Producers’ Handbook

Editorial and compliance guidelines aimed at content producers, production partners and their agencies.

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Last updated: September 2019
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Introduction

Welcome to the BritBox Producer’s Handbook.

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

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

BritBox is an on-demand programme service, and is therefore subject by law to Ofcom’s ODPS Rules and Guidance. These Rules have relatively limited provisions in relation to editorial content.

However, although BritBox is not a broadcaster, we pride ourselves on being a responsible service showcasing the best of British television and film, and we therefore expect our commissioned programmes to comply with both relevant broadcast and on-demand regulatory obligations.

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

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

Chris Wissun
Director of Content Compliance
September 2019
Viewer Trust in BritBox

Senior production executives with editorial responsibility for commissioned programmes on BritBox eg executive producers, series producers, series editors – should ensure that this guidance is circulated to every member of their production team, and that all team members understand and follow its requirements.

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

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

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

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

Therefore it is the responsibility of the Executive Producer or most senior production executive on every programme to ensure that:

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

- When a decision is made on a viewer trust issue, it is clearly communicated to, and understood by, all the relevant members of the production team.

What are we seeing?

Essentially, whatever the genre of programme, it should always be clear to viewers what it is they are watching.

There are many different ways to tell a story, and all programmes are constructed to impose a coherent narrative on the material, and edited to tell that story in the most effective way. But programmes should not get factual information wrong, either by design or by poor research. They should not invent or fake events, or pass them off as actuality, or present reconstructions of events as being actual events. The source and authenticity of any third party footage should be verified.

Anyone involved in a production who fears that their programme is putting viewer trust at risk, or that the integrity or truthfulness of the programme is being undermined, must refer those concerns upward to the relevant executive producer, commissioner or compliance advisor. BritBox will always respect individuals who are prepared to identify problems. “It’s always been done like that” or “we didn’t have a programme without it” – these are not acceptable reasons for a viewer trust issue not to be disclosed.

Every programme and every genre of programme is different, and there is no “one size fits all” when making editorial judgments. Entertainment programmes may well have greater levels of artifice than current affairs or documentary programmes. But respect for the viewer is essential in every genre, and the viewer should be able to trust the integrity of all our programmes.

Factual entertainment, reality and formatted non-scripted programming can sometimes present challenges in terms of viewer trust when telling the story. A key issue is usually fairness to the participants when presenting events. Does the material selected for inclusion reflect or distort what actually happened? Does it reflect fairly how participants behaved, and why they behaved that way?

“Reality TV” or “Constructed reality” formats are now well established with viewers, and will not violate viewer trust principles, provided it is clear to them (for example via pre-publicity or pre-title captions) that what they are seeing is not “fly on the wall” actuality, but real people interacting in an arranged environment and directed story arc.

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

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

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

Interviews must be edited fairly and must not misrepresent the person’s views. An answer to a specific question must not be used so as to appear to be responding to a different question. What is left out may sometimes be as important as what is left in.

Actuality
Faking actuality – inventing things that did not happen, and presenting them as actual events - is not acceptable, whether it is done during filming or in the edit suite. Presenting footage so ambiguously that the viewer will conclude, wrongly, that it is actuality, is not acceptable.

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

In reality and formatted factual entertainment shows, participants are often shown responding to situations or challenges that are created by the programme makers – they will be doing things we have asked them to do. This is not a trust problem when the viewer knows they are watching something that is contrived or directed by the show format.
But having a programme participant act out significant actions and events, particularly those they would never have done but for the camera’s presence, and passing this off as actuality, is not acceptable. Provoking or encouraging atypical or “bad” behaviour, which wouldn’t have otherwise happened, without showing the audience what provoked that behavior, is not acceptable.

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

Time and chronology
Compression of time – devices like the fade or wipe are common means of signalling the passage of time. But if the programme’s narrative or format depends on the importance of a particular time scale, then care is needed to avoid the audience being misled.

Chronology - it may sometimes be reasonable to portray a different order of events in a factual programme to that of the strict chronology of filming – perhaps to tell a story more clearly – where to do so makes no material difference to the overall meaning for viewers.

Time shifts – if significant and not obvious to the viewer, these should be shared with commissioners and compliance.

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

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

Any serious doubts about participants should be referred to the executive producer and discussed with the commissioner and compliance before a decision is taken to include the individual in a programme.

Covert recording
BritBox treats covert recording very seriously, and never undertakes it lightly or without careful consideration.
Covert recording for investigative purposes usually involves some breach of privacy, and is usually broadcast without the consent of those filmed. It therefore should only be carried out when it is warranted, such as where it is necessary and likely to provide evidence for a story in the public interest, and that this public interest outweighs privacy considerations. Approval is required from the Director of Content Compliance (or an authorised alternate) at two stages: the decision whether to covertly record, and the decision whether to include the material in the programme. The same approval is required for the use of acquired third-party covert recordings, which again should reveal matters of public interest.

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

Due Accuracy
Respect for due factual accuracy is essential. BritBox programmes should not be economical with the facts simply to make a show more entertaining or convincing.

Stated facts and figures must be checked, and producers must be able to provide credible sources for them. They should not always rely on statements simply because an interviewee, even an “expert”, has made them. It may make for a good soundbite, but is it right? If assertions of fact are not capable of corroboration, and/or fly in the face of other known evidence, this should be flagged and discussed fully at the offline stage with commissioners and compliance.

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

Crime and anti-social behaviour
Filming crimes, or people talking about crimes, raises issues of BritBox’s corporate and social responsibility, and requires advice. Someone admitting to or carrying out a criminal act may be prosecuted after transmission. A police inquiry may involve a production team being identified, questioned, and possibly even required to give evidence in court. Footage, including all relevant rushes, can be ordered by the court to be handed over to the police. Everyone involved – including the individual filmed – has to be aware of these potential consequences at the outset. All decisions and rules of engagement must be well documented.
BritBox will not broadcast material that would incite or encourage crime or lead to disorder, or condone criminal behaviour. We will not demonstrate detailed criminal techniques, such as how to make a bomb or steal a car. There must always be a careful distinction drawn between observation and participation. Producers must never provoke or encourage criminal actions that would not otherwise have occurred. No production team member should be put at unnecessary risk of harm when dealing with criminals.

