

SECTION 6: FAIRNESS, CONTRIBUTORS and CONSENT

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6.1 INTRODUCTION

The BBC strives to be fair to all – fair to those our output is about, fair to contributors, and fair to our audiences. BBC content should be based on respect, openness and straight dealing. We also have an obligation under the Ofcom Broadcasting Code to “*avoid unjust or unfair treatment of individuals or organisations in programmes*”.¹

Much of this section concerns the process of recruiting those who participate in or are otherwise involved in our content, and it should be considered alongside Section 7: Privacy – Privacy and Consent.

However, material inaccuracies in the way people are referred to, or featured, may risk causing unfairness. This applies not just to factual output (for example when representing the views of, and information about, others), but also to drama portraying real people or organisations. Consequently, this section of the Guidelines should also be read in conjunction with Section 3: Accuracy.

6.2 PRINCIPLES

6.2.1 We will be open, honest, straightforward and fair in our dealings with contributors and audiences unless there is a clear public interest in doing otherwise, or we need to consider important issues such as legal matters, safety, or confidentiality.

6.2.2 Individuals should normally be appropriately informed about the planned nature and context of their contributions when they are asked to take part in BBC content and give their consent, unless there is an editorial justification for proceeding without their consent.

¹ Rule 7.1, Ofcom Broadcasting Code

6.2.3 When our output contains allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or organisation, those criticised should normally have a right of reply, unless there is an editorial justification to proceed without it.

6.3 MANDATORY REFERRALS

(Mandatory Referrals are part of the BBC's editorial management system. While they will not, in themselves, meet the Principles in the Editorial Guidelines, they are an essential part of the process to ensure compliance and must be observed.)

Referrals to Director Editorial Policy and Standards

6.3.1 Any proposal to broadcast a serious allegation resulting from our own journalism without giving those concerned an opportunity to reply must be referred to a senior editorial figure or, for independents, to the commissioning editor. Referral must also be made to Director Editorial Policy and Standards.

(See 6.4.27)

6.3.2 The portrayal of a real person in a significant way in a drama against the wishes of the individual portrayed or their surviving near relatives must be referred to Director Editorial Policy and Standards.

(See 6.4.29)

Referrals to Editorial Policy

6.3.3 Any proposal to deceive a contributor to news or factual output must be referred to a senior editorial figure or, for independents, to the commissioning editor. Editorial Policy or, in the most serious cases, Director Editorial Policy and Standards, must also be consulted.

(See 6.4.17)

6.3.4 Any proposal to create a website which appears to have no connection with the BBC must be referred to a senior editorial figure and Editorial Policy.

(See 6.4.21)

Other Referrals

6.3.5 Any proposal to deceive a contributor for comedy and entertainment purposes, whether or not they are in the public eye, must be referred to a senior editorial figure, or for independents to the commissioning editor, who may consult Editorial Policy.

(See 6.4.20)

6.3.6 Any proposal to use a tourist visa to avoid visa restrictions when working for the BBC in that country, or any other proposal to enter a country illegally, must be referred to a senior editorial figure, or for independents to the commissioning editor, who may consult Director Editorial Policy and Standards.

(See 6.4.23)

6.3.7 Any access, filming or recording agreement must be referred to a senior editorial figure, or for independents to the commissioning editor, who may also consult Editorial Policy particularly when the proposed wording compromises the BBC's editorial independence or has the potential to cede editorial control to a contributor or contributing organisation.

(See 6.4.15)

6.3.8 Any request from output areas outside BBC News for interviews with, or exclusive appearances by, members of the Royal Family must be discussed with the BBC's Royal Liaison Officer.

(See 6.4.15)

6.3.9 Anyone actively intervening to steer the course of an online discussion for a BBC purpose, without revealing their link to the BBC, must be acting in the public interest and must refer to a senior editorial figure or, for independents to the commissioning editor. In the most serious cases, referral must also be made to Director Editorial Policy and Standards.

(See 6.4.22)

6.4 PRACTICES

Contributors and Informed Consent

6.4.1 We should treat our contributors honestly and with respect. Our commitment to fairness is normally achieved by ensuring that people provide 'informed consent' before they participate. 'Informed consent' means that contributors should be in possession of the knowledge that is necessary for a reasoned decision to take part in our content.

