

Section 1

Protecting the Under-Eighteens

I General Summary of Responses

Responses to the Consultation

We have received substantive responses from the BBC, ITV, Channel 4 and Five, ITN, Trustar, Kanal 5, UKTV, Discovery Networks Europe, NTL, S4C, Chrysalis Radio, Capital Radio, Cross Rhythms City Radio, Commercial Radio Companies Association (CRCA), Portman Group, Ofwatch, Campaign against Censorship, Campaign for Courtesy, ASH and ASH Scotland, Royal Society for the Prevention of Accidents (RoSPA), Public Voice, Emap, Xplicit, Cornwall Community Standards Association, **mediamarch**, mediawatch-uk, MediaWise, Association for International Broadcasting (AIB), Association for Television on Demand (ATVOD), On Demand Group, Melon Farmers, British Naturism (Eastern Section), National Secular Society, Astrological Association of Great Britain (AA), Christian Broadcasting Council (CBC), United Christian Broadcasters, Office of the Chief Rabbi (OCR), Catholic Bishops' Conference of England and Wales, Muslim Council of Britain (MCB), Satellite and Cable Broadcasters' Group (SCBG), Campaign for Press and Broadcasting Freedom (CPBF), ECPAT, British Board of Film Classification (BBFC), Ligali, Church of England, Church of Ireland Broadcasting Committee, River of Life Church and Associated Ministries, Churches' Media Council, Evangelical Alliance, Libertarian Alliance and Libertarian International, Christian People's Alliance, Maranatha Community and Scottish Media Group (SMG). We also received responses from individuals. Nine responses were received in confidence.

General Positive Responses

Three individuals find the principles, rules and meanings acceptable.

One individual, the ITV and the Evangelical Alliance state that no other principles, rules or meanings are necessary.

General Comments

Trustar asks that Ofcom rules match exactly the provisions of the Television Without Frontiers Directive ("the TWF Directive) and do not create a more restrictive framework by omitting any qualifying wording.

Discovery Networks Europe believes that some of this section is inconsistent with the TWF Directive and complains about the use of "must not" rather than "should not", which seems to be more restrictive and goes beyond the TWF Directive's requirements.

Channel 4 and Five believe the rules go far beyond the TWF Directive objectives and the word "potential" opens up a series of additional problems. How is it to be judged that a programme has "seriously impaired" the "moral, psychological or physical development" of a child? They believe that this does not serve freedom of expression and that broadcasters cannot be expected to work under the regulatory threat of sanctions based on subjective views. They also believe that the rules on the watershed are too stringent and that instead there should simply be a requirement to avoid abrupt change to more adult material straight after 2100. This process was supposed to be about clarifying rules rather than tightening them, but rules have been tightened. They have already moved their more adult themed material to well after 2200. In particular, Five feels that these rules will lead to a ghettoising

of viewers who can only watch commissioned material after 2200. In addition, Channel 4 and Five believe that the rules on protecting under-eighteens and the rules around harm and offence are interlinked and should not be separated.

SCBG is concerned that these rules are inconsistent with the TWF Directive and Communications Act 2003 (“the Act”), especially the wording “must not” in Section One versus “should avoid”.

Scope of Regulation

The BBC places importance on the two principles in the BBC Producers’ Guidelines, that “wherever in the world the BBC operates, programme makers must have due regard for the welfare of children who take part in their programmes” and “the BBC should respect the interests of children as viewers and listeners of BBC programmes whether these are aimed specifically at them or a wider audience”. The BBC says that there is no acknowledgement of the way children are to be protected in the new media environment. It suggests that the section should distinguish more clearly between radio and television. It would prefer to maintain the existing watershed policy for linear viewers. The BBC argues that labelling should be given a higher priority in the Broadcasting Code to help parents in a non-linear environment. The BBC would welcome reference in this section of the Broadcasting Code to the increase in time shifting and its effect in the future on the watershed.

The BBC believes the section as drafted could severely restrict the programme choice accessed by adults in the UK. The BBC hopes the balance, recognised in the legacy codes, between the protection of children and the right of adult audiences to expect a range of subject matter can be clearly reflected in the Broadcasting Code. The BBC asks Ofcom to consider the total media environment and how television and radio fit into the bigger picture of protecting children.

The BBC argues that this section of the draft code omits to acknowledge that parents have the primary responsibility for the upbringing and protection of their children and therefore primary responsibility for the control of viewing and listening.

One individual thinks a separate section concerning the welfare of young people is a positive development. United Christian Broadcasters agrees the protections provided are clear and necessary, though there needs to be clarification between under sixteens and under-eighteens, and how this impacts upon programming decisions.

It is noted that Ofcom has a responsibility to protect the young and that very clear warnings about content are needed. Two individuals do not want the Broadcasting Code to absolve broadcasters of responsibility and delegate it to the individual.

SCBG does not believe more labelling is necessary. It believes that Ofcom must avoid micromanagement of content and that regulation should be light.

Five individuals believe that “freedom of expression has gone too far”. One stresses that the protection of the young is the overriding objective in any situation. Campaign Group CPBF states that children have a right to programming which is appropriate to their age and stage of development. The section should begin with a statement that the Broadcasting Code will be in accordance with the UN Convention on the Rights of the Child (UNCRC). Broadcasters should ensure that children’s programming is appropriate to an age range, made specifically for them, wide ranging in genre and content, properly funded, and transmitted at an appropriate time.

Channel 4 and Five are concerned about the strictness of the new test of “educational purpose” children’s programmes, as well as the introduction of editorial guidance instead of clear rules.

Pressure groups Libertarian Alliance and Libertarian International say that no restriction of free expression in any form of media can be morally justified by the “specious ploy” of protecting children, which they regard as the sole concern of parents.

ECPAT would like changes in the Broadcasting Code to regulate the use of images of child prostitution.

An individual considers the draft code is poorly worded and wonders how potential harm will be measured as a diet of violent or unsavoury programmes could be of real harm.

Ligali believes the wording is clear and necessary but believes Ofcom needs an annual re examination of guidelines based on research of public attitudes. Ligali adds that racist material should not be broadcast before the watershed.

Maranatha suggests the draft code will not protect children. Maranatha suggests that the principles, rules and meanings can be interpreted so that assumptions about modern society will be the basis of guidelines and believes that Ofcom has made incorrect judgements about modern morality and behaviour, with particular reference to the assertion that offensive language is a feature of modern society.

An individual believes there is scope for an educational role for the young that reaches into areas of morals, ethics and faith.

An individual respondent suggests that restrictions should only be imposed to reduce real and proven, rather than imagined, harm. Another individual suggests that freedom of expression should only be restricted if there is evidence of proof of harm.

An individual would like the Broadcasting Code to be clear that more stringent measures are required to protect children from actual harm than potential harm. Another is concerned about the use of trailers for programmes that are shown after the watershed, which would seem to circumvent the Broadcasting Code for broadcasters.

The CBC believes that Ofcom have correctly interpreted the Act and would certainly not agree that “offensive language is a feature of modern society” any more than before.

The Church of England would like an explicit reference made to innuendo.

Campaign group CPBF believes there should be a statement on the type of appropriate programming children have the right to be provided with. They believe the ITC Advertising Code should be cross referenced with this Broadcasting Code and that the issue of marketing to children within programmes and product placement should also be addressed.

An individual supports the exception made for educational purposes but believes that it should apply to both children and young people.

Cultural Relativism

Kanal 5 suggests that attitudes to nudity, sexual content, violence and bad language are different in Scandinavia and the Baltic States and that this ought to be recognised in any assessment of what material may be screened pre watershed.

Sex and Violence on TV

Seven individuals have general concerns about the impact of sex and violence on TV on young people. A further four people are concerned that the new Broadcasting Code will offer less protection for children. One is worried that relaxing the standards on sex and violence will result in more children viewing increasingly explicit and violent programmes. Another believes the only way to be sure to give proper guidance and protection to children is to disallow all material relating to violence, sex, nudity, bad language, smoking, alcohol, drugs, solvent abuse and the occult.

Another individual believes Ofcom needs standards for the protection of under-eighteens as society does for tobacco and alcohol.

The Catholic Bishops' Conference of England and Wales welcomes that a particular section for the under-eighteens has been created and point to US statistics which revealed that parents are concerned about too much sex and violence on television and that 63% would favour new regulations to limit these.

The OCR points to research carried out by the Broadcasting Standards Commission ("BSC") in 2002 which indicates that there was an average of 5.2 violent scenes per hour on UK TV in 2001, compared with 4.1 in 1998. They note that the surge to satisfy the appetite of consumers in a competitive marketplace seems to have taken precedence over the protection of citizens. "By allowing more harmful material to appear on TV and radio, we run the risk of normalizing harmful patterns of behaviour".

The Cornwall Community Standards Association notes that there is far more and more explicit sex, violence and language broadcast today than 30 years ago and that these all affect public thinking and the attitude of young people. Although aware that it is impossible to "turn the clock back", it suggests that greater controls be put in place to ensure that no new methods of inflicting violence or further derogatory language be disseminated through broadcasts.

Watershed

A youth worker is concerned that the new Broadcasting Code will offer much less protection for children, many of whom watch TV after the watershed. One individual wants strict regulation of adult content before the watershed. Another individual hopes the watershed laws will remain to protect not only children but also vulnerable adults. A third believes the material broadcast on radio requires a watershed to be introduced. United Christian Broadcasters welcomes the reinforcement of the watershed principle and believes the rules on violence and dangerous behaviour need to be tightened.

An individual would like the wording to be changed so the rules state clearly they are only applicable to pre watershed transmissions on normal broadcasting services.

One individual wants news reports relating to court proceedings on murders, rapes, paedophiles, and so on kept to a minimum, if they have to be mentioned at all, especially before 2100.

Channel 4 and Five believe the “triple watershed” is a threat to legitimate programming at 2100 and that there should be no watershed for premium subscription services.

mediawatch-uk believes the watershed is now redundant. An individual adds that modern equipment has made the watershed irrelevant.

The CRCA wants an amendment to clarify that the watershed does not apply to radio. It also points out that many radio stations will not have a compliance officer and so recommends the following amendment, “...in the first instance, talk to the appropriate manager or person in the service in which the programme will be broadcast”.

A reverend does not believe the watershed is effective and is particularly disturbed by the notion that there may be “editorial justification” in including matter that is liable to be harmful to children and young people before the watershed.

The BBC believes the watershed should extend to all broadcasts and should be moved to 2100 on subscription channels, and that labelling be given much higher priority. It also suggests that “respect for human dignity” be referred to in the Broadcasting Code if it means more than “avoiding harm and offence”.

The OCR believes it is crucial that the watershed should remain in place for television as a protective device from harmful material.

Moral Benchmarking

An individual wonders why films that were inappropriate 10 years ago are now allowed. One individual says that if something is immoral, then it applies to all not just the under-eighteens; a better term would be “inappropriate”. The statement that people have “...right to listen to, and watch, complex and challenging broadcast material” is not valid as society often prevents people from doing harmful things. Another individual refers to the Christian and Jewish scriptures as providing a moral benchmark.

Ofcom Response

Overall this section of the draft code generated the greatest comment from broadcasters, stakeholders and members of the public.

In particular, television broadcasters were concerned that Ofcom had unintentionally diluted the watershed, but at the same time extended it. Radio broadcasters were concerned that some of the restrictions on television broadcasting had been carried over to radio during convergence of the separate legacy codes. Responses by stakeholders and individual members of the public varied widely:

- there were a number of single issue groups who directed their comments to suggestions regarding particular rules;
- there were viewer and listener stakeholder groups who, whilst welcoming the decision to create an under-eighteen section, were concerned that Ofcom should not cede any ground to broadcasters or to commercial interests that might result in any relaxation in this important area and they also suggested ways in which rules could be further tightened;

- there were also individuals and lobby groups who wished to emphasise the importance of freedom of expression and the rights of adults and asked Ofcom to take into account that over 70% of households do not contain children;
- there were also a number of religious groups, who came from a broadly similar perspective, and were concerned that this section of the draft code had to be made to work in the best interests of the under-eighteens and had suggestions on tightening the rules;
- we also received over 1500 postcards in a campaign by mediamarch which urged Ofcom to reduce the level of violence, sex and bad language in all programmes and also stated that such programmes contributed to family breakdown and crime.

In re-drafting this section we have paid particular attention to the above points. We have made some changes in response to the consultation which aid clarity or which appear to be closer in line to the requirements of the Act.

We have taken on board the “more technical” aspects of the broadcasters’ responses ensuring that we do not unintentionally create perverse outcomes e.g. three watersheds. But we have maintained the key objectives in the draft code identified by the citizen-consumer groups and individuals that ensure that under-eighteens are protected.

Other more specific points are dealt with below underneath the relevant principle, rule or meaning.

II Principles

Responses to the Consultation

General Positive Responses

The OCR welcomes these principles and applauds the precautionary approach with regard to children (defined as under-fifteens).

The CBC fully supports the principles and would like broadcasters to give all young people positive encouragement by producing positive and informative programmes on the real meaning of life. Three individuals and the Evangelical Alliance fully support these principles.

General Remarks

Capital Radio asserts that protection from “potential” adverse effects is applied too broadly and goes beyond the requirements of the Act. The phrase “potential or actual” should be removed, and the principles should be “protection from harm, distress, etc”. The CRCA makes the same argument, calling the word “extraneous”.