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

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

**Taking compliance and legal advice**

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

Our compliance advisors and lawyers are committed to help the programmes that BritBox has commissioned deliver their editorial goals, and can offer advice and support from the earliest stages of a programme’s production. They will take the lead in defending of programmes if they are subject to viewer complaints, Ofcom investigation or threats of litigation.

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

Legal and compliance advice cannot be simply ignored or rejected by a programme maker. But it can always be discussed, and creative compromises can nearly always be reached. But ultimately, decisions about BritBox programmes will be taken by BritBox, not by an individual producer or supplier. Very occasionally a programme maker may feel unwilling to accept advice or to find a compromise. In those circumstances, BritBox has a process of referral up, through the respective production, commissioning and compliance chains of command.
Taking Part in Programmes

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

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

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

Background Checks

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

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

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

The extent of the background checks necessary for each production should be agreed in advance between the producers and commissioners, taking into account factors such as the size of the potential participant pool, the production timescale, and any auditioning process. Not all programmes automatically require criminal records to be checked for all participants. A senior member of the production team should have responsibility for oversight of the assessment of contestant applications, and ensuring any relevant information regarding prior convictions is conveyed to commissioners prior to confirmation of the participant taking part.

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

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

**Conduct & Inappropriate Behaviour**

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

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

Such behaviour may include:

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

Drugs and other Criminal Activities
Participants invited to talk about drug taking, or to unburden themselves about past drug taking or any other criminal activities, should be reminded that making admissions about past criminal behaviour could have serious repercussions for them after the programme is made available on BritBox.

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

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

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

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

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

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

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

Consent for Children and Vulnerable Adults

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

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

Evidence of Consent

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

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

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

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

Deceptions and Set-ups

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

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

The Ofcom Broadcasting Code

The following Rules will shortly come into force in relation to protecting participants in all programmes, other than dramas:

**Rule 2.17:** Due care must be taken over the welfare, wellbeing and dignity of participants in programmes.

**Rule 2.18:** Participants must not be caused unjustified distress or anxiety by taking part in programmes or by the broadcast of those programmes.

Producers are directed to read Ofcom’s detailed Guidance on these Rules. But the essential elements of these Rules are:

“Participants” - these Rules seek to protect all participants, that is, everyone who agrees to take part in programmes (except dramas), other than presenters and reporters.

“Due care” – this concept is key to the first Rule: the required steps to satisfy due care will vary considerably, depending on the individual participant, the nature of their experience in the programme, the format, and the degree of control the broadcaster/producer has over that experience.

“Unjustified distress or anxiety” – this concept is key to the second Rule: since there are editorial contexts where it is justified for programmes to subject participants to situations that are likely to produce some distress or anxiety (e.g. when competing against others in a talent show, or undergoing emotional or physical challenges in a factual entertainment or reality show).

We should consider and treat each participant as an individual. For example, some individuals might already be potentially vulnerable, or might be placed in situations during the programme that might make them vulnerable.

These Rules require us to consider the impact on participants of taking part in the programme and the impact on them of the broadcast of the programme.

They are also closely related to Rule 2.3, which concerns viewer offence. Participants displaying distress or anxiety may itself cause offence to viewers, which must be justified by the context. If it is not sufficiently clear to viewers that participants are properly supported by the programme makers, then this is more likely to cause greater offence.
Mental health awareness

Society is now more concerned and better informed about mental health issues and the increasing challenges to mental health that cultural developments such as social media have created, especially for younger people. The television industry is therefore now more focused on the mental as well as the physical health and safety of people who take part in our programmes.

BritBox recognises its responsibility to have in place appropriate procedures to identify risks to participants' mental health and welfare, and to take steps to properly mitigate those risks; to seek appropriate expert advice where necessary, when casting or selecting participants and supporting them whilst taking part in our programmes; and to consider appropriate aftercare, especially where the format of the programme involves participants in challenging situations, or may involve conflict, competition, or other activities with potential psychological impacts.

Informed consent

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

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

BritBox's commitment and expectations

Broadcasters and producers both have responsibilities as a matter of general health and safety law. BritBox is committed to having in place in all commissioned programmes suitable processes to protect the mental health and welfare of programme participants, so far as reasonably practicable. BritBox acknowledges that these processes must be proportionate to the likely risks, given the programme format and the individuals concerned, and this must be
taken into account at the point of commission when considering the cost of production.

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

Identifying and assessing participant mental health risks

This guidance sets out how BritBox approaches issues of mental health risks to programme participants, and what we consider to be best practice in identifying and managing those risks. All commissioned producers should of course develop their own processes reflecting best practice and suitable to their production.

A. Identifying mental health risks

The following general factors should be considered during the development of each production, and should inform the procedures required to protect the mental health of participants:

Control
- The programme involves the participants being unscripted but directed in staged or “constructed reality” situations.
- The programme involves the participants’ environment being created or largely controlled by production teams, with continuous filming.

Format
- Key editorial elements will include potential confrontation, emotionally challenging situations, or increased anxiety.

Profile
- High levels of press/media interest and social media interest in the show/participants are anticipated.

Location/Duration
- Participants are required to be away from home for filming.
- Participants will not have contact with their usual support network (family/friends) during filming.

Residence
- Participants are required to be in shared accommodation for a sustained period of time.
- Arrangements include living in close proximity to others, or could otherwise potentially impact on mental health, for example if they impact on participants’ sleep.
Type of participant:
- Participants are not used to being in the public eye.
- Participants are considered more likely to be vulnerable.

