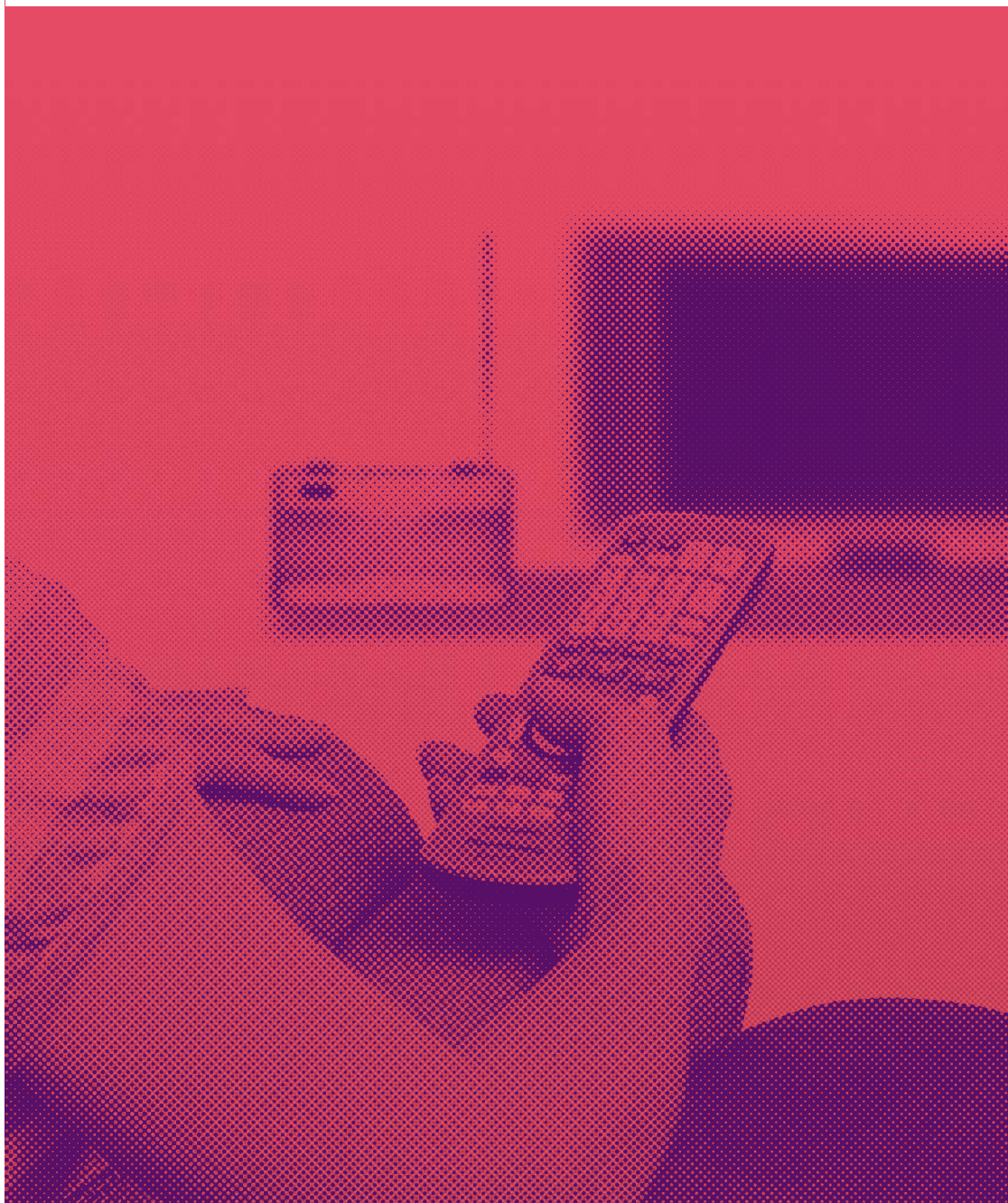


THE OFCOM BROADCASTING CODE
(Incorporating the Cross-promotion Code) | 28 February 2011



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**Cross-promotion
Code**

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The Legislative Background to the Code¹

Ofcom is required under the Communications Act 2003 (as amended) (“the Act”) and the Broadcasting Act 1996 (as amended) (“the 1996 Act”) to draw up a code for television and radio, covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy. This Code is to be known as the Ofcom Broadcasting Code (“the Code”).

Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross-references and other linking text.

In setting these standards, Ofcom must secure the standards objectives set out in the Act. This not only involves setting minimum standards but also such other standards as may be appropriate. (See sections 3(1)(a) and (b), (2)(e) and (f) and (4)(b)(g)(h)(j)(k) and (l), 319, 320, 321, 325, 326 and Schedule 11A of the Act and sections 107(1) of the 1996 Act. These extracts can be found in Appendix 1 of the Code.)

The Code also gives effect to a number of requirements relating to television in EC Directive 2010/13/EU (“The Audiovisual Media Services Directive”). Extracts can be found in Appendix 2 of the Code.

The Code has also been drafted in the light of the Human Rights Act 1998 and the European Convention on Human Rights (“the Convention”). In particular, the right to freedom of expression, as expressed in Article 10 of the Convention, encompasses the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This Article, together with Article 8 regarding the right to a person’s private and family life, home and correspondence; Article 9, the right to freedom of thought, conscience and religion; and Article 14, the right to enjoyment of human rights without discrimination on grounds such as sex, race and religion, can be found in Appendix 3 of the Code.

1. In this Broadcasting Code, where the context admits, references to any legislative provisions, whether in primary or secondary legislation, include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time; any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision..

Unless expressly stated otherwise, the Code applies to radio and television content (with certain exceptions in the case of the British Broadcasting Corporation (“the BBC”) – see below) in services licensed by Ofcom, services funded by the licence fee provided by the BBC and to Sianel Pedwar Cymru (“S4C”).

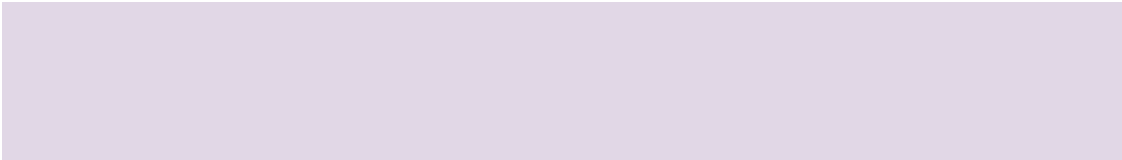
Broadcasters are required by the terms of their Ofcom licence to observe the Standards Code and the Fairness Code, which are to be interpreted as references to this Code. Observance of this Code is also required in the case of the BBC by the BBC Agreement² and, in the case of S4C, by statute. Except where the Code states otherwise, the term “television broadcasters” refers to providers of television programme services (including any local services such as restricted television services), the BBC and S4C, and “radio broadcasters” refers to providers of radio programme services (including local and community radio services and community digital sound programme services) and the BBC. Sections Five, Six, Nine, with the exception of the relevant product placement rules (see Section Nine), and Ten of the Code do not apply to BBC services funded by the licence fee. No part of the Code applies to the BBC World Service funded by grant in aid.

Under the Act, the provider of a service is the person with “general control” over which programmes and other facilities and services are comprised in the service (section 362(2) of the Act).

General control is wider than editorial control in that it includes control over services and facilities to which access is provided (for example through the inclusion in the main service of a link or facility to interactive features) and over which the broadcaster may not have editorial control.

Although a link included in the service may lead to features outside of that service which are not regulated by Ofcom, the provision of access to those features by, for instance, the inclusion of a link, is within the control of the broadcaster and so within Ofcom’s remit. Ofcom may therefore require such a link or facility to be removed where Ofcom has concerns, in the light of its statutory duties and, in particular, the standards objectives set out in section 319 of the Act, about the material to which it

2. The BBC Agreement is the Agreement dated July 2006 between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation as may be amended from time to time.



leads. In any event, the transition from broadcaster to third-party control must be clear to the viewer, so as to manage both audience expectations regarding the material to which they are being led and the risk to the broadcaster of being found in breach of this Code (for example Rules 1.2 and 2.1).