The Church of England accepts the Ofcom principles provided the watershed is not defeated by on demand television or video recording, and that access by children to harmful material is restricted by encryption or PIN access. Research must be made into the actual age range of viewers post watershed, what proportion of satellite decoders have had their access PIN reset from the default after installation, and how easily children might defeat restrictions.

ITN finds the principle of protection against “potential for harm or distress” to be unrealistically high and recommends that the Broadcasting Code “directly adopt Article 22 of the TWF Directive – programmes should not be included that “might seriously impair the physical, mental or moral development of minors”.

Chrysalis Radio believes the phrases “moral harm” and “potential distress” are not clearly enough defined.

mediawatch-uk believes these principles lack definition and a method of achieving protection.

Campaign group CPBF believes it is useful to separate principles, rules and meanings. Principles should include positive statements about the sort of TV children have the right to view.

Ofwatch believes that the principles should make it clear that more stringent measures are required to protect from actual harm than potential harm.

MediaWise suggests that children be regarded as participants in society and not only considered in terms of protection. Some emphasis should be placed on the media’s positive role as well.

S4C feels that although the principles are fair they need further clarification on what constitutes “material that might seriously impair the moral psychological or physical development of children” for the purposes of draft Rule 1.1.

With respect to protection of under-eighteens, ITV states that the principles extend beyond the “lighter touch” envisaged by the Communications Act 2003. The Act’s “generally accepted standards” are not reflected here. The principles also go beyond Article 22 of the TWF Directive, which states “might seriously impair”, whereas the draft code uses “potential”. There is a wide difference between the two. There is no effective balance between freedom of expression and protection from harm; “potential or actual distress” is beyond Ofcom’s remit and is too wide and imprecise. Broadcasters cannot avoid potential to cause distress. Protection from exploitation is too imprecise and outside Ofcom’s remit. Exploitation of under-eighteen participants in programmes should be in the Fairness section. Overall, the principles ought to mirror the Act and the TWF Directive, with references to “potential” and “distress” removed.

Additional Principles

Public Voice would like to see additional wording to establish the principle that a young person must be given a true, clear and comprehensive explanation of what their participation in a programme will involve.

An individual would like an additional principle: “Programmes which depict gratuitous violence and sexual promiscuity as normal and accepted ways of behaviour and which tend to undermine decent and honourable standards of conduct” should not be transmitted.

Channel 4 and Five would like to see the following principle: “to ensure that people under eighteen are protected from actual moral, psychological or physical harm or unacceptable distress caused by the content of programmes”.

Ofcom Response

In order to provide clarity to stakeholders, in particular with regard to the difference between rules and principles, we believe it is appropriate to return to the specific wording of the standards objectives set out in the Act. We, therefore, have one principle for this section i.e. “that people under-eighteen are protected” which mirrors the objective set out in section 319(2)(a). We have taken the same approach in other sections of the Broadcasting Code.

To ensure that people under the age of eighteen are protected from:

- potential or actual moral, psychological or physical harm caused by content in programmes;

Responses to the Consultation

An individual requests clarity and definition of the term “moral harm”.

Ofwatch believes principles one and two should be combined.

The BBC suggests that “potential” harm is too imprecise and asks for a clarification of “moral and psychological harm” and requests a reference to “generally accepted standards”. It suggests the first principle read: “To ensure that people under the age of eighteen, and in particular children under fifteen, are protected from unsuitable programme content. This is material which might impair their physical, mental or moral development, as judged against generally accepted standards”.

Ofcom Response

We have deleted this principle. See above.

- potential or actual distress caused by content in programmes;

Responses to the Consultation

Ofwatch believes principles one and two should be combined.

Channel 4 and Five worry about the subjective test applied to principles and the restrictive rules relating to “exploitation” in relation to minors who consent to take part in programmes.

The BBC suggests deletion of the second principle. It considers principle two too wide and imprecise; it is covered by the first principle and infringes freedom of expression. The BBC notes that Ofcom’s duty is to provide adequate protection from harm and offence.

Ofcom Response

We have deleted this principle. See above.

- potential or actual exploitation through participation or coverage in programmes;

Responses to the Consultation

The BBC considers principle three to be neither consistent nor achievable. The use of exploitation would infringe a broadcaster’s right to freedom of expression and Ofcom’s duty is to provide adequate protection from harmful and offensive material.

The BBC suggests that principle three is dealt with in the Fairness section, and suggests it be combined with principle four to read: “To ensure that the mental and physical welfare of people under the age of eighteen, and in particular under fifteen, are protected during the making and broadcast of programmes”.

Ofwatch believes that principle three should be changed to: “potential or actual exploitation or harm through participation or coverage in programmes”.

Ofcom Response

We have deleted this principle. See above.

- potential or actual harm through participation or coverage in programmes;

Responses to the Consultation

Ofwatch believes principle four should be removed.

Ofcom Response

We have deleted this principle. See above.

- material which might seriously impair the moral, psychological or physical development of children.

Responses to the Consultation

The BBC suggests that the fifth principle be rewritten as follows: “To ensure material is not broadcast which might seriously impair the moral, psychological or physical development of children”. The BBC notes an inconsistency in that Ofcom defines children as under-fifteen but the principle refers to people under eighteen and to children in the same sentence.

Ofcom Response

We have deleted this principle. See above.

III Rules

Scheduling and content information

Draft Rule 1.1 (now Rule 1.1)

Material that might seriously impair the moral psychological or physical development of children must not be broadcast.

Meaning of “children”:

Children are people under the age of fifteen years.

Responses to the Consultation

General comments

A teacher believes young people have been negatively affected by falling moral standards and bad language on TV, and urges Ofcom to realise the “awesomeness” of its responsibility to the next generation. An individual very much welcomes the rule and says that if strictly enforced, no other rule would be needed.

Discovery Networks Europe believes that this rule should read, “broadcasters should avoid the inclusion of material that might seriously impair the moral, psychological or physical development of children, in particular programmes that involve pornography or gratuitous violence”.

MediaWise suggests that explicit rules are needed on the representation of violent or dangerous behaviour. S4C wishes to have clarification on this rule.

One individual notes that the objective is described as “uncompromising” in draft Rule 1.1 but that draft Rules 1.2 and 1.3 effectively allow exceptions to 1.1 by allowing that unsuitable material may be “appropriately scheduled”, “technical devices used” or a “clear verbal warning” issued – thus compromising this “uncompromising” objective. Three individuals ask whether draft Rule 1.1 is necessary in the light of draft Rule 1.2.

The BBC says draft Rule 1.1 should be a rule or a principle, but not both, and should be deleted.

ITV states that draft Rules 1.1, 1.2 and 1.3 should be rewritten as follows:

“All TV broadcasters must observe the watershed. The suitability of all programme content and its scheduling must be judged by the requirements of the watershed; by the likely expectations of the audience for a particular channel at a particular time and on a particular day; by the nature of the channel and the nature of the programme or programme service. Broadcasters must take account of the likely number and age range of children present in the potential audience, bearing in mind school time, weekends and holidays. Material likely to impair the moral, psychological or physical development of the under eighteens must be appropriately scheduled and presented.”

The CRCA asks that the definition of the watershed be reworked to make it entirely clear to listeners and broadcasters that it applies only to television.

SMG would like clarification of the word “potential” and is concerned that redefining the definition of children to those under fifteen may have a significant impact in terms of programme content and viewer expectation. SMG also points out that Scottish legislation is different from that of England and Wales and the Broadcasting Code needs to reflect this.

An individual says draft Rule 1.1 merely reiterates what is required by Article 22 of the TWF Directive, without any explanation as to what is to be understood by “might seriously impair the moral psychological or physical development of children”. This is a clear example where the Broadcasting Code needs to be expanded.

One individual believes that draft Rules 1.1 to 1.5 do not accurately implement Article 22 of the TWF Directive. The correct interpretation of them is as follows: broadcasters must be prevented from televising programmes which include either (a) pornography or (b) gratuitous violence, or any other programmes which might seriously impair the physical, mental or moral development of minors, such people being those who are not adults (in this country that means people aged under eighteen). That is an absolute prohibition. There are no circumstances in which such programmes can lawfully be televised. This individual suggests the proposed rules fall short of this.

An individual believes draft Rule 1.1 imposes an absolute prohibition on the broadcasting of material which might seriously impair the physical, psychological or moral development of under fifteens. This leaves fifteen, sixteen and seventeen year olds unprotected. It also omits the express references in the TWF Directive to pornography and gratuitous violence. Those two categories are mentioned distinctly by the TWF Directive, which also prohibits any

programmes which might cause serious impairment. The prohibition of pornography and gratuitous violence is self standing; it is not buried (as proposed Rule 1.1 buries it) in the more generally expressed wording, which would have jeopardised the prohibition by admitting debate about whether a pornographic or gratuitously violent programme might cause serious impairment.

An individual says that a verbal warning before the programme does not cater for those who started watching the programme later. Another suggests Rule 1.1 should have “pre watershed” added to the end of the sentence, given that the reference is specifically “serious harm to children”.

The Church of England suggests that the words “spiritual and cultural” be included, as they are in the description of children’s development in the Education Act. It suggests “material which might seriously impair the spiritual, moral, cultural, mental and physical development of children”. This amendment does not transfer responsibility for a child’s formation of religion from the parents.

The SCBG observes that the watershed retains the Independent Television Commission’s (“the ITC”) wording “material unsuitable for children should not, in general, be shown before 2100 or after 05.30am” and that the stronger wording here, “must not be broadcast ”should be brought in line with the watershed and changed to “should avoid”.

Definitions of “children” and “young people”

The Church of Ireland Broadcasting Committee prefers to define a child as being under sixteen, not fifteen. The Churches’ Media Council also prefers the definition of children as those under-sixteen. The Catholic Bishops’ Conference of England and Wales believes that the definition of children should apply to people under the age of sixteen.

Twelve individuals, the Evangelical Alliance, Trustar, Maranatha, and ITV believe the definitions are appropriate.

The BBC believes the definitions are appropriate but would add a category of pre school children, defined as four and under.

An individual says that thirteen sixteen years would be the most effective definition. Another would like to see the definition of a child increased to age eighteen. A third believes that the definition of children should go up to age fifteen, and that sixteen and seventeen year olds should be defined as young people.

One individual accepts the definition but suggests that if the Government definition should change to sixteen, Ofcom should change as well. SCBG supports the definition but believes there should be scope here for further refinement. Campaign group CPBF agrees with the definition but highlights that broadcasters need to be reminded that there are many subdivisions and programming should be suitable for each age range.

Channel 4 and Five believe the definition of “children” is too wide and for the sake of simplicity the focus should be on the under-eighteens. The BBFC believes that these rules are intuitive and understandable though they should perhaps bear in mind that a “child” in law is anybody under eighteen years of age.

The Church of England prefers a definition of children as under 16 and suggests that Ofcom acknowledges this is a pragmatic definition and considers the range of ages in their audience.

Campaign organisation Melon Farmers feels a more appropriate age break would be fifteen.

An individual points out that people over the age of sixteen can legally marry and therefore should not be classified as children.

Public Voice believes these definitions are wrong, as the UNCRC defines children as under-eighteens.

S4C believes that this definition is incompatible with Rules 1.7 and 1.9.

Ofcom Response

This rule reflects Article 22(1) of the TWF Directive. We have replaced the word “children” with “people under-eighteen” as that is in accordance with the standard objective set in section 319(2)(a) of the Act “that persons under the age of eighteen are protected”. We do not consider that any broadcaster regulated by us would find this regulation disproportionate. We do not consider that it would be appropriate to add to the wording of TWF Directive used in the Broadcasting Code as the remaining words simply provide examples. Article 22(1) in full can be found in Appendix 2 of the Broadcasting Code.

In the draft code consultation Ofcom noted that young people, especially those in their teens, vary widely in maturity and sophistication.

The watershed has not been defined in terms of age before. There is no single accepted definition of children either in legislation or more generally.

We still believe it is appropriate, for the purposes of this Broadcasting Code, to define children as those under the age of fifteen for the reasons below that we set out in the consultation, in particular that audiences will, in general, be very familiar with ‘15’ being a key dividing-age in the context of cinema and other mediums.

This will maintain consistency with the existing ITC guidelines with regards to film classification and scheduling, whereby as a general guide ‘15’ rated films may be broadcast from 2100. Using 2100 as a starting time for 15-rated plus material is well established and understood by television broadcasters.

We do not think it practical, or useful, to have further sub-groups within this age range. We recognise that, in different contexts, children are defined differently.

Draft Rule 1.2 (now 1.2)

Material that is unsuitable for people under the age of eighteen must be appropriately scheduled. In particular, children must be protected by appropriate scheduling or technical devices from material that is likely to impair their moral, psychological or physical development. If such material is not encoded then a clear verbal warning must be given before the programme starts.

Responses to the Consultation

An individual believes the proposed Rule 1.2 is another departure from the terms of Article 22 of the TWF Directive, diluting Article 22.1 by attaching loopholes about scheduling and

other factors which are not admissible in regard to broadcasts covered by that part of the Article. There are no circumstances permitted by Article 22.1 for the transmission of the types of programme which it specifies. The references in Rules 1.2 to 1.5 to factors such as scheduling are relevant to the type of programme described by Article 22.2, namely those which are likely to impair (rather than, as in Article 22.1, seriously impair) minors' development. It is noted that Ofcom has not adopted the requirement in Article 22.3 that specified forms of transmission must be preceded by an acoustic warning "or... identified by the presence of a visual symbol throughout their duration".