B. Assessing the risks

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

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

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<thead>
<tr>
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<th>Lower</th>
<th>Medium</th>
<th>Higher</th>
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<tbody>
<tr>
<td>Control</td>
<td>Documentary portrayal of a real situation (ie largely observational, unstaged).</td>
<td>Directed or “produced” scenarios or discussions.</td>
<td>Artificial environment (eg location or activity).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Producers have near total control of the environment being filmed, and activities of the participants.</td>
</tr>
<tr>
<td>Format</td>
<td>Generally does not include emotionally challenging situations.</td>
<td>May include some emotionally challenging situations or increased anxiety, but these are not central to the content.</td>
<td>Key editorial elements include potential confrontation, emotionally challenging situations, or increased anxiety.</td>
</tr>
<tr>
<td>Profile</td>
<td>Relatively low degree of media interest in the individuals featured in the show anticipated.</td>
<td>Some interest in the participants featured in the show anticipated.</td>
<td>High level of press and media interest in the show and participants anticipated.</td>
</tr>
<tr>
<td></td>
<td>Relatively low degree of social media interest in</td>
<td>Some degree of social media interest in the participants anticipated.</td>
<td>High level of social media interest in the show and participants anticipated.</td>
</tr>
<tr>
<td><strong>Location and duration</strong></td>
<td><strong>Residence</strong></td>
<td><strong>Participants</strong></td>
<td></td>
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<tr>
<td>No need for participants to travel far from home or be filmed for long periods. Filming the normal day to day activities of participants.</td>
<td>Time away from home short and not significant (eg overnight in a hotel). Filming for a short period away from home. Accommodation shared, but by a small number of people/people who already know each other.</td>
<td>Participants are celebrities. Participants already have a public image or large following on social media. Participants have access to personal management, advice and representation before, during and after the production.</td>
<td></td>
</tr>
<tr>
<td>Participants are required to be away from home, although not in a remote location. Able to maintain contact with natural support network.</td>
<td>24/7 shared accommodation for a sustained period of time. Nature of accommodation could have a potential impact on participants’ sleep.</td>
<td>Participants are not used to being widely known in the public eye. Participants may have or used to have some public profile, and are seeking to increase or revive that profile. Participants have disclosed, or are suspected to be, pre-disposed to poor mental health, although currently displaying good mental health.</td>
<td></td>
</tr>
<tr>
<td>Participants required to be remote from home, in a potentially “alien” environment. No contact with their natural support network during filming.</td>
<td></td>
<td>Participants are not used to being in the public eye. Participants have disclosed recent or current mental health issues. Participants considered more vulnerable eg young or elderly.</td>
<td></td>
</tr>
</tbody>
</table>
C. Managing the risks

Having identified and reviewed the risks above, producers should consider what measures can be put in place to reduce those risks (so far as reasonably able).

Where productions have medium or higher risk elements, producers should always discuss their participant protection processes with their BritBox commissioner and the compliance lawyer or advisor allocated to their programme. The production may require expert psychological advice and support.

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

If it is not agreed that the proposed measures are sufficient to mitigate any medium or higher risk, BritBox and the producers may need to consider changes to the content, programme set up, casting or format etc.

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

D. Review

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

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

Further help & guidance for Producers

BritBox’s compliance and health and safety risk teams can provide advice and support to BritBox commissioned productions. For example, they can advise producers on the experience, expertise and qualifications desirable for independent expert psychological advisors supporting a production. All
productions must consider data protection requirements relating to any personal data requested, reviewed or stored. Further guidance can be sought from the BritBox data protection team.
Appendix

Lower risk programmes
At a minimum, producers should:

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

During Filming
- monitor for signs of stress, anxiety or other mental health issues, and act on any concerns;
- seek advice from BritBox’s compliance team and/or central risk team if any concerns arise;
- ensure adjustments identified during casting are in place, and monitor use.

Aftercare
- provide participants with a production contact (who will not become unavailable once the production team has dispersed after filming), and a backup contact;
- make clear to participants they can seek advice or support at any time;
- provide advice on potential hostile social media comment, if relevant.

Medium risk programmes
At a minimum, producers should:

Pre-production and casting
- obtain informed consent from participants;
- provide information about the nature and purpose of the programme and their contribution, and if relevant possible negative consequences of taking part;
- seek disclosure of mental or physical health conditions that may be relevant, for example via a health and background questionnaire;
- seek to identify other vulnerabilities which might influence ability to give informed consent, or to take part, and consider reasonable adjustments;
- Where mental health issues or other vulnerabilities are flagged, refer the assessment of the participant’s suitability to an expert psychological advisor.
During Filming

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

Aftercare

- provide participants with a production contact (who will not become unavailable once the production team has dispersed after filming), and a backup contact;
- make clear to participants they can seek advice or support at any time;
- provide advice on potential hostile social media comment;
  - prepare participants for adjusting to home life;
  - contact participants immediately before programme launch, to ask about their post filming experiences, and afterwards, to check on their wellbeing.

This could be achieved by a formal “debrief” with the expert psychological advisor and/or the production team.

Higher risk programmes

Pre-production and casting

In addition to the medium risk steps:

- have discussions with potential participants regarding the potential downside of participation in the show – for example, press intrusion, social media negative comment and “trolling”, people they know giving stories to the press about them, examination of their past social media posts etc; record the outcome of these discussions.
- encourage them to discuss with their families/friends/personal support network before making any final decision to participate.

During filming

In addition to the medium risk steps:

- have expert psychological advice accessible 24/7;
● have dedicated individuals (i.e. a Welfare Producer or team) to oversee the physical and psychological health of participants (including monitoring sleeping, eating etc).

This could be achieved by:

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

**Aftercare**

In addition to the medium risk steps:

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

This could be achieved by:

● ensuring all participants undergo a debrief soon after they have finished filming, and before returning home. The debrief should include:
  o a psychological assessment;
  o giving details of how the participant has been portrayed; if already made available, encouragement to watch the programme or series;
  o details of press and social media interest in the production and the individual
  o social media training;
  o financial awareness training;

● Agreeing ongoing support. This can be tailored to the individual, but a minimum level of support for all participants should be agreed with the expert psychological advisor.
Children in Programmes: BritBox Child Protection Guidelines

Introduction

BritBox believes children should have the opportunity to take part in television programmes, and that there are clear benefits for them and for audiences in them doing so. BritBox has a duty to safeguard all children and young people who take part or are otherwise involved in our programmes from harm or abuse, and also to protect children that watch our programmes. BritBox is therefore committed:

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

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

There is no single legal definition of a child. For the purpose of this guidance “child” refers to someone under the age of 16, and “young people” refers to people under the age of 18.
Parental Consent

Generally, before children take part in programmes, consent will need to be obtained from either a parent or guardian, and will usually be obtained in writing. Parents/guardians must sign all releases and contracts on behalf of under 16s. Any exceptions to this rule should be discussed with Compliance beforehand. Any decision to proceed to feature children without parental consent is normally only editorially justified on the basis of a clear and overriding public interest. Young people aged 16 or 17 can consent on their own behalf and sign consent forms themselves, although parental agreement may be desirable (but is not compulsory).