(See Section 3 Accuracy: 3.4.7 - 3.4.8)

Before they participate, contributors should normally know:

- why they are being asked to contribute to BBC content and where it will first appear
- the context of the content
- the nature of their involvement.

The more significant their contribution, the more detail we should provide. However, we should normally expect to explain the following:

- The kind of contribution they are expected to make. We should tell them in advance about the range of views being represented in the specific content to which they are contributing and, wherever possible, the names of other likely contributors

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- Whether their contribution will be live or recorded and/or edited. When recorded, we should not guarantee it will be broadcast
- We can only give a broad outline of question areas because the direction the interview takes will be dependent on what is said
- The final content will be a fair and truthful representation of what they say and do
- Their contribution may be used by other BBC outlets including reproduction and archiving online

(See Section 13 Re-use and Reversioning: 13.4.6 - 13.4.12)

- We do not normally allow a preview of BBC content. However, when a preview is considered for editorial, ethical or legal reasons, we must be clear about the terms under which it is offered. It is normally best to do this in writing in advance. We should make it clear that we are not surrendering editorial control and that any changes made as a result will generally only relate to the correction of agreed factual inaccuracies or for reasonable concerns about the welfare of children, personal safety, or national security

(See Section 6 Fairness, Contributors and Consent: 6.4.13 - 6.4.16)

- Their contractual rights and obligations and those of the BBC in relation to their contribution. For example, we expect contributors to be honest, straightforward and truthful.

We should not make any commitment to a contributor that we can not keep. Third party websites may reproduce our content globally without our knowledge or consent, so no guarantee can be given that a contribution will not be seen in particular countries.

(See Section 6 Fairness, Contributors and Consent: 6.4.10 - 6.4.12)

(See Guidance online: Informed Consent)

6.4.2 People recorded committing or admitting to an offence, or behaving or admitting to behaving in an anti-social manner will not normally be asked for consent. We would also normally reveal their identity although there are circumstances when it is important not to do so.

(See Section 7 Privacy: 7.1 Legitimate Expectations of Privacy and Section 6 Fairness, Contributors and Consent: 6.4.17 - 6.4.23)

6.4.3 There may be occasions when people are discussed, referred to or appear in material without their knowledge or consent. They may be public figures or private individuals and the material may include photographs, video and correspondence in which they feature. We should be fair and accurate in our portrayal of these people and, where appropriate, respect their legitimate expectations of privacy.

(See Section 7: Privacy: 7.1 Legitimate Expectations of Privacy and Section 7 Privacy: 7.4.7)

6.4.4 We should normally make contributors aware of significant changes to a programme or other content as it develops and prior to transmission, if such changes might reasonably be considered to have affected their original decision to participate, had it been known at the time. Depending on specific circumstances, such changes might include programme titles (for example, where they alter audience perception of the content or contributors), other significant contributors, significant changes to broadcast or publication date, or anything that materially alters the context in which the contribution will appear.

(See Section 6 Fairness, Contributors and Consent: 6.4.9)

Obtaining Consent

6.4.5 We obtain informed consent from our contributors in a variety of ways depending on the circumstances of their contribution. Wherever practicable we should obtain consent in a form capable of proof.

In many cases contributors will give their consent by simply agreeing to be recorded for radio or television or to contribute online. For example, this will usually apply to those who are interviewed at short notice for any of our services, including people in the news and people who take part in “vox pops”. It is clearly impractical to obtain written consent for time sensitive contributions, including those to local radio, continuous news and other news outlets.

Occasionally there may also be circumstances in which contributors give their verbal consent at the start of a project and their continued consent is implicit through their ongoing involvement in the making of the programme.

(See Guidance Online: Informed Consent)

6.4.6 We should not normally rely on third parties to gain consent from a responsible adult although it may sometimes be sensible to approach a potential contributor via a third party in the first instance, for example when dealing with vulnerable people, the bereaved or in other sensitive circumstances.

(See Section 7 Privacy: 7.4.41)

6.4.7 For more significant contributions, we may sometimes ask participants to sign a contract which formalises the terms of their dealings with us, and includes a declaration of personal information which may bring the BBC into disrepute, for example, criminal convictions, or which may involve possible conflicts of interest.