The MCB suggests the last sentence of draft Rule 1.2 should be rewritten as follows: "If such material is not encoded then a clear verbal and visual (if televised) warning must be given before the programme starts", as this would reinforce the intended message.

Chrysalis Radio believes the concept of "suitability" is too vague.

Pre-watershed

An individual raises general concerns about the content of material screened before 2100 on TV and radio and in advertising. Another objects to proposals to lower the standards of TV broadcasting before the watershed of 2100 "where it is deemed necessary", saying there is already too much bad language, sexual content and a general portrayal of bad behaviour on TV, which leads young people to accept it as the norm. An individual believes there ought to be no adult programming of any kind pre watershed, regardless of considerations of the context of nudity, language and violence in pre watershed programming.

An individual notes that many children have access to broadcast TV both before and after the watershed, and to PIN protected channels on Sky and cable.

Two individuals want the rules to be tightened up, referring to the suggestive material in pop videos before the watershed.

The BBC wants a definition of "appropriate scheduling" for under the age of eighteen as opposed to children.

Post-watershed

Twelve individuals express concern about the impact of "generally accepted standards" on children, many of whom watch TV after the watershed.

The Catholic Bishops' Conference of England and Wales would like the last sentence to be amended to, "if such material is not encoded then a clear visual and/or verbal warning must be given before the programme starts".

The Churches' Media Council accepts the recommendations but favours both a visual (for hard of hearing) and verbal warning before broadcast of material unsuitable for children, with a visual symbol being displayed throughout.

Two individuals agree that verbal warnings only encourage children towards programmes which are forbidden, while another individual points out that warnings are useful only to people who are viewing or listening at the time.

Monitoring viewing

Six individuals point out that many children have televisions in their bedrooms and they need to be protected. A political party, the Christian People's Alliance, says: "To a degree the

need for some restriction is already recognised by the operation of stricter guidelines before the watershed than after. However, the CPA would argue that more account must be taken of the fact that many children now have TV in their bedrooms”.

A paediatrician warns that the aim to limit more offensive programmes to specific times will not prevent greater damage being wrought on young people. Televisions in bedrooms and broken families mean parents do not have the control that they used to have in limiting watching to the times that one might consider safe and child friendly. One individual says that you cannot even let children watch the adverts without having to be there with them.

The OCR believes the convergence of the communications industry places an emphasis on strong regulation, as there are more media conduits for people to access material. For instance, the growth of the internet and the mobile internet enables children to access broadcasting content that previously would only have been available on television.

Capital Radio considers it unclear what appropriate scheduling for young people might be. They would like a clear idea of the specific concerns Ofcom has about the moral, psychological or physical development of older teenagers. The meaning of “when children are particularly likely to be listening” should be subject to and modified by actual evidence of child listening, with reference to stations as well as times of day.

S4C would welcome guidance on “material that is likely to impair the moral, psychological or physical development of children” as well as an explanation for the distinction between “material that might seriously impair the moral psychological or physical development of children” in draft Rule 1.1 and the expression/test used in draft Rule 1.2 (“material that is likely to impair...”).

ATVOD would like to work with Ofcom on the introduction of access controls to content and believes “holistic access controls” combined with other methods will reduce reliance on time based restrictions.

ITV thinks that draft Rule 1.2 goes beyond requirements of Article 22.2 of the TWF Directive. The rule is too vague, with unclear distinction between material unsuitable for under-eighteens and material likely to impair. There is an unclear distinction between under-eighteens and “children” (defined by Ofcom as under fifteens). This draft rule may destroy the clarity of the present watershed; therefore draft rule 1.2 should be deleted and rewritten with draft rules 1.1 and 1.3 as follows:

“All TV broadcasters must observe the watershed. The suitability of all programme content and its scheduling must be judged by the requirements of the watershed; by the likely expectations of the audience for a particular channel at a particular time and on a particular day; by the nature of the channel and the nature of the programme or programme service. Broadcasters must take account of the likely number and age range of children present in the potential audience, bearing in mind school time, weekends and holidays. Material likely to impair the moral, psychological or physical development of the under-eighteens must be appropriately scheduled and presented.”

Chrysalis Radio believes this implies that children should not hear programming with adult themes, which cannot be Ofcom’s intention, as it would prohibit, for example, a social action campaign on teenage pregnancy. It observes that in radio, the times when the child audience is greatest usually coincide with the times when the audience overall is at its greatest.

The BBC feels this rule uses confusing wording and is inappropriate for radio; it suggests this be combined with Rule 1.3 and that it make explicit reference to the watershed.

mediawatch-uk points out that Channel 4's attempt to indicate "Special Discretion Required" on programmes in the 1980s had the effect of doubling the audience.

Ofcom Response

The rule has been rewritten to encapsulate the principle that precedes the rules in this section and to make it clear that the responsibility on television broadcasters to protect the under eighteens includes, but is not limited to, obligations emanating from the TWF Directive. Other scheduling issues are dealt with at length in the Ofcom response to draft Rule 1.3.

Draft Rule 1.3 (now Rules 1.3, 1.4 and 1.5)

In scheduling content, broadcasters must take account of the likely number and age range of children present in the potential audience, bearing in mind school time, weekends and holidays. Television broadcasters must observe the watershed. Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Meaning of the "watershed":

The watershed only applies to television. It is the period which starts at 2100 and lasts until 0530. Material unsuitable for children should not, in general, be shown before 2100 or after 0530. On premium subscription services the watershed is at ? (please see linked questions at the end of this section)

Meaning of "when children are particularly likely to be listening":

This phrase applies to radio and sound services. It particularly refers to the school run and breakfast time, but might include other times.

Responses to Consultation

Effectiveness of the watershed

The Church of Ireland Broadcasting Committee agrees with the watershed but anticipates its ineffectiveness, and approves of labelling of all material unsuitable for children.

AIB supports a watershed of 2100.

An individual believes that encrypted channels should have more flexible watershed requirements.

A teacher believes the watershed is meaningless, as early evening programmes such as soaps regularly include unsuitable material. Another individual says there is already violence, swearing and sexually explicit material before the watershed. The definition of children as being up to age fifteen means that many will be watching beyond 2100. A third individual adds that the watershed should be re enforced and extended to 2200, as children go to bed much later nowadays. A fourth adds, "the 2100 watershed is not a magic hour when all vulnerable people switch off; there are many people in society who are and will always remain vulnerable".

Three individuals do not believe the current watershed is working. Another says the Broadcasting Code must consider that in spite of the 2100 watershed, viewing decisions are often made by children and young people, who are likely to be heavily influenced by peer pressure.

Two individuals believe the 2100 watershed is fairly meaningless because young people can record programmes after the watershed and view them later. One individual suggests that material unsuitable for children should be non recordable. The author of *Nudity and Sexual Activity in the Media* cited a BBC report (*Children as Viewers and Listeners*, 1974) which found that 5% of five to fourteen year olds watch past the watershed without their parents' permission. According to ChildWise, 75% of five to sixteen-year olds have their own VCR. Therefore, the watershed cannot be the basis for these guidelines.

An individual says that the watershed should be extended until after 11.00pm, given that children have televisions in their bedrooms beyond 2100.

An individual believes the watershed definition for TV should also apply to radio.

A youth and community worker believes the idea of a watershed is not sufficient in the modern world.

The Catholic Bishops' Conference of England and Wales supports the retention of the watershed.

A trainee teacher acknowledges that children commonly get to watch TV after the watershed. Providing more violent and sexually explicit material will have a damaging impact on children, vulnerable persons at risk, and broader society now and in future.

An individual would prefer that a warning be applied to any programme containing material unsuitable for children, even if after the watershed.

ITV values the recognition of changes in make up of child audiences but it is not clear that the rule recognises that children may watch programmes that straddle the watershed. ITV policy is that such programmes remain pre watershed compliant in their post watershed parts. It suggests the rule be combined with Rules 1.1 and 1.2 as follows:

“All TV broadcasters must observe the watershed. The suitability of all programme content and its scheduling must be judged by the requirements of the watershed; by the likely expectations of the audience for a particular channel at a particular time and on a particular day; by the nature of the channel and the nature of the programme or programme service. Broadcasters must take account of the likely number and age range of children present in the potential audience, bearing in mind school time, weekends and holidays. Material likely to impair the moral, psychological or physical development of the under-eighteens must be appropriately scheduled and presented.”

The BBC suggests this rule be rewritten as follows:

“Broadcasters must ensure that material which might impair the moral, psychological or physical development of children is appropriately scheduled. The suitability of programme content for children should be judged in a relation to the likely expectations of the audience at a particular time on a particular day, the nature of the TV or radio service, and the nature of the programme”. The BBC also proposes specific guidance that broadcasters should consider the likely number and age range of children present in the likely audience. Guidance in relation to radio should refer to the importance of playing the radio edit versions of music.”

The CRCA suggests the following amendment, “radio broadcasters must consider carefully times when children are particularly likely to be listening”. Capital Radio believes that this rule should be modified so that it puts emphasis on actual evidence of the child listening, rather than mere reference to day parts as different radio stations can have very different audience profiles.

Ofcom Response

The requirement on television broadcasters to observe the watershed is now in Rule 1.4. Scheduling on television so that children are protected by the watershed is a singularly well understood and accepted concept by the viewer – even by those who have no children, according to research. It does however create a tension for all television broadcasters (including the BBC) who have to balance the protection of children with a “commercial” schedule which will attract adult viewers. The draft code maintained the watershed and sought to gather together in rule form the different elements that created the protection associated with the watershed. The same was also done for radio. The intention was not to increase the regulatory burden upon either radio or television but to carry through the well understood concepts that listeners and viewers understand and that broadcasters operate.

There was a huge variance in views from those, other than broadcasters, about the watershed, its effectiveness and the role of parents in terms of children’s viewing. Some believe the watershed is now redundant, particularly with the increase in multi-channel homes, PVRs and time shifting. Others however valued the watershed as a particularly useful tool for protecting children, but believed that broadcasters were currently flouting it. Another view held that the watershed was effective and ultimately parents were responsible for what children watched.

This area raised particular concerns with the broadcasters and, in particular, with the PSBs (Public Service Broadcasters), not least because the accompanying web site guidance which would have clarified the meaning had not been written (as it could not be written until the consultation was concluded and the rules finalised).

The BBC addressed this area at length but it was also addressed by Channel 4 and Five and ITV and others. In essence all feared that effectively the rules meant a tightening of the restrictions. A number of respondents from the radio industry also argued that, in particular, warnings (on the radio) would prompt children to listen, rather than dissuade, taking into account the likelihood that children might be listening on their own without an adult to monitor their listening.

Broadcaster concerns effectively centred around three areas in scheduling. We have sought to clarify the wording to allay the broadcasters’ concerns and to provide certainty for those working in production whilst maintaining the protections for viewers and listeners that are presently well accepted and understood.

(i) Firstly the draft code required that “Material that is unsuitable for people under the age of eighteen must be appropriately scheduled.” This was based on the age contained in the standards objective from 319(2)(a) “that persons under the age of eighteen are protected”. The Broadcasting Code rule now requires that children are protected by appropriate scheduling from material that is unsuitable for them in Rule 1.3. Associated web based guidance will qualify this by explaining that different age ranges require different protection; a six year old would clearly require more protection than a twelve year old. In television terms, for example, that means broadcasters schedule differently at different times of the day.

(ii) Secondly respondents were unclear that the requirement to give a clear verbal warning only referred to material that is likely to impair the development of minors. They took it to also refer to unsuitable material - that is material that should be scheduled post watershed or when children are not particularly likely to be listening. This obligation is no longer explicitly set out since it is now captured by Rule 1.2 which refers to the requirements of the TWF Directive.

(iii) Thirdly, for television, the draft code proposed that “stronger, more adult material should be scheduled well after 21.00” which broadcasters feared marked a change in the regulatory regime. This reflected a requirement in the ITC Programme Code that stronger sex material be “limited to much later in the schedule” (ITC Code section 1.6). Similarly in that code, '18' rated films are not to be shown until 2200. Indeed, Channel 4 in its response accepted that it now schedules the most challenging content much later on in the evening.

We have added a new term, “appropriate scheduling” to this rule to encompass those elements of section 319(4) of the Act (e.g. likely expectation of the audience) that are particularly appropriate in scheduling material for children. The meaning of “appropriate scheduling” is also now given along the lines proposed by ITV.

We have adopted and adapted wording suggested by respondents to clarify the requirement that the strongest material should appear later in the schedule (see new wording in Rule 1.6).

In making these changes we have also been aware of the very large number of responses from members of the public and from viewer and listener groups which have urged clarity and respect for the watershed and voiced concern that the watershed is ignored. We believe these changes will help meet these concerns too. We have not however chosen to adopt suggestions that the watershed be moved to later in the evening as we believe that the present system is well understood and provides protection for children before 2100 whilst accepting that after that time parents/responsible adults must take responsibility for television viewing in the household. We recognise that technological and market changes (such as the increase in use of time-shifting devices e.g. PVRs) will have a long-term impact upon the watershed’s effectiveness as a tool to protect children. However, while acknowledging this, we have created a Broadcasting Code for today.

Rule 1.3 now requires that “Children must also be protected by appropriate scheduling from other material that is unsuitable for them”. We understand that there is unlikely to be any time of day/ night when e.g. seventeen year olds are not watching television. The obligation in the Act remains the same (to protect the under-eighteens). However, appropriate scheduling is not always the most effective way to do this for those older than 15. Instead mechanisms such as information, technical protection such as pay per view combined with encoding and any prohibitions that exist on the more challenging or unsuitable material may be more effective.

