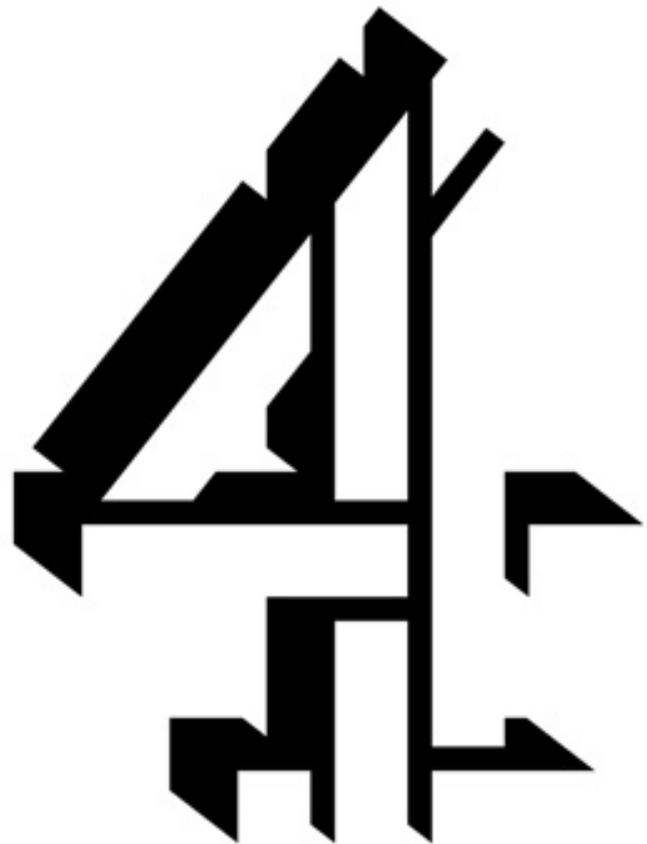


# Channel 4 Guidelines

## Working and Filming with Under 18s

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## Introduction

Channel 4 has an established reputation for making bold, educational and innovative programming involving children and young people in all genres. It is clear that both adults and children value and enjoy under 18s being represented in programming and Channel 4 strongly believes that the views of children and young people deserve to be seen and heard in programmes. However involving children and young people in television programming requires an appropriate degree of responsibility and care. Involvement in the production process and the final programme, which will be broadcast to a very wide audience, will undoubtedly have an impact on any contributor. As a responsible programme maker and broadcaster, it is crucial that careful consideration and measures are put in place to safeguard the welfare of contributors under the age of 18, as well as ensuring that their involvement does not cause them to suffer unnecessary distress or anxiety.

These guidelines, which apply to content on all Channel 4 platforms, aim to give helpful and practical guidance to all of Channel 4's programme-makers, content producers and editorial staff. They reflect Channel 4's best practice procedures, the Ofcom Broadcasting Code rules and guidance and the main areas of law that apply to the making and broadcast of programmes involving under 18s. These Guidelines are intended as a starting point and are not a substitute for seeking early advice and guidance from the commissioning editor and/or Channel 4 programme lawyer.

Series and programmes involving under 18s can differ greatly and many will require their own specific, tailored guidelines. It is important that wherever under 18s are to feature in programmes - particularly where their participation is substantial and/or integral to the programme's narrative or format e.g. filming centred on pupils at a school, or the filming of children within a formatted programme; or where the subject matter of the programme or contribution is potentially sensitive, e.g. a documentary about teenage sexuality or criminality – that early advice is sought from the Channel 4 programme lawyer, in many cases even before the programme goes into 'development'.

There are numerous legal and regulatory provisions to protect the rights and interests of under 18s. These Guidelines focus primarily on regulatory rules and best practice guidance. Further details can be found in Channel 4's Independent Producer Handbook (the "Handbook"). The Handbook can be viewed and downloaded at <http://www.independentproducerhandbook.co.uk> or in the 4Producers section of the Channel 4 website at <http://www.channel4.com/corporate/4producers>

Within these guidelines, the terms 'under 18s' and 'young people' denote individuals who have not reached their 18<sup>th</sup> birthday. The term 'under 16s' denotes individuals who have not reached their 16<sup>th</sup> birthday. The term 'children', to be consistent with its definition within the Ofcom Broadcasting Code, denotes individuals who are under 15 i.e. not reached their 15<sup>th</sup> birthday.

**Guiding Principle**

The guiding, overarching principle is that due care must be taken over the physical and emotional welfare and the dignity of people under 18 who take part in or are otherwise involved in programmes, from initial approach to transmission and beyond.

## The Ofcom Broadcasting Code

Ofcom (the Office of Communications) regulates the content of all television programmes in the UK. It operates the Ofcom Broadcasting Code which contains rules and principles covering standards in programmes and fairness and privacy issues, including in relation to under 18s.

