

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Broadcasting Code Review

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Representing (self or organisation/s): Self

Address (if not received by email):

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Name Jeffrey Howell

Signed (if hard copy)

Jeffrey Howell

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1 September 2009

**RESPONSE TO OFCOM'S PUBLIC CONSULTATION IN RESPECT OF ITS
REVIEW OF ITS CODES OF BROADCASTING STANDARDS**

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Introduction & Background

There is a need for a clear Broadcasting Code that all parties understand without denying members of the public the right to be able to view or listen to programmes without the fear of being deeply offended by explicit or obscene content.

Having studied the regulation of media-entertainment industries for the last twelve years or so, long before Ofcom was even conceived, I feel well able to comment on the subject. Indeed, Ofcom knows my interest only too well and has specifically requested that I should refrain from making further complaints in respect of broadcasting matters and has even implied that I should stop asking the type of questions regarding its adjudications that it is unable to comfortably answer and thus forcing the broadcasting regulator into demonstrating its shortcomings.

One recent question asked occurred following Ofcom's decision not to uphold complaints of swearing during the broadcast of 'The Brit Awards 2008'. Ofcom had cited one of the reasons for not upholding the complaints was that over the years this show had not attracted large numbers of the youngest viewers. The question raised with Ofcom was how many children were in the audience for this year's show given that the broadcast was being made during the school holidays. Unfortunately, Ofcom finally had to admit that it had not obtained the number of under-eighteens who had viewed this particular programme – and, therefore, the regulator had made a decision based on information that it had no knowledge of. It was even more disappointing that Ofcom had not been willing to provide this information until a request was made under the Freedom of Information Act 2000. The reason Ofcom stated for previously withholding this simple piece of information is in the interests of economy and good administration. However, supplying this information at the first time of asking would have been far more sensible and economical. **This incident alone clearly demonstrates that a sensible broadcasting code is desperately needed that all parties are able to understand and one that Ofcom is legally obliged to follow.**

Therefore, it is by a review of its broadcasting codes that Ofcom can improve its performance and its relationship with the general public. The Ofcom Broadcasting Code has always been an unclear and indecisive piece of jargon that no-one outside of Ofcom can understand. This would seem to ensure that Ofcom remains all-powerful, in that it is the only party able to understand and interpret the rules, but it remains a problem to broadcasters and the public who cannot use it with confidence. Indeed, after reading the document consumers certainly do not feel 'empowered' to control their viewing experience, unless it is by being placed in denial by using the off button, without the fear of being verbally abused or confronted by explicit material against their wishes.

This problem is possibly best indicated by the fact that Ofcom received 27,000

complaints in 2008 – that is 27,000 disgruntled customers in just one year alone! Now, most organisations would see this as a major concern and an indication that something was not quite right.

Even before Ofcom had been appointed as broadcasting regulator, I provided a vision of the future under Ofcom's planned lightweight regulation, which indicated a 'WildWest' approach to broadcasting where literally any amount of offensive and explicit material would be acceptable and that the only choice available to the public wishing to avoid such inappropriate content would be to switch off – but people do not purchase licences and equipment just to switch off! Surely, people deserve much better than being placed in a position of denial – at the very least they deserve the right to view television or listen to the radio without having the fear of being verbally abused or confronted by explicit, offensive and obscene material. Most importantly, as customers and fellow human beings they deserve respect. Unfortunately, the current Ofcom Broadcasting Code does not think so and offers little respect for people offended by explicit material. And yet, many people in this category place a serious reliance on television and radio: people who live alone, the elderly and the disabled.

Also, the present Ofcom Broadcasting Code does very little to protect the under eighteens. Here, Ofcom has followed the strategy taken by the British Board of Film Classification (BBFC) where the classification grades, e.g. '15', '18', remain constant but the explicit material contained within the grades is increased dramatically year-on-year. In the broadcasting world, we have a constant watershed that, unfortunately, is coupled with a severe ongoing increase in the amount of explicitness that is allowable before the 9:00 watershed. Since the introduction of Ofcom, the broadcasting regulator has introduced swearing as being acceptable material for broadcast before the watershed with broadcasters not being forced to offer any pre-broadcast warnings despite having a requirement to do so under Rule 2.3 of The Ofcom Broadcasting Code. The 'watershed' now remains in name only.