It should also be noted that Parliament’s requirement that under-eighteens be protected – is applied by Ofcom with the understanding that different age groups require different levels of protection.

We have separated the various requirements regarding television and radio into two new rules (television watershed in Rule 1.4 and when children are particularly likely to be listening, in Rule 1.5) to meet the concerns voiced in responses about the difficulty of applying one rule in this case to both radio and television.

Draft Rule 1.4 (now Rule 1.6)

Television broadcasters should ensure that the transition at the watershed to stronger material is not abrupt. Stronger, more adult material should be scheduled well after 2100. Broadcasters must consider giving clear warnings if the material may be unsuitable for young persons.

Meaning of “young persons”:

Young persons are those aged fifteen, sixteen and seventeen.

Responses to the Consultation

Campaign for Courtesy concurs that the transition to adult material after the watershed at 2100 is too abrupt.

On Rule 1.4, the MCB suggests the wording: “Broadcasters must give clear audio and visual warnings if the material may be unsuitable for young children”.

An individual cautions that programmes containing inappropriate material should not be allowed to breach the watershed hours.

The BBC is concerned that the indication of several watersheds in the draft code will lead to a decrease in understanding, and suggests a 2100 watershed for subscription services so as to “maintain a level playing field across all UK TV services”. The BBC generally expresses grave concerns regarding this Rule. It feels that it prevents the transmission of 12 and 12A films pre watershed. It is concerned that Ofcom interprets its duties to protect the fifteen, sixteen and seventeen year old post watershed and that this will lead to two or three watersheds. This does not reflect the context set out in the glossary. There is no definition of “stronger more adult material” or “scheduled well after 21.00”. The BBC recommends that warnings are dealt with in Rule 1.5 and this rule should be rewritten as follows: “Television broadcasters must observe the 21.00 watershed before which, except in exceptional circumstances, all programmes must be suitable for a general audience including children. Television broadcasters must ensure the transition at the watershed to more adult material does not take viewers unawares”.

The Churches’ Media Council suggests “must give” replace “should give”.

The Catholic Bishops’ Conference of England and Wales believes that the wording of the penultimate line should be changed to “Broadcasters must give clear warnings”.

UKTV seeks clarity on how the phrases “more adult” and “well after” will be interpreted. It points out that this Rule could have the effect of applying principles designed to protect children from all adult post watershed programming, rather than programming likely to cause unjustified and widespread harm to children. ITN does not support the notion of a staggered watershed, claiming it would confuse viewers.

An individual believes this rule does require a warning, but that they are useful only to people who are listening at the time. A visual warning symbol would overcome that defect.

An individual applauds the proposed Rule 1.4 but suggests that if “stronger, more adult material” is broadcast, it should not commence before midnight. No watershed is likely to be very effective in keeping unsuitable transmissions away from young people, because the prevalence of video recorders facilitates its evasion, but it is better to have such a rule than not to have one at all.

ITV states that the “progressive decline” towards the watershed is widely understood and supports this rule. This rule puts potential new restrictions on broadcasters. It is unclear what is meant by “stronger, more adult material” and also “well after 2100”. This rule replaces a clear watershed with a “calibrated watershed”. The rule seems to aim to protect fifteen eighteen-year olds, yet it is those in the ten fourteen age bracket about whom parents are most concerned. This rule will be detrimental to the enjoyment and expectation of a significant part of the adult audience, narrowing the scheduling window for adult programming such as challenging drama. Context needs to be considered; violence in a history programme is different from that in a drama. There must be a test of harm in defining “stronger, more adult material”. There must be an “exceptional circumstances” provision for essential news coverage and similar programming. The rule should be rewritten as: “TV broadcasters must ensure that all programming transmitted before the 2100 watershed, at times when there are likely to be significant numbers of children viewing, is suitable for an audience including children. Only in the most exceptional circumstances can there be any departure from this rule, and on those occasions clear warning should be given to the viewer. The post watershed transition to more adult material should reflect the nature of the channel and viewer expectation and should not be unduly abrupt. Appropriate information should be given to the viewer about the content of the programmes immediately post watershed if relevant”.

Chrysalis welcomes Ofcom’s definition of children as those being “under fifteen”, which it says “is consistent with other regulatory approaches”.

Ofcom Response

This rule has been redrafted and is now Rule 1.6. See [response to draft Rule 1.3](#). The response to the meaning of young people can be found at the [Ofcom response to draft Rule 1.1](#).

Draft Rule 1.5 (now Rule 1.7)

For television programmes broadcast before the watershed, clear information about content that is unsuitable for certain age ranges under the age of eighteen must be given to the audience.

Responses to the Consultation

Two individuals urge that content warnings be included in listing materials, as pre programme warnings are insufficient. Another believes this rule does require a warning, but notes it is only useful to people listening at the time. Another does not believe that any offensive language should be allowed before the watershed.

The Christian People’s Alliance states that modern technology enables all broadcasting to be potentially accessible to children so that pre broadcast warnings about programme content are often ineffective.

The BBC notes that this rule contradicts Rule 1.4, implying that material unsuitable for younger viewers may be shown as long as it is announced and suggests the rewording: “Television broadcasters must ensure that audiences are not taken by surprise and are given enough information to judge whether a programme is likely to be the one they want to access or is suitable for their children. Broadcasters must consider giving clear information about the content of some pre watershed programmes, programmes which may start before the watershed and run beyond it, and post watershed programmes”.

UKTV believes draft Rule 1.5 is inconsistent with draft Rule 1.4, implying material unsuitable for certain age ranges can be shown, as long as it is announced. The definition of “more adult” is unclear.

ITV views this as inconsistent with other provisions, implying unsuitable material can be broadcast pre watershed. There needs to be a distinction between programmes “unsuitable” for children and those that may “upset” children; the latter should not immediately be disqualified from pre watershed transmission. “Unsuitable” content should only be post watershed. Pre watershed warnings should only be given in exceptional circumstances. Viewers should be informed about scenes upsetting to children. This Rule should be rewritten as: “For TV programmes broadcast before the watershed, clear information about content that may distress children should be given to the audience”.

Ofcom Response

The requirement set out in this draft rule is now in Rule 1.7 and has been amended to make it clear that this rule is not intended to permit material that is unsuitable for children pre-watershed. The rule now states that when appropriate (and taking into account the context) broadcasters should give clear information about content that may distress children.

Draft Rule 1.6 (this rule has been deleted and is covered by the Rule 1.7)

For radio and sound services, broadcasters must consider giving clear verbal warnings about programme content that may be unsuitable for young persons when children are not particularly likely to be listening. Clear information must be given to the audience, when children are particularly likely to be listening, about content that is unsuitable for certain ages under the age of eighteen.

Responses to the Consultation

Verbal warnings

Capital Radio maintains that giving verbal warnings before a radio programme is not appropriate. It merely alerts younger listeners (particularly older ones), who often listen to radio unsupervised, that something exciting is coming up. Such warnings should be restricted to TV. Similarly, Chrysalis (in its response to Rule 1.6) asserts that verbal warnings are no use if the listener joins the programme halfway through. Emap adds that a verbal warning is impractical for radio and is likely to attract attention and promote listening rather than serving as a warning. The CRCA believes this requirement should be deleted. The CRCA suggests the following amendment: “programme content that may be unsuitable for young persons should not be broadcast at times when children are particularly likely to be listening”.

An individual says in order to maintain the clear meaning of the watershed and its use by parents, such material should not be broadcast before the watershed.

Capital Radio is unsure how broadcasters would demonstrate compliance. Would it be enough to demonstrate that consideration to a verbal warning had been given, but rejected on the grounds that it would be counterproductive by attracting rather than repelling young listeners? Also, it is not always possible to predict material which is unsuitable for young people, e.g. during phone ins. Capital Radio recommends the deletion of this rule.

Chrysalis Radio cautions that such warnings are more likely to make children watch or listen and suggests that there need not be labelling post watershed. It also observes that marketing activity and other off air activity helps to brand stations in the marketplace, helping listeners to establish for themselves the broad nature of the content.

The Catholic Bishops' Conference of England and Wales believes that the first line should be changed to, "broadcasters must give clear verbal warnings... even when children are not particularly likely to be listening".

The OCR notes that radio has traditionally been regulated with a lighter touch, which places extra onus on the broadcaster to give verbal warnings about unsuitable material.

ITN believes the new regulations on "clear verbal warnings about programme content" on radio are unjustified and merely serve to increase the volume of regulation. They recommend the adoption of the Radio Authority standard at p.19 "Opening Announcements and Warnings" which refers to announcements that should be made when material is "likely to disturb in the extreme"

The BBC suggests this is more restrictive than the Radio Authority Code, does not acknowledge "context", and is neither appropriate for radio nor achievable, and that research showing a low level of parental concern about radio content renders this unnecessary. Instead, it suggests the following: "In exceptional circumstances, broadcasters of radio and sound services must give clear information about programme content that may cause widespread offence or be unsuitable for children. The decision to broadcast such information should be judged in relation to context and generally accepted standards".

The AIB is concerned that it will be difficult to demonstrate "consideration". It also suggests that radio is consumed differently to television and that such warnings would serve to encourage children to listen further. It suggests that the phrase "clear information must be given to the audience when children are particularly likely to be listening" is problematic.

Ofcom Response

We acknowledge that giving warnings on radio services is not always appropriate and may on occasions encourage children to listen. We have therefore deleted this rule and any information that would be helpful to listeners is covered in new Rule 1.7.

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

Draft Rule 1.7 (now Rule 1.8)

Broadcasters must not identify people under the age of eighteen who are victims, witnesses or defendants in UK court proceedings involving sexual offences (unless the court rules otherwise). The word "incest" must not be used where a person under the age of eighteen might be identified as the victim (the offence may be described as a serious sexual offence).

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

ITN believes this term does not reflect the practice of the law. A court would never rule on identifying the victim of a sexual offence, as this is prohibited by law. A victim can give consent to be identified, but that consent must be in writing; it is not the ruling of the court that allows identification. The identification of defendants in court should be left to the law.

ITN also believes that broadcast media journalists should not be subject to restrictions on identifying a defendant that newspaper reporters are not subjected to.

ITN believes it is reasonable for Ofcom to step in where a court fails to impose an Order preventing the identification of witnesses or victims under 16. They recommend the rewording of draft Rule 1.7 as follows: “Even if legally free to do so, broadcasters should not normally identify children under 16 who are victims or witnesses in court cases”. They also recommend that the second sentence of draft Rule 1.7 be made into a separate rule, reading as follows: “The word “incest” must not be used where a person under eighteen might be identified as the victim, the offence should [not “may” as in the current drafting] be described as a “serious sexual offence”.

Channel 4 and Five sense a possible double jeopardy in draft Rules 1.7 and 1.8, noting that any restriction should come directly from law. They believe these rules are a matter for the courts and Ofcom guidance, but not the Broadcasting Code. Capital Radio also notes that general law is sufficient in this area; it recommends the deletion of this rule.

The BBC notes that programme makers and content producers must always obey the criminal law and not rely on the Broadcasting Code, rendering this rule unnecessary. The BBC suggests the rule be deleted or moved to guidance.

S4C believes that this rule is incompatible with the definitions of “children” and “young persons” as given by Ofcom.

ITV also thinks the rule is unnecessary, as the law protects children’s identity in court proceedings in the UK. Broadcasters should not face both legal challenges and regulatory action. Reminder of legal obligation should be included in the guidance and this rule should be deleted.

MediaWise suggests there be special reference to coverage of inquest findings on suicide where children are involved, with some divorce and custody cases, school footage and other civil proceedings involving children. It also suggests identity protection should extend to non UK resident children.

CRCA says that an Ofcom Rule is not required as the ruling of the Court is sufficient.

The Evangelical Alliance supports this rule.

Ofcom Response

This rule has been redrafted and is now Rule 1.8.

Respondents were concerned that we had failed to take into account that the legal definition of an adult varies within the UK. Scottish law uses a different definition. We have therefore clarified this.

They were also concerned that the draft rules in this area created double jeopardy – that is that Ofcom was creating code requirements already covered by the law which meant that broadcasters could be in breach of the general law as well as the Broadcasting Code. They were also concerned that the rules preventing the “jigsaw” effect could lead to unworkable regulation.

We have recognised in the Broadcasting Code that there are certain statutory provisions in force which already prohibit direct identification of those who are not yet adult. We have

therefore not made this a rule but a note as a useful reminder to broadcasters about these provisions that exist here.

However the statutory provisions dealing with indirect identification (the “jigsaw effect”) have not been brought into force (these are contained in sections 44, 45 and 48 of the Youth Justice and Criminal Evidence Act 1999). These could be enacted if regulatory bodies, such as Ofcom and the PCC, do not include like provisions in their own rules and codes of practice. We have therefore included the rule so that broadcasters ensure they take particular care with respect to the jigsaw effect in the reporting of sexual offences.

Draft Rule 1.8 (now Rule 1.8)

Particular care must be taken when reporting court proceedings involving sexual offences, that the relationship between the accused and the person under the age of eighteen is not implied, and cannot be inferred, from the material broadcast or taken in conjunction with other material published by the media.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

The BBC believes this is guidance, not a rule, and could restrict the way broadcasters comply with the law, and wonders how Ofcom would identify parties in breach of the rule. Also, this does not reflect the law in Scotland. It should be deleted.