Channel 4, like all commercial broadcasters, is licensed by Ofcom to broadcast, subject to compliance with its codes, including the Ofcom Broadcasting Code (“the Code”). Failure to comply with the Code can lead to serious sanctions being imposed on the broadcaster, including financial penalties and in the most serious cases the shortening or revocation of a broadcaster’s licence (although not in the case of Channel 4 itself, Ofcom can shorten or revoke the licences of our digital channels E4, More4 and Film4).

Editorial staff and programme-makers must be aware of and apply the relevant rules and principles of the Code. Note: the Code can be viewed and downloaded at <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>

The Code contains two fundamental rules relating to the involvement of under 18s in programmes:

- **Rule 1.26. Due care must be taken over the physical and emotional welfare and the dignity of people under 18 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 18 in loco parentis.**
- **Rule 1.27. People under 18 must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.**

Accordingly, all those involved in the commissioning and making of programmes must take “**due care**” to protect fully the welfare of participants under the age of 18.

The appropriate level of care to be applied in any given situation will depend on the particular circumstances, the nature of the programme and the individual(s) concerned. As responsibility for ensuring compliance rests ultimately with the broadcaster, Channel 4, in consultation with the programme-makers, will ultimately decide what measures are appropriate in relation to each project.

## Ofcom Guidance

In addition to the Code, Ofcom also publishes additional “guidance”, which is intended to assist broadcasters and programme-makers interpret and apply the rules and principles of the Code. With regard to under 18s, Ofcom has published: Guidance on the Participation of Children and Young People in Programmes (“The Guidance”). Note: The Guidance with regard to under 18s can be viewed and downloaded at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance/guidance1.pdf>

The Guidance is based on research undertaken by Ofcom and contains recommendations to help broadcasters achieve the appropriate level of protection for under 18s in programmes. It sets out a non-exhaustive list of the sorts of things

which may be appropriate for programme-makers to consider and apply, depending on the particular circumstances of an individual case.

In the event of any complaint in connection with the participation of an under 18 in a programme, Ofcom will consider the extent to which The Guidance has been followed. Accordingly, it is important that editorial staff and programme-makers consider this guidance and apply it where appropriate.

### **Best Practice Guidelines for Programmes Involving under 18s**

Below are best practice guidelines which editorial staff and programme-makers should consider carefully when developing, commissioning and producing programmes involving under 18s. These are designed to ensure that under 18s are suitably protected and that relevant programmes comply with the Code.

#### **The production team**

It is the responsibility of the programme's executive producer, in consultation with the commissioning editor and, where appropriate, the programme lawyer to ensure that:

- the nature and level of experience of the production team is appropriate for the nature and sensitivity of the project;
- additional advice, training or other support is given to the production team where needed;
- all members of the production team are familiar with the relevant sections of the Code, The Handbook, The Guidance, these guidelines and any additional guidance and/or procedures drawn up for their particular programme;
- all members of the production team having direct contact with under 18s must have up-to-date Criminal Records Bureau ("CRB") checks. As these checks can take some time to obtain, they should be applied for at the earliest opportunity. It may be necessary for other members of the team to also have CRB checks and this should be discussed with the commissioning editor and programme lawyer.

#### **Programme-specific guidelines/protocols**

At the very outset of a project, the programme-makers in consultation with the commissioning editor and the programme lawyer, should carefully consider whether the project requires more tailored written guidance to be put in place, specific to the particular programme. This will be advisable where under 18s, particularly children, make a significant contribution and are integral to the narrative or format of the programme; or where the subject matter raises or touches upon sensitive subjects or involves filming in sensitive circumstances e.g. filming about or involving private family matters, sexual matters, antisocial or criminal behaviour and activity etc.

In some circumstances, it will be advisable to have specific written guidelines in place before programme-makers begin approaching potential contributors e.g.

written guidelines about how the programme-makers should find, advertise for, approach and correspond with under 18 contributors and their families.

Programme-makers should also consider any changing circumstances during the course of production which may require the development of further written guidelines/protocols at a later stage. Programmes can evolve and can change emphasis once filming gets underway and events unfold, so whether or not updated or further written guidelines/protocols are required should be kept under review.

Programme-makers may need to be able to demonstrate they have taken appropriate steps in an appropriate manner to safeguard the welfare of the under 18. The more sensitive the situation the more important it is to keep a record (documented or filmed as appropriate) of the steps you have taken to ensure compliance with this guidance and regulatory obligations.

### **Finding/approaching potential contributors**

Some programme ideas and proposals come to Channel 4 with contributors already secured. However, most projects require programme-makers to actively search out suitable contributors once development or the programme/series is commissioned.

Searching for under 18 contributors - particularly under 16 contributors - requires care and, for programmes about potentially sensitive subjects e.g. relating to sexual matters, criminality, antisocial behaviour, medical issues, illness, private family matters etc., and advice must be sought from the commissioning editor and programme lawyer before advertisements are placed, flyers are handed out, or any under 18s are approached.

As above, it may also be deemed appropriate to put in place tailored, written guidelines regarding finding, approaching and 'casting' contributors, so that all members of the production team are clear about their responsibilities.

