

# Response of the Children's Commissioner for Wales to the OFCOM Broadcasting Code consultation



The Children's Commissioner for Wales is an independent children's rights institution established in 2001 in line with the Paris Principles<sup>1</sup>. The Commissioner's principle aim is to safeguard and promote the rights and welfare of children.<sup>2</sup> In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC).<sup>3</sup> The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare and they may also make representations to the National Assembly for Wales about any matter affecting the rights and welfare of children in Wales.<sup>4</sup>

The UN Convention on the Rights of the Child (UNCRC) is an international human rights treaty that applies to all children and young people aged 18 and under. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children.

Amongst the rights which children have under the Convention are the right to non discrimination (Article 2), the right to a private life (Article 16) and the right to participate in artistic and cultural activities (Article 31). This response has been developed using the framework of the UNCRC.

We note that the European Convention on Human Rights is referenced within the current broadcasting code<sup>5</sup> but that there is no such reference to the UNCRC within the code. As the United Kingdom Government has ratified the UNCRC, we find this omission to be surprising and would suggest that the UNCRC is referenced in the revised code.

The implementation of the UNCRC in individual countries is assessed by a group of international experts, the United Nations Committee on the Rights of the Child. The most recent examination of the United Kingdom's progress occurred in 2008. The Committee at the conclusion of its examination of a country's progress publishes Concluding Observations. These are recommendations for change which countries are expected to respond to prior to their next examination.

Within their 2008 Concluding Observations, the United Nations Committee on the Rights of the Child made a number of comments and recommendations in relation to the involvement of children in the media and television programmes in particular. The Committee were particularly concerned about the impact on the rights of the child when

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<sup>1</sup> <http://www2.ohchr.org/english/law/parisprinciples.htm>

<sup>2</sup> Section 72A Care Standards Act 2000

<sup>3</sup> Regulation 22 Children's Commissioner for Wales Regulations 2001

<sup>4</sup> Section 75A (1) Care Standards Act 2000

<sup>5</sup> <http://www.ofcom.org.uk/tv/ifi/codes/bcode/bcode.pdf>

participating in reality television programmes. These comments and recommendations are shown below:

### **Non-discrimination**

24. The Committee is also concerned at the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.

*25. The Committee recommends that the State party ensure full protection against discrimination on any grounds, including by:*

*a) taking urgent measures to address the intolerance and inappropriate characterization of children, especially adolescents, within the society, including the media;*

### **Respect for the views of the child**

33. The Committee recommends that the State party, in accordance with article 12 of the Convention, and taking into account the recommendations adopted by the Committee after the Day of General Discussion on the right of the child to be heard in 2006:

*a) promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child;*

*b) support forums for children's participation, such as the UK Youth Parliament, Funky Dragon in Wales and Youth Parliament in Scotland;*

*c) continue to collaborate with civil society organizations to increase opportunities for children's meaningful participation, including in the media.*

### **Protection of privacy**

36. The Committee is concerned that:

a) DNA data regarding children is kept in the National DNA Database irrespective of whether the child is ultimately charged or found guilty;

b) the State party has not taken sufficient measures to protect children, notably those subject to ASBOs, from negative media representation and public "naming and shaming";

c) children's appearance in TV reality shows may constitute an unlawful interference with their privacy.

37. The Committee recommends that the State party:

*a) ensure, both in legislation and in practice, that children are protected against unlawful or arbitrary interference with their privacy, including by introducing stronger regulations for data protection;*

*b) intensify its efforts, in cooperation with the media, to respect the privacy of children in the media, especially by avoiding messages publicly exposing them to shame, which is against the best interests of the child;*

*c) regulate children's participation in TV programs, notably reality shows, as to ensure that they do not violate their rights.*

## CONSULTATION QUESTIONS

We welcome the revisions to the code with reference to the rules in relation to sexual material within a framework for protecting under-eighteens. The clarifications of the definitions enable the reader to understand the actions that broadcasters must take to ensure that under-eighteens are protected from viewing material which may cause offence or harm to them.