ITN states that this rule, as presently drafted, could be confusing and even legally dangerous to someone who does not know the law. It recommends the section be deleted, as the matter is regulated by criminal law and the principle is already covered by draft Rule 1.7.

ITV views this as “unworkable”, claiming it is impossible to assess a broadcaster’s responsibility for “jigsaw” identification. This ought to be guidance for good working practice and not a rule. Ofcom rules should not interfere with reporting that is compliant with the law. This is a legal issue and should be dealt with only by the law, not by regulatory body as well. It also recommends that the rule be deleted.

Channel 4 and Five sense a possible double jeopardy in Rules 1.7 and 1.8, noting that any restriction should come directly from law. They believe these rules are a matter for the courts and Ofcom guidance, but not the Broadcasting Code.

Emap says this rule must be redrafted to prevent “jigsaw identification”, making the point that having a blanket rule for the broadcast media when there is no equivalent Rule for the print media could be highly problematic. MediaWise believes this does not cover the issue of “jigsaw” identification, and suggests Ofcom consult with child protection experts in addressing unusual material.

Capital Radio asks: what is the test of “particular care”? It recommends this rule be deleted, and included instead in guidance. CRCA agrees that “particular care” is guidance rather than a rule.

Ofcom Response

This rule has been redrafted and incorporated into Rule 1.8. See response to draft Rule 1.7 above.

Draft Rule 1.9 (now Rule 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 under the age of eighteen 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 related to the identity of any person under the age of eighteen who is involved in the defence as a defendant or potential defendant.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

The BBC suggests this is guidance, not a rule, and assumes that this does not extend to the reporting of Anti-Social Behaviour Orders made against the under-eighteens, as these are a civil matter. The BBC asks for guidance in interpretation and suggests the rule be deleted.

Capital Radio points out that “should pay particular regard to” is not a rule, but guidance. It asks what the test is for “particular justification” what is meant by the use of the word “also” in that sentence. It recommends the deletion of this rule, moving it to guidance. ITV thinks this goes beyond the law and should be deleted; perhaps guidance should be issued.

If draft Rule 1.9 becomes statutory law, Channel 4 and Five want to know if it will then be dropped by Ofcom.

S4C believes that this rule is incompatible with the definitions of “children” and “young persons” as given by Ofcom.

Ofcom Response

This rule which is now Rule 1.9 is carried across from paragraph 2.11 of the ITC code and was included in the legacy code following dialogue between the ITC, Government and broadcasters after objections were raised by the media in relation to the proposal to bring into force Sections 44, 45 and 48 of the Youth Justice and Criminal Evidence Act 1999. In the event, agreement was reached with the Department of Culture Media and Sport that these restrictions would only be brought into effect if equivalent provisions to be included in the rules made by the Press Complaints Commission and the broadcasting regulators proved ineffective. The wording and its adoption of this rule in the ITC Code resulted from the discussions that took place between these parties and on the understanding that it was to be a pan-media initiative.

Smoking, alcohol, drug and solvent abuse

Draft Rule 1.10 (now Rule 1.10)

Drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should not be featured in children’s programmes unless there is a clear educational purpose.

Responses to the Consultation

The Christian Broadcasting Council, Evangelical Alliance and the OCR support this rule.

Campaigning charities ASH and ASH Scotland point out that role model smoking within the context of programmes is more likely to have an impact than advertisements. They call for the Broadcasting Code to be extended to cover all programmes that are popular with children and young people, not just children. ASH contrasts the responsible attitude to smoking in *Friends* with that of *Spike*, broadcast on Sky and the BBC. They suggest the following wording for Rules 1.10 and 1.11: “Drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should not be featured in any programmes for children and young people unless there is a clear educational purpose for doing so”. The charity ASH believes that drinking alcohol, solvent abuse, the use of illegal drugs, the abuse of drugs and smoking should not be portrayed as a glamorous or desirably adult activity, either directly or by implication, in programmes popular with children or young people.

SCBG notes that Rule 1.10 goes further than the ITC predecessor by restricting inclusion to “a clear educational purpose” rather than “a strong editorial case”.

The BBC argues that this should not link legal but potentially harmful activities like drinking and smoking with illegal substance abuse, suggests “clear educational purpose” is too narrow, and requests clarification as to the meaning of “children’s programmes”. It recommends that the rule be deleted and reflected in draft Rule 1.11.

mediawatch-uk believes “clear educational purpose” should be qualified.

Channel 4 and Five were concerned by the different uses of the phrases “clear educational purpose” in children’s programmes and “editorial justification” pre-watershed.

Capital Radio, Emap and the CRCA state that a definition of “children’s programmes” is required. There is a danger that this rule would prevent pop songs from being played on children’s radio services. Capital Radio also asks what the test would be for “editorial justification”. Would it prevent, for example, a breakfast show presenter mentioning that he had been out for a drink the night before? This rule could have a disproportionate and unintended effect. It recommends that the wording states that these matters “should not be encouraged, condoned or glamorised”.

Industry organisation Portman Group believes the phrase “drinking alcohol” in Rules 1.10 and 1.11 is problematic because it is used alongside and equated with “smoking, solvent abuse, the use of illegal drugs and the abuse of drugs”. The group believes the phrase should be replaced by “alcohol misuse” and that there should be an affirmation of the right of broadcasters to portray socially responsible alcohol, including in settings that involve children (e.g. family occasions or restaurants).

ITV suggests renaming subsections “Smoking, alcohol, drug and solvent abuse” as “Harmful and Antisocial Behaviour” with separate sections on “smoking and other self abuse”, “violence” and “dangerous behaviour”. ITV believes Rules 1.10 and 1.11 should be consolidated, with no distinction made for children’s programming. It also believes that “clear educational purpose” is unnecessary. Children have developed “preacher protection” and resent having social and moral messages pushed on them through programming. There ought to be a distinction between unhealthy and life threatening activities such as smoking, and illegal activities such as drug taking. Rewrite both rules as one simple rule that can be supplemented with guidance geared towards particular demographics and issues: “In programmes broadcast before the watershed, TV broadcasters must avoid the glamorising or condoning of antisocial, criminal or harmful behaviour. The same responsibility is carried by radio broadcasters in relation to programming transmitted when children are particularly likely to be listening”.

Discovery Networks Europe complains that this rule seems to tighten the regulations by insisting on a “clear educational purpose” as compared to a “strong editorial case”.

S4C would like further guidance on the expression “a clear educational purpose” as they do not want to have to produce programming that rams home the message that smoking is harmful but instead will be given the leeway to develop stories, themes and messages over a series or longer. S4C is further concerned that Rule 1.10 refers to “drinking alcohol” rather than “the misuse of alcohol” which would be a more workable solution.

Ofwatch believes this rule is unnecessary.

An individual suggests smoking should be taken out of programmes, especially soaps and other dramas.

Ofcom Response

As a result of these representations we have made five changes to the proposed rules in this area and consolidated the various elements into one rule (Rule 1.10 in the Broadcasting Code).

Firstly we have changed “drinking alcohol” to the misuse of alcohol. We accept that showing an adult having a drink can be acceptable depending on the context and that real concern centres around misuse of alcohol.

Secondly we have changed the wording of “children’s programmes” to “programmes made primarily for children” here, and elsewhere in the Broadcasting Code, to give clarity. (Television broadcasters had been concerned that “children’s programmes” meant everything shown before the watershed which would have made the second part of the rule redundant).

Thirdly a number of broadcasters were concerned about the term “clear educational purpose” in the rules under this and later sections in the draft code (Ofcom used this term in the context of children's programmes, when discussing smoking etc). Broadcasters believe that this would demand that material be overly prescriptive in its portrayal of such matters and would not allow for subtle representations or those developed over a number of episodes. In addition, our research with under-eighteens found that many were scathing of overtly educational content. With this in mind, we propose a different test of “strong editorial justification”, meaning that the inclusion of such material within programmes made primarily for children has a higher test than other pre-watershed programming but that it is not forbidden and, crucially, does not suggest a specific type of representation.

Fourthly, we have also added wording requiring that the use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol “must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed, or when children are particularly likely to be listening, unless there is an editorial justification”. This wording was suggested by ITV, CRCA and others as well as reflecting ASH’s approach to this rule regarding the glamorisation of such substances and seems an appropriate clarification of the protection required.

Finally, given society’s overall concern about the attractions of abusing both legal and illegal substances, we have also extended the draft rule, as recommended by some respondents, to programmes likely to attract a wide under-eighteen audience. However, this is not an extra regulatory burden since this is in line with what was required by the legacy codes. Ofcom has also commissioned content analysis into this area. This indicates that under the current rules broadcasters act responsibly.

Combining all the substances

A number of respondents felt it was inappropriate to combine legal and illegal substances into one rule.

We do not think that, in combining the substances into one rule, it is suggesting that they are all equally problematic. Indeed, the legality of some substances can vary depending upon a number of factors (for example age in the context of cigarettes and alcohol, or the degree of processing in the case of “magic” mushrooms); we would not want to inadvertently provide advice on whether a particular substance belonged in a particular category.

We believe the new and combined shorter rule reflects the general concern that programmes must take care when incorporating the use of potentially harmful substances within programmes.

Draft Rule 1.11 (now Rule 1.10)

Drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should be avoided in other programmes broadcast before the watershed, or when children are particularly likely to be listening, unless there is an editorial justification.

Responses to the Consultation

The CBC and the Evangelical Alliance support this rule.

UKTV believes illegal and legal substances should be separated, and suggests adding the phrase “substances with significant and proven health risks should be treated responsibly”.

Capital Radio asks: what is the test of “editorial justification”? For example, this rule could prevent a breakfast presenter mentioning going out for a drink. It believes the Rule should state that these matters should not be encouraged, condoned or glamorised.

Chrysalis Radio notes that this appears to preclude the discussion of topic related to alcohol or drug use, or the portrayal of their use in drama or comedy, and suggests that as adults are equally vulnerable this should be moved to “Harm and Offence”.

The BBC notes that this is too onerous for radio and suggests the following:

“Broadcasters must avoid glamorising or condoning harmful, antisocial or criminal behaviour likely to be easily imitable by children, in programmes broadcast before the watershed, or when children are particularly likely to be listening”. The BBC asks the extent to which a comedy/entertainment context is justification for material. It proposes guidance.

The CRCA suggests the following amendment: “drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should not be encouraged, condoned or glamorised”. ASH believes that drinking alcohol, smoking, solvent abuse, the use of illegal drugs and the abuse of drugs should be avoided in all programmes before the watershed, unless there is an editorial justification.

Channel 4 and Five do not like the distinction between “clear educational purpose” in children’s programmes and “editorial justification” pre-watershed.

mediawatch-uk believes "clear educational purpose" should be qualified.

Two individuals believe that "editorial justification" provides a loophole.

SCBG does not support Ofcom's strengthening of restrictions in the absence of evidence that the previous rules were inadequate. Discovery Networks Europe believes that this rule is an extension of the legacy regulation and should not be extended without any real hard facts behind it.

Public Voice believes that the word "substantial" should be included before "editorial justification".

Campaign group CPBF welcomes the recognition that young people's understandings, abilities and reactions are constantly changing but have reservations about "editorial justification".

Ofwatch believes this rule is unnecessary.

Ofcom Response

This rule has been redrafted. See response comments to draft Rule 1.10 above.

Violence and dangerous behaviour

Draft Rule 1.12 (now Rule 1.11)

Material containing violence that has the potential to cause moral or psychological harm should not be broadcast before the watershed or when children are particularly likely to be listening.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

ITN believes a better test is set out in the Communications Act: "the degree of harm and offence likely to be caused". They also recommend inclusion of a caveat that such scenes can be broadcast "if editorially justified". ITV would like to see Rules 1.12, 1.13 and 1.15 rewritten as one rule. Violence cannot and should not be removed from all pre watershed programming. It also notes that "potential to cause" is an imprecise test, preferring the TWF Directive test of "likely to cause". Capital Radio also suggests that the test should be that of the TWF Directive. It maintains that "potential" is a much lower test than "likely" and is over regulatory.

An individual wants the words from "before" to "listening" to be omitted from Rule 1.12.

Discovery Networks Europe complains that this rule is more restrictive than the legacy regime.

The BBC suggests this rule be deleted and combine the rules dealing with protection issues in order to include one rule on violence.

Chrysalis Radio believes it is difficult to determine how broadcasters are to establish evidence of "potential harm" and suggests "likely harm" as a clearer alternative.

The CRCA also sees the rule as over regulatory, perhaps leading to the banning of records such as Elton John's "Saturday Night's Alright for Fighting".

An individual believes the existing codes have failed to suppress the use of violence as entertainment, and this proposed rule is enfeebled by the inclusion of loopholes for "editorial justification" and "clear educational purpose". Another individual would like the insertion of the words "or young persons" (defined by Rule 1.4 as those aged fifteen, sixteen and seventeen) immediately after "when children".

SCBG worries that this rule goes beyond the legacy regime by restricting violent material to post watershed.

Ofwatch believes this rule is unnecessary.

Channel 4 and Five believe that Rules 1.12 through to 1.15 are too proscriptive and should be replaced by a test of "editorial justification". They suggest that editorial restrictions such as violence having a "positive means to an end" is too restrictive and that these rules should be simplified to two key issues: "broadcasters need to demonstrate care in how violence is portrayed in pre watershed programmes, particularly in children's programmes; and care needs to be taken where violence or other dangerous behaviour may be easily imitable by children". The rules should highlight matters that need to be handled responsibly with special regard to children's programming. Also, they think Rule 1.12 is imprecise.

mediawatch-uk believes that the "potential to cause moral or psychological harm" needs to be clarified. More generally, they want to know who decides whether material is editorially justifiable and believe some means of accountability should be identified.