Handing out flyers, posting flyers (legally), placing advertisements e.g. in newspapers or online, are all legitimate ways of finding under 18 contributors for programmes. However, the wording of such flyers and advertisements should be approved by the commissioning editor and programme lawyer in advance, unless in the circumstances their content is uncontroversial.

Flyers and advertisements can request that under 18s and under 16s contact programme-makers but for under 16s they should state that parental consent will be required before programme-makers can enter into detailed discussions with under 16s. For example, suitable wording might be: *Note: if you are under 16, we will need your parents' consent before we can enter into a discussion with you.*

Careful consideration must also be given to other ways in which under 18s – particularly under 16s - are approached. Whilst it may be acceptable in some public places e.g. on a high street, to hand out flyers to members of the public, including to under 18s and under 16s, it is likely to be unacceptable in other places e.g. it is generally unacceptable for programme-makers to loiter outside schools and approach young people there without the permission of the school. [See Filming in Schools below]. It is always advisable that members of the production team carry written identification with them on the production company's headed note paper making clear who they are, describing the nature of the programme, explaining that

is has been commissioned by Channel 4 and setting out a contact number for the executive producer.

Similarly, whilst it may be acceptable to place advertisements or flyers on-line e.g. within social networking sites, it may be inappropriate to make unsolicited, direct contact with under 16s, particularly if the subject matter of the intended programme is sensitive or potentially controversial.

Generally the best way to approach potential under 18s – particularly under 16s - will be through an organisation or appropriate adult e.g. school, a parent, guardian, head teacher, teacher, youth group, sports group, coach etc.

However, even where under 18s are approached this way, through an organisation or adult who knows the young person well, programme-makers should generally not discuss private matters or sensitive subjects with under 18s, particularly under 16s, before making contact with and obtaining the consent of the young person's parent(s) or legal guardian(s). Any plans to discuss private matters or sensitive subjects with under 18s should generally be discussed in advance with the commissioning editor and programme lawyer to ensure the appropriate parameters and safeguards are in place.

Where programme-makers do, for whatever reason, come into direct contact with under 16s before they have had a chance to obtain parental consent, discussions should be limited to a general description of the intended programme and the nature of the contribution. Under 16 potential contributors should be told that the programme-makers will have to seek the consent of the young person's parent(s) or guardian(s) before they can enter into detailed discussions about participating. It is often advisable in such circumstances to have a flyer or contact sheet which the individual can be given to pass to their parents, which can allow them to contact you direct.

As a general rule, no filming should take place with under 16s without prior parental consent. For further details and for filming with 16 and 17 year olds, see "Consents" below.

### **Background Checks**

When considering an under 18 person as a participant, it is essential that programme-makers ensure that appropriate background checks are made to assess their suitability. Clearly what is appropriate will depend on the nature of the programme and the proposed contribution. For example, an observational documentary in a school might not require the same level of checks as a formatted series, where children are placed in a new residential environment by programme-makers.

A number of other factors will also be relevant, including the particular under 18 concerned (their age, level of understanding, maturity, confidence etc.), the level of participation expected of him/her and the subject matter of the programme.

Programme-makers should discuss and agree with the commissioning editor and programme lawyer the appropriate checks to be carried out in advance but these might typically include the following (subject to the child's and parents' consent as appropriate):

- Contacting and consulting with the under 18's GP;
- Contacting and consulting with the under 18's school/college;
- Contacting and consulting with any mentor or similar person (including members of the contributor's wider family e.g. grandparents);
- Possibly contacting and consulting with the leaders of any youth or other social/recreational groups the under 18 is a member of/associated with.
- Depending on the circumstances of the particular under 18 and/or the nature of the programme, consideration may need to be given as to whether any additional investigations into his/her suitability should be made - for example, by an appropriate expert such as a child or educational psychologist.

**If programme-makers find out (or have reason to believe) that the under 18 or his/her family is known to (or likely to be known to) social services, or is on the local authority's 'At risk register', or is involved in court proceedings of any kind (whether civil/ family or criminal and whether as a party, defendant or witness) it is vital that advice is sought from the programme lawyer as soon as possible.**

### Consents

Set out below are details of those from whom programme-makers should obtain consent when dealing with under 18s e.g. parents, guardians. This will vary according to the age and the circumstances of the particular under 18 individual.

However, remember that Channel 4's and the programme-makers' obligation is to take due care over the physical and emotional welfare of people under 18 involved in their programmes, irrespective of any consents given by them or anyone on their behalf i.e. their parent(s).

It is important, therefore, that the commissioning editor and programme-makers form their own judgements as to whether participation is appropriate and do not rely solely on the judgement of the child or young person and/or their parents or guardians. This is particularly important where the parents may have a vested interest, for example, where the programme requires the participation of the whole family and they themselves want to be participants or where the parents may act as the child's professional agent.

It may be necessary, depending on the type of programme, to seek advice from an independent child or educational psychologist (or other child specialist as appropriate) in order to assess the child's suitability to participate in a programme. Any advice given should be carefully considered.