Programme makers should make clear to children that it is acceptable for them to disagree with their parent’s decision to give consent, and they should not be pressured to participate against their wishes. A child’s reluctance to participate should be respected. Meaningful, child-friendly information about the programme should be given to children when discussing their possible participation.

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

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

Duty of Care and Risk Assessment

BritBox Producers should have regard to the Guidance Notes to Section 1 of the Ofcom Broadcasting Code. An appropriate risk assessment should be made by the production in every case, whether or not a child’s participation is licensed by a local authority, to minimise the risks to children in relation to the activities they will be carrying out. Depending on the type of production, producers may wish to create specific written guidelines for their team working with children, in addition to this general policy.

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

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

Some genres and formats focus on competition or conflict, and may cause distress and/or anxiety. We should consider carefully whether this is justified. The Ofcom Code does not require the elimination of all distress and anxiety, and there are editorial contexts in which a degree of both will be inevitable.

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

Background checks may need to be made on social, family, health and educational circumstances, as part of the risk assessment regarding physical health and safety and emotional and mental wellbeing. Care should be taken where a child is new to performance, or participating in a production the subject matter of which might exceed their emotional maturity or experience.

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

**Expert advice**

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

Anonymity

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

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

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

Child Licensing

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

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

Regulations set out maximum hours per day for which children of certain ages can be present on set, and minimum requirements for breaks, depending on the age of the child. Chaperones may in addition request additional breaks or longer periods between performances if the child’s welfare demands. Children should not be required to be on set before 7am and must leave the set by 11pm if over 5 years of age, and 10pm if younger, unless the consent of the Licensing Authority has been sought. Specific consent must also be sought for any night work. Producers must ensure that where licensing is necessary, children have an appropriate performance licence and appropriate supervision, ie by a
parent/guardian or a registered chaperone. A registered chaperone means one recognised by the appropriate Licensing Authority.

For more information please refer to BritBox’s Child Licensing Guidelines, the Advice issued by the Department of Education on the new regulations, and the full guidelines that apply to the area in which the child resides:

- England
- Scotland
- Wales

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

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

### Abuse

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

Physical abuse includes deliberate acts causing physical harm and failing to act to protect a child from such harm, or fabricating or inducing illnesses in a child. Emotional abuse is the persistent emotional ill treatment of a child, which is likely to cause serious harm to their emotional and behavioural development. It may involve suggesting to a child that they are worthless, inadequate or unloved, or placing inappropriate expectations or responsibilities upon them.

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

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

Staff may become concerned through observation of:

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

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

Whilst staff may not be qualified to manage the responsibility of the child's welfare themselves, BritBox recognises that there must be an appropriate response to concerns about a child's welfare. Staff should therefore make suspicions of abuse known. If anyone working with children suspects that a child may be at risk they should report their concerns to an appropriate manager responsible for child protection in Production, Health and Safety, or to the Director of Content Compliance.

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

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

Children’s Act 1989 and 2004

The Ofcom Broadcasting Code and Code Guidance
Ofcom Broadcasting Code: Section 1 key Rules on child participants

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

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

Ofcom Guidance Notes
Covert Filming/ Recording

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

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

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

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

Entertainment set-ups

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

Key Principles and Issues

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

1. Commercial references in programmes

Promotion and undue prominence of products and services

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

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

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

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

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

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

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

Programme-related material

Programme-related material (PRM) is defined as "products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or interact with, that programme". Examples include directly related editorial content available on programme websites and apps, downloads or streaming of music performances from a programme, DVDs of the programme or series, or CDs or downloads of the soundtrack music. PRM can be promoted during or around the programme it is derived from, where editorially justified.
PRM can be free or paid for by viewers. Where it is paid for, any promotion must be kept “distinct” from the rest of the programme, eg via a text strap or V/T, rather than announced by presenters.

Premium rate services (PRS)

PRS can only be promoted where they:

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

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

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

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

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

Such references may be editorially acceptable, provided:

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

Credits for suppliers of goods and services for a programme

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

Brand references in viewer competitions

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

Use of adverts in programmes

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

2. Sponsorship

What is sponsorship?

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

Who cannot sponsor programmes?

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

Identification of sponsorship and sponsor credits

Sponsored programmes must be clearly identified by reference to the name of the sponsor and the fact they are sponsoring the programme, at the beginning and/or end of the programme. A sponsored programme must therefore have either a front or end credit, and will usually have both. It may also have credits at the end and start of each part. Sponsorship credits may include separate sponsor “bumpers” (which do not form part of the programme’s running time) or integrated title sequences and credits within the programme.

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

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

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

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

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

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

3. Product placement

What is product placement?

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

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

Prop placement is different to product placement. Prop placement is the inclusion of a product, service or trademark in a programme without any payment to BritBox, the producer or any person connected with them. Both prop and product placement can be used in the same programme.
Any proposed product placement arrangement must be notified to BritBox and to Compliance in advance of filming.

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

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

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

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

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

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

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

- Unduly prominent – the extent and nature of references need to be judged against the editorial requirements of the programme.

Signalling of product placement

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

The Ofcom Broadcasting Code requires us to apply “generally accepted standards” to language in programmes, to ensure that material that may cause offence is justified by context.

There are no “forbidden” words. Any use of offensive language must be justified, and considered in its context eg why it appears in the programme, the nature of the likely audience, and their expectations.

Offensive language is a part of British culture, and BritBox is proud that its programmes are at the heart of that culture, and reflect British society. But many viewers are still concerned by such language. This guidance is informed by research on viewer attitudes published by Ofcom, and by previous Ofcom adjudications. It provides general guidance for all programmes on BritBox channels, and the examples of offensive words are not exhaustive.

Any use of offensive language is always both an editorial and a compliance issue, and should be considered carefully and discussed with commissioners and compliance advisors.