Ofcom Response

We have reworded this rule since draft Rules 1.1 and 1.2, are intended to ensure people under eighteen are protected, including from material on television that is likely to impair their moral, psychological or physical development. However, we remain of the view that there needs to be a limit on the broadcast of violence prior to the watershed. We have therefore combined elements of the draft Rules 1.12 and 1.15 to make the new Rule 1.11. The rule makes it clear that violence before the watershed (or when children are particularly likely to be listening in the case of radio) must be limited and within an appropriate context.

This is an area which is of concern to many and while we recognise that children cannot, and should not, be shielded entirely, the understanding is that life contains violence - we believe that it is important that the representation is appropriate for the time of day and justified by its context. We believe that young people are not as vulnerable as children to the effects of violent content. It will be for broadcasters to make judgements about whether violent material can be justified editorially and, in cases that it investigates, for Ofcom to decide whether that judgement was appropriate.

Draft Rule 1.13 (now 1.12)

Types of violence or violent behaviour, whether verbal or physical, that are easily imitable by children in a manner that is harmful and or dangerous, should not be broadcast before the watershed or when children are particularly likely to be listening, unless it is editorially justifiable. Such material should not be featured in children's programmes unless it serves a clear educational purpose.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

Campaigning charity ASH says rules are needed regarding violence and dangerous behaviour, smoking and drug taking, citing its response to draft Rule 1.10 above. The charity RoSPA also wants rules regarding dangerous behaviour. It would view speeding as unacceptable unless the consequences were shown, e.g. a crash or a court case and conviction.

Capital Radio is concerned that this rule is over regulatory and would prevent certain genres of music from being played, in spite of their popularity with young people (e.g. rap). They seek confirmation that Ofcom will not use these rules to prevent airplay of popular music which explores adult themes.

Campaign group CPBF welcomes the recognition that young people's understandings, abilities and reactions are constantly changing but have reservations about "editorial justification".

S4C feels there needs to be greater clarity here as much of this is already in children's programming such as cartoons, literary classics and westerns.

One individual wants to eliminate the words "in a manner that is harmful and or dangerous" because introducing debate about whether the conduct concerned is imitable in one or other of those ways raises a serious risk that the rule will be virtually unenforceable. It is, in any event, disabled by excusing such broadcasts if they are "editorially justifiable" which the individual believes gives fertile ground for clouding the issue.

An individual wants the words from "before" to "listening" to be omitted from draft Rule 1.13 and also states that the words "or when children are particularly likely to be listening" should be inserted after the word "programmes".

An individual would like the deletion of the words "by children" and the insertion immediately after "when children" of the words "or young persons".

Chrysalis Radio, responding to draft Rules 1.13–1.15 together, would like to know how this regulates against stunts, where presenters put themselves in harm's way, and notes that adults are again as vulnerable here as children.

The BBC notes that this will not prevent references to violence from being broadcast and suggests its deletion and combination with protection issue rules. The BBC asks how this would relate to radio.

ITV believes draft Rules 1.12, 1.13 and 1.15 should be rewritten as one rule. Violence cannot and should not be removed from all pre watershed programming, the "clear educational purpose" test is unworkable, and children are able to distinguish between real life and TV.

An individual believes a further weakness is draft Rule 1.13's reference to "types of violence or violent behaviour, whether verbal or physical, that are easily imitable by children," and feels the words "in a manner that is harmful and or dangerous," should be deleted. By introducing debate about whether the conduct concerned is imitable in one or other of those ways, the risk is that the rule will be virtually unenforceable.

Another individual agrees but suggests that in general the more extreme the broadcast the later it should be shown.

Channel 4 and Five believe that draft Rules 1.12 through to 1.15 are too proscriptive and should be replaced by a test of “editorial justification”. They suggest that editorial restrictions such as violence having a “positive means to an end” is too restrictive and that these rules should be simplified to two key issues: “broadcasters need to demonstrate care in how violence is portrayed in pre watershed programmes, particularly in children’s programmes; and care needs to be taken where violence or other dangerous behaviour may be easily imitable by children”. The rules should highlight matters that need to be handled responsibly with special regard to children’s programming.

Ofwatch believes this rule is unnecessary.

Ofcom Response

This draft rule has been redrafted (and is now Rule 1.12). See also response to comments on draft Rule 1.12 that we consulted on. We remain of the view that there should be a separate rule relating to imitable violence specifically, rather than a general rule on protection. This is because we believe separating the rules by each specific problematic issue gives greater clarity to stakeholders in understanding, and dealing with, the regulatory framework.

This rule is intended to protect children from easily emulating harmful or dangerous activities that are not justified by their editorial context. This is particularly important in programmes made primarily for children. Web-based guidance will expand on how we intend to interpret this area. The rule applies equally to radio and television. We have amended the wording relating to programmes made primarily for children to refer to “strong editorial justification” rather than “clear educational purpose”.

Draft Rule 1.14 (now Rule 1.13)

Dangerous behaviour or its portrayal that is likely to be easily imitable by children in a manner that is dangerous should not be broadcast before the watershed or when children are particularly likely to be listening, unless it is editorially justifiable. Such material should not be featured in children’s programmes unless it serves a clear educational purpose.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

The charity RoSPA has serious concerns about imitation. There are many cases over the years where children have been injured after copying something they have seen on TV.

Campaign group CPBF welcomes the recognition that young people’s understandings, abilities and reactions are constantly changing but have reservations about “editorial justification”.

Capital Radio is again concerned that this rule is over regulatory and would prevent certain genres of popular music from being played. It seeks confirmation that Ofcom will not use these rules to prevent airplay of popular music which explores adult themes.

An individual believes the existing codes have failed to suppress the use of violence as entertainment, and this proposed rule is enfeebled by the inclusion of loopholes for “editorial justification” and “clear educational purpose”.

An individual would like the deletion of the words “by children” and the insertion immediately after “when children” of the words “or young persons”.

MediaWise suggests consideration be given to the impact of disturbing imagery on early evening news.

SCBG believes this draft rule may be too restrictive on factual cable and satellite documentaries or foreign channels, and suggests the decisions be left with broadcasters.

The BBC suggests this draft rule be deleted and combined with protection issue rules. Discovery Networks Europe also complains that this rule is too restrictive, stronger than the legacy regime and should be deleted.

ITV contends that violence cannot and should not be removed from all pre watershed programming. This rule is “unduly restrictive” as “consideration of the likelihood [of imitation] is properly part of editorial judgement”. Furthermore, “Clear educational purpose” is too restrictive and unrealistic. It suggests this rule be rewritten as: “Dangerous behaviour or its portrayal, that is likely to be easily imitated by children in a manner that is dangerous, should not be broadcast before the watershed or when children are particularly likely to be listening, unless it is editorially justifiable”.

Channel 4 and Five believe that draft Rules 1.12 through to 1.15 are too proscriptive and should be replaced by a test of “editorial justification”. They suggest that editorial restrictions such as violence having a “positive means to an end” is too restrictive and that these rules should be simplified to two key issues: “Broadcasters need to demonstrate care in how violence is portrayed in pre watershed programmes, particularly in children’s programmes; and care needs to be taken where violence or other dangerous behaviour may be easily imitable by children”. The rules should highlight matters that need to be handled responsibly with special regard to children’s programming.

Ofwatch believes this rule is unnecessary.

Ofcom Response

This rule has been redrafted (and is now Rule 1.13). See also response to comments on draft Rules 1.12 and 1.13. We remain of the view that such a rule is necessary to help reduce the risk of children imitating dangerous behaviour. We also believe it is necessary to keep this as a separate rule to reflect the different nature of the potential problem(s), that is the more general concern about dangerous behaviour rather than the more specific rules on violence.

In view of the potential for harm, we believe that it is important that any such material is editorially justified. This is not a complete prohibition but requires broadcasters to make judgements appropriate to the nature of the programme. We remain of the view that younger children are particularly vulnerable to harm in this area, rather than young people.

We accept that some news bulletins may contain disturbing imagery but consider that this should be treated with a degree of discretion pre watershed, as is currently the case. This will be in web based guidance. The same argument applies to documentary material. We have amended the wording relating to programmes made primarily for children to refer to

“strong editorial justification” rather than “clear educational purpose” (see response to draft Rule 1.10).

Draft Rule 1.15 (now Rule 1.12)

Violence and violent behaviour (verbal or physical) should not be presented as a positive means to an end in programmes broadcast before the watershed, or when children are particularly likely to be listening, unless there is an editorial justification. Such material should not be featured in children’s programmes unless it serves a clear educational purpose.

Responses to the Consultation

The CBC supports this rule and believes this rule should be the ethos behind all programming.

The Evangelical Alliance particularly supports draft Rule 1.15. It is concerned with the motivation behind the programme, as children do need to understand the reasons for violence.

Again, Capital Radio believes this would create a problem with much popular music, creating an unintentional racial bias, given the prevalence of violent themes in music by black artists. It seeks confirmation that there is no intention to prevent the radio broadcast of hitherto accepted song tracks.

Campaign group CPBF welcomes the recognition that young people’s understandings, abilities and reactions are constantly changing but have reservations about “editorial justification”.

An individual believes that the term “should not” should be changed to “must not”; otherwise there is too much scope for this to be exploited. Another individual believes the existing codes have failed to suppress the use of violence as entertainment, and this proposed rule is enfeebled by the inclusion of loopholes for “editorial justification” and “clear educational purpose”. An individual would like the deletion of the words “by children” and the insertion immediately after “when children” of the words “or young persons”.

An individual states the words from “in programmes” to “listening” should be omitted from draft Rule 1.15 and that the words “or when children are particularly likely to be listening” should be inserted after the word “programmes”.

An individual hopes that draft Rule 1.15 will relate to all output.

SCBG supports the intention of the second sentence of the rule but does not see the justification for a detailed rule here.

The BBC suggests that this would prevent broadcasters from reflecting real life to the audience and recommends it be deleted and combined with protection issue Rules 1.12 to 1.14 to create a single rule on violence: “Broadcasters must ensure that material covering violence which might cause moral, physical or psychological harm is not broadcast before the watershed, or when children are particularly likely to be listening, without clear editorial justification”.

ITV would like to see draft Rules 1.12, 1.13 and 1.15 rewritten as one rule. Soaps and factual programmes may include violence and this will not necessarily be resolved within the same programme. It should be rewritten as: “Violent material likely to cause moral, physical or psychological harm to children should not be broadcast before the watershed, or when children are particularly likely to be listening. Violence that is likely to be easily imitable by children should not be broadcast before the watershed, or when children are likely to be listening, without clear editorial justification”.

Channel 4 and Five believe that draft Rules 1.12 through to 1.15 are too proscriptive and should be replaced by a test of “editorial justification”. They suggest that editorial restrictions such as violence having a “positive means to an end” is too restrictive and that these rules should be simplified to two key issues: “broadcasters need to demonstrate care in how violence is portrayed in pre watershed programmes, particularly in children’s programmes; and care needs to be taken where violence or other dangerous behaviour may be easily imitable by children”. The rules should highlight matters that need to be handled responsibly with special regard to children’s programming.

Both Discovery Networks Europe and Ofwatch believe this rule to be unnecessary. The former asserts that it is covered by draft Rule 1.1.

Ofcom Response

We remain of the view that the portrayal of violence is a social concern, especially when it is shown in a positive light. However we agree that, as originally worded, this rule was not sufficiently targeted and have decided to combine the essence of draft Rule 1.15 with draft Rule 1.12. This is reflected in the final drafting of Rule 1.12.

Offensive language

Rule 1.16 (now Rule 1.14)

The most offensive language must not be broadcast before the watershed or when children are particularly likely to be listening.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

An individual welcomes the prohibition on offensive language in children’s programmes. Two individuals believe this rule should be amended to include a prohibition of blasphemy¹. Another individual notes that adults also need to be protected from potentially offensive language. Another individual asserts that children not only “may” imitate offensive language, they do.

The Church of England suggests that offensive language includes innuendo so that “children are not exposed to language which may excite their curiosity about the words referred to, and so that they do not unwittingly imitate it”.

An individual believes the categories of “less offensive”, “offensive” and “most offensive” are unworkable and asks what criteria will be used to decide which words fit into which category. An individual thinks that this rule is in danger of drifting over time. A third individual believes this rule is unsatisfactory and rejects the conclusion that because offensive language is a feature of modern society, this legitimises its use in broadcasting.

¹ Blasphemy is used frequently by respondents in this section as well as Section Four: Religion. Blasphemy is a criminal offence and dealt with through the courts. Blasphemy, therefore, is not provided for in any part of the Broadcasting Code, although religious offence is dealt with in Rule 2.3.

ITV has “serious reservations” about draft Rules 1.16, 1.17 and 1.18 in that “offensive language” covers too broad a spectrum. Research and experience show the variety of and changes in the offensiveness of words. There is little agreement on Ofcom’s proposed calibration of offence into “most offensive”, “offensive” and “less offensive”. Refining gradations of language belongs to guidance not rules: “Audience expectation; the programme and its purpose and form; the channel; the time; the day; the editorial justification – all form the matrix of judgement”. Broadcasters do not wish to divorce programme language from the reality of viewers’ language. All three rules should be replaced with: “Offensive language must not be included in programmes aimed at young children. The most offensive language should not be broadcast before the watershed, or when children are particularly likely to be listening. There must be clear editorial justification for the inclusion of other offensive language in programmes broadcast at those times”.

