

Section Eight: Privacy

(Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003, sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), and Articles 8 and 10 of the European Convention on Human Rights.)

Foreword

This section and the preceding section on fairness are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating or otherwise directly affected by programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of this section of the Code (Rule 8.1). *However, failure to follow these practises will only constitute a breach where it results in an unwarranted infringement of privacy.* Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid an unwarranted infringement of privacy.

The Broadcasting Act 1996 (as amended) requires Ofcom to consider complaints about unwarranted infringement of privacy in a programme or in connection with the obtaining of material included in a programme. This may call for some difficult on-the-spot judgments about whether privacy is unwarrantably infringed by filming or recording, especially when reporting on emergency situations (“practices to be followed” 8.5 to 8.8 and 8.16 to 8.19). We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints.

Where consent is referred to in Section Eight it refers to informed consent.

Please see “practice to be followed” 7.3 in Section Seven: Fairness.

Principle

To ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

Rule

- 8.1 Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Meaning of “warranted”:

In this section “warranted” has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Practices to be followed (8.2 to 8.22)

Private lives, public places and legitimate expectation of privacy

Meaning of “legitimate expectation of privacy”:

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

- 8.2 Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.
- 8.3 When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.
- 8.4 Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

Consent

- 8.5 Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.
- 8.6 If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution.)
- 8.7 If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.
- 8.8 When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

- However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

Gathering information, sound or images and the re-use of material

- 8.9 The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.
- 8.10 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.
- 8.11 Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places.

(See “practice to be followed” 8.15.)

Meaning of “doorstepping”:

Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

- 8.12 Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so.
(See “practices to be followed” 7.14 and 8.13 to 8.15.)
- 8.13 Surreptitious filming or recording should only be used where it is warranted. Normally, it 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.
- (See “practices to be followed” 7.14, 8.12, 8.14 and 8.15.)

Meaning of “surreptitious filming or recording”:

Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

- 8.14 Material gained by surreptitious filming and recording should only be broadcast when it is warranted.
(See also “practices to be followed” 7.14 and 8.12 to 8.13 and 8.15.)

8.15 Surreptitious filming or recording, doorstepping or recorded ‘wind-up’ calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be broadcast without the consent of those involved. However if the individual and/or organisation is not identifiable in the programme then consent for broadcast will not be required.

(See “practices to be followed” 7.14 and 8.11 to 8.14.)

Suffering and distress

- 8.16 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.
- 8.17 People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.
- 8.18 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.
- 8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.
- In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

People under sixteen and vulnerable people

- 8.20 Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.
- 8.21 Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:
- a parent, guardian or other person of eighteen or over *in loco parentis*; and
 - wherever possible, the individual concerned;
 - unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.
- 8.22 Persons under sixteen and vulnerable people should not be questioned about private matters without the consent of a parent, guardian or other person of eighteen or over *in loco parentis* (in the case of persons under sixteen), or a person with primary responsibility for their care (in the case of a vulnerable person), unless it is warranted to proceed without consent.

Meaning of “vulnerable people”:

This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.