The strongest language

<table>
<thead>
<tr>
<th>Cunt, Motherfucker</th>
<th>These words are regarded as the “strongest” language and require strong editorial justification.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fuck, Fucking</td>
<td>Specific clearance should be sought from senior compliance management for use of “cunt”.</td>
</tr>
<tr>
<td></td>
<td>“fuck” and “fucking” should generally be avoided in pre-titles sequences and recaps, and used only sparingly in early scenes.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Twat, Pussy, Gash, Beaver, Fanny, Minge, Snatch, Flaps, Beef-curtains, Clunge, Bloodclaat, Punani</th>
<th>These words are regarded as strong language.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milf, Ho, Prickteaser, Slag, Skank, Slut, Whore, Sket</td>
<td></td>
</tr>
<tr>
<td>Cock, Cocksucker, Bellend, Dick, Dickhead, Wanker, Prick, Nonce,</td>
<td></td>
</tr>
<tr>
<td>Discriminatory Language</td>
<td></td>
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<tr>
<td>--------------------------</td>
<td></td>
</tr>
<tr>
<td><strong>Knob, Knob-head, Tosser, Tool, Bastard</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Bukkake, Dildo, Jizz, Rapey</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Nigger, Paki, Chink, Chinky, Slope, Pikey, Gippo, Gyppo, Raghead, Towelhead, Coon, Darky, Dago, Wog, Golliwog, Coloured, Negro, Sambo, Spade, Choc Ice, Gook, Honky, Jap, Kraut, Spic, Wop, Taff, Fenian, Prod, Taig, Polack, Sheeny, Kike, Yid, Heeb, Kafir/Kuffar, Papist</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Faggot, Homo, Queer, Poof, Batty Boy, Nancy, Pansy, Fairy, Bender, Shirt Lifter, Queer, Bum Boy, Bumclat, Bummer, Faggot, Fudge-Packer, Chi-Chi Man</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Lezzie, Lezza, Lesbo, Dyke, Muff Diver, Carpet Muncher, Rug Muncher</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Tranny, Gender Bender, He-She</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Retard, Mong, Schizo, Mental, Spastic, Spaz, Spakka, Cripple, Midget, Special, Windowlicker, Vegetable, Loony, Nutter, Div</strong></td>
<td></td>
</tr>
</tbody>
</table>

| Derogatory racial and religious terms, or those derived from historical racial terms, or those about LGBT or disabled people, require strong editorial and contextual justification eg in the context of factual or drama programmes dealing with racism, homophobia or disability as a theme. |
| Some derogatory terms may be less offensive if used lightheartedly and without intention to insult, for example if referring to stupidity (eg “mental”, “nutter”, “loony”), but not if applied to people with learning difficulties. |

<table>
<thead>
<tr>
<th>Milder language</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Effing, Frigging, Frickin’, Feckin’, Feck</strong></td>
</tr>
<tr>
<td><strong>Shit, Bullshit</strong></td>
</tr>
<tr>
<td><strong>Shag, Screw</strong></td>
</tr>
<tr>
<td><strong>Bitch, Tart, Bint, Munter, Slapper</strong></td>
</tr>
<tr>
<td><strong>Arsehole, Son of a Bitch</strong></td>
</tr>
</tbody>
</table>

| Language in this section is still potentially offensive, and compliance advice should always be sought on its inclusion. |
| Some terms may be less acceptable where there is less audience expectation of this language appearing in a particular genre of programme. |
| Tits, Balls, Bollocks, Piss, Pissed, Pissed off | There is greater tolerance towards occasional use of this milder language. |
| Bugger, Crap, Sod, Sod off, Damn, Goddamn Bonk | Repetition and cumulative effect – where a one off use of a mild term may be acceptable, repeated uses in the same programme might not be. |
| Arse, Ass, Bum, Boobs | No offensive language should be used in children’s programmes. |
| Cow, Minger, Git, Old Bag, Ginger, Coffin Dodger Bloody | |
| God, OMG, Jesus, Christ | Generally “God”, “Oh My God” or “OMG” are seen as innocent and inoffensive expressions of emotion or surprise. Other uses of religious names as exclamations or expletives can cause offence to religious viewers, and require contextual justification eg where their use by the speaker is not intended to be offensive. Religious names combined with other expletives are particularly offensive and unlikely to be editorially justified at any time eg “Jesus fucking Christ”. |
Internet Material

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

- **Is it true?** - Material and information on the internet may be untrue, defamatory or even malicious. It may be inaccurate, unconfirmed or simply repeating speculation. Video footage may be deliberately faked.

- **How credible is the source?** – What is the website source and who is posting the material? A major public service broadcaster or a broadsheet newspaper is likely to carry reports subject to journalistic processes; tabloid or gossip websites are less reliable; YouTube and social media is entirely unreliable.

- **Can you verify the content?** - Try and corroborate the content of the material with at least one reliable source and with what is in the public domain and has been reported in the past elsewhere. If the material purports to be a version of another piece of material – or you think it is - always cross-check it with the original material.

- **Remaining concerns about authenticity** – after following the above checks, if any concerns remain over the authenticity or veracity of the material, make those concerns (and the source of the material) known to the commissioner and compliance. Sometimes unverified material might still be included with suitable qualification or warnings. This needs to be judged on a case-by-case basis.

- **Copyright** - There is a common misconception that because something is available and free to access online, it is therefore free to reproduce. Material online is still protected by copyright, and therefore use in our programmes needs to be cleared with the copyright owner by the production team, unless fair dealing or another copyright defence is available. Always seek advice from a BritBox compliance lawyer if you wish to use any material without prior clearance of copyright or other rights (eg music or performance rights).

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

For further information on how BritBox supports communities and causes see www.Britboxresponsibility.com
Compliance, Commissioning & Referral Up

Many compliance decisions inevitably overlap with editorial decisions, and are a matter of careful judgment and risk assessment. On the very rare occasions when agreement cannot be reached between the compliance team, producers and commissioners, or where content related issues arise that require high level management decision making, there is a referral up process.
Editorial rules

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

Rule 10: Harmful Material: Material Likely to Incite Hatred
An ODPS must not contain any material likely to incite hatred based on race, sex, religion or nationality.

Rule 11: Harmful Material: Protection of Under-18s (Specially Restricted Material)
An ODPS must not contain any specially restricted material unless the material is made available in a manner which secures that persons under the age of 18 will not normally see or hear it.

