



# PROGRAMMING CHECKLISTS

# 6A. FACTUAL AND CURRENT AFFAIRS PROGRAMMING

The following is a checklist of regulatory and legal issues and best practice that may arise in factual and current affairs programming, with suggested further reading which gives a more detailed description and explanation of the issues. This document is not intended to be a substitute for seeking appropriate legal advice.

## OFCOM BROADCASTING CODE

### TRUTH & ACCURACY

● 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 programmes 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. **Programmes must be honest, fair and accurate and must not mislead viewers.**

- See Chapter 4A, *Protecting Under 18s & Harm and Offence – ‘Viewer Trust: Truth, Accuracy and the Importance of not Misleading the Audience’*
- See Channel 4’s *Viewer Trust Guidelines at Appendix 7A*
- See Five’s *Viewer Trust Guidelines at Appendix 8A*

### RECONSTRUCTIONS

- All reconstructions must be fair and accurate.
- If there is a risk that viewers might be misled, reconstructions should be labelled as such to avoid confusion.
- Where there is risk of causing distress

by reconstructing actual events, appropriate parties should be informed.

- See Chapter 4A, *Protecting Under 18s & Harm and Offence – ‘Viewer Trust: Truth, Accuracy and the Importance of not Misleading the Audience’*
- See Channel 4’s *Viewer Trust Guidelines at Appendix 7A*
- See Five’s *Viewer Trust Guidelines at Appendix 8A*

### SECRET FILMING

- Individuals must not normally be filmed or recorded secretly for inclusion in a programme unless approved by the broadcaster in advance.
- Programme-makers must set out in writing their justification for covert filming/ recording. It must satisfy the provisions of Section 8.13 of the Code.
- Before any secret filming is undertaken, there are detailed guidelines you must follow. See Channel 4’s and Five’s internal compliance procedures and rules contained within the Appendices.

- See Chapter 4D, *Privacy – ‘Surreptitious or Secret Filming’*
- See Channel 4’s and Five’s *Secret Filming Rules at Appendices 7C & 8C*

### PAYMENTS

- Do not make payments to sources or contributors without reference to and the approval of the broadcaster. This does not include modest out-of-pocket expenses e.g. to cover meals and taxi fares, which are unlikely to be problematic.
- You must seek advice from the programme lawyer before making or promising to make any payment to a convicted or confessed criminal.
- You must not make any payment or promise to make any payment to any

witness or defendant involved in any kind of legal proceedings without the consent of the commissioning editor and programme lawyer. Where criminal proceedings are likely and foreseeable, again never pay or promise to pay a potential witnesses without first consulting with your commissioning editor and taking advice from the programme lawyer.

- See Chapter 4B, Crime – ‘Payments’
- See Chapter 5B, Contempt

## DEALING WITH CONTRIBUTORS

- If advertising for contributors, the wording of adverts should be approved by the commissioning editor and programme lawyer.
- Contributors should take part in programmes on the basis of their informed consent.
- Consent should normally be in the form of a signed release form, although consent on camera may be satisfactory.
- Any ‘set-ups’ or use of deception must be justified by the public interest and this must always be agreed in advance by the broadcaster, unless it is intended to seek consent of those filmed before broadcast.
- Letters to key prospective contributors should be approved by the commissioning editor and programme lawyer before being sent.
- Any approach to seek a response (right of reply) in relation to significant allegations or criticisms must be discussed and approved in advance by the programme lawyer.
- Any conditions placed on interviews by contributors must be agreed by the programme lawyer before programme-makers accept. Programme-makers

cannot agree to give contributors previews of programmes without the consent of the commissioning editor. **Editorial control must never be ceded.**

- Any attempt to seek an interview without prior arrangement i.e. a ‘doorstep’, must be discussed and approved by the programme lawyer in advance.
- Programme-makers must comply with the rules on payments.
- Interviews must be fairly edited.
- Individuals in distress should not be put under pressure to agree to be interviewed or otherwise take part in a programme.
- If filming with the police or other authorities, seek advice from the programme lawyer.
- If a source seeks an absolute guarantee of anonymity seek immediate advice from your programme lawyer.
- See Chapter 4C, Fairness – in particular ‘Fairness & Contributors’
- See Chapter 4D, Privacy, in particular ‘Privacy & Contributors’

## PEOPLE UNDER 18

- Due care must be taken with regard to the physical and emotional welfare and the dignity of people under 18 years who are involved in programmes. Further, unnecessary distress or anxiety must not be caused.
- Parental consent will be required for individuals under 16 appearing in programmes, unless their contribution is minor and uncontroversial, or it is warranted to proceed without such consent.
- Similar considerations must be had with regard to ‘vulnerable adults’ i.e. those unable to give informed consent e.g.

because of mental disorder.

- See Chapter 6E, ‘Programmes Involving Under 18s’ Checklist
- See Chapter 4C, Fairness – ‘Consent & Children and Young People’ and ‘Consent & Vulnerable Adults’
- See Chapter 4D, Privacy – ‘Privacy & Contributors’ and ‘The Involvement of Under 18s in Programmes Generally’

## FAIRNESS & PRIVACY

- We must avoid the unfair treatment of individuals or organisations in programmes.
- If the programme you are making involves criticising or making any damaging allegation about any living individual or organisation, seek advice from your programme lawyer.
- Any significant infringement of privacy of an individual or organisation, in the making or broadcast of a programme, must be warranted by the public interest.

- See Chapter 4C, Fairness
- See Chapter 4D, Privacy

## CRIMINALITY

- Programmes involving criminals or about criminality require special care and are likely to be legally contentious.
- See Chapter 6F, ‘Programmes Concerning and/or Involving Crime’ Checklist
- See Chapter 4B, Crime
- See Chapter 5B, Contempt and Reporting Legal Proceedings
- See Chapter 5F, Programmes Involving Criminal Activity

## IMPARTIALITY

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

- See Chapter 4F, Impartiality

## POTENTIALLY OFFENSIVE MATERIAL

- Material with the potential to cause offence e.g. strong language, violence, sexual violence, explicit sexual portrayal etc. must always be justifiable by the context. Advice should be sought from the legal & compliance department at an early stage.
- The commissioning editor, on the advice of the programme lawyer, will ensure that an on-air warning is given to viewers, where appropriate.

- See Chapter 4A, Protection of Under 18s & Harm and Offence

## COMMERCIAL REFERENCES

- Programmes should not give undue prominence to commercial products or services.
- Product placement is prohibited.
- Where programmes contain viewer competitions and/or premium rate telephone lines for viewers to call, seek advice from the programme lawyer.
- Sponsored programmes must not contain promotional references to the sponsor, its activities or products or services.
- Advertisements or clips from advertisements used within programmes will require strong editorial justification. Always seek advice from your programme lawyer.
- See Chapter 4H, Editorial Independence and Commercial References within Programmes

**MEDIA LAW****DEFAMATION**

If the programme you are making involves criticising or making any damaging allegation about any living individual or organisation, seek advice from your programme lawyer immediately.