Programme-makers must verify the age of young contributors, as some children may appear older than they are. Do not simply take their word or that of their parents; a passport or some other official photo identification should normally be checked and a copy taken (unless in the circumstances it is justified not to do so)

Attached to these guidelines are an under 18s and a parental release form which can be adapted for use, subject to final approval by the programme lawyer.

### Consents - under 16s

- If a programme contributor is under 16, in addition to obtaining their consent to take part, you should also obtain consent from his/her parents or guardians, or other person aged 18 or over with legal responsibility for the under 16. Ideally, both parents' consents should be sought for the under 16's contribution, or from those who have 'parental responsibility' for the under 16. However, this may not always be possible or practicable. If an under 16's parents are divorced or separated, parental consent should, in the first instance, be sought from the parent the child resides with and who has 'parental responsibility'. As to whether or not consent should be sought from the other parent as well (or if you have any other doubts), seek advice from the programme lawyer.
- Parental consent should normally be obtained before filming an under 16, especially where the subject matter of the filming/programme is sensitive and/or potentially controversial. If this is not practicable or desirable, you must take advice from your commissioning editor and programme lawyer at the earliest opportunity. See also above - Finding/approaching potential participants.
- There may be rare occasions where parental consent for an under 16's contribution is deemed unnecessary e.g. a vox pop situation, where the subject matter is uncontroversial and is not of a sensitive nature. The age and understanding of the under 16, the subject matter of the programme and the extent and nature of the under 16's participation will all be relevant when deciding whether parental consent is necessary. **Programme-makers must seek advice from the programme lawyer wherever it is intended to include within a programme any under 16 without parental consent.**
- Programmes dealing with an under 16 (or indeed an under 18) person who is the subject of a care order, is a ward of court or is being adopted raise more complicated legal issues (and may mean identification of your contributor in the programme will be a problem) and will require considered and detailed advice from the programme lawyer at the earliest stage.

### Consents - 16 and 17 year olds

- Sixteen and seventeen year olds are able to give their own consent to participate in many circumstances. However, if the proposed participant is still at home and/or still in education programme-makers should normally also obtain parental consent.
- If programme-makers wish to (or have to) proceed on the basis of consent from the young person alone please refer to your commissioning editor and programme lawyer for advice at the earliest stage.

### Informed consent

- As with any contributor, to be able to consent or agree to contribute to a programme, the under 18 and/or those who have parental responsibility for

them (if their consent is required) must properly understand the nature of the programme they are considering contributing to and their role within it.

- From the start, there should be an easy to understand description of the programme and the contributor's role within the programme. Explanations given to an under 18 should be appropriate to the young person's age, maturity and ability to understand. It may also be appropriate to give this information in writing, for example a clear description of the programme and the contributor's role may form part of the contributor's release form and the release form giving parental permission.
- In some situations, depending on the nature of the programme, contribution and/or the particular circumstances of the young person, it will be appropriate to explain to them, in terms they can understand, both the positive and negative likely consequences of their involvement in the programme e.g. the possibility of bullying at school, being criticised by the press or other members of the public.

The delivery of clear information on likely outcomes is considered by Ofcom to be a core element of "due care" and whereas there may be rare circumstances where it is not appropriate to highlight the likely positive and negative consequences directly to the under 18, Ofcom does advise that potential outcomes should be made clear to the parents or guardians. How this information should be communicated is something which should be discussed with the commissioning editor and programme lawyer. In most situations a record (documented or filmed as appropriate) of this advice should be kept.

- It is important that neither the under 18 nor his/her parents or guardians (if their consent is required) feel pressured into giving consent. They should also be given sufficient time to think about their decision to take part and discuss it with others should they so wish.
- Programme-makers should make it clear to under 18 participants that they can say 'yes' or 'no' to filming and that the choice is theirs. It is recognised that some children and young people find it difficult to say 'no' to an adult (whether their parent or another), so programme-makers should look out for non-verbal indications that they are unhappy with the situation.
- With children who lack the maturity or capacity to make decisions for themselves, programme-makers in consultation with the commissioning editor and programme lawyer should ask themselves if there is a need for independent expert advice to form a view as to their suitability as contributors.
- Where English is not the child's and/or parents' first language, steps must be taken to ensure that the contributor agreement or any release form is accurately translated into their first language. Where appropriate, it may also be necessary to use a competent translator to communicate with the child and/or parents.

## Ongoing consent

- Once consent has been given and where filming continues over a period of time, particularly where there are any changes to the original description of the programme or the contributor's role within it, programme-makers should check at regular intervals during the production that the young person is still happy about continuing to take part. Ideally, their continued assent to participate should be documented on camera, showing that they understand what the filming is going to be of/about and that they are happy to continue being filmed.