Even the most obscene language has been broadcast before the watershed with the 'C' word being broadcast as early as between 8.00 p.m. and 9.00 p.m. with Ofcom's recommendation being merely to write to the broadcaster on a not uphold basis. However, Ofcom did uphold complaints of severe swearing occurring during the afternoon broadcast of the BBC's 'Live 8' – but, unfortunately, the BBC was only given a warning. Ofcom was asked for the reasons for its leniency bearing in mind that the programme was broadcast during the afternoon when millions of children were expected to be in the audience and the language used was the strongest possible. Ofcom was also informed that such leniency sent out the wrong message to broadcasters and was actually inviting similar breaches in the future. As many people will remember to their disgust, a repetition did take place during a similar event, 'Live Earth' which was also broadcast in the afternoon by the BBC.

Predicable it may have been, but the ever-declining standards of decency since the introduction of Ofcom as broadcasting regulator has been most alarming. Repetitive swearing is now so common that is now almost expected in every programme after the watershed, and in many programmes before the watershed, as people have become

desensitised to this particular, disgusting form of antisocial behaviour. Of serious concern is the way Ofcom is allowing the 'F' word, considered one of the most offensive and obscene words possible, to become the most used swearword on television - or at least on Channel 4. This demonstrates a sickness within the present broadcasting regulatory system and I believe that if the present regulatory regime remains in force without change then we are in serious danger of allowing all television and radio programmes to degenerate into a shallow mire of filth, swearing and explicit sexual and violent imagery – that is all that we will have left. The serious danger is that, as explicitness in programmes is similar to pornography, after a relatively short period of time the amount of explicitness becomes 'normalised' and broadcasters then feel that they have to continually 'push the boundaries' even further and further - and further. But just where does it all stop? Well, under Ofcom's broadcasting regulatory regime it does not stop. And with such material being pumped out continually every night directly into people's homes it is hardly surprising that we face a culture of disrespect, violence, sexual irresponsibly and foul-mouthed antisocial behaviour.

Since the introduction of Ofcom as broadcasting regulator, standards have fallen to such an extent that the public has been seriously offended by: 'Jerry Springer – The Opera', which formalised the excessive and gratuitous use of both the 'F' and the 'C' word as being appropriate, mainstream television entertainment; 'Big Brother', which included the most unacceptable face of racism; 'Live 8' and 'Live Earth', which were the most obscene programmes to ever be broadcast before the 9:00 watershed; and numerous television phone-in competitions or quizzes where competitors had no chance of winning and which, intentionally or unintentionally, could have been potentially the biggest fraud this country has ever known and which occurred right under the nose of Ofcom without the regulator's detection or prevention through its broadcasting codes. And, of course there was the serious breach of broadcasting standards involving Ross and Brand, which given the flimsy broadcasting regulation in place was an incident just waiting to happen. Firm, responsible broadcasting regulation would have gone a long way to preventing this incident from ever being broadcast. Looking at Ofcom's record of complaints that have not been upheld and judging by the increased amount of explicit material that has been broadcast since the introduction of Ofcom as broadcasting regulator, it would be hardly surprising if both Ross and Brand had thought their disgusting and obscene broadcast had been perfectly acceptable under the present rules.

Given the situation to date, it is impossible for people under the age of eighteen and adults who find obscene material deeply offensive to avoid swearing or explicit sexual references on television and radio and, therefore, Ofcom is failing to provide adequate protection for children and is, therefore, failing to properly fulfilling its duties under its legal requirements. The broadcasting code needs revision to fulfil this failure. Ofcom must now prove its worth as a broadcasting regulator by reviewing its Broadcasting Code so that all parties can understand what can and what cannot be broadcast without having to recruit an army of legal advisers and which prevents members of the public from being denied the right to access broadcasts without the fear of being verbally abused or deeply offended by explicit material..