(See Section 3 Accuracy: 3.4.7 - 3.4.8)

6.4.8 Young people and vulnerable adults may not always be in a position to give informed consent, for example, people with learning difficulties or forms of dementia, the bereaved, and people who are sick or terminally ill. In such cases, someone over 18 with primary responsibility for their care should normally give consent on their behalf, unless it is editorially justified to proceed without it. In particular, we should avoid asking someone who is unable to give

their own consent for views on matters likely to be beyond their capacity to answer properly without the consent of an adult with primary responsibility for their care.

(See Section 9 Children and Young People as Contributors: 9.4.12 - 9.4.23)

(See Guidance online: Medical Emergencies)

Withdrawal of Consent

6.4.9 Occasionally people who have willingly contributed to our output try to withdraw their consent prior to broadcast. Generally no one has the right in such circumstances to prevent their contribution being used, but we should listen carefully to any reasonable objections. There may be exceptions, for example where we have contractual obligations or perhaps where there have been significant changes to the context in which their contribution is to be used.

(See Section 6 Fairness, Contributors and Consent: 6.4.4)

Anonymity

6.4.10 Sometimes information the public should know is only available through sources or contributors on an 'off-the-record' or anonymous basis.

When we grant a contributor or source anonymity as a condition of their participation, we must clearly agree the extent of anonymity we will provide. It may be sufficient to ensure that the contributor or source is not readily recognisable to the general public, or they may wish to be rendered unidentifiable even to close friends and family. We should keep accurate notes of conversations with sources and contributors about anonymity. A recording is preferable where possible.

(See Section 3 Accuracy: 3.4.10)

6.4.11 We must ensure when we promise anonymity that we are in a position to honour it, taking account of the implications of any possible court order demanding the disclosure of our unbroadcast material. When anonymity is essential, no document, computer file, or other record should identify a contributor or source. This includes notebooks and administrative paperwork as well as video and audio material.

6.4.12 Effective obscuring of identity may require more than just anonymity of a face. Other distinctive features, including hair, clothing and voice may need to be taken into account. Blurring rather than pixilation, which can be reversed, is the best way of ensuring anonymity in pictures. When disguising a voice, using a 'voice-over' by another person is usually better than technically induced distortion, which can be reversed, but audiences should be told what they are hearing.

To avoid any risk of 'jigsaw identification' (that is, revealing several pieces of information in words or images that can be pieced together to identify the individual), our promises of anonymity may also need to include, for example,

considering the way a contributor or source is described, blurring car number plates, editing out certain pieces of information (whether spoken by the contributor or others) and taking care not to reveal the location of a contributor's home. Note that, in some circumstances, avoiding the 'jigsaw effect' may require taking account of information already in the public domain.

We may need to disguise the identity of international contributors to meet our obligations of anonymity or if their safety may be compromised. Third party websites may reproduce our content globally without our knowledge or consent.

(See Guidance online: Anonymity)

Contributors, Access Agreements and Editorial Independence

6.4.13 Contributors sometimes try to impose conditions on us before agreeing to take part. We must not surrender editorial control. Any contractual agreement with a contributor, their agent, or a production company must allow us to ask questions our audience would reasonably expect and tell a fair and accurate story.

If a contributor refuses to give an interview unless questions are rigidly agreed in advance or certain subjects avoided, we must consider carefully whether it is appropriate to proceed at all. If we decide to do so we should make clear on air the conditions under which the interview was obtained.

Access Agreements and Indemnity Forms

6.4.14 Many organisations, ranging from police forces, military organisations and the Royal Household via hospitals and schools to department stores and leisure parks, require the BBC to enter into written agreements in return for facilitating access to their premises or staff. This can be a useful way of formalising the terms under which consent for access or other contributions is granted.

However, it is important to ensure the terms under which access is granted do not compromise the BBC's editorial control or otherwise undermine our editorial integrity. Editorial control requires the BBC, or independents working for the BBC, to retain the right to record material as freely as possible, as well as to edit accurately, impartially and fairly. If unacceptable conditions are imposed we should withdraw from the project.

(See Guidance online: Access Agreements and Indemnity Forms)

6.4.15 Any access, filming or recording agreement must be referred to a senior editorial figure, or for independents to the commissioning editor, who may also consult Editorial Policy particularly when the proposed wording compromises the BBC's editorial independence or has the potential to cede editorial control to a contributor or contributing organisation.

Any request from output areas outside BBC News for interviews with, or exclusive appearances by, members of the Royal Family must be discussed with the BBC's Royal Liaison Officer.

When access agreements cover other areas, including rights, re-use and facility fees, Legal and Business Affairs should be consulted.