## Consents - when filming in schools

- Prior consent to film in a school must be obtained in writing from the Head Teacher.
- When filming over long periods at a school, it may be advisable for programme-makers to have a letter of agreement or letter of intent with the school setting out the programme-makers' obligations, together with a protocol for filming. Indeed, this may be necessary to secure access in the first place and to provide comfort to parents, governors and the Local Education Authority. Programme-makers should discuss this with the commissioning editor and programme lawyer.
- Depending on the nature of the filming programme-makers may need to inform all of the school's children's parents that the filming is taking place, whether or not their child is to be included within the programme. Programme-makers should discuss this with the Head Teacher, the commissioning editor and programme lawyer.
- Irrespective of the Head Teacher's general consent to film within the school, if an under 18 actively participates in the programme or is in some way focused upon, rather than merely being incidental, programme-makers should normally obtain, prior to filming, signed consent forms from them and those who have parental responsibility for them. For example, if programme-makers are interviewing a main contributor while he is sitting with his friends, it would be advisable, if those children are identifiable, to obtain parental consents in respect of those young people too.
- Normally clear notices should be put up at the school gates and in the school on the days that filming is taking place. The notices should make clear the times and areas where filming will take place and should include a brief description of the project as well as a production contact name and number. This may be a condition of the access agreement.
- In schools where there are significant numbers of children for whom English is not their first language, programme-makers should ensure that correspondence and notices are translated. Schools and Local Education Authorities often have their own translators.
- It is advisable to liaise with the School's Senco (Special Educational Needs Co-ordinator) to identify any children who it may be inappropriate to film.

## When filming/interviewing under 18s

Whenever programme-makers anticipate filming or interviewing under 18s about sensitive or controversial subjects or filming in sensitive circumstances, they should consult with their commissioning editor and programme lawyer prior to filming, so that consideration and advice can be given as to the appropriate safeguards which should be put in place to ensure under 18s are adequately protected - and also in some cases to ensure the production team is adequately protected.

In some circumstances it may be appropriate to engage an independent expert or experts e.g. counsellor, psychologist etc., not simply to help determine the suitability of the contributor [see above], but also with regards to the processes involved in making the programme and/or the manner of interviewing/filming e.g. if a young person is undertaking certain tasks or challenges that may impact on their physical or emotional health, or where a child is young and/or vulnerable and is being filmed in the context of some private or sensitive matter e.g. such as being caught up in the breakdown of their parents' relationship.

When filming with under 18s the following checklist should be considered and adhered to as and where appropriate:

### General

- Under 18s, parents, schools etc. should be told that initial research chats and filming do not automatically mean they will be included in further filming/the finished programme.
- Under 16s should not be asked for views on matters likely to be beyond their comprehension or capacity to answer, without the consent of an appropriate adult.
- Programme-makers should not encourage or incite under 18s to say or do things that they would not have done otherwise. 'Showing off' and playing up for the cameras should be discouraged.
- It will normally be appropriate when filming with young people, particularly children, to have at least two members of the production team present, if a parent or other responsible adult is not present.
- Consideration should be given to any gender issues. For example, it may be appropriate for some filming or interviews to be conducted by an all female crew, or alternatively all male crew.
- Serious consideration should always be given as to whether a young person should be accompanied by a parent/guardian or chaperone e.g. where filming/interviewing a vulnerable child or where the child is being filmed/interviewed away from home or school or being interviewed about a private or otherwise potentially sensitive matter. Please discuss any such considerations with the commissioning editor and programme lawyer before filming.

- Programme-makers should ensure that there is a known and consistent point of contact (usually the AP or Producer/Director or in some cases an independent member of the production appointed specifically for this role) for young contributors and their families throughout production and up to and after transmission, for an appropriate period of time. Main contributors should have a contact number and understand that the specified team member is available for them to call at all times.
- Programme-makers should generally try to avoid giving advice or counselling young people. Where appropriate programme-makers can pass on information to them about agencies they can contact for advice and help. If in doubt, programme-makers should seek guidance from the commissioning editor and programme lawyer, as appropriate.
- When filming with under 18s, detailed health and safety assessments must be undertaken as appropriate. All health and safety advice and recommendations must be followed and all relevant members of the production team should be appropriately briefed on such issues. As part of this briefing, production crew must know what to do and who to notify in the event of an emergency e.g. a member of the crew or any contributor suffers physical harm during filming.
- Consideration should always be given to the personal security of any young people involved in programmes.
- If programme-makers are transporting or arranging transport for under 18 contributors, parental consent should normally be obtained and programme-makers must take due care e.g. reliable transport companies, taxi firms etc. should be used; under 18s should not be allowed to travel alone with adults who are not members of the crew and thus have not been CRB checked.
- Careful consideration must be given to the appropriate kind and level of any insurance cover – both for the production company and any contributors if appropriate - that should be put in place. This will obviously depend on the nature of the programme and the participants' proposed contributions.
- If programme-makers have concerns about anything they have learned or witnessed during filming this must be referred up within the production team as soon as possible and, where appropriate, to the commissioning editor and programme lawyer. Any tailored production protocols for a particular programme should contain a clear referral process for situations where any member of the production, including independent advisers or chaperones, is concerned about the welfare of any under 18 contributors.