- See Chapter 5A, Defamation
- See also Chapter 4C, Fairness

**CONTEMPT**

If your programme involves or makes reference to any active or current legal proceedings, particularly criminal legal proceedings or those involving children, seek advice from your programme lawyer immediately.

- See Chapter 5B, Contempt & Reporting Legal Proceedings

**PRIVACY AND CONFIDENCE**

If your programme may contain private or confidential information without the consent of the person or organisation to which it relates seek advice from your programme lawyer immediately.

- See Chapter 5C, Privacy, Confidence and Data Protection
- See also Chapter 4D, Privacy

**COPYRIGHT**

All material must be properly cleared for use within programmes and this is the responsibility of producers. Wherever programme-makers wish to rely on one of the statutory defences to copyright infringement e.g. fair dealing or incidental inclusion, they must seek advice from the programme lawyer at an early stage.

- See Chapter 5D, Copyright & Fair Dealing

Programmes may well give rise to further legal issues e.g. Official Secrets Act legislation, Protection of Children Act. If in doubt seek advice immediately.

- See Chapter 5E, Other Laws Affecting Broadcasting

**BEST PRACTICE**

● Under the process of 'disclosure', journalists' notes, emails, letters, all correspondence etc. are 'disclosable' in legal proceedings i.e. copies may be provided to the other party, so think carefully about how they are written. Rushes are also 'disclosable' so be careful about presenter/reporter comments before and after filmed sequences, which could be misinterpreted.

● Documents written for the dominant purpose of receiving legal advice should be headed "Privileged", as they will be subject to legal professional privilege. This means they are exempt from disclosure i.e. the other party to the litigation will not be provided with a copy.

● Journalists, when working on sensitive or legally contentious programmes, should carry documentation identifying them at all times unless it would be inappropriate or dangerous to do so.

**TRAVELLING ABROAD**

● Filming abroad may give rise to special legal and health and safety issues, especially if it involves undercover filming. All such filming must be approved by the commissioning editor and programme lawyer in advance. In addition, if filming for Channel 4 is to take place in a potentially 'hostile' country or environment, programme-makers must read and comply with the Channel 4's Hostile Environment Protocol at Appendix 7D.

# 6B. COMEDY & ENTERTAINMENT PROGRAMMING

The following is a checklist of legal and compliance issues that may arise in comedy and entertainment programming, with suggested further reading which gives a more detailed description and explanation of the issues. This document is not intended to be a substitute for seeking appropriate and timely legal advice.

## OFCOM BROADCASTING CODE

### LIVE PROGRAMMES

● Live programmes have special requirements. For this reason, you must read and follow the particular broadcaster's live programme procedures.

- See Chapter 2, Channel 4's Compliance Procedures
- See Chapter 3, Five's Compliance Procedures
- See Channel 4's Live Programme Procedures at Appendix 7B
- See Five's Live Programme Procedures at Appendix 8B

### POTENTIALLY OFFENSIVE MATERIAL

● Material with the potential to cause offence e.g. strong language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language, must be justifiable editorially and by the context. Advice should be sought from the programme lawyer at an early stage where such material is to be included in programmes.

● Where appropriate, the commissioning editor, on the advice of the programme lawyer, will ensure that an on-air warning is provided to enable viewers to make informed choices about what they watch.

● Nothing broadcast should be intended to stir up racial hatred or, taking into account the circumstances, be likely to

do so. Racist terms should be avoided in programmes, as should insensitive comments or stereotyped portrayals of particular ethnic groups, unless there is strong editorial justification, in the particular context.

● Jokes and material at the expense of those with disabilities are likely to cause widespread offence. Patronising or outdated derogatory expressions relating to disability should generally be avoided unless it is justified editorially and by the context. Similar considerations apply to jokes and material about other minority groups e.g. older people, homosexuals, religious faiths or language groups.

● Material that amounts to an unwarranted, abusive or derogatory treatment of the religious views and beliefs of those belonging to a particular religion should be avoided. Whilst there is scope for negative and/or humorous material concerning aspects of religion, care should be taken not to undermine or ridicule central beliefs. If in doubt, seek advice from the programme lawyer.

● Nothing transmitted should encourage, incite or condone criminal activity.

● See Chapter 4A, Protecting Under 18s & Harm and Offence

### TOPICAL HUMOUR

● Many comedy and entertainment shows on television seek to provide a humorous take on current affairs and other stories in the news. However, since television is a much more closely regulated medium than the press, there may be stories appearing in other parts of the media e.g. in newspapers, magazines or on the internet, that we can only make reference to with particular care.

● Many stories that appear in newspapers involve a victim of some kind e.g. of war,

terrorism, crime, natural disaster, illness or accident. Humour based on these stories 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.

● There may be certain stories in respect of which any attempt at humour would be problematic e.g. a joke about hostage-taking around the time that a British hostage had been murdered would be likely to cause widespread offence and be unacceptable. Similarly, jokes about natural disasters or serious accidents involving loss of life, around the time these events happened, would be likely to be problematic.

● Other stories in the news involving victims may not be so clear-cut and a view will need to be taken as to whether humour based on such stories is acceptable. Common sense dictates that the more serious the plight of the victim(s), the less likely that humour based on the story will be permissible. In addition, the amount of time that has elapsed between the event in question and the references being made is likely to play a factor in whether the material is acceptable.

● Most viewers expect broadcasters to display a degree of respect for those people in the public eye that have recently died and for those close to them they leave behind. Consequently, humour based around a recent death is likely to cause widespread offence.

● If in doubt about the suitability of any material, seek advice from the commissioning editor and the programme lawyer.

● See Chapter 4A, Protecting Under 18s & Harm and Offence, in particular 'Preserving Human Dignity, Scenes Showing Humiliation and People in

Distress' and 'Intervening Events'

- See Chapter 4C, Fairness – 'Fairness & Non-Contributors'
- See Chapter 4D, Privacy – 'Privacy & Non-Contributors'
- See Chapter 5A, Defamation.
- See Chapter 5B, Contempt and Reporting Legal Proceedings'
- See Chapter 5C, Privacy, Confidence and Data Protection

### DEALING WITH CONTRIBUTORS

● Contributors should generally take part in programmes having given informed consent.

● Consent should normally be in the form of a signed release form, although consent filmed on camera may be satisfactory. Both should certify that the nature and content of the programme have been explained to them.

● Any 'set-ups' or use of deception must be justified in the public interest, unless it is intended to seek the informed consent of those filmed prior to broadcast. The permission of the broadcaster will always be required before the use of any deception, regardless of the basis on which it may be justified. You must seek advice from your programme lawyer at an early stage.