(See Section 13 Re-use and Reversioning: 13.4.6 - 13.4.12)

6.4.16 Indemnity forms are the legal agreements by which an organisation providing a facility to the BBC clarifies liability if something goes wrong – either during recording or as a result of the broadcast. They may be stand-alone documents or an indemnity clause within a broader Access Agreement. Programme Legal Advice should be consulted before agreeing an indemnity clause.

The BBC has agreed a standard indemnity form with the Association of Chief Police Officers. Copies are available in electronic form on the BBC Editorial Guidelines website. Content producers who are presented with indemnity forms by police forces in England and Wales may sign them only if their wording precisely matches the standard form.

(See Section 7 Privacy: 7.4.37)

(See Guidance online: Access Agreements and Indemnity Forms)

Deception

News and Factual Output

6.4.17 In news and factual output, where there is a clear public interest², it may occasionally be acceptable for us not to reveal the full purpose of the output to a contributor. Such deception is only likely to be acceptable when the material could not be obtained by any other means. It should be the minimum necessary and in proportion to the subject matter.

Any proposal to deceive a contributor to news or factual output must be referred to a senior editorial figure or, for independents, to the commissioning editor. Editorial Policy, or in the most serious cases Director Editorial Policy and Standards, must also be consulted.

(See Section 8 Reporting Crime and Anti-Social Behaviour: 8.4.15 - 8.4.19 and 8.4.40 - 8.4.47)

Comedy and Entertainment Output

6.4.18 If deception is to be used for comedy or entertainment purposes, such as a humorous 'wind-up', the material should normally be pre-recorded and consent must be gained prior to broadcast from any member of the public or the organisation to be featured identifiably. If they are not identifiable, consent

² See Section 7 Privacy: 7.1 The Public Interest

will not normally be required prior to broadcast unless the material was secretly recorded or is likely to result in unjustified public ridicule or personal distress.

The deception should not be designed to humiliate and we should take care not to distress or embarrass those involved. We may need to consult with friends or family to assess the risks in advance of recording.

(See Section 5 Harm and Offence: 5.4.32 and Section 7 Privacy: 7.4.17 - 7.4.20)

6.4.19 Deceptions for comedy or entertainment purposes involving those in the public eye will not normally require consent prior to broadcast unless the material was secretly recorded or is likely to result in unjustified public ridicule or personal distress.

6.4.20 Any proposal to deceive a contributor for comedy and entertainment purposes, whether or not they are in the public eye, must be referred to a senior editorial figure, or for independents to the commissioning editor, who may consult Editorial Policy.

Online

6.4.21 On rare occasions, where strictly proportionate and editorially justifiable, it may be appropriate for the BBC to operate a website which appears to have no connection with the BBC.

For example, we might do this as part of an extended online game where clues are hidden on third party sites for players from BBC Online to discover. In such cases, we must ensure that non-participants who come across such a site can find out its real purpose quickly and easily.

In the case of websites created for an investigation, we must ensure that there is no significant detriment to those who discover the website but are not the subject of the investigation.

Any proposal to create a website which appears to have no connection with the BBC must be referred to a senior editorial figure and Editorial Policy.

6.4.22 Anyone actively intervening to steer the course of an online discussion for a BBC purpose, without revealing their link to the BBC, must be acting in the public interest³ and must refer to a senior editorial figure or, for independents, to the commissioning editor. In the most serious cases, referral must also be made to Director Editorial Policy and Standards.

Working Abroad

6.4.23 We should normally be open about our intentions when entering countries to work.

³ See Section 7 Privacy: 7.1 The Public Interest

Any proposal to use a tourist visa to avoid visa restrictions when working for the BBC in that country, or any other proposal to enter a country illegally, must be referred to a senior editorial figure, or for independents to the commissioning editor, who may consult Director Editorial Policy and Standards.

When use of a tourist visa in this way, or any other illegal entry of a country, is approved, Newsgathering and the Head of the relevant World Service region should also be informed. It may also be advisable to contact Programme Legal Advice before travelling.

(See Section 18 The Law: 18.3.1)

Intimidation and Humiliation

6.4.24 We must treat our contributors and potential contributors with respect. We must not be unduly intimidatory, humiliating, intrusive or aggressive to contributors, either to obtain their consent or during their participation in our output.