#### Interviewing under 18s about sensitive subjects

Whilst not intended as an exhaustive list, sensitive subjects are likely to include interviewing or filming an under 18 talking about the following: sexual matters; personal relationships or private family matters; antisocial or illegal behaviour they have been involved in or are considering; alcohol or drug use/abuse; addictions of any kind; their bodies; medical matters; illnesses they suffer or have suffered from, physical or mental; generally being unhappy, being depressed, self-harm or having

suicidal thoughts; accidents or attacks they have been involved in which have led to serious harm. When interviewing under 18s about sensitive subjects:

- Detailed, tailored guidelines/protocols are likely to be necessary. As noted above, consideration should be given as to the appropriate adults that ought to be present for any such interview e.g. a welfare producer or chaperone in addition to a parent, to ensure the contributor is not being caused unnecessary distress or anxiety. Seek advice from the commissioning editor and programme lawyer at an early stage.
- Under 18s should be told they can ask for the camera to be turned off, if they become uncomfortable with the filming at any stage. Similarly, if programme-makers sense or get any indication that a contributor is uncomfortable with filming, then it may be appropriate to ask the contributor whether they are happy to continue filming.
- Programme-makers should consider discussing with/taking advice from those who know the young person well e.g. a parent, teacher, other family member or other person, as to the appropriate way to approach certain subject matters in interviews.
- Where a young person confides in a member of the production team about something which could place that child at risk, either physically or emotionally, the matter must be referred up as soon as possible to the executive producer, the commissioning editor and, where appropriate, the programme lawyer. A decision will be taken as to what action, if any, should be taken. With programmes that are dealing with sensitive subjects, the process of referral-up is likely to be key. Referral-up procedures and an 'intervention policy' are likely to form part of the specific, tailored guidelines which will have been drawn up for the particular programme.
- Where appropriate, programme-makers should also consider whether there is another person already in the young person's life who understands their circumstances and who is prepared to remain in the young person's life post-transmission to offer guidance and support, for as long as it is needed e.g. a parent, family member, teacher, mentor, youth group leader.

### Filming in sensitive situations

In some programmes, programme-makers are likely to film under 18s in sensitive situations. Again, whilst not an exhaustive list, filming an under 18 in sensitive situations is likely to include filming an under 18 involved in or in the presence of any of the following: antisocial or illegal activity; alcohol and drug use/abuse; bullying; threatening or intimidating behaviour; violence; criminal damage; dangerous and potentially dangerous activities.

Whenever programme-makers are filming in sensitive situations, if possible seek advice from the programme lawyer in advance. If that is not possible and situations present themselves, programme-makers should use their common sense as to how best to proceed e.g. whether to continue filming, cease filming, intervene, refer the matter up, notify the authorities, emergency services etc. It is important that the filming itself does not compromise the welfare of the under 18 and that it does not cause the under 18 unnecessary distress or anxiety. Please note that programme-

makers should only intervene where to do so would not place them or the under 18 at further risk.

#### Antisocial and/or criminal behaviour

- Programmes the subject matter of which concerns under 18s and illegal and/or antisocial behaviour will require guidelines tailored to the specific needs of the programme. Programme-makers should seek advice from the programme lawyer at the earliest opportunity.
- As part of the selection process and background checks on potential contributors, programme-makers should ascertain whether under 18s have any criminal convictions, ASBOs or have a history of any antisocial behaviour.
- As above, programme-makers must ensure that they do not incite, facilitate, encourage or assist anti-social and/or criminal behaviour, directly or indirectly e.g. simply by their presence or filming, by purchasing spray cans which are then used for graffiti, or even just by driving an under 18 to a location where anti-social or criminal behaviour may be committed. Assisting a criminal offence is a criminal offence in itself. Programme-makers must remain as impartial observers.
- If programme-makers witness and/or film the commission of a crime when filming with an under 18, this must be referred to the commissioning editor and programme lawyer as soon as practicably possible. Rushes can be subject to a 'production order' for seizure by the police and programme-makers may be interviewed as witnesses, so it is important they seek prompt legal advice from the programme lawyer.

#### Payments, Expenses, Gifts, Meals

- Contributor fee payments should not be offered or made to under 18 contributors unless agreed in advance by the commissioning editor and programme lawyer.
- Reasonable expenses can be paid to the parents of under 18 contributors, but should not generally be made to the under 18s themselves, unless in the circumstances it is justified to do so. Similarly, expenses e.g. for loss of earnings, particularly if the amounts are substantial, should be agreed in advance by the commissioning editor and programme lawyer.
- Production crew should be clear about what, if anything, they can buy or pay for, for under 18 contributors e.g. transport, meals, soft drinks etc. and any agreed limits on such spending. Where purchases are made, crew members should pay for the items or services themselves and provide the receipts to the production company. Under 18s should not be given cash or gifts by members of the production team unless this has been agreed by the production company and Channel 4 in advance.
- Programme-makers should not purchase or give cigarettes and/or alcohol to any under 18 contributor, even if it is legal to do so.