We do not, however, wish to comment on the other three major areas of consultation relating to competition and voting rules, commercial references in television programming or radio programming.

We would wish to take the opportunity to raise a number of related issues which are not, in our view, addressed within the consultation.

We note that the consultation document was compiled following considerable pre consultation work with stakeholders and consumer research. However we do not consider that sufficient attention has been paid to the impact of children's participation in reality television programmes. It has been reported by some of the families who participated in the BBC Wales show Coal House for example that their family life has been affected as they are now unable to visit public places without constant questioning of and about their children and the children reported that they had been the subject of considerable negative discussion in their school and local community. A recent Channel 4 programme Boys and Girls Alone was the subject of considerable public debate<sup>6 7</sup> as to the impact of the children's participation in that programme. OFCOM stated at the time of broadcast that it was investigating the programme to see whether there were potential breaches of the broadcasting code. There are concerns that such programmes are shown purely for entertainment and do not protect those children who may be involved.

We would suggest that OFCOM, as it did with its research into the future of children's television in 2007 and in line with Article 12 of the UNCRC, undertakes consultation with children and young people to ascertain their views about participation in television programmes. It is only through consulting with children and young people that adults will be able to understand children's views on this important issue and how children and young people think the code could possibly be changed to further help to safeguard their welfare. We recognise that participating in television programmes can have benefits for children and young people. However, this participation should not put children and young people at risk of any infringement of their privacy.

We feel that OFCOM, in its broadcasting code, should take account of the UN Committee's concluding observation that children's participation in television programmes should be regulated to prevent breaches of their rights. The current code refers to the involvement of people under eighteen in programmes. It also refers to the need to take due care in relation to the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes and that people under eighteen must not be caused unnecessary distress or anxiety.

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<sup>6</sup> <http://news.bbc.co.uk/1/hi/england/cornwall/7885886.stm>

<sup>7</sup> [http://www.timesonline.co.uk/tol/life\\_and\\_style/education/article5728744.ece](http://www.timesonline.co.uk/tol/life_and_style/education/article5728744.ece)

We would be interested to know how children and young people and their families could raise a concern with OFCOM as to the negative impact of their involvement in television programmes and how such procedures are publicised. We are concerned that children are not sufficiently well informed about the consequences of being involved in television programmes.

The increase in the number of media platforms and growth of user generated content hosted by various media organisations means that it is ever more important to have a code that safeguards children's rights.

We note that there is an extensive section on the OFCOM website relating to how to complain and that viewers can complain through the medium of Welsh if they choose to do so. However we were unable to discover a children's version of the complaints procedure and would question whether children would be able to access the current system if they felt that the broadcasting code had been breached.

## **CONCLUDING COMMENTS**

The United Nations Committee on the Rights of the Child has outlined its concerns about the possible infringement of children's rights through their participation in reality television shows. Within its role as the communications regulator, encompassing TV and radio sectors, fixed line telecoms and mobiles, plus the airwaves over which wireless devices operate, we feel that it is vital that OFCOM takes steps to increase the protection available to children under its code and thus contribute to the realisation of the United Nations Committee's recommendation.

The current code's section 1 is entitled "protecting the under eighteens" but then defines children as those aged under sixteen years. This appears to be anomalous. The Children Act 1989 defines children as those up to their eighteenth birthday and the UNCRC also shares the same definition. We would call on OFCOM to align the definitions within the code.

We would also call on OFCOM to review, in light of the UN Committee's concluding observation, the rules on the involvement of people under eighteen in programmes. We would suggest that such a review must include a full consultation with children and young people.

## **United Nations Convention on the Rights of the Child**

### **Article 2**

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

### **Article 12**

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

### **Article 13**

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

### **Article 14**

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### **Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

#### **Article 31**

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

# The Ofcom Broadcasting Code

## The involvement of people under eighteen in programmes

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

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

1.28 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.  
(See Rule 2.11 in Section Two: Harm and Offence.)

## Section Eight:

### Privacy

#### 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.