Suggested Revisions to the Ofcom Broadcasting Code

(i) Sexual Material

Ofcom has shown its intention to allow the mainstream broadcast of pornography and this should be totally unacceptable. There is no difference to the broadcast of a scene of an explicit sexual nature as contained in a 'R18' film to that contained in any other genre. This must be seen as introducing pornography into mainstream broadcasting by the back door and for the purposes of accommodating the BBFC that seems intent on introducing 'real' sexual activity into the mainstream cinema.

It is important that Ofcom realises that there is a significant difference between people actually making a conscious decision to pay money to specifically view a pre-selected film than the broadcast of continuous explicit material that is beamed directly into people's own homes through television.

Furthermore, it must have been noticed that the BBFC has substantially moved the goalposts and films that not too long would have been classified '18' are now classified as being suitable for fifteen-year-old schoolchildren. Having studied the research, there seems to be no sound reasoning behind this and it must, therefore, be considered that the motives are simply to increase the potential audience range of certain films for the benefit of filmmakers. Indeed, there seems to be fewer and fewer films now being classified '18' and obviously the films that are so classified are increasingly graphic and explicit. Bearing this in mind, one can only wonder just how long it will be before the BBFC decides to relegate the present '18' films down a notch so that schoolchildren can view hardcore pornography and listen to unlimited sexual language for themselves! The point here is that the BBFC has allowed pornography into mainstream cinema through its '18' classification heading and such classifications should now be a step much too far for broadcast on mainstream television.

Ofcom's proposal that 'strong sex' is somehow different to the sex that is included in 'R18' films is actually beyond belief and would prove to be a major victory for the pornography industry, which may see this as a way of introducing 'R18' material into mainstream broadcasting. Could Ofcom explain the necessity for including pornography, or scenes of strong sex, into mainstream television? Surely, the necessity to demonstrate that such desires are important to the development of the film or play can be indicated just as effectively in many other ways – or is Ofcom intent of introducing sexual titillation by disguising it under a different name?

The proposed rules regarding the broadcast of sexual material should be strengthened and revised to read: Material equivalent to the BBFC 'R18' classification and all visual representations of sexual acts within any genre, excluding kissing, must not be broadcast at any time. Material equivalent to the BBFC '18' classification that includes scenes of any form of 'real' sexual activity or nudity indicating sexual desire must also not be broadcast at any time. There should be no broadcast of nudity before the watershed.

(ii) Swearing and Offensive Language

It is noted that Ofcom does not intend to change the Broadcasting Code to cover the increase in the broadcast of excessive and ever-stronger swearing. Indeed, Ofcom has always given the impression of encouraging and promoting the use of swearing in broadcasting. Here, Ofcom is once again denying many people the right to be able to view television without the fear of being verbally abused and deeply offended. In other words, Ofcom is more considerate towards people who are not offended by swearing and offers little respect towards people who are seriously offended by such language. Indeed, the respect I have been given by Ofcom for complaining about swearing in programmes is limited to being told to 'clear off, although perhaps not in quite those exact words - but near enough!

Swearing is currently allowed at all times and as I understand the present situation, all but just three of the strongest swearwords are allowed before the watershed, which still leaves many seriously obscene words that can be heard before 9:00 p.m. and many of these words are broadcast without the provision of any pre-broadcast warnings. Therefore, it is perfectly clear that people under eighteen are not adequately protected and adults who are deeply offended by swearing are not even considered. This certainly indicates that something is seriously wrong with the present system and Ofcom really needs to review this area of the code to prevent many people being denied access to television and radio programmes without the fear of being verbally abused and confronted by swearing and obscene language.