### After filming, before transmission

- Programme-makers should ensure they maintain the relationships they have built up throughout production and the flow of information with the under 18 and their family.
- Programme-makers should monitor during this period whether anything is occurring that may affect the edit or transmission. Have the facts or circumstances changed? Has the young person been arrested or taken into care?
- Programme-makers should keep the under 18 and his/her family informed about the progress of the programme, including about any publicity (press, trails etc.) for the programme and the transmission date, as appropriate.
- Programme-makers should consider informing the under 18's school of the transmission date, if appropriate.
- If it has been agreed at the outset by Channel 4 that the under 18 and his/her family can view a fine cut of the programme prior to transmission, this promise must be honoured. [Note the terms on which such a viewing is granted must be agreed with Channel 4 first and in any event it should always be made clear that final editorial control rests with Channel 4]. Contributors should be given an indication of when the viewing will take place and programme-makers should try to stick to that. It may well be advisable for such viewings to take place before copies of the programme are sent out to the press.
- If it has been agreed that an under 18 and his/her family do not have the right to view a copy of the programme prior to transmission, programme-makers should keep under review whether there is any reason why it would be sensible or appropriate to reverse that decision and offer a viewing of the whole or part of the programme. However, any decision to offer a contributor the right to view the programme or any part of it prior to transmission must be agreed by the commissioning editor and programme lawyer.
- Programme-makers should consider what, if any other, support the under 18 may need in the run up to transmission, bearing in mind how press and publicity may affect the young person. Depending on the circumstances of the particular case, it may be advisable for programme-makers to take expert advice on how to best manage this phase of the production. The need for this should be discussed with the commissioning editor and your programme lawyer.

### After transmission and beyond

- Programme-makers should also carefully consider what, if any, support the under 18 may need in the aftermath of transmission and beyond. What will the impact of transmission be? How might filming and the experience have affected the young person in the longer term? Depending on the circumstances, it may be advisable for programme-makers to take expert advice on how to best manage this post-production phase. The need for this

should be discussed with the commissioning editor and your programme lawyer. It may be appropriate in some cases to offer aftercare support or counselling to a contributor for a fixed period after transmission.

- Editorial staff and programme-makers should consider whether under 18 contributors need to be notified when the programme they have been filmed for is to be repeated, especially where a significant period of time has elapsed since the last transmission.

### **Fairness**

As with all programmes, a programme involving under 18s must not amount to an unfair treatment of its contributors.

- As above, contributors should take part in programmes based on their informed consent and where appropriate the informed consent of their parent(s) or guardian(s). If programmes evolve and change throughout the production process so as to change the nature of the programme or contribution, contributors should be made aware and their consent re-sought.
- Factual programmes must be fair and accurate. The interviews and contributions of under 18s must be fairly edited and presented within programmes.
- Programme-makers can in very limited circumstances, legitimately use 'deception' in a variety of ways when making programmes. Deception may be employed in factual programmes when it is justified by and proportional to the public interest served. Deception may also be employed in some entertainment formats where there is no public interest served. However, where it is, particularly if the filming involves under 18s, appropriate safeguards must be put in place. Seek advice from the programme lawyer at an early stage. Footage obtained by deception in entertainment programmes cannot be broadcast without the prior informed consent of the under 18 and/or their parent(s)/ guardian(s).

### **Privacy**

- Programmes must not amount to an unwarranted infringement of privacy of under 18s. Informed consent is key and following and applying these guidelines is likely to result in programmes not unwarrantably infringing under 18s' privacy.
- Rule 8.20 of the Code states: "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". This rule relates not simply to contributors but to any under 16 who may feature or be referred to within programmes, including news programmes.
- Wherever it is anticipated that a programme may give rise to particular privacy issues e.g. it involves deception, secret filming, door stepping, involves intrusive filming such as in some formatted programmes etc.,

programme-makers must seek advice from the commissioning editor and programme lawyer before filming takes place.

### **Viewer Trust**

Channel 4 has a bond of trust with its audience and a duty to ensure that viewers are not deceived or misled by any of its programmes, whether it involves under 18s or not. Programmes must be truthful, accurate and fair and not mislead the audience.

See Channel 4's Viewer Trust Guidelines at Chapter 7A of the Independent Producer Handbook.

### **Competitions**

Prizes aimed at children must be appropriate to the age range of both the target audience i.e. viewers and the participants i.e. those involved in the competition. Competitions should be conducted fairly, prizes should be described accurately and rules should be clear, fair and appropriately made known.

See also: The Use of Telephony Services Checklist, at Chapter 6G of the Independent Producer Handbook.

### **Child performance licences**

Where a child is under the compulsory school age and their role in a programme involves 'taking part in a performance' programme-makers may, in addition to obtaining parental consent, also need to obtain a performance licence (prior to filming) from the Local Authority in the area where the young person lives.

Individuals are considered to be of compulsory school age until the last Friday in June in the school year in which they reach 16, which means some 16 year olds will require a licence. The licensing regime also applies to children who permanently reside within the UK but who are taken outside the UK and Republic of Ireland for filming.

