can be promoted on air if it is “*directly derived from a specific programme*” and the broadcaster has “*responsibility*” for the programme-related material. However, if the book in question did not fall within the definition of programme-related material e.g. the book was an autobiography of the presenter, published independently of the broadcaster, it could not be promoted within or around the programme. This can be a tricky area and advice should be sought from the programme lawyer.

Q. A car manufacturer has offered us a top of the range car as a prize for a viewer competition. Is this permissible?

A. Commercial products and/or services can be given away as prizes in viewer competitions in programmes and in presentation time, providing the commercial references (verbal and visual) are “*brief and secondary*”. Programmes should not promote the product or service and should describe it without giving it undue prominence. As a guide, two combined verbal and visual references to the commercial names per programme part is permissible. Advice should be sought from the programme lawyer on the cumulative effect of such references occurring in more than one part.

Q. Can broadcasters promote their other commercial channels, video on demand, mobile services and websites?

A. Yes. Ofcom rules on cross-promotion clarify that broadcasters can do so within presentation time (but not within programmes), providing the service is “*broadcasting-related*” i.e. that the service delivers content similar to that delivered on a television or radio service. Some material e.g. websites or references to a programme showing on another channel, may be both broadcasting-related as well as programme-related.

Possible examples include a television channel; a radio station; video-on-demand; content delivered over a mobile or broadband platform; a website that provides content clearly and directly related to a broadcasting-related service e.g. a channel’s own website.

When promoting the service, in which the broadcaster must usually have at least a 30% interest, broadcasters can also refer to the commercial names of the platform the service is carried on, providing the promotion mentions all of the platforms the service is on and does so equally. Note: there are exceptions for platforms with less than 500,000 customers. Seek advice from the programme lawyer.