The BBC suggests this rule is combined with draft Rules 1.17 and 1.18.

Emap would like further guidance, for example, on what is deemed the “most offensive language”.

Channel 4 and Five believe the BBFC should only be referred to as guidance and that the new draft Rules 1.16 to 1.18 are too restrictive and should be restated such that broadcasters must demonstrate care when using offensive language. They believe that the rules presuppose offence to particular language, whereas the use of certain words in some situations may not be offensive but may be funny, for example.

An individual believes draft Rules 1.16, 1.17 and 1.18 are too vague and open to interpretation.

Ofcom Response

There is general support, in principle, for this rule (now Rule 1.14). We know from audience research and complaints that the use of offensive language concerns a significant minority of viewers. This is particularly true where language which is considered seriously offensive is concerned. Most viewers and listeners, including parents, do not wish to hear very strong language when children are watching television or listening to the radio in significant numbers.

Ofcom has commissioned additional research to supplement previous research on the general issue of offensive language. A link to the research is provided in the web based guidance.

Some respondents suggested combining the three rules into one or two rules. We believe the three rules reflect different concerns and provide greater clarity to stakeholders when presented as separate rules. Therefore we have kept three separate rules, but amended them to give better clarity and ensure that there is not a complex system of three tiers of offensive language.

Rule 1.17 (now Rule 1.15)

Offensive language should not feature in children’s programmes.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

The Cornwall Community Standards Association believes that a specific prohibition on blasphemy in children’s programming should remain in the Broadcasting Code and that this rule does not cover blasphemy sufficiently. It believes that reclassifying blasphemy as a form of offensive language makes it commonplace creating potential for blasphemous acts and denigrates religious belief and morality.

SCBG believes the wording “must not” should be changed to “should be avoided”, as offensive language is a subjective judgement.

The BBC suggests this rule is combined with Rules 1.16 and 1.18.

Emap proposes that the words “or at times when children are likely to be listening” be added to the end of this rule.

Channel 4 and Five state that the draft Rules 1.16 to 1.18 are too restrictive and should be restated such that broadcasters must demonstrate care when using offensive language. An individual believes draft Rules 1.16, 1.17 and 1.18 are too vague and open to interpretation.

Ofcom Response

In line with the rest of the Broadcasting Code, we have not referred to “children’s programmes” – since this caused some definitional confusion. Instead, in this rule, we have referred to “programmes made for younger children”. However, it is generally recognised that offensive language should not appear in these programmes and this principle is carried through from the draft code. We acknowledge that some offensive language might, in the most exceptional circumstances, be appropriate within programmes made for children, specifically those with a very clear educational context. The final rule reflects this (Rule 1.15).

We believe that the restrictions applying to offensive language will be sufficient to meet stakeholders’ concerns about profanity.

Draft Rule 1.18 (now 1.16)

Less offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, unless it is justified by the context. Frequent use of such language must be avoided before the watershed.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

Three individuals regard this rule as unsatisfactory, rejecting the conclusion that because offensive language is a feature of modern society, this legitimates its use in broadcasting. Another individual believes that the rule’s permission of “less offensive language” which is “justified by the context” is problematic, as context is an elastic concept and therefore a useful excuse for broadcasters who are keen on finding reasons for the inclusion of controversial expressions.

An individual notes that draft Rule 1.18 stipulates that before the watershed, the “frequent” use of such language must be avoided; the clear implication is that some is regarded by Ofcom as acceptable. It should not be. The Campaign for Courtesy agrees, saying that offensive language cannot be justified. An individual thinks the watershed is too early and that all bad language should be eliminated from broadcasts. Again, an individual believes a specific prohibition of blasphemy is needed.

Discovery Networks Europe believes that the draft rule should be amended to: “less offensive language should be avoided before the watershed, unless it is justified by the context”.

SCBG does not support the prohibition on less offensive language in pre watershed programmes and suggests the wording “should be avoided”.

Chrysalis Radio thinks there is an unclear boundary between “less offensive language” and “inoffensive language”. It is unclear to Chrysalis Radio whose offence should be avoided (the child or the parent in the car with the child). Chrysalis Radio comments “in our experience, children are generally difficult to offend with language alone”.

The BBC points out that this is a highly subjective area; that factual programmes and dramas about children should be able to reflect the language they use; and that broadcasters should be able to rely on editorial judgement rather than a restrictive rule. The BBC suggests the rewording: “Offensive language must not be broadcast before the watershed, or when children are particularly likely to be listening, without clear editorial justification”. The BBC suggests this rule is combined with draft Rules 1.16 and 1.17. It also proposes a new rule (see new rules).

mediawatch-uk believes terms like “frequent” should be defined and is of the view that the regulator “must do much more” to discourage the use of bad language.

Channel 4 and Five believe that the new Rules 1.16 to 1.18 are too restrictive and should be restated such that broadcasters must demonstrate care when using offensive language. An individual believes Rules 1.16, 1.17 and 1.18 are too vague and open to interpretation.

Ofcom Response

This rule (now Rule 1.16) has been redrafted. There is a distinction between the most offensive language prohibited under the earlier rule and other offensive language in this rule. Some respondents thought Ofcom had created a three tier structure for offensive language (most offensive, offensive, less offensive). This was not our intention and to provide clarity we have removed the reference to “less” in “less offensive”.

Although many viewers will accept a certain amount of offensive language in programmes not primarily aimed at children, providing it is justified by the context, research indicates that there is still widespread concern that this should not be frequently used before the 2100 watershed.

Sex

Draft Rule 1.19 (now Rule 1.17)

Material of a sexual nature (verbal and/or visual) should be inexplicit and appropriately limited, if broadcast before the watershed or when children are particularly likely to be listening.

Responses to the Consultation

The Christian Broadcasting Council and the Evangelical Alliance support this rule.

An individual says that in order to maintain the clear meaning of the watershed and its use by parents, such material should not be broadcast before the watershed.

Another individual says that the definition of the watershed needs to be clearer.

Capital Radio asks what the test of “appropriately limited” is and whether guidance will be issued.

An individual says that they need to make this definition more clear.

An individual sees an inconsistency between draft Rule 1.19 and draft Rules 1.10 and 1.11. There should be a prohibition on sexual material similar to the prohibition on drug and alcohol abuse in children’s programming unless it is for an educational purpose. Another individual agrees with the rule with the exception of specially produced educational material for their target audience.

An individual believes that sex portrayed, whether simulated or real, is not a problem as long as safeguards are in place, as with adult subscription services.

SCBG worries that this could place an unnecessary restriction on health focused programmes and suggests the following amendment: “material of a sexual nature...should be inexplicit if broadcast before the watershed, unless there is an editorial justification”.

The author of Nudity and Sexual Activity in the Media does not think draft Rules 1.19 and 1.20 are tight enough. Broadcasters will argue that their material is “justified by context”; therefore a full ban is preferable.

Chrysalis Radio suggests the addition of the “editorial justification” exception here, for example, in the case of sexual health campaigns.

mediawatch-uk believes subjective words like “inexplicit” will lead to confusion and argues that Ofcom should define the term in order to avoid abuse.

The BBC says the rule is imprecise and requires an editorial justification qualification. The BBC proposes that the rule be rewritten as follows: “Broadcasters must ensure that the explicit portrayal of sex or sexual relationships is not broadcast before the watershed or when children are particularly likely to be listening, without a clear editorial justification”. The BBC believes this draft Rule does not acknowledge that many pre watershed programmes are about sex and relationships, and some may be useful sources of information for children about this subject.

Discovery Networks Europe would like the wording to read: “material of a sexual nature (verbal and/or visual) should be inexplicit if broadcast before the watershed, unless there is an editorial justification”. It feels the draft Rule does not sufficiently take account of educational programmes.

ITV notes that pre watershed programmes deal with sex and relationships. Research shows soaps are valued sources of information on such issues for children and young people. The Department of Health has approached ITV to link Coronation Street storylines to health education plans. “Limitation” is vague and unworkable. However, there should be protection from explicit or inappropriate portrayal of sex. It suggests the rule is rewritten as: “Explicit and inappropriate portrayal or discussion of sex or sexual relationships should not be broadcast before the watershed, or when children are particularly likely to be listening”.

Ofcom Response

This draft rule (now Rule 1.17) has been redrafted. We accept that the draft rule appeared to prevent educational sexual material from being broadcast pre-watershed: this was not the intention.

We have also redrafted the rule to make it clear that, with the appropriate editorial justification, the broadcast of sexual material is valid before the watershed (or, in the case of radio, when children are particularly likely to be listening) - although such material must still be appropriately limited and inexplicit.

Nudity

Draft Rule 1.20 (now Rule 1.18)

Nudity before the watershed must be non-sexual and must be justified by the context.

Responses to the Consultation

ITV, the Christian Broadcasting Council and the Evangelical Alliance support this draft rule.

The British Naturism (Eastern Section) believes that nudity in a sexual context before the watershed is not problematic and will not harm persons under the age of eighteen, provided it is in a relevant context and not gratuitous. An individual adds there is no explanation of when nudity is to be regarded as “non sexual”, and again there is the useful excuse for broadcasters of “the context”.

mediawatch-uk thinks there should be a clearer definition of nudity and suggests the addition of “with tact and discretion”. A pastor agrees and recommends a more specific statement giving clearer guidance.

The BBC believes this draft rule is unclear and could restrict the broadcast of serious arts and cultural programs that may contain images of nudity; it suggests the rewording “nudity shown before the watershed must normally be non-sexual and have a clear editorial justification”.

The River of Life Church and Associated Ministries believe that the rule needs to be more specific to guard against inappropriate nudity.

Ofcom Response

This rule (now Rule 1.18) has been redrafted. We recognise that nudity tends to be most problematic when shown in a sexual context but that nudity per se is not automatically inappropriate pre-watershed.

We also consider that the rule regarding sex and its portrayal are sufficient to capture concerns about nudity in a sexual context. Therefore, we have removed the reference to sex in this rule but retained the requirement that nudity be justified by the context.

Exorcism, the Occult and the Paranormal

Draft Rule 1.21 (now Rule 1.19)

Demonstrations of exorcism and the occult must not be transmitted before the watershed, or when children are particularly likely to be listening.

Responses to the Consultation

Channel 4 and Five ask for clarification as to whether paranormal is a restricted practice.

The National Secular Society suggests that any programme in which people make claims about paranormal powers be scheduled away from times when children may view them. They should be preceded and succeeded by disclaimers suggesting that “we cannot guarantee that trickery and misdirection are not used”. The United Christian Broadcasters believes it would be helpful to have a clear definition of what is meant by “exorcism”.

Three individuals are concerned about the relaxation of regulation around the occult, Satanism and the paranormal. Another individual suggests that nothing likely to distress children should be shown, unless it is editorially justified or there is a clear warning broadcast first.

An individual says that paranormal material should not be shown as the protection of children overrides other considerations.

The AA thinks a blanket ban on the paranormal is too broad and should be worded more precisely. It suggests the following wording: “Except as drama or fiction, where it is clearly labelled as such, demonstrations of exorcism, satanism, black magic, and attempts to possess, manipulate, emotionally exploit, harm and ridicule people must not be transmitted before the watershed, or when children are particularly likely to be watching or listening”.

Capital Radio wishes to know how far the definition of “the occult” extends. Does it preclude general horoscopes at breakfast time? It asks if there is any evidence of actual harm being done to children. Emap asks whether Ofcom wants to outlaw the broadcast of light hearted horoscopes. The CRCA suggests the rule ends with the sentence “Light hearted horoscopes may be broadcast”.

Chrysalis Radio believes it is unclear if harm is done by such broadcasting, and is concerned about the impact of this rule in portrayals of the occult in drama or comedy, citing Harry Potter as an example.

The BBC would like a definition of “demonstration” and “occult” and suggests this rule should have an “editorial justification” exception. The BBC says that different genres require different responses. Some may be acceptable pre watershed.

ITV welcomes the simplification, but notes that the Beyond Entertainment findings are not conclusive. Voodoo is the religion of Haiti and should not be included in the definition of the occult. With that amendment, the proposal is accepted. The word “actual” should be retained at the start of the sentence to clarify that the reference is to non fictional programming. There should be no distinction between PSBs and other broadcasters regarding scheduling of paranormal programming. ITV supports the addition of the Option 2 wording.

Ofcom Response

This rule has been redrafted and is now Rule 1.19. We have maintained the scheduling restriction regarding demonstrating the practices that raise the most serious concerns to viewers (ITC research - Beyond Entertainment), i.e. exorcism and the occult. However, we have made it clear that this restriction refers to those practices “which purport to be real” and also does not apply to drama, films or comedies. The explanations of these practices will be addressed in web based guidance.

It should be noted that we consider entertainment paranormal shows to cover purportedly “positive” and “life affirming” activities ranging from divination (e.g. looking into the future) by cards and crystals through to purported contact with “loved ones”. In essence, they must be presented as entertainment and are at the lower end of “psychic” practices, however we have now included such practices in the rule. Broadcasters are not permitted through the Fraudulent Mediums Act 1951 to pass off, as real, practitioners posing as mediums or exploit their audience. Rule 2.7 in Section Two of the Broadcasting Code states that when these (pre-watershed) paranormal programmes are transmitted, the fact that they are entertainment programmes must be made clear to the audience.