● Any conditions placed on interviews or contributions by those taking part in programmes must be agreed by the commissioning editor, who will seek the advice of the programme lawyer, before programme-makers accept them. Programme-makers should not agree to give contributors previews of programmes or rights of veto without the consent of the commissioning editor. **Editorial control must never be ceded to third parties.**

● Programme-makers must comply with the Code's rules on payments. In particular, programme-makers must seek the advice

of the programme lawyer before making or promising to make any payment to a convicted or confessed criminal or any potential witness in criminal proceedings even if the context in which they are to be featured is humorous or entertaining.

- Interviews must be edited fairly.

- See Chapter 4B, *Crime, in particular 'Payments'*
- See Chapter 4C, *Fairness – 'Fairness & Contributors'*
- See Chapter 4D, *Privacy – 'Privacy & Contributors'*

## PEOPLE UNDER 18

● Due care must be taken with regard to the physical and emotional welfare and the dignity of people under 18 years who are involved in programmes. Unnecessary distress or anxiety must not be caused.

● Parental consent will be required for individuals under 16 appearing in programmes, unless their contribution is merely incidental, minor and uncontroversial, or it is warranted to proceed without such consent. Parental consent for those aged 16 and 17 may also be appropriate, depending on the nature of the contribution. Seek advice from your programme lawyer if unsure.

● Similar considerations apply with regard to 'vulnerable adults' e.g. those unable to give informed consent because of incapacity or disability.

- See Chapter 6E, *'Programmes Involving Under 18s' Checklist*
- See Chapter 4C, *Fairness – 'Consent & Children and Young People' and 'Consent & Vulnerable Adults'*
- See Chapter 4D, *Privacy – 'Privacy & Contributors' and 'The Involvement of Under 18s in Programmes Generally'*

## FAIRNESS & PRIVACY GENERALLY

● The unfair treatment of individuals or organisations in programmes must be avoided.

● If the programme you are making involves criticising or making any damaging allegation about any living individual or organisation, seek advice from your programme lawyer immediately.

● Any significant infringement of privacy of an individual or organisation, in the making or broadcast of a programme, must either be warranted by the public interest or the individual or organisation must have consented to the material in question being broadcast.

● As above, just because a story appears in a newspaper does not necessarily mean that it can be referred to and dealt with in the same way. Television is far more strictly regulated than the press.

● Any contentious material must be referred to the programme lawyer as soon as possible.

- See Chapter 4C, *Fairness*
- See Chapter 4D, *Privacy*

## COMMERCIAL REFERENCES WITHIN PROGRAMMES

● Programmes should not give undue prominence to commercial products or services.

● Product placement is prohibited.

● Where programmes contain viewer competitions and/or premium rate telephone lines for viewers to call, seek advice from the programme lawyer.

● Sponsored programmes must not contain promotional references to the sponsor, its activities or products or services.

● Advertisements or clips from advertisements for commercial products or services, used within programmes, will require clear editorial justification. Always seek advice from your programme lawyer.

- See Chapter 4H, *Editorial Independence and Commercial References within Programmes*

## MEDIA LAW

### DEFAMATION

If the programme you are making involves criticising or making any damaging allegation, even as a joke, about any living individual or organisation, seek advice from your programme lawyer immediately.

- See Chapter 5A, *Defamation*

### CONTEMPT

If your programme involves or makes reference to any active or current legal proceedings, particularly criminal legal proceedings, or those involving children, seek advice from your programme lawyer immediately.

- See Chapter 5B, *Contempt and Reporting Legal Proceedings*

### COPYRIGHT

All material must be properly cleared for use within programmes and this is the responsibility of producers. Wherever programme-makers wish to rely on one of the statutory defences to copyright infringement e.g. fair dealing or incidental inclusion, they must seek advice from the programme lawyer at an early stage.

- See Chapter 5D, *Copyright & Fair Dealing*<sup>222</sup>

Programmes may well give rise to further legal issues. If in doubt seek advice immediately.

- See Chapter 5E, *Other Laws Affecting Broadcasting*

## PARLIAMENTARY FOOTAGE

Parliamentary footage i.e. from within the House of Commons and House of Lords (including Committees in both Houses) cannot be used in light entertainment (including satire) or drama programmes. Similar rules apply to footage from within other parliaments and assemblies e.g. the Scottish Parliament, Welsh and Northern Ireland Assemblies. If in doubt, seek advice from the programme lawyer.

- See Chapter 4F, *Due Impartiality – 'Parliamentary Footage and Footage from Other Assemblies'*

# 6C. REALITY SHOWS, FACTUAL ENTERTAINMENT PROGRAMMES & FORMATTED DOCUMENTARY PROGRAMMING

The following is a checklist of best practice and regulatory and legal issues that may arise in the above types of programming i.e. those which rely on the prominent featuring of members of the public, with suggested further reading which gives a more detailed description and explanation of the issues. This document is not intended to be a substitute for seeking appropriate legal advice.

## OFCOM BROADCASTING CODE

### TRUTH, ACCURACY & ADVICE TO VIEWERS

- 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 programmes 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. Programmes should be true and accurate.
- Consideration should be given to the inclusion in contributor's agreements of a warranty as to the truth and accuracy of their contribution.
- The qualifications, experience and other credentials of presenters and experts who appear in programmes must be checked and properly verified.
- If any events are to be reconstructed, seek advice from the programme lawyer. The footage may need to be labelled as having been reconstructed.

● See Chapter 4A, *Protecting Under 18s & Harm and Offence – 'Viewer Trust: Truth,*

*Accuracy and the Importance of not Misleading the Audience'*

- See Channel 4's *Viewer Trust Guidelines at Appendix 7A*
- See Five's *Viewer Trust Guidelines at Appendix 8A*

## FAIRNESS & PRIVACY: CONTRIBUTORS

- Programme contributors must be told the nature of the programme to which they are being invited to contribute, the nature of the contribution they are expected to make and how it is to be used within the programme.
- If a show's format involves deceiving contributors in any way, advice must be sought from the programme lawyer and, where appropriate, safeguards put in place. Informed consent before broadcast is likely to be necessary without adequate public interest justification.
- Programme titles should always be qualified in correspondence and contributor agreements/release forms with 'working title' or 'provisional title' in case the title changes nearer to transmission. Consideration should be given as to whether a change in title could materially affect an individual's decision to take part. If unsure, advice should be sought from the programme lawyer.
- Programmes often evolve during the production process, so ensure contributors are kept up to date with changes in the content and structure of the programme, especially if new contributors are introduced who may be an issue for those people who have already made their contribution.
- If there is a delay in transmission of a completed programme, intervening events may affect an individual's contribution to a programme.

● Programmes must not be edited in such way which causes material unfairness to contributors. If a contributor is portrayed negatively e.g. they are shown as having acted naively or foolishly, consider whether they have an opportunity in the programme to explain why they acted as they did.