(See Section 5 Harm and Offence: 5.4.32, and Section 6 Fairness, Contributors and Consent: 6.4.20)

Right of Reply

6.4.25 When our output makes allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an individual or institution the presumption is that those criticised should be given a “right of reply”, that is, given a fair opportunity to respond to the allegations.

We must ensure we have a record of any request for a response including dates, times, the name of the person approached and the key elements of the exchange. We should normally describe the allegations in sufficient detail to enable an informed response, and set a fair and appropriate deadline by which to respond.

6.4.26 Any parts of the response relevant to the allegations broadcast should be reflected fairly and accurately and should normally be broadcast in the same programme, or published at the same time, as the allegation.

There may be occasions when this is inappropriate (for legal or overriding ethical reasons) in which case a senior editorial figure, or commissioning editor for independents, should be consulted. It may then be appropriate to consider whether an alternative opportunity should be offered for a reply at a subsequent date.

(See Guidance online: Right of Reply)

(See Section 7 Privacy: 7.4.30 - 7.4.32)

6.4.27 In very rare circumstances where we propose to broadcast a serious allegation without giving those concerned an opportunity to reply,

the proposal must be referred to a senior editorial figure or, for independents, to the commissioning editor. Referral must also be made to Director Editorial Policy and Standards. The allegation must be in the public interest⁴ and there must be strong reasons for believing it to be true. Our reasons for deciding to make the information public without requesting a response from the individuals or organisations concerned may include possible interference with witnesses or other legal reasons.

(See Section 3 Accuracy: 3.4.13)

Refusals to Take Part

6.4.28 Anyone has the right to refuse to contribute to our output and it is not always necessary to mention their refusal. However, the refusal of an individual or an organisation to make a contribution should not be allowed to act as a veto on the appearance of other contributors holding different views, or on the output itself.

When our audience might reasonably expect to hear counter arguments or where an individual, viewpoint or organisation is not represented it may be appropriate to explain the absence, particularly if it would be unfair to the missing contributor not to do so. This should be done in terms that are fair. We should consider whether we can represent the missing contributor's views based on what we already know.

(See Section 7 Privacy: 7.4.30 - 7.4.32 and Section 4 Impartiality: 4.4.5 - 4.4.15)

Portrayal of Real People in Drama

6.4.29 Whenever appropriate, and where their role is significant, real people portrayed in a drama or their surviving near relatives should be notified in advance and, where possible, their co-operation secured. There is less requirement to secure co-operation when dealing with people in the public eye, particularly if the portrayal is primarily of public aspects of their life.

Any proposal to go ahead against the wishes of the individual portrayed or their surviving near relatives must be referred to Director Editorial Policy and Standards for approval before a commitment is made to the production.

Unless dealing with people in the public eye and the public aspects of their lives, approval will only be given when it can be shown that the following three criteria are met:

- The portrayal is fair
- The portrayal is based on a substantial and well-sourced body of evidence whenever practicable.

⁴ See Section 7 Privacy: 7.1 The Public Interest

- There is a clear public interest⁵.

(See Section 7 Privacy: 7.1 and Section 18 The Law: 18.4.1 - 18.5.1)

6.4.30 When drama realistically portrays living people in contemporary situations, particularly a controversial or sensitive event, we should ensure it does not unduly distort the known facts and thus become unfair.

(See Section 3 Accuracy: 3.4.19 and Section 7 Privacy: 7.4.7)

Safety and Welfare of Contributors

6.4.31 We should not ask contributors to expose themselves to significant health and safety risks while taking part in our output unless we have completed a BBC risk assessment form and conducted rigorous fitness and psychological checks as appropriate.

We must ensure that our contributors recognise and accept all the identified risks in writing.

6.4.32 We must ensure we do not encourage contributors to put themselves at risk when using recording equipment, including small cameras and mobile phones, to gather material.

6.4.33 We may need to take practical steps to protect international contributors or sources from repercussions within their own countries, arising from their participation in our output. Third party websites may reproduce our content globally without our knowledge or consent.

(See Section 6 Fairness, Contributors and Consent: 6.4.10 - 6.4.12)

6.4.34 If any material is gathered, by us or by contributors, by recklessly or wilfully endangering anyone, the BBC may decide not to broadcast it and may take disciplinary action. Those responsible may also be liable to prosecution.

(See Section 11 War, Terror and Emergencies: 11.4.22)

⁵ See Section 7 Privacy: 7.1 The Public Interest