“A specially restricted material” means—

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

Rule 12: Sponsorship

Rule 13: Prohibition of Product Placement and Exceptions
The Sponsorship Rules and the Product Placement Rules are broadly based on and similar to (but not in all respects identical) those in Ofcom’s Broadcasting Code.

Product placement is prohibited in ODPS if—

A. it is of cigarettes or other tobacco products,
B. it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products, or
C. it is of prescription-only medicines; or
D. it is of electronic cigarettes or refill containers.

Permitted Product Placement
Subject to the above, product placement is otherwise permitted in programmes included in on-demand programme services provided that—
A. conditions A to F below are met, and
B. where the programme featuring the product placement has been produced or commissioned by the ODPS provider or any connected person, condition G is also met.

Condition A
The programme is:
A. a film made for cinema;
B. a film or series made for a television programme service or for an on-demand programme service;
C. a sports programme; or
D. a light entertainment programme.

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

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

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

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

Condition F
The way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—
A. prejudice respect for human dignity;
B. promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
C. encourage behaviour prejudicial to health or safety;
D. encourage behaviour grossly prejudicial to the protection of the environment;
E. cause harm to persons under the age of eighteen;
F. directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
G. exploit the trust of such persons in parents, teachers or others; or
H. unreasonably show such persons in dangerous situations.

Condition G

The ODPS in question signals appropriately the fact that product placement is contained in a programme, no less frequently than—
A. at the start and end of such a programme, and
B. in the case of an on-demand programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

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

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

A. is for a commercial purpose,
B. is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person, and
C. is not prop placement.

“Prop placement”, in relation to a programme included in an on-demand programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where:
(a) the provision of the product, service or trade mark has no significant value; and no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

Rule 14: Harmful Material: Prohibited material
An ODPS must not contain any prohibited material.

“Prohibited material” means:
A. a video work which the video works authority has determined for the purposes of the 1984 Act not to be suitable for a classification certificate to be issued in respect of it, or
B. material whose nature is such that it is reasonable to expect that, if the material were contained in a video work submitted to the video works authority for a classification certificate, the video works authority would
determine for those purposes that the video work was not suitable for a classification certificate to be issued in respect of it.
Ofcom Broadcasting Code and Guidance

All BritBox producers are expected to be familiar with the Ofcom Broadcasting Code (the Code). Below is a very brief outline reminder of the main areas covered in the Code.

Section 1 - Protecting the Under Eighteens

The key Principle is that viewers under 18 are protected from harmful or unsuitable material (such as violence, language, sex, nudity, drug taking, exorcism, the occult and paranormal) primarily by appropriate scheduling pre-watershed. BritBox provides viewer content guidance and suitable PIN protection for adult subscribers who wish to protect children from unsuitable material.

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

Section 2 - Harm and Offence

A key Principle is that “generally accepted standards” should be applied. Material that might cause offence must be justified by the context eg the type of programme, the type and size of the audience and their expectations, and the information given to viewers about the content before viewing it.

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

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

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

Hypnotism – cannot be directed at the viewing audience, ie hypnotists cannot perform straight to camera and the programme should not include their full routine.
Simulated news – the viewer must not be misled by simulated news in drama or documentaries into believing they are watching actual news.

Subliminal messages – are not allowed.

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

Competitions and voting – must be conducted fairly and must not materially mislead viewers. Rules must be clear and significant conditions must be stated on air, and competition prizes must be described accurately. There are detailed rules around the use of premium rate services.

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

Programmes must not include material likely to encourage or incite the commission of crime or disorder. “Material” may include calls to criminal action, promotion of engagement in terrorism, and hate speech likely to encourage criminal activity or lead to disorder. This does not mean that such material can never be broadcast. Significant contextual factors include:

- the editorial purpose of the programme;
- the status or position of those featured;
- whether sufficient challenge is provided

Criminal techniques - details that could enable the commission of crime must not be included, unless editorially justified eg by showing viewers how to avoid becoming a victim of crime.

Payments – programmes must not pay criminals for contributions relating to their crime, unless where it is in the public interest. Factors include: the benefit to viewers of seeing the interview; the purpose of the interview; the seriousness of the crime; and the likely feelings of victims. Payment includes payments in kind, promises and indirect payments, for example to friends or family members if the criminal may benefit. Criminals (for these purposes) include those that admit they have committed a crime, even if they have never been prosecuted.

If criminal proceedings are active, no payment can be made for a programme contribution to a witness, or reasonably expected to be a witness. This is to prevent risk of influencing witness testimony. Note there is no public interest exception here.
If criminal proceedings are not yet active but likely, no payment can be made to a likely witness unless it is clearly in the public interest and payment is necessary to elicit the information.

Kidnappings/hijacks – do not include material that would endanger lives or prejudice attempts to resolve such a situation.

**Section 4 - Religion**

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

- Must exercise a proper degree of responsibility – they must take into account the sensitivity around religion, particularly to believers, and ensure treatment is fair, accurate and balanced;
- Must not treat religious views abusively - religion can be criticised, but that criticism should be balanced and objective;
- Must make clear the identity of the particular religion being referred to;
- Must not promote religious views by stealth;
- Must not seek recruits;
- Must not improperly exploit the audience's susceptibilities, and must treat with objectivity any claims that a living person or group has special powers.

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

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

News - must be:

- Reported with due accuracy
- Presented with due impartiality

Programmes other than news - Due impartiality is also required for coverage of matters of political or industrial controversy or relating to current public policy. These are issues on which politicians, industry and the media are in debate. Examples include grievances giving rise to industrial action, or matters of economic policy, eg tax rises.
Undue prominence should not be given to the views of particular individuals on matters of political or industrial controversy, and matters relating to current public policy.

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

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

Linked programmes – where due impartiality is going to be observed over several programmes rather than within one programme, it must be made clear to the audience prior to the start of each programme that it is one of several on that subject.

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

Section 6 - Elections and Referendums

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

During election periods:

- Due weight must to be given to coverage of parties and independent candidates, taking into account evidence of past electoral support and current support. Appropriate coverage of “significant views” must be considered.
- Discussion and analysis of election issues must stop when polling stations open.
- No opinion poll results on polling day, until the poll closes.
- Election candidates cannot act as news presenters, interviewers or presenters of any type of programme during the election period, but appearances on non-political programmes that were scheduled prior to the election period can still go ahead.