● Contributors may agree to filming which amounts to a substantial infringement of their privacy. Producers must be comfortable with and be able to justify editorially the level of intrusion that is being agreed to by the contributor. This is particularly relevant when filming children. Their physical and psychological wellbeing is of paramount importance. They must not be exploited or placed at any physical or moral risk.

- See Chapter 4C, Fairness – ‘Fairness & Contributors’
- See Chapter 4D, Privacy – ‘Privacy & Contributors’

### FAIRNESS & PRIVACY: GENERALLY

● Care needs to be taken to ensure that the privacy rights of third parties i.e. those not actually taking part in the programmes e.g. family, friends or work colleagues referred to or identified by a contributor, are not infringed by what is broadcast. Similarly what is broadcast should not amount to an unfair treatment of individuals or organisations.

- See Chapter 4C, Fairness
- See Chapter 4D, Privacy

### PEOPLE UNDER 18

● Due care must be taken with regard to the physical and emotional welfare and the dignity of people under 18 years who are involved in programmes. Unnecessary distress or anxiety must not be caused.

● Parental consent will be required for individuals under 16 appearing in programmes, unless their contribution is

minor and uncontroversial, or it is warranted to proceed without such consent.

● Similar considerations must be had with regard to ‘vulnerable adults’ i.e. those unable to give informed consent e.g. because of disability.

- See Chapter 6E, ‘Programmes Involving Under 18s’ Checklist
- See Chapter 4C, Fairness – ‘Consent & Children and Young People’ and ‘Consent & Vulnerable Adults’
- See Chapter 4D, Privacy – ‘Privacy & Contributors’ and ‘The Involvement of Under 18s in Programmes Generally’

### POTENTIALLY OFFENSIVE MATERIAL

● Material with the potential to cause offence e.g. strong language, violence, explicit sexual portrayal must always be justifiable by the context. Advice should be sought from the programme lawyer at an early stage.

● The commissioning editor, on the advice of the programme lawyer, will ensure that an on-air warning is given to viewers, where appropriate.

- See Chapter 4A, Protecting Under 18s & Harm and Offence

### COMMERCIAL REFERENCES WITHIN PROGRAMMES

● Programmes should not give undue prominence to commercial products or services.

● Product placement is prohibited.

● Where programmes contain viewer competitions and/or premium rate telephone lines for viewers to call, seek advice from the programme lawyer.

● Sponsored programmes must not contain promotional references to the

sponsor, its activities or products or services.

● Advertisements or clips from advertisements used within programmes will require clear editorial justification. Always seek advice from the programme lawyer.

- See Chapter 4H, Editorial Independence and Commercial References within Programmes

### MEDIA LAW

#### DEFAMATION

If the programme involves criticising or making any damaging allegation about any living individual or organisation, seek advice from the programme lawyer immediately.

- See Chapter 5A, Defamation

#### CONTEMPT

If the programme involves or makes reference to any active or current legal proceedings, particularly criminal legal proceedings, or involves children seek advice from the programme lawyer immediately.

- See Chapter 5B, Contempt

### PRIVACY AND CONFIDENCE

If your programme may contain private or confidential information without the consent of the person or organisation to which it relates seek advice from your programme lawyer immediately.

- See Chapter 5C, Privacy, Confidence and Data Protection
- See also Chapter 4D, Privacy

### COPYRIGHT

Where programme-makers wish to avail themselves of one of the statutory defences to copyright infringement e.g. fair dealing, incidental inclusion, they must seek advice from the programme lawyer.

- See Chapter 5D, Copyright and Fair Dealing

### BEST PRACTICE

#### CHECKS ON CONTRIBUTORS' BACKGROUNDS

● Application forms and contributor agreements should always require contributors and potential contributors to disclose any criminal convictions or pending legal proceedings in which they are involved.

● If contributors are to be placed together in a ‘reality’ setting, consideration should be given to requiring each contributor to obtain a Subject Access check on (a) the Police National Computer and (b) their local police authority’s systems, to ascertain whether they have had any dealings with the police. [Note: the applications can take up to 12 weeks to process and must be made by the individual him/herself].

● If relevant to the content of the programme in which they are appearing, contributors should disclose details of any matrimonial and childcare proceedings, including any court orders made. If anything is disclosed, the commissioning editor and programme lawyer should be contacted immediately.

● Where appropriate, proof of identity and references i.e. personal and/or professional should be sought and checked.

● Through discussion with the contributor, programme-makers should ascertain whether there is anything else about the contributor or someone close to him/her e.g. a close family member, which could have the potential to lead to adverse public relations issues and whether there is any conflict of interest or matter that could compromise them or the programme, given the nature of the programme.

● In certain circumstances, it may be necessary to undertake research to confirm the credentials of a contributor (including presenters and experts) or the truth of what they are telling you. Potential contributors should not be taken at face value. Some may have reason to be less than totally honest, or may even be trying to deceive production staff deliberately.

### SUPPORT FOR AND PAYMENTS TO CONTRIBUTORS

● It may be appropriate in certain circumstances to obtain an expert opinion e.g. medical, psychological or counselling-based, to ascertain a contributor's suitability for their taking part in a particular programme.

● It may be appropriate in certain circumstances for support e.g. medical, psychological or counselling-based, to be provided to relevant contributors e.g. throughout filming, to transmission of the programme and, sometimes, beyond.

● Consideration should be given as to whether contributors should be paid for their contribution and where they are, the actual amount that is paid. In some cases, it may be appropriate merely to recompense contributors for their time and the expenses they have incurred. Payments to Under 18s must be agreed in advance by the commissioning editor and programme lawyer.

● Care needs to be taken when payments are contemplated to anyone who has been involved in criminal or anti-social acts. Seek advice from the programme lawyer before any commitment is made.

● See Chapter 4B, Crime – 'Payments'

### COMMUNICATION AND CORRESPONDENCE

● Queries and concerns raised by contributors should be dealt with

promptly. The commissioning editor should be appraised of the circumstances as soon as possible.

● Programme-makers and commissioning editors should alert the programme lawyer to serious potential issues at the earliest possible stage, so they can advise on how to deal with the matter.

**6D.**  
**DRAMA**

The following is a basic checklist of legal and compliance issues that may arise in drama productions, with suggested further reading which gives a more detailed description and explanation of the issues. This document is not intended to be a substitute for seeking appropriate and timely legal advice.

Clearly, the issues likely to arise in television drama will depend to a large extent on the subject matter and also whether the drama is an entirely fictional piece or whether it is entirely, or partly, based on real facts, events and characters.

## FICTIONAL DRAMA

● Fictional drama with invented characters and storylines may still contain references to individuals, organisations or things that exist in the real world, e.g. for authenticity. Where this is the case, as in factual programmes, care must be taken to ensure that material is not defamatory, causes unfairness or constitutes an unwarranted infringement of the privacy of identifiable individuals or organisations. If in any doubt, programme-makers and commissioning staff should seek advice from the programme lawyer at an early stage.

