

Public Consultation on Ofcom's Broadcast Code



A Summary

Issued on 14 July 2004

The deadline for responses is 5 October 2004



Contents

Introduction	2
Your view matters	2
How the new code would work	3
The main things we considered when writing this code	4
Freedom of expression	4
Legal background	4
Regulatory principles	4
Regulating TV and radio	5
Context	5
Choice of channels	6
Media literacy	6
What the code covers	7
Section 1 – Protecting people under 18	8
Section 2 – Harm and offence	9
Section 3 – Crime	9
Section 4 – Religion	9
Sections 5 and 6 – Impartiality and accuracy, and elections and referendums	9
Sections 7 and 8 – Fairness and privacy	10
Sections 9 and 10 – Sponsorship and commercial references	10
How to respond	11

Introduction

We (Ofcom) are the new communications regulator.

We started work in late December 2003, replacing three existing broadcasting regulators – the Broadcasting Standards Commission (BSC), the Independent Television Commission (ITC) and the Radio Authority (RA).

One of our many tasks has been to create a written set of standards for the broadcasters we regulate. They include all radio and television services we license, together with the BBC and S4C. We have to create these standards under the Communications Act 2003.

The result will be the Ofcom Broadcasting Code. However, before we finish it we want to hear the views of everyone – viewers, listeners, programme makers and broadcasters – on the draft version we have already prepared.

The Ofcom Broadcasting Code will replace six codes which are still being used.

- BSC Code on Fairness and Privacy;
- BSC Code on Standards;

- ITC Programme Code;
- ITC Code of Programme Sponsorship;
- RA News and Current Affairs Code and Programme Code; and
- Sponsorship rules set out in the RA Advertising and Sponsorship Code.

This booklet is a brief summary of the full consultation document, which contains the proposed code in full. You can find it on our website at www.ofcom.org.uk/consultations/current/broadcasting_code/ or you can write to us for a printed copy.

Your view matters

This is your invitation to tell us how we could improve the proposed code. We hope that everyone with an interest in broadcasting will help us to shape its future standards.

Once we have taken account of everyone's responses, we will publish the new Ofcom Broadcasting Code in 2005. It will set standards for television and radio programmes and sponsorship on services we regulate. However, it will not apply to broadcast advertising.

How the new code would work

The code is a set of principles and rules, which every broadcaster we regulate will have to follow. If you have a complaint about one of their programmes, we have a duty to investigate it. If we find that our rules have been broken, we will publish the fact. In serious cases, we can also take further action, such as fining a broadcaster. (For more information on how we handle complaints, and the action we can take, please see our website.)

Of course, a lot comes down to personal opinion. For example, a programme that is offensive to one viewer may be justifiable and even educational to another. To help broadcasters, viewers and listeners understand and interpret the code, we plan to publish some guidance on our website. This will reflect audience research and will focus on how to apply our rules. However, we haven't included this guidance in the current consultation process because it is not

something that broadcasters have to follow and it will depend on what the final code looks like. We will write the guidance when we have finished the code and will update it regularly.

The main things we considered when writing this code

Freedom of expression

Freedom of expression is an important part of our society. It is a basic human right that we can express opinions, and listen to ideas and information from other people. We have a duty to respect freedom of expression, and we must be very careful that our rules only prevent it when absolutely necessary.

In a creative industry such as broadcasting, freedom of expression will always lead to complaints as broadcasters explore fresh areas and push boundaries. This is actually healthy. If there are no complaints, it suggests that broadcasters are censoring themselves and not breaking new ground. So, we fully expect to continue to receive complaints about radio and television programmes under this new code. If we find these complaints are justified, we will use the code to protect viewers and listeners.

Legal background

Our new proposed code is based on current law that relates to broadcasting. The code is also entirely new. It is not a revision of the rules previous regulators enforced. Its framework is

mainly taken from section 319(2) of the Communications Act 2003 and section 107 of the 1996 Broadcasting Act 1996. It also follows European law for television.