Rules for constituency/electoral area coverage during elections:
When a candidate takes part in an item about their constituency/electoral area, all candidates with significant past or current support must be offered the chance to take part (but the item can still proceed if they refuse, or are unavailable to participate);
The item must include a list of all parties/independent candidates standing after nominations close;
If a candidate is appearing they must not be allowed to raise constituency/electoral area issues.

Section 7 – Fairness

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

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

Fairness is often an area where compliance and editorial judgments overlap, and must be considered on a case by case basis.

Accuracy

Programmes that refer to real people, organisations or events must be properly researched. Accuracy and fairness is not the same thing, but an inaccurate report is more likely to be unfair than an accurate one.

Fair Editing

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

Opportunity to Contribute and Right of Reply

Material facts should not be unfairly omitted from programmes, and fairness has a bearing on whether someone should be approached to take part in the programme, or at least notified about it.

Practice 7.11 says “if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond”. (It is also often a requirement for the legal defence of a libel claim to succeed - see the Media Law chapter).

Producers must provide sufficient information about the programme and all of the material allegations to enable them to respond. There is no requirement to
provide all of the evidence collected, for example covertly filmed footage. In most cases it will be sufficient to give a full, fair and accurate summary of the allegations to be made and a full explanation of the evidence in the programme supporting them.

Time given to respond will depend on:

- whether the allegations are complex or might require investigation before responding;
- whether they are addressed to an individual or a large organisation – the latter has greater resources to prepare responses quickly;
- the type of programme – for a topical news story timescales for response are generally much shorter, whereas for a factual programme that has been weeks or months in production, more time should be given;

Seeking a response is part of the journalistic process, and programmes sometimes change significantly as a result of the responses received. Therefore producers should not complete editing before any deadline given for these responses, and should not leave sending out “right of reply” letters too late in the production process.

Where a response to significant allegations has been provided, it should be reflected fairly in the programme. That does not mean that the response has to appear verbatim, nor that irrelevant material needs to be included.

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

Consent

Generally we include people in programmes with their consent.

Consent must be “informed”, ie the contributor must be given all the information necessary for them to make an informed decision whether or not to take part. This depends on the nature of the programme and the contribution itself. Informed consent is likely to be achieved where contributors have been told:

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

Contributors should be made aware of any material changes made to the programme as it develops through the production process that may reasonably affect their original consent to participate. One common change that might affect consent is a change in title. A parent might consent to participate in a programme with a working title “Britain’s Biggest Babies”, but that decision might change when they are told (as they should be) that the title has changed to “Too Fat to Toddle”.

Consent for Children and Vulnerable Adults
If a contributor is under 16 years of age make sure that the child freely assents to take part, and that you have the consent of a parent or other person with parental responsibility for the child. If the child or young person is a ward of court or is involved with social services in any way, seek compliance advice. If a contributor over the age of 16 does not have capacity to provide informed consent, seek compliance advice and seek consent from an adult primarily responsible for them.

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

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

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

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

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

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

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

Deceptions and Set-ups
There must be a strong public interest to justify employing deception in the production of factual programmes.

If you wish to employ any kind of deception with a contributor or potential contributor, you should seek early compliance advice and approval from the Director of Content Compliance before taking steps to do so. The use of deception must only be employed in the public interest when the material could not have reasonably been obtained through other means and must always be proportionate in all the circumstances, and kept to the minimum necessary to achieve the programme’s aims.

The most common form of deception employed in factual programmes is secret/covert/undercover filming. Please see the Covert Filming guidance in the Handbook. Compliance approval is required to include any covertly filmed footage, regardless of who shot it.

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

Where the person set-up is a celebrity, it may be justified to include the item without their consent, but seek compliance advice.

Section 8 – Privacy

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

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

Any infringement of privacy in programmes must be warranted, ie the broadcaster must be able to demonstrate why, in the circumstances, it was justified. Usually that will involve arguing that the public interest in the programme outweighs the individual’s right to privacy. Public interest is difficult to define, but examples would be revealing crime, protecting public health or safety, exposing misleading claims, or disclosing incompetence that affects the public.

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

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

Consent – if material that would infringe a person’s privacy is being broadcast without their consent, the infringement must be warranted. If someone asks that filming be stopped, the producer should do so, unless it is warranted to continue (eg in a doorstep interview – see below).

Places – filming in institutions generally requires permission from the relevant authority. Sensitive places eg hospitals, ambulances, schools, prisons, police stations etc, normally require consent from individuals for filming. Often obtaining such consent will be a pre-requisite of access to such institutions.
Doorstepping – this means an attempted interview without prior warning. It should not be attempted unless:

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

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

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

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

BritBox has detailed compliance and editorial processes governing covert filming. See the relevant chapter of the Handbook.

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

Suffering and distress – use of footage without consent of people caught up in emergencies or accidents or personal tragedies, must be warranted by public interest.

Past events – programmes should try to reduce potential distress to victims and relatives when examining past events. Surviving victims and families of those featured should be informed of plans and broadcast dates for the programme.

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

Section 9 – Commercial References in Programmes

This is one of the lengthiest and most complex sections of the Code, and the Guidance to it runs to over 60 pages. Set out below is a brief summary of the main Principles and Rules.
• Broadcasters must maintain editorial independence and control over programming.
• There must be a distinction between editorial content and advertising.
• Audiences must be protected from surreptitious advertising.
• Audiences must be protected from the risk of financial harm.
• Products or services cannot be promoted in programmes, other than in very limited circumstances.
• Undue prominence of products, services and brands is not allowed, and any reference to them must be justified by the editorial requirements of the programme.
• Unsuitable sponsorship must be avoided. Sponsorship cannot involve any editorial control and cannot lead to the creation of content that is the vehicle for the purpose of promoting the sponsor and its interests. Sponsorship credits cannot contain advertising messages or calls to action.
• Product placement is permitted in certain programme genres and for certain products/services/brands. Product placement cannot influence the content and scheduling of a programme - programmes cannot be created or distorted so that they become a vehicle for the purpose of featuring placed products/services/brands.
• Programmes cannot contain promotional or unduly prominent references to placed products/services/brands.