● In fictional drama, there may be a risk that some elements are mistakenly understood by viewers to be real. To minimise this risk, invented names of characters or organisations should be checked at an early stage to ensure they don't closely correspond with names in the real world, which could lead to problems. This process is commonly referred to as 'negative checking'. A 'neg-checking' report should be prepared on the script at an early stage, long before the script is finalised.

● Even where the 'neg-checking' process confirms that a name is safe to use, there

may still be a significant risk of viewers identifying mistakenly a fictional character or organisation with a real-life one, based on other details that are given. Where this is the case, especially where there is a risk of accidental defamation, advice must be sought from the programme lawyer at an early stage, before the script has been finalised or plans to shoot have been made.

● See Chapter 5A, Defamation – in particular 'Intentional/Accidental Defamation'

## FACT-BASED DRAMA

The term "fact-based drama" or "factual drama" covers a broad range, from those which are very loosely inspired by real facts and events to those drama-documentaries which seek to reconstruct accurately actual events. Often fact-based dramas will not fall squarely within either category and storylines may be a mix of both fact and fiction. Programme-makers should have regard to the following matters.

## OFCOM BROADCASTING CODE

### FAIRNESS AND PRIVACY

● All fact-based dramas should be referred to a programme lawyer for advice at a very early stage whilst the script is still in development.

● Programme-makers must inform the commissioning editor and programme lawyer wherever a storyline, character or organisation in a drama has been based upon someone or something real, especially where this is not obviously apparent.

● Dramas based on real events will usually portray and refer to identifiable real people and organisations, so we must ensure that the way in which they are portrayed is fair and historically accurate – just as if the allegations

were being made in a factual programme.

● Where the subject matter is contentious, accuracy is likely to be vitally important. In practice, this will mean that careful research is essential to ensure that material facts are included and not disregarded or omitted in a way that results in any unfairness. This will be important both to comply with regulatory obligations under the Code and to ensure programmes are not libellous.

● As with factual programmes that criticise individuals or organisations or make damaging allegations, it may be necessary to seek a response from the individual or organisation concerned and to include any response within the drama. This should only be done on the advice of the programme lawyer. Again, this may be important to ensure programmes are not libellous.

● The privacy of individuals or organisations portrayed or referred to in fact-based dramas is also likely to require careful consideration, particularly where the subject matter relates to things of a private or confidential nature. In common with other types of programming, fact-based drama must not unjustifiably infringe privacy.

● Decisions as to whether an infringement of privacy is justified will normally turn on whether, in all the circumstances, there is an overriding public interest in broadcasting the material, i.e. whether the public interest and programme-makers/broadcaster's right to freedom of expression outweighs the individual's or organisation's right to privacy taking into account other relevant factors, e.g. the extent to which the potentially infringing material is already in the public domain.

● Inevitably, even in the most carefully researched drama-documentary, the creative realisation of some elements, such as dialogue and characterisation, will introduce a fictional dimension. This

is likely to be perfectly acceptable as long as it is not inconsistent with the known facts and does not cause unfairness to any individual or organisation.

● Care must be taken with dramas which mix fact with significant elements of fiction. There is a risk that the factual elements may become confused with what is invented. This may result in unfairness to real-life individuals or organisations that are identified or identifiable. Such dramas must be carefully considered to ensure that the factual elements are fair and accurate and also that the fictional elements do not raise unfairness or libel issues. This is likely to require very careful consideration, over and above merely 'neg-checking' names. Early advice from the programme lawyer will be essential.

● The fictional elements of those dramas which mix real individuals and organisations with fictional ones will need to be properly neg-checked at an early opportunity.

● To ensure viewers are not misled, it will often be appropriate to flag up to viewers the basis for a particular drama e.g., by labelling the film: "*This is a true story...*", "*... based on a true story...*" or "*... inspired by real-life events...*".

● Sometimes, it may be necessary or prudent to include within a drama a disclaimer e.g.: "Whilst elements of [name of drama] are inspired by real-life events, the storyline and all associated characters and organisations are entirely fictional. Any resemblance to real individuals or organisations is purely coincidental and unintentional". Such disclaimers may appear as a caption at the beginning or end of a drama, close to or as part of the end credits.

● See Chapter 4C, Fairness  
● See Chapter 4D, Privacy

● See Chapter 5A, Defamation

## CONSULTATION/CONTACT WITH THOSE INVOLVED

● Where dramas are based upon or concern past events, particularly where the subject matter is capable of giving rise to personal distress, e.g. natural disaster, accident, crime, it may be necessary to consult with those affected by the real-life event upon which the drama is based e.g. victims, victims' families, survivor groups and to give due consideration to their perspectives, taking into account how recently the event took place, the extent to which the event continues to attract wider media attention and the public interest in broadcasting the material. As noted above, it is important that the portrayal of such events does not result in unfairness or the unwarranted infringement of privacy of any individual or organisation.

● Where fact-based dramas revisit past events that could give rise to personal distress, we must consider the feelings of those directly involved and, where practicable, should inform such people of the times of intended transmission of the drama and from when programme trails will start to be transmitted. Where there are many such people e.g. there are many victims or close relatives of victims, as in a large scale accident or natural disaster, it may be appropriate to alert people through a survivor or support group.

● Advice regarding consulting or contacting those directly involved in or affected by the subject matter of a fact-based drama should be taken from the programme lawyer at an early stage.

## IMPARTIALITY

● Drama, whether fictional or fact-based, must comply with the impartiality provisions of the Ofcom Broadcasting Code ("the Code"), i.e. unless other arrangements have been made to ensure

impartiality, programmes should be duly impartial on matters of political or industrial controversy and matters of current public policy, e.g. political issues, domestic and foreign policy, introduction or abolition of laws, industrial action, strikes.

● See Chapter 4F, Impartiality

## PEOPLE UNDER 18

● Due care must be taken to ensure the physical and emotional welfare and dignity of people under 18 years who are involved in programmes. They must not be caused unnecessary distress or anxiety.

● Parental consent will normally be required for individuals under 16 appearing in drama productions. In addition, a performing licence from the child's Local Authority may be required.

● Advice must be sought from the programme lawyer wherever an actor under the age of 18 is to take part in a scene of a sexual nature. Any actors required to take part in scenes of an explicit sexual nature must be aged 18 or over; otherwise, a criminal offence may be committed.

● See Chapter 6E, 'Programmes Involving Under 18s' Checklist

● See Chapter 4C, Fairness – 'Consent & Children and Young People' and 'Consent & Vulnerable Adults'

● See Chapter 4D, Privacy – 'Privacy & Contributors' and 'The Involvement of Under 18s in Programmes Generally'

● See Chapter 6E, 'Protection of Children Act' & 'Child Performance Licences'

## COMMERCIAL REFERENCES WITHIN DRAMA

● Dramas should not give undue prominence to commercial products or services.

● Product placement is prohibited.