What constitutes a 'performance' is not defined under the legislation and while traditionally it has been applied to children who appear in dramas, scripted comedies, musical and dance performances, the legislation is currently under review, with particular emphasis on extending the licence regime to children who appear in factual 'reality TV' shows. It is therefore important that programme-makers seek early advice from their programme lawyer, as to which programmes might now be caught as the time limits for applying for licences are strictly applied and the limited exemptions available require careful application.

A licence may only be refused in very specific circumstances and reasons must be given in writing. A Local Authority is not entitled to 'vet' scripts as part of the application process and scripts should not therefore be provided to them without reference to your commissioning editor and programme lawyer.

## The Law

It is essential that programme-makers obtain advice from their programme lawyer at the earliest opportunity if they believe contributors may be subject to legal considerations.

Under 18s can be involved in all kinds of legal proceedings and in recognition of the fact that they are generally more vulnerable than adults, the law seeks to protect their rights in a number of ways.

### Legal Proceedings involving under 18s

The majority of legal considerations involve reporting restrictions. Reporting legal proceedings is a complex area of law and legal advice must be sought at an early stage and certainly before filming begins.

It is a contempt of court i.e. a criminal offence, to identify a child in contravention of an order of the court or in contravention of legal restrictions.

The identity of under 18s involved in most legal proceedings is protected by the court – automatically in the Youth Court and by specific order in most other courts. Any reference whatsoever to under 18s involved in legal proceedings (criminal, civil or family) must be referred to the programme lawyer as soon as possible for advice.

Where legal restrictions apply prohibiting the identification of minors involved in legal proceedings, programmes must be careful not to publish any material that would directly or indirectly lead to any of those individuals being identified, whatever their involvement in the proceedings.

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

See Independent Producer Handbook, Chapter 4B (Court Reporting & Under 18s) and Chapter 5B (Contempt and Reporting Legal Proceedings) for more detailed guidance regarding the position in relation to Youth Courts, Adult Courts, in relation to Anti-Social Behaviour Orders, Proceedings involving sexual offences, Family and Divorce Proceedings and Wardship issues.

### Protection of Children Act

It is a criminal offence to take, distribute or show an indecent photograph (which includes filming for television) of an under 18. To involve a minor in a photograph or television image that is itself indecent, even where the under 18's role in it is not central is also an offence, for example, broadcasting an image where a child's picture had been superimposed onto a pornographic image. If you are unsure whether or not an image involving a minor may be indecent, seek immediate advice from the programme lawyer *before* filming.

This means that in drama or reconstructions, any actors that are required to be filmed in scenes of a sexual nature must be at least 18, regardless of the character

they are playing. Programme-makers must seek independent written verification of the ages of all actors who are under 18 or who are over 18 but look younger.

### **Sources/References**

The Ofcom Broadcasting Code

[www.ofcom.org.uk/tv/ifi/codes/bcode/ofcom-broadcasting-code](http://www.ofcom.org.uk/tv/ifi/codes/bcode/ofcom-broadcasting-code)

Ofcom Guidance on the Participation of Children and Young People in Programmes

[www.ofcom.org.uk/tv/ifi/guidance/bguidance](http://www.ofcom.org.uk/tv/ifi/guidance/bguidance)

Channel 4/ Five Independent Producer Handbook

[www.independentproducerhandbook.co.uk](http://www.independentproducerhandbook.co.uk)

**Legal & Compliance Department**

**Channel 4**

**May 2009**

[FOR THE PARENT/GUARDIAN]

**TO BE TYPED ON PRODUCTION COMPANY NOTEPAPER**

Name:

Address:

Date:

"NAME OF PROGRAMME" (working title)

[Name of child], who is under my care and control has been asked to take part in the above programme.

1. That on signing this I have agreed that all or some of [name of child]'s recorded contribution can be included in this programme and to the other points in this letter.
2. That the nature of the programme which deals with [*insert a fair and accurate description of the programme*] has been explained to me. [*Where appropriate a full programme description that explains the envisaged role of the contributor should be referenced and attached to this release form*].
3. That the producers do not have to use [name of child]'s recorded contribution, but if they do, they may fairly cut and edit it in accordance with the TV regulator's (Ofcom) Broadcasting Code and use it in any publicity for the programme.
4. That I give all necessary consents for [name of child]'s recorded contribution to be used in all media anywhere in the world.

Signature.....

[UNDER 18s VERSION – not to be used other than with the parent's/guardian's consent form]

**TO BE TYPED ON PRODUCTION COMPANY NOTE PAPER**

Name:

Address:

Date:

**'NAME OF PROGRAMME' (Working Title)**

I understand and agree: -

1. That on signing this I have agreed that I can be filmed and that some or all of this filming can be included in this programme.
2. That the nature of the programme which deals with [*insert a fair and accurate description of the programme*] has been explained to me. [*Where appropriate a full programme description that explains the envisaged role of the contributor should be referenced and attached to this release form*].
3. That the producers do not have to use their filming of me, but if they do, they may fairly cut and edit as they wish in accordance the TV regulator's (Ofcom) Broadcasting Code and use it in any publicity for the programme.
4. That I give all necessary consents for the filming of me to be used in the programme in all media throughout the world.

Signature.....