Regulatory principles

The rules in the code are there to protect viewers and listeners. They should also make sure that people who take part in programmes, and people who are directly affected by programmes, are treated fairly and that their right to privacy is respected. Where possible, the rules must also promote choice and competition. This will benefit listeners and viewers, as well as the broadcasting industry. We must also:

- encourage more programmes that feature people from different racial and cultural backgrounds;
- make people aware of the choice of programmes and of their rights (for example, to make a complaint); and
- support new ideas, creativity and investment.

When considering what kind of rules we need, we have had to consider all these things.

Regulating TV and radio

As different media come together, it makes sense to regulate television and radio in the same way wherever we can. Sometimes, however, the law says we must treat television differently from radio. The rules governing radio have always been lighter, and we do not propose to toughen them.

Context

It's crucial to define the context of a programme before we can decide whether it is in line with the code. Clearly, the rules governing a children's teatime show will be very different from an adult drama broadcast late at night.

The Communications Act 2003 contains a list of factors relating to the context of programmes which we must take into account. This list (in section 319(4) of the Act) is so important that we have included it in the proposed

introduction to the code itself. It should also be used by broadcasters when they apply the code. The factors include:

- the type of programme;
- who is likely to be watching or listening to it and what they're expecting; and
- the use of warnings and information.

So if, for example, a code rule says that 'broadcasters must provide adequate protection from harmful or offensive material in programmes', the broadcaster has the freedom to use the context to decide what 'adequate' actually is.

But while the context will affect the interpretation of many rules, others will have just one meaning. For example, the rule that says 'no material should be broadcast which encourages crime.'

Choice of channels

Viewers and listeners have never had such a wide choice of channels, and the choice is still growing. Broadcasters need the freedom to use that choice to provide different programmes for different audiences. We want to give broadcasters more responsibility for what they put out, and viewers and listeners more responsibility for what they choose to watch or listen to. That's why the rules in this code are based on the minimum standards necessary by law. We have only set more restrictive rules where we think they are particularly needed.

Media literacy

We believe that all viewers and listeners are not the same – some are more 'media literate' than others and know what to expect from different programmes and channels. So, we have tried to draw up rules that are flexible and can be interpreted in line with those expectations. We also believe that viewers and listeners will become more and more media literate, so the level of protection they need may change.

What the code covers

The code will apply to all broadcasters. However, the BBC does not have to follow the code's sections on:

- sponsorship;
- commercial references;
- being impartial (reporting issues fairly);
- being accurate when reporting news; and
- reporting on elections and referendums.

This is because the BBC does not take sponsorship and we do not currently regulate the BBC on commercial issues. The BBC has its own regulators (its Board of Governors) to make sure it is accurate in news and impartial, and reports elections and referendums fairly.

The sections of the code are based mainly on the objectives for standards that are set out in the Act. Each section of the code is new, and we are keen to hear how we can improve the code and any particular areas that interest you. For the fullest and best explanation, please see the full draft code and

consultation document on our website. There are detailed questions relating to individual rules set out in each section in the consultation document (see pages 114 to 118). It also contains a Regulatory Impact Assessment (RIA) which sets out in detail the areas we think will have a significant effect (see pages 87 to 108).

However, if you don't have the opportunity to go through the consultation in detail, we would still like to hear your views on these points.

- **We have chosen to draw up a single code. It covers:**
 - **all radio and television stations;**
 - **programme and sponsorship standards; and**
 - **fairness and privacy.**

Do you agree with this approach, or do you think it would be better to have separate codes? If so, how should the codes be divided?

- **Our proposed code sets out the main principles with more detailed rules, and separate guidance on how to apply them. Do you agree with this approach, or is there a better way of setting out the code?**
- **Are all the principles and rules in the code necessary? Do they strike the right balance? Are they achievable? Have we used the right words?**
- **Have we met the aims of the law?**

We have described each section of the code in more detail below.

Section 1 – Protecting people under 18

Most people feel that our most important job is to protect children and young people. We agree, and have made this the first and most detailed section of our code. Under the Communications Act 2003, we must make sure that people under the age of 18 are protected. This wording leaves no room for doubt, and we have dealt with this by being cautious. This is particularly important when thinking about children (those under 15).