● Dramas which are sponsored must not contain promotional references to the sponsor, its activities or products or services.

● See Chapter 4H, Editorial Independence and Commercial References within Programmes

## POTENTIALLY OFFENSIVE MATERIAL

● Dramatic content with the potential to cause offence e.g. violence, strong language, sex, nudity etc. must always be justifiable by the context. Advice should be sought from the programme lawyer at an early stage.

● The broadcaster's presentation department, on the advice of the commissioning editor and programme lawyer, will ensure that an on-air warning is given to viewers where appropriate.

● See Chapter 4A, Protecting Under 18s & Harm and Offence

● For Channel 4 programmes, see Channel 4's Compliance Procedures at Chapter 2

## CRIME

● Fact-based drama relating to real-life criminal activity and/or legal proceedings are likely to be legally contentious, so must be referred to the programme lawyer at an early stage.

● See Chapter 4B, Crime

● See Chapter 5A, Defamation

● See Chapter 5B, Contempt and Reporting Legal Proceedings

● See Chapter 6F, Programmes Involving or Concerning Crime Checklist

## MEDIA LAW

### DEFAMATION

If the drama you are making involves criticising or making any damaging

allegation about any living individual or organisation, seek advice from your programme lawyer immediately.

● See Chapter 5A, Defamation

## PRIVACY

If the drama you are making involves any potential infringement of the privacy of real individuals or organisations, seek advice from your programme lawyer immediately.

● See Chapter 5C, Privacy, Confidence & Data Protection

## CONTEMPT

If your programme involves or makes reference to any active or current legal proceedings, particularly criminal legal proceedings or those involving children, seek advice from your programme lawyer immediately.

● See Chapter 5B, Contempt & Reporting Legal Proceedings

## COPYRIGHT

All material must be properly cleared for use within programmes in accordance with the production agreement. This is the responsibility of producer.

● See Chapter 5D, Copyright & Fair Dealing

## TRAVELLING ABROAD

Filming abroad may give rise to special legal and health & safety issues, especially if it involves undercover filming. All such filming must be approved by the commissioning editor and programme lawyer in advance. In addition, if filming for Channel 4 is to take place in a potentially 'hostile' country or environment, programme-makers must read and comply with Channel 4's Hostile Environment Protocol.

- See Channel 4's Hostile Environment Protocol at Appendix 7D

### PARLIAMENTARY FOOTAGE

Parliamentary footage i.e. from within the House of Commons and House of Lords (including Committees in both Houses) cannot be used in light entertainment (including satire) or drama programmes. Similar rules apply to footage from within other parliaments and assemblies e.g. the Scottish Parliament, Welsh and Northern Ireland Assemblies. If in doubt, seek advice from the programme lawyer.

- See Chapter 4F, Due Impartiality – 'Parliamentary Footage and Footage from Other Assemblies'

# 6E. PROGRAMMES INVOLVING UNDER 18s

Programmes involving Under 18s require special care. There are numerous legal and regulatory provisions that exist to protect minors. Below is a summary of the issues that may arise in programmes involving Under 18s together with suggested further reading. If you are in doubt about any particular issue, please contact your programme lawyer for advice.

## OFCOM BROADCASTING CODE

### CONSENT

● If a programme contributor is under 16, in addition to that of the child, consent to take part should be obtained from his/her parents or guardians, or other person aged eighteen or over with legal responsibility for the young person. 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.

● Where a contributor is 16 or 17, it may still be appropriate to seek parental consent, depending on the particular circumstances. If in doubt, seek advice.

● There may be occasions where parental consent for a child's contribution is deemed unnecessary e.g. a vox pop situation, where the subject matter is uncontroversial and is not of a sensitive nature. The age and understanding of the child, the subject matter of the programme and the nature of the child's participation will all be relevant when deciding whether parental consent is necessary.

● If filming in a school, consent should be obtained from the Head Teacher, who may also require you to inform all parents that filming is taking place. Specific consent is likely to be necessary from the parents of the principal children featured on camera, particularly those who actively participate in filming.

● In certain circumstances, in addition to parental consent, a Local Authority licence may be required before a child can take part in a programme during term time. If a child's role in a film is to perform e.g. in an entertainment capacity, a "licence to perform" may be required. This is obtained from the relevant Local Authority if the child is under the upper age limit of compulsory school attendance. This relates primarily to child actors in long-running shows or series and not to appearances within one-off documentaries. If in doubt about whether such a licence is required, seek advice from the programme lawyer.

● See Chapter 4D, *Privacy – 'The Involvement of Under 18s in Programmes Generally'*

● See Chapter 6E, *'Child Performance Licences.'*

### TREATMENT OF UNDER 18s

● Due care must be taken with regard to the physical and emotional welfare and the dignity of people under 18 who take part in or are otherwise referred to in programmes, regardless of any consent given by the participant or by a parent or guardian.

● Under 18s must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes. They must never be put at physical or moral risk e.g. in factual programmes concerning criminal activity.

● Under 16s should not be asked for views on matters likely to be beyond their comprehension or capacity to answer properly without the consent of an appropriate adult.

● Other regulatory requirements relating to the fair treatment of contributors generally will also apply to Under 18s, e.g. Under 18s should take part in programmes on the basis of their informed consent; interviews must be edited fairly; rules on payments must be complied with.

● Whenever Under 18s are interviewed in sensitive situations or take part in programmes of a controversial or sensitive nature, advice must be sought in advance from your programme lawyer so that appropriate safeguards can be put in place. In certain situations it may be necessary for child contributors to be accompanied by a parent/guardian or chaperone.

● Ofcom has published its own guidance to broadcasters in relation to the participation of under 18s within programmes. See 'Ofcom Guidance on the Participation of Under 18s in Programmes', Chapter 4D.

● See Chapter 4C, *Fairness – 'Fairness & Contributors'*

● See Chapter 4D, *Privacy – 'Privacy & Contributors'*

### COMPETITIONS INVOLVING UNDER 18s

● Prizes aimed at children must be appropriate to the age range of the both the target audience and the participants e.g. large cash prizes or cars are unlikely to be appropriate.

● See Chapter 4H, *Editorial Independence & Commercial References within Programmes - Competitions*

## FAIRNESS & PRIVACY

● As with any other contributor, programmes must avoid the unfair treatment of Under 18s and any infringement of privacy must be warranted.

● Particular attention must be paid to the privacy rights of those under 16. They do not forfeit their right to privacy simply because, for example, of the fame or notoriety of their parents.

● See Chapter 4C, *Fairness*

● See Chapter 4D, *Privacy*

## MEDIA LAW

### PROTECTION OF CHILDREN ACT

● Do not take or show (e.g. include in a programme) an indecent image of someone who is under the age of 18. This is a criminal offence. Merely involving a young person in a photograph or television image that is itself indecent, even where the child's role in it is not e.g. superimposing a child's picture onto an indecent image, is prohibited. If you are unsure whether or not an image involving a minor may be indecent, seek advice from the programme lawyer immediately.