A further concern is that swearing has now been introduced into all genres of broadcasting and is included in comedy, music, cookery programmes, sporting events, films, plays, talk shows, documentaries – in fact, after the watershed swearing has become so rife and excessive that it is now impossible to view television during this time without being exposed to the consistent and multiple use of the 'F' word. It is quite clear that without any responsible intervention we are going to be left with programmes that contain only swearwords – we have just about reached that point already in some Channel 4 programmes revealing a most serious flaw in the present broadcasting codes. It is of little wonder that the British are seen as being the capital of the foul-mouthed, which no respectful and responsible person can be proud of – and yet we are bringing our children up to believe that swearing is right and that we should not give any respect to people who find swearing deeply offensive.

Spoon-feeding both children and adults with swearing and obscene language day-after-day and night-after-night through television and radio broadcasts must have an adverse effect on people's tolerance of swearing to the extent of normalising obscene language due to desensitisation. Can Ofcom be so naive to such an effect or does it just not care about the damage that may be caused to society and the declining quality of life that this brings to all of us in increased real-life explicitness and intimidation caused through violence and antisocial behaviour such as swearing?

Before considering the proposed new rule below, the matter of freedom of expression or speech has been carefully considered. People in this country have for many years enjoyed this freedom and the proposed new rule does not affect this freedom in any way except to prevent the inclusion of swearing. People still remain free to air their views on practically any subject except any areas that are covered by specific laws. It should be noted that people should also have the freedom to go about their legal business in any way they choose without having to be confronted by swearing or obscene language and the suggested new rule delivers on this point.

The proposed rules regarding the broadcast of swearing should be strengthened and revised to read: Swearing, including obscene, offensive, sexual and strong language is not allowed on television and radio at any time.

(iii) Other Matters

(a) Protection From Explicit Radio Broadcasts

Ofcom proposes to amend the requirement governing the broadcast of explicit material on the radio to avoid broadcasting such material during the time “when children are likely to be in the audience”. This redefinition is not acceptable as there are many adults who do not wish to be confronted or verbally abused by swearing. **However, the proposed new rule suggested previously should be sufficient to clarify the situation and to ensure that all members of the public are able to listen to radio broadcasts at any time of the day or night without the fear of being confronted by deeply offensive language.**

(b) Ofcom’s Assurances to all Other Parties

Given that there have been occasions in the past when Ofcom has seemingly failed to follow aspects of its own Broadcasting Code especially in respect of Rule 1.3, Rule 1.6 and Rule 2.3 or has found some reason to reject complaints that have not appeared to be in line with the spirit of the rules, e.g. the ‘Brit Awards 2008’ when Ofcom cited one of the reasons for not upholding the complaints was that a large number of children were not expected to be in the audience at the time of broadcast despite the regulator having no knowledge of how many children had been in the audience for this particular programme, it would seem appropriate for the organisation to reassure people for the future by defining its adjudication policy when hearing complaints. After reading The Ofcom Broadcasting Code, it should be obvious whether a breach has occurred or not and complainants should be able to indicate the exact rule that has been breached with a reasonably good chance that that complaint will be upheld. However, if this is not the case then it must be considered that The Ofcom Broadcasting Code has failed.

The following new rule is proposed: Ofcom will adjudicate on all complaints received where it is clearly indicated that The Ofcom Broadcasting Code has

been breached and will treat all complainants fairly and respectfully. Further, Ofcom acknowledges that it has a specific duty to uphold all complaints where it is shown that a particular rule has been broken and will not take any other factors into account which are not specifically stated in the Broadcasting Code or which the complainant would not have been familiar with at the time of making the complaint. In reaching its adjudications, Ofcom will not take any technical aspects of any complaint into consideration that have not been written into the Broadcasting Code and undertakes to work within the spirit of the Broadcasting Code at all times. Ofcom further guarantees to make every effort to answer all correspondence relating to complaints made and will provide exact answers to all questions raised.

(c) Responsibility for People Under Eighteen

The following new rule is proposed: The general public accept that Ofcom and broadcasters will take full responsibility for ensuring the protection of people under eighteen in respect of all television and radio broadcasts.