This section contains rules on:

- scheduling and content information (including only broadcasting more adult programmes on television after 9pm);
- coverage of sexual and other offences relating to people under 18;
- smoking, alcohol, drug and solvent abuse;
- violence and dangerous behaviour;
- offensive language, sex and nudity;
- exorcism, the occult and the paranormal;
- premium subscription services and pay-per-view channels; and
- involving people under the age of 18 in programmes.

Section 2 – Harm and offence

This is a short section. Under the Communications Act 2003, material that may be harmful or offensive must be judged against ‘generally accepted standards’. It also demands that ‘adequate protection’ must be provided against this kind of material being included. However, the wording in the Act is more flexible than, for example, its requirements for people under 18, so this section is less restrictive.

This section of the code explains that the broadcaster must consider the context of the programme when judging whether its content is offensive. This may include:

- what the programme is about;
- the time of day it is broadcast;
- who is likely to be watching or listening to it; and
- what the audience is expecting from the programme.

Section 3 – Crime

This section makes it clear that programmes may not encourage crime or lead to disorder. It also says that

criminals cannot normally be paid to appear in programmes.

Section 4 – Religion

This section contains specific rules for programmes that deal with religion or belief. The rules should make sure that programmes:

- are responsibly made;
- respect faiths and views; and
- do not exploit their audience.

Sections 5 and 6 – Impartiality and accuracy, and elections and referendums

Section 5 sets out rules to make sure news is accurate and impartial (reporting issues fairly). When programmes deal with very controversial matters, broadcasters should make sure that many views are aired. This section also contains rules that stop broadcasters from using their channels to express their own views.

A separate section (section 6 of the code) sets out the rules broadcasters must follow during elections and referendums.

Sections 7 and 8 – Fairness and privacy

These sections of the code are different from the rest. They set out how broadcasters should treat the people or organisations taking part in their programmes (or who are directly affected by them). These rules are to protect people from being treated unfairly or from having their privacy invaded without justification.

Sections 9 and 10 – Sponsorship and commercial references

These sections of the code should make sure that programmes are not distorted for commercial reasons. So, while it is acceptable for a broadcaster to accept advertising or sponsorship, this should not influence its independence when making programmes. These two sections set out the rules.

The rules on sponsorship are about:

- what can be sponsored;
- the content of sponsored programmes; and
- what can be put in the sponsor’s message at the beginning and end of breaks (sponsor’s credits).

Some of these rules are different for radio and television.

The section on commercial references is about how products and services can be featured in programmes. This includes:

- programme-related material;
- premium-rate phone numbers; and
- using advertisements in programmes.

The section also contains rules on:

- viewer and listener competitions;
- charity appeals;
- community service announcements;
- financial promotions; and
- covering events (for example, sporting events and pop concerts).

How to respond

We published the consultation on 14 July 2004 and it will close on 5 October 2004. You can see a copy of the full consultation at

www.ofcom.org.uk/consultations/current/broadcasting_code/

You can also ask for a copy of the full consultation document by writing to or faxing:

Sara Winter
Content and Standards
5th Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA.

Fax: 020 7981 3806

Please send your views and feedback (marked 'Broadcasting Code Consultation') to the postal address or fax number above.

You can also e-mail

BroadcastingCode@ofcom.org.uk

Please tell us if you want any part of your response to be confidential and, if so, which parts. Please also tell us if we can publish your response when we receive it or whether you want us to wait until the consultation has closed. It will help us if you use the consultation cover sheet (included with the full consultation document and available from our website) when you send us your response.

We hope to publish the final code early in 2005. At that time, we will also publish our response to the contributions we have received to this consultation. The code will come into force two months after we publish it.

Riverside House
2a Southwark Bridge Road
London SE1 9HA
Switchboard +44 (0)20 7981 3000
Facsimile +44 (0)20 7981 3333
www.ofcom.org.uk