● In drama or any reconstruction, where an actor is to be involved in a scene of an explicit sexual nature, the actor must be aged 18 or over, regardless of the age of the character he/she is playing. If in doubt about an actor's age, you must seek independent written verification.

● See Chapter 5E, *Other Laws Affecting Broadcasting*

### LEGAL PROCEEDINGS INVOLVING UNDER 18s

● The identity of Under 18s involved in most legal proceedings is protected by the court - automatically in the Youth Court and by specific order in most other courts.

Any reference whatsoever to Under 18s involved in legal proceedings e.g. criminal or family proceedings, must be referred to the programme lawyer as soon as possible for advice.

- 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.

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

- See Chapter 4B, Crime – Court Reporting & Under 18s

- See Chapter 5B, Contempt & Reporting Legal Proceedings – ‘Legal Proceedings Involving Under 18s’

## 6F. PROGRAMMES INVOLVING OR CONCERNING CRIME

The following is a checklist of regulatory and legal issues and best practice that may arise in programmes involving or concerning crime, with suggested further reading which gives a more detailed description and explanation of the issues. This document is not intended to be a substitute for seeking appropriate legal advice.

## OFCOM BROADCASTING CODE

### GENERALLY

- Programmes must not encourage or incite crime or be likely to lead to disorder. Programmes should not give the impression of condoning criminal activity.
- Programmes should not contain essential details about criminal techniques that could enable the commission of a crime, unless there is sufficient editorial justification.

● See Chapter 4B, *Crime*

### PROGRAMMES INVOLVING WITNESSES IN LEGAL PROCEEDINGS

- Programme-makers must seek advice from the programme lawyer whenever a witness or potential witness in legal proceedings takes part in a programme.

- Do not pay or promise to pay, directly or indirectly, any witness or any person reasonably expected to be called as a witness in criminal legal proceedings. The payment of any expenses must be approved by the commissioning editor and programme lawyer in advance.

- Similarly where criminal legal proceedings are “likely and foreseeable” do not make or promise to make any payment to anyone who might reasonably be expected to become a witness without first seeking advice from the programme lawyer.

- See Chapter 4B, *Crime – ‘Payments’*
- See Chapter 5B, *Contempt and Reporting Legal Proceedings*

### FILMING WITH CONVICTED OR CONFESSED CRIMINALS

- Convicted or confessed criminals may be willing to be interviewed to talk about their crimes, or for other reasons. In all cases, advice must be sought from the programme lawyer as soon as practically possible and preferably before filming takes place. Given the potentially sensitive nature of such interviews, careful thought must be given to the conduct of such interviews and what is to be ultimately broadcast.

- No payment or promise of payment must be made to convicted or confessed criminals, or those close to them, e.g. family members, without first obtaining the broadcaster’s approval. Note: criminals will not be paid for interviews (or any other contribution) that relate to their crimes, unless it is justified by the public interest.

- See Chapter 4B, *Crime – in particular ‘Payments’ and ‘Programmes Involving Criminal Activity’*
- See Chapter 5F, *Programmes Involving Criminal Activity*

### MEDIA LAW

### PROGRAMMES REFERRING TO LEGAL PROCEEDINGS

- All references to active criminal legal proceedings must be referred to the programme lawyer for advice as early as possible. Proceedings become active when someone is arrested or charged with an offence. Nothing must be broadcast which creates a substantial risk of serious prejudice to active legal proceedings.

- Indeed, any reference to legal

proceedings, active or concluded, in particular those involving sexual offences or any proceedings involving under 18s must be referred to the programme lawyer for advice at the first available opportunity.

- Never approach jurors (past or present) or potential jurors without first seeking legal advice. Soliciting information from jurors about their deliberations is a criminal offence.
- Do not take any kind of recording device into a court room unless you have the explicit consent of the court to do so.
- If you seek to rely on documents or information sourced from documents which have been obtained through the legal disclosure, whether in civil or criminal proceedings, seek legal advice immediately. Use of the documents/information may be an offence.
- When referring to legal proceedings, programme-makers must check with the relevant court to ensure that there are no specific court orders in place relating to media reporting of a particular case.

- See Chapter 5B, *Contempt and Reporting Legal Proceedings*
- See Chapter 4B, *Crime*

### TERRORISM & OFFICIAL SECRETS

- Programme-makers working on programmes investigating matters of terrorism must seek legal advice at the earliest opportunity and preferably before research begins. Unlike most other areas of the criminal law, terrorism legislation creates a positive obligation to disclose information relating to certain offences. Similarly, programme-makers working on programmes touching upon matters that could fall within the ambit of the Official Secrets Act must seek legal advice immediately.

- See Chapter 5E, *Other Laws Affecting Broadcasting*

### BEST PRACTICE

### FILMING CRIMINAL ACTIVITY

- Generally, filming criminal activity should not be undertaken without first seeking advice from your programme lawyer. In rare cases, where this is not possible, use your common sense and do not put yourself or your crew at any risk. In such circumstances, you must alert your commissioning editor and programme lawyer as soon as possible thereafter.

- When filming criminal activity, remember to remain as passive observers and do nothing that could be deemed as encouraging, inciting or assisting criminal activity, otherwise you are at risk of having committed a criminal offence yourself. Remember to make a careful distinction between observation and participation and keep any criminal behaviour at arm’s length. Do not provoke nor give the impression of provoking criminal behaviour which would not otherwise have occurred.

- Undercover investigations often have the goal of exposing criminal activity. They are invariably legally contentious and can present real dangers to the programme-makers that are undercover. Such investigations require very careful consideration, research and preparation and must not be undertaken before detailed advice has been sought from the programme’s commissioning editor and programme lawyer.

- See Chapter 4B, *Crime*
- See Chapter 5F, *Programmes Involving Criminal Activity*

## DEALINGS WITH THE AUTHORITIES/POLICE

- Whilst there is a legal obligation to answer questions properly posed by a court of law, there is no legal obligation to provide information to the police for their enquiries. However, you must never be dishonest or attempt to mislead the police or tamper or dispose of evidence.
- Journalistic material, e.g. rushes, notebooks, films are given special protection from seizure by the police. Generally, the police need to obtain a court order from a judge before they can seize such material.
- Any approach from the police or other authorities relating to any aspect of the programme or in relation to handing over any footage or material related to the programme should be referred immediately to the commissioning editor and programme lawyer.

● See Chapter 5E, Other Laws Affecting Broadcasting

# 6G. THE USE OF TELEPHONY 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 updates to the Handbook will be published on the Handbook website.

The following is a basic checklist of legal and compliance issues that should be addressed in the use of telephony services, whether premium rate services ("PRS") or otherwise, in programmes and promotional time.