Where the Code has been breached, Ofcom will normally publish a finding and explain why a broadcaster has breached the Code (these findings are available in Ofcom's Broadcast Bulletins at www.ofcom.org.uk). When a broadcaster breaches the Code deliberately, seriously or repeatedly, Ofcom may impose statutory sanctions against the broadcaster. Ofcom's procedures for investigating cases (following the receipt of a complaint or otherwise) and applying statutory sanctions to broadcasters are also on the website. Members of the public who have no access to the web can ask Ofcom to send them a copy of the procedures by post.

The Code is divided into sections which are primarily drawn from the objectives as set out in section 319(2) of the Act and section 107(1) of the 1996 Act, as well as the Representation of the People Act 1983 (as amended).

How to Use the Code

The Code is set out in terms of principles, meanings and rules and, for Sections Seven (Fairness) and Eight (Privacy), also includes a set of “practices to be followed” by broadcasters. The principles are there to help readers understand the standards objectives and to apply the rules. Broadcasters must ensure that they comply with the rules as set out in the Code. The meanings help explain what Ofcom intends by some of the words and phrases used in the Code. The most relevant broadcasting legislation is noted under each section heading so readers can turn to the legislation if they wish.

When applying the Code to content, broadcasters should be aware that the context in which the material appears is key. In setting this Code, Ofcom has taken into account (as required by section 319(4) of the Act) the following:

- (a) the degree of harm and offence likely to be caused by the inclusion of any particular sort of material in programmes generally or in programmes of a particular description;
- (b) the likely size and composition of the potential audience for programmes included in television and radio services generally or in television and radio services of a particular description;
- (c) the likely expectation of the audience as to the nature of a programme’s content and the extent to which the nature of a programme’s content can be brought to the attention of potential members of the audience;
- (d) the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
- (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section;
- (f) the desirability of maintaining the independence of editorial control over programme content.

These criteria have informed Ofcom’s approach to setting the Code and therefore must be taken into account by broadcasters when interpreting the rules.

The Code does not seek to address each and every case that could arise. Broadcasters may face a number of individual situations which are not specifically referred to in this Code. Examples included in the Code are not exhaustive. However, the principles, as outlined in the following sections, should make clear what the Code is designed to achieve and help broadcasters make the necessary judgements.

To assist further those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards, guidance to accompany the Code will also be issued by Ofcom on the Ofcom website and will be reviewed regularly.

Broadcasters should be familiar with their audiences and ensure that programme content can always be justified by the context and the editorial needs of the programme. (In the Code, the word ‘programmes’ is taken to mean both television programmes and radio programming.)

Broadcasters may make programmes about any issue they choose, but it is expected that broadcasters will ensure at all times that their programmes comply with the general law, as well as the Code.

General guidance on the Code

It is the responsibility of the broadcaster to comply with the Code. Programme makers who require further advice on applying this Code should, in the first instance, talk to those editorially responsible for the programme and to the broadcaster’s compliance and legal officers.

Ofcom can offer general guidance on the interpretation of the Code. However, any such advice is given on the strict understanding that it will not affect Ofcom’s discretion to judge cases and complaints after transmission and will not affect the exercise of Ofcom’s regulatory responsibilities. Broadcasters should seek their own legal advice on any compliance issues arising. Ofcom will not be liable for any loss or damage arising from reliance on informal guidance.

Section One: Protecting the Under-Eighteens

(Relevant legislation includes, in particular, sections 3(4)(h) and 319(2)(a) and (f) of the Communications Act 2003, Article 27 of the Audiovisual Media Services Directive, and Article 10 of the European Convention on Human Rights.)