See the Handbook chapter on commercial references, sponsorship and product placement.
Media Law

Introduction

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

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

- **Libel**: protects the reputation of individuals and companies, and provides legal remedies to those whose reputation has been damaged by a publication or broadcast. The law in England and Wales was revised in the Defamation Act 2013.

- **Privacy**: protects individuals against unjustified intrusions into their private life. The law is constantly developing, but derives primarily from the Human Rights Act 1998.

- **Contempt of court**: protects the administration of justice, and seeks to ensure that defendants in criminal proceedings can receive a fair trial that is not prejudiced by media reporting. The law is derived primarily from the Contempt of Court Act 1981.

- **Copyright**: protects the creators of artistic works such as film footage, photographs, books and artworks by preventing others from copying and exploiting these works without permission. The law derives primarily from the Copyright Designs and Patents Act 1988.

- **Data Protection**: protects use of personal data. The law derives primarily from the Data Protection Act 2018 and the GDPR.

- **Confidentiality**: protects disclosure of confidential information. The law derives primarily from past cases, although there is some overlap with privacy rights under the HRA 1998.

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

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

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

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

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

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

Definition
A statement is defamatory if:

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

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

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

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

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

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

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

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

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

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

Honest Opinion
This defence (previously known as “fair comment”) is available where a statement is:

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

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

Privilege

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

There are two forms of privilege:

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

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

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

Public Interest

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

The defence requires the defendant to show that:

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

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

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

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

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

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

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

Article 8 states -

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

The rights of privacy and freedom of speech are often in conflict. A balancing exercise needs to be carried out between the right of the public to receive and of the media to impart information, and the right of an individual to privacy. In 2004 the House of Lords in the case of Naomi Campbell v MGN Ltd effectively created a new action of “unjustified disclosure of private information”. The courts apply a two stage test:

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

The key question is therefore whether there is a sufficiently strong public interest in the publication of the private information to warrant the infringement of privacy. It has been much debated in different judgments that what may be of interest to the public is not the same as what is in the public interest. “The public interest” is broadly categorised as contributing to an important public debate of general interest. Examples would include a report which:

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

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

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

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

Unlike libel, claimants can seek an injunction to prevent information that they consider private from being published, whether or not that information is true. Courts must assess such injunction applications in relation to the public interest, and whether the broadcaster has complied with the Ofcom Broadcasting Code. In addition to protection of privacy, the criminal law protects individuals from certain types of conduct, for example conduct that amounts to harassment. There are no specific defences for journalists to harassment.

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

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

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

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

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

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

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

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

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

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

Photographs where identity is in issue - A suspect’s photograph must not be published where identity is in issue, for example where a witness identity parade may have been held, or a defendant is being identified from video footage and denies that he is the person in the footage. If identity remains an issue at trial, a defendant’s photograph should not be published during the proceedings.

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

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

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

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

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

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

Jury deliberations – the law prohibits soliciting, publishing or broadcasting the deliberations of a jury even after a trial has finished ie anything said in the jury room or the reasons why the jury reached the verdict should remain confidential. Soliciting such information is an offence, even in the absence of any publication.
Civil cases - Civil proceedings are also covered by the law of contempt, and contempt becomes a live issue when the date of a trial has been fixed. However, most civil cases are now heard by judges without a jury, with a very few exceptions. In these cases, considerations similar to those in criminal proceedings will apply.
Copyright and Fair Dealing

Introduction

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

Infringement of copyright

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

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

Multiple copyrights

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

Duration of copyright

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

Fair Dealing

“Fair dealing” is a statutory exception to the general need to obtain permission for use of copyright material.
It covers all sorts of copyright works (e.g., TV programmes, films, literary and musical works, photography) subject to certain restrictions.

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

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

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

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

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

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

Fair Dealing for the Purposes of Criticism or Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. That the use of the material was fair

To be judged as fair dealing the use must be ‘fair’.

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

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

3. That the material is actually being criticised or reviewed

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

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

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

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

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

4. Or used to criticise or review another Work

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

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

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

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

Editing

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

Beware Contractual Liability

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

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

Further Exploitation

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

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

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

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

There is no general “news access” provision, as is often (wrongly) assumed.

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

Fair dealing for the purpose of Caricature, Parody or Pastiche

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

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

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

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

European court precedent suggests that a parody must:

- evoke an existing work
- be noticeably different from that work
- contain an element of humour or mockery
There is no express requirement to acknowledge the source work, but the parody must either relate to the source work or else must mention the source work.

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

**Fair dealing for the purpose of quotation**

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

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

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

1. Background

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

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

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

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

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

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

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

Special category data: personal data about an individual’s racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sex life or sexual orientation, physical or mental health matters, genetic and biometric data.
Criminal offence data: includes data about arrests, charges, proceedings and convictions - and also includes personal data related to security measures.

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

Data Subjects’ Rights include:

Right to Information: to know who is processing their data, what kind of data, the legal basis for the processing, who it is being sent to, and other information needed to establish the data is being processed fairly and transparently, and to be informed about decision making.

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

Right to Object to processing.

Right to Rectification: if the information is inaccurate.

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

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

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

3. The ‘Special Purposes’ Exemption

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

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

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

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

4. Processing Different Types of Personal Data

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

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

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

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

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

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

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

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

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

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

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

A data subject can withdraw consent to processing of their data. If they do, we need to assess (i) whether we can lawfully continue to process their data under another condition and/or the journalism exemption and (ii) whether we can still use the person’s contribution/data in the programme. Please refer any such cases to Compliance immediately that consent is withdrawn.

Criminal Offence Data
This includes data about criminal allegations, proceedings or convictions.

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

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

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

Consent - in most circumstances reporting criminal charges and convictions does not need consent, as one of the other conditions will apply. If we do need consent it is important to have evidence of that consent to our use of their data.
Already public – many criminal convictions are reported publicly and are a matter of public record. Advice should be taken on whether those convictions are now spent.

The broader journalism exemption may also apply.

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

Criminal Background Checks

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

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

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

5. Privacy Notices

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

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

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

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

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

Children

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

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

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

6. Practical Issues

Withdrawing consent

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

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

Requests for rectification

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

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

Subject Access Requests

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

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

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

7. Unlawful Obtaining of Personal Data

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

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

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

8. Data Security

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

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

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

**Disposal of data**

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

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

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

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

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

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

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