## USING PRS

- Premium rate numbers and services must not appear in programmes (including promotional time) except where:
  - They form part of the editorial content of the programme; or
  - They fall within the meaning of "programme-related material"
  - Their use must comply with the PhonepayPlus (formerly ICSTIS) Code of Practice.

- See Ofcom Broadcasting Code, rules 1.28, 2.11, and 10.9–10.11;
- See Ofcom Broadcasting Code Guidance Note 2, section 2.11;
- See PhonepayPlus Code of Practice, sections 5, 6, and 7 (as appropriate);
- See PhonepayPlus Help Note on Pricing Information

## PRICING AND OTHER INFORMATION

Viewers must be given the following information:

- Details of how the competition, voting, or

other interactivity operates, including details of the entry or voting route(s) available;

- The opening and closing times and dates during which responses will be accepted, which might be different according to the method of interactivity used;
- Details of where the detailed terms and conditions can be obtained (usually the broadcaster's website);
- Any key terms & conditions which are likely to affect a decision to participate (e.g. any age limit or requirement that the prize must be taken on a certain date);
- Pricing information in accordance with Ofcom and/or PhonepayPlus guidance.
- Details of any free method of response, which must be given due prominence.
- A requirement to obtain the bill payer's permission where the programme is aimed at, or likely to appeal to, children.

Special requirements apply to Call TV quiz services – see PhonepayPlus's 'Statement of Expectations for Call TV quiz services'.

## TECHNICAL ISSUES

- Careful consideration must be given to the technical issues surrounding the use of PRS. All parties involved at the production company, broadcaster and service provider must liaise closely on arrangements for the opening and closing of lines and the winner selection or vote counting process.
- Adequate arrangements for the transmission, reception, and processing of votes, entries, or other responses must be in place and approved in advance by the broadcaster. This will involve discussions between you and the broadcaster, service provider, network

operators, and aggregators, particularly in relation to the expected size of audience for the programme and anticipated level of demand and use of the PRS.

- Sufficient provision must be made for the occurrence of technical problems. Procedures must be in place and approved by the broadcaster in advance of transmission to ensure that the possibility of disadvantage to members of the public is reasonably minimised. Measures to deal with the following non-exhaustive list of eventualities must be implemented:
  - Complete failure of one or more PRS before, after, and/or during viewer participation;
  - Partial failure or unavailability of one or more PRS during viewer participation;
  - Latency in SMS delivery;
  - Red Button users dropping their connection before the necessary information is transferred.

## COMPETITIONS

- All entries must be treated in a fair and consistent manner, regardless of the means of entry.
- All qualifying entries must have exactly the same chance of winning and the winner selection process must be designed to achieve that.
- It must be made clear to viewers when the competition closes and whether or not entries received after this time will (a) be entered and (b) be charged. Full allowance must be made for SMS latency and Red Button connection issues.
- No steps at all, including the creation of a short-list, must be taken before the stated time at which entries will no

longer be accepted (unless it is clear that participants will be selected on an on-going basis, for example, in Call TV quiz services) and after the allowance of an additional time calculated to enable all entries to be aggregated and a winner chosen.

- Ample time, calculated to enable all entries to be aggregated, must be given to process all correct entries between the stated closing time and the announcement of the winner. Provision must be made for the occurrence of technical or other problems which may delay or prevent the announcement of a result.
- Viewers must not be told a programme or item is live if that is not the case.
- The names of winners announced must accurately reflect the true result. "Winners" must never be faked.
- Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known. The competition must be run exactly in accordance with its terms and conditions.
- Cryptic or complicated solutions must not be described as simple.
- Prizes should be delivered to winners within 28 days of the competition closing date. Prizes which cannot be delivered within this time should generally not be offered.
- Prizes aimed at children must be appropriate to the age range of both the target audience and the participants. If the prize is cash, then entrants must be at least 16 years of age and this condition of entry brought to potential entrants' attention.
- References to brands within competitions must be brief and secondary.
- Legal advice should be sought to ensure

the competition complies with the new provisions of the Gambling Act 2005 which came into force on 1 September 2007.

● See Chapter 4H, Editorial Independence & Commercial References within Programmes – ‘Products and Services within Programmes – Competitions’

## VOTING

- All votes must be treated in a fair and consistent manner, regardless of the means by which they were sent.
- It must be made clear to viewers when counts will be taken and whether or not votes after this time will (a) count and (b) be charged. Full allowance must be made for SMS latency and Red Button connection issues.
- Ample time, calculated to enable all votes to be aggregated, must be given to process all votes between the stated closing time and the announcement of the result. Provision must be made for the occurrence of technical or other problems which may render a vote incomplete, thus delaying or preventing the announcement of a result.
- The result which is announced must accurately reflect the actual proportions of votes received.

**From 1st August 2008 Ofcom requires all on air premium rate competitions and votes to be subject to third party verification. This system of verification is the responsibility of a broadcaster but may require some information, if requested, from a production company. Please speak with the relevant broadcaster if you have any queries relating to this.**

## VIEWER COMMENTS, MESSAGES AND CONTENT SELECTION

- All responses must be treated in a fair and consistent manner with all other responses received, regardless of the route of sending.
- It must be made clear to viewers whether all messages will be shown on-screen and, if not, how they will be selected for transmission.
- It should also be made clear that messages may be edited before transmission.
- Procedures must be in place to cease promotion of any PRS message, comment, or content selection route where a technical problem occurs.
- All content selection must accurately reflect the actual responses received unless viewers are clearly told otherwise.

## PROGRAMME CONTRIBUTOR SOLICITS

- All responses must be treated in a fair and consistent manner with all other responses received, regardless of the route of sending.
- Consideration must be given to the length of time during which solicits will be accepted, bearing in mind the programme may be repeated for months or years to come. Under no circumstances may a premium rate number be promoted or the line left open after the active consideration of responses has ceased.
- Viewers must not be led into believing all responses will be pursued if that is not the case.

● On Channel 4, programme contributor solicits in programmes must not invite responses through PRS. On Five, this must not be done without the prior approval of the commissioning editor.

● Appropriate terms and conditions which explain how responses to solicitors will be processed should be agreed with the broadcaster and published on the broadcaster’s website.

## REPEATS

● It must be made clear to viewers where a repeated broadcast of a closed competition, vote, or programme inviting viewer interactivity or response is being transmitted that a response must not be attempted. As best practice, only to be deviated from in exceptional circumstances after advice has been sought, the relevant numbers should be obscured using an on-screen graphic.

## CUSTOMER CARE

- Winners’ names should, as best practice, be published on a relevant website and, at the very least, be available to anyone who requests them, for 3 months of the competition closing date.
- Adequate provision must be made to deal with enquiries from participants regarding the sending, delivery, receipt, processing and treatment of any entry, vote, or use they make of any PRS.
- The broadcaster’s viewer enquiries department should be notified of the details of all promotion of any PRS and should be given sufficient information to enable it to respond effectively to viewer enquiries regarding the service.