This section must be read in conjunction with Section Two: Harm and Offence.

Principle

To ensure that people under eighteen are protected.

Rules

Scheduling and content information

- 1.1 Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.
- 1.2 In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen. For television services, this is in addition to their obligations resulting from the Audiovisual Media Services Directive (in particular, Article 27, see Appendix 2).
- 1.3 Children must also be protected by appropriate scheduling from material that is unsuitable for them.

Meaning of “children”:

Children are people under the age of fifteen years.

Meaning of “appropriate scheduling”:

Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

1.4 Television broadcasters must observe the watershed.

Meaning of “the watershed”:

The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

On premium subscription film services which are not protected as set out in Rule 1.24, the watershed is at 2000. There is no watershed on premium subscription film services or pay per view services which are protected as set out in Rule 1.24 and 1.25 respectively.

1.5 Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Meaning of “when children are particularly likely to be listening”:

This phrase particularly refers to the school run and breakfast time, but might include other times.

1.6 The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule.

1.7 For television programmes broadcast before the watershed, or for radio programmes broadcast when children are particularly likely to be listening, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context).

(For the meaning of “context” see Section Two: Harm and Offence.)

The coverage of sexual and other offences in the UK involving under-eighteens

1.8 Where statutory or other legal restrictions apply preventing personal identification, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:

- by reporting limited information which may be pieced together with other information available elsewhere, for example in newspaper reports (the ‘jigsaw effect’);
- inadvertently, for example by describing an offence as “incest”; or
- in any other indirect way.

(Note: Broadcasters should be aware that there may be statutory reporting restrictions that apply even if a court has not specifically made an order to that effect.)

1.9 When covering any pre-trial investigation into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. Particular justification is also required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved in the defence as a defendant or potential defendant.

Drugs, smoking, solvents and alcohol

1.10 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;

- must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification;
- must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.

Violence and dangerous behaviour

- 1.11 Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio) and must also be justified by the context.
- 1.12 Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful or dangerous:
 - must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.
- 1.13 Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:
 - must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.

(Regarding Rules 1.11 to 1.13 see Rules 2.4 and 2.5 in Section Two: Harm and Offence.)

Offensive language

- 1.14 The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio).
- 1.15 Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances.
- 1.16 Offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

(Regarding Rules 1.14 to 1.16 see Rule 2.3 in Section Two: Harm and Offence.)

Sexual material

- 1.17 Material equivalent to the British Board of Film Classification (“BBFC”) R18-rating must not be broadcast at any time.
- 1.18 ‘Adult sex material’ - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access.

In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of “mandatory restricted access”:

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

- 1.19 Broadcasters must ensure that material broadcast after the watershed which contains images and/or language of a strong or explicit sexual nature, but is not ‘adult sex material’ as defined in Rule 1.18 above, is justified by the context.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of “context”.)

- 1.20 Representations of sexual intercourse must not occur before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited.

Nudity

- 1.21 Nudity before the watershed must be justified by the context.

Films, premium subscription film services, pay per view services

- 1.22 No film refused classification by the British Board of Film Classification (BBFC) may be broadcast unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:
- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
 - the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.
- 1.23 BBFC 18-rated films or their equivalent must not be broadcast before 2100 on any service (except for pay per view services), and even then they may be unsuitable for broadcast at that time.
- 1.24 Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530.

In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of “mandatory restricted access” under Rule 1.18 above.)

- 1.25 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of “mandatory restricted access” under Rule 1.18 above.)

- 1.26 BBFC R18-rated films must not be broadcast.

Exorcism, the occult and the paranormal

- 1.27 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio). Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching, or are particularly likely to be listening. (This rule does not apply to drama, film or comedy.)

(See Rules 2.6 to 2.8 in Section Two: Harm and Offence and Rule 4.7 in Section Four: Religion.)

The involvement of people under eighteen in programmes

- 1.28 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.
- 1.29 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.
- 1.30 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.

(See Rule 2.16 in Section Two: Harm and Offence.)