For the purposes of the Broadcasting Code activities such as astrology and daily horoscopes, which are not based on religious or paranormal belief-systems are not “Paranormal practices”. (For further details please see guidance.)

Currently the transmission on television of paranormal shows for entertainment are prohibited altogether on PSB channels prior to the watershed but on other satellite and cable channels these shows are only prohibited from being transmitted at times when significant number of children are in the audience. The PSBs have argued that singling them out creates an uneven playing field. On radio, such programming is only permitted when children are not likely to be listening.

In the RIA we recommended levelling the playing field so that such shows could be allowed on all television services at times when significant numbers of children are not available to view (e.g. school time). We point out that changing the rule might affect some niche channels as paranormal programming had commercial possibilities but that allowing it on PSB channels might extend the availability of the genre to those who had not yet moved to multi channel in the day time and thus extend viewer choice whilst still providing protection for school age children.

The Church of England, the Evangelical Alliance, the Christian Broadcasting Council and the Churches Media Council wanted the rule tightened preventing the transmission of such material on all services before the watershed. Given that this material in the context of entertainment has been provided on niche channels before the watershed for some time, with few complaints, we do not regard that this would be proportionate. Further rules in Harm and Offence lay down specific conditions for such material.

The Church of Ireland Broadcasting Committee, Ligali and several individuals support retaining the ITC prohibition on such material pre-watershed on the PSB services.

The Catholic Bishops’ Conference supported our recommendation that the rules should be relaxed for PSBs as does ITV, Discovery, S4C, Ofwatch, several individuals and Trustar. Channel 4 and Five argue that the current rules discriminate against the PSB channels and do not recognise that broadcasters should be allowed to make scheduling decisions based on their audience’s expectations. They also argue that Ofcom must limit its analysis of this issue to the “harm” which it is seeking to regulate and not whether such programming is commercially valuable to certain channels.

Our duty in this section is to protect the under-eighteens. However, the most vulnerable group of the under-eighteens (that this section and the underlying statute seeks to protect) is children up to the age when they can legally leave school.

We therefore believe that it is proportionate and correct to adopt option 2 from the RIA which allows the paranormal to be transmitted on all television services so long as it is for entertainment purposes, that this is made clear to the audience and this material should only

be shown when significant numbers of children are not available to view i.e. during school time.

The participation of people under the age of eighteen in programmes

Draft Rule 1.22 (now Rule 1.26)

People under the age of eighteen must not be harmed or put in moral, psychological or physical danger in the making of programmes or by the broadcast of programmes.

Responses to the Consultation

SCBG supports this rule. Discovery Networks Europe agrees with this rule.

An individual says that “moral danger” is not adequately defined to be of use in the draft code.

The BBC notes that this is covered by other statutory bodies and points out that there are legitimate instances in which young people may be recorded in challenging physical conditions; it suggests this rule be deleted.

ITV notes that producers and broadcasters are bound by statutory regulation through local authorities and the Health and Safety Executive. Therefore, those harmed in the making of a programme can claim legal redress. Hence, the rule is unnecessary and should be deleted.

Ofcom Response

We have redrafted the rule (now Rule 1.26) to stress the duty of care required by broadcasters to the physical and emotional welfare and dignity of people under the age of eighteen involved with their programmes.

In redrafting this rule we have also added elements of the draft Rule 1.24. A more detailed explanation is given below.

We acknowledge that broadcasters are bound by Health and Safety legislation. The Broadcasting Code does not seek to duplicate or police what that legislation requires.

It should be noted that this rule is not restricted to UK citizens and that Ofcom would expect the same duty of care to apply regardless of where a broadcaster was filming.

Draft Rule 1.23 (now Rule 1.27)

People under the age of eighteen must not be caused unjustifiable distress or anxiety by their participation in programmes or the broadcast of those programmes.

Responses to the Consultation

The BBC believes this is vague and suggests the revision: “Broadcasters must ensure that people under the age of eighteen are not caused anxiety or distress by their participation in programmes or the broadcast of those programmes unless the necessary support has been given to the contributor and it is clearly editorially justified”. The BBC proposes guidance.

Capital Radio asks: what is the test for “unjustifiable distress”? They believe the contents of this draft rule are already covered by draft 1.22 and it should be deleted. The CRCA also believes that this rule should be deleted, leaving draft Rule 1.22. ITV also asked for a definition of “unjustifiable distress or anxiety”. It believes the rule should be rewritten and

supplemented with guidance. They propose the following wording: “People under the age of eighteen should not be caused gratuitous distress or anxiety by their participation in programmes or the broadcast of those programmes”.

SCBG supports this rule. Discovery Networks Europe agrees with this rule.

Ofcom Response

This rule is now Rule 1.27 in the Broadcasting Code. Ofcom acknowledges the concerns of some respondents about the potentially problematic use of the word “unjustifiable”. We have therefore redrafted with the word “unnecessary” instead of “unjustifiable”. This places the onus on the broadcaster to ensure that no greater distress is caused by the subject’s involvement in the programme than is necessary. We have also replaced the word “participation” with “involvement”. This is because we believe that “participation” may suggest a clear, willing involvement with a programme, whereas “involvement” suggests a wider range of relationships, which should all be captured by these rules.

The rewording of the rule clarifies which programmes are referred to.

Draft Rule 1.24 (part deleted and part now incorporated into Rule 1.26)

The exploitation of persons under the age of eighteen is unacceptable, irrespective of any consent given by persons under the age of eighteen or by a parent, guardian or other person over the age of eighteen in loco parentis.

Responses to the Consultation

Capital Radio asks what “exploitation” means and who is applying the test? The rule should make it clear that exploitation has to do with putting children in a situation (which they do not understand) for the inappropriate titillation of adults.

The CRCA also considers that “exploitation” is insufficiently clear and suggests the amendment: “Persons under the age of eighteen should not be placed in situations they do not understand for the entertainment or gratification of other people”.

SCBG worries that this rule places an undue burden on broadcasters, as a change of heart after signing could render a participant’s consent invalid and the programme non compliant. Discovery Networks Europe is also concerned about the potential for a change of heart and questions the existence of any evidence in support of such exploitation.

Channel 4 and Five believe this draft Rule to be particularly problematic. Further, they argue that it seems to imply that even with consent of both the participant and parent; there could be a breach of the Broadcasting Code. They believed that this draft rule could be adequately covered in the Fairness section of the Broadcasting Code.

Public Voice believes that there ought to be additional wording to ensure that young people are fully aware of what they are taking part in.

MediaWise believes it is unfortunate the draft code is presented in terms of “protection” of audiences rather than stressing media participation, especially with regard to children, and the Broadcasting Code should emphasise reflection of social diversity.

The BBC notes that the draft code is inconsistent in its approach to the definition of age in draft Rule 1.24 and draft Rules 7.3, 8.7 and 8.22; these rules relate to informed consent and do not recognise that 16 year olds are treated as citizens. The BBC also points out that, under-eighteens have rights to freedom of expression and freedom of information and that, the draft code is potentially restrictive. The BBC points out that exploitation may include commercial exploitation, which may be in the participant’s interest. It notes that obtaining consent may not always be possible and suggests the rule be rewritten to apply to children rather than young people, with a public interest qualification regarding factual programming. The BBC proposes guidance.

ITV explains that “exploitation” is the term within broadcasting for the use of programme material. They believe the rule is unnecessary and disproportionate, potentially infringing broadcasters’ and participants’ freedom of expression, as consenting under-eighteens’ participation might be considered a Broadcasting Code infringement by a viewer. Under-eighteens are protected by fairness and privacy provisions. In some cases, parental consent might not be relevant. There should be a distinction between young people and children. The rule should be rewritten as: “Broadcasters should pay full regard to the well being of children who take part in programmes, regardless of consent having been given by a parent, guardian or other responsible adult or body”.

Ofcom Response

We recognise the concerns of broadcasters over the use of the term exploitation, as commercial “exploitation” may be legitimate and not problematic. However, we believe that persons under the age of eighteen are owed a particular duty of care by broadcasters. In order to provide clarity we have therefore deleted the rule and included a reference to emotional welfare in Rule 1.26 in the Broadcasting Code.

On the issue of consent, and when it may not be a sufficient justification for particular programming, we do not believe, as some respondents suggested, that this will mean that participants in programmes will be able to change their mind and then claim they were unfairly exploited simply because of a change of mind. This rule would only apply where broadcasters had not taken sufficient care with regard to the welfare and dignity of the person under the age of eighteen taking part.

Draft Rule 1.25 (now Rule 1.28)

Prizes offered in programmes to children must be appropriate to the age range of both the target audience and participants.

Responses to the Consultation

Capital Radio notes that the age of the target audience may be different to the age of the child winner; a child may enter a general competition open to all listeners. An unintended effect of this rule would be to force all prizes where a child might enter and win to be child appropriate. There are many general competitions, with general prizes, with entry open to all. They recommend that this rule be limited to prizes in children’s programmes.

ITV accepts this rule.

Discovery Networks Europe believes that this rule could lead to major problems and should not be included. Discovery Networks Europe backs the proposal to forbid cash prizes, but believes they “must” be forbidden, rather than “should”.

The Church of Ireland Broadcasting Committee thinks cash prizes should be forbidden.

The BBC recommends cash prizes be expressly ruled out for competitions aimed at or likely to appeal to children; where high value prizes are offered, they should require an appropriate level of skill.

Nine individuals, the Evangelical Alliance and the Church of England, say that cash prizes should be forbidden for children as it will encourage gambling.

The Catholic Bishops' Conference of England and Wales believes that cash prizes should continue to be outlawed for children.

The Churches' Media Council opposes the permitting of cash prizes, for the sake of simplicity of applying the Broadcasting Code.

Trustar and the SCBG support the proposal that prizes offered in programmes to children must be appropriate to the age range of both the target audience and participants. Capital Radio states that appropriate levels of cash prizes should be available to children entering general competitions. Channel 4 and Five believe that Ofcom should trust broadcasters to give children appropriate cash prizes.

Four individuals see no reason why cash prizes should be prohibited or capped.

The CRCA does not know of any evidence of harm being caused by children winning cash but believes that there should be a sensible upper limit.

The AA supports the awarding of cash prizes.

Maranatha thinks modest amounts only may be acceptable as cash prizes for children. Campaign group CPBF suggests small cash prizes of £10 or less would be acceptable.

Ofwatch say they should be appropriate. S4C says a cash prize is no more appropriate or inappropriate than any other and is a matter of suitability.

Campaign group Melon Farmers thinks age related restrictions should govern limits.

Ligali thinks this may be acceptable where the programmes do not impair the moral, intellectual or physical development of young people.

Ofcom Response

This draft rule has been redrafted (and is now Rule 1.28 in the Broadcasting Code) to make clear that the rule refers to "Prizes aimed at children".

Given that we have no evidence of harm to children from receiving cash prizes we believe that it is not proportionate to prohibit cash prizes - with the proviso that prizes aimed at children must be appropriate to the age range of both the target audience and participants.

IV Questions

Question 4d: *Do we need rules regarding violence and dangerous behaviour, smoking, drug taking, etc. as proposed in the Broadcasting Code or are such matters already covered by other rules?*

Responses to the Consultation

Need rules

The Church of Ireland Broadcasting Committee believes rules are needed. The Catholic Bishops' Conference of England and Wales agrees that it is useful to have specific rules on these matters as proposed in the draft code. S4C welcomes the inclusion of specific rules regarding violence and dangerous behaviour.

RoSPA supports these rules. The CPBF believes the rules are appropriate.

Two individuals say that these rules are necessary, although another says this is covered by other rules. Several individuals agree that rules regarding violence, smoking and drug taking are required to protect children.

One individual believes that adequate warnings should be broadcast and remain in place after the watershed, and that none of these behaviours should be presented as desirable.

The Churches' Media Council agrees with the deletions as they are included in the general rules.

The Cornwall Community Standards Association believes that rules pertaining to violence and dangerous behaviour should be well signposted under specific rules and not dismantled and lost within other more general rules. It believes that these areas of negative human behaviour are dangerous in their capacity to harm and influence young people's thinking.

One individual believes there should not be restrictions for over eighteens, only warnings.

One individual feels the rules are necessary to prevent broadcasters from testing the limits of permissiveness. Several individuals request explicit rules prohibiting bestiality and/or adult child sexual activity.

An individual believes the prohibition of "explicit portrayals of sexual acts between adults and children" and the prohibition of the "portrayal or description of sexual activity between humans and animals" should be retained and extended to portrayals of sexual acts between adults, without being tied to the complicating questions of whether they encourage or incite crime. Another individual feels that it would weaken the current position to prohibit explicit portrayals of sexual acts between adults and children only if it can be proved that they are "likely to encourage or incite crime".

ASH believes that rules regulating violence, smoking, drug taking etc. are necessary. ASH wants Ofcom to ensure that films in contravention of the Ofcom guidelines on smoking are not broadcast, even if classified as appropriate for children and young people by the BBFC.

The Church of England holds that rules regarding violent behaviour, smoking and drug use should be included; the proposed deletions in sex and blasphemy rules are acceptable as they are covered in other rules, but the organisation suggests the Broadcasting Code states that this is not an exhaustive list.

Campaign organisation Melon Farmers believes that rules should be no more restrictive than necessary, or parents will ignore them.

Already covered

Two individuals believe these matters are covered elsewhere, particularly under harm and offence.

ITV believes there are too many rules.

Maranatha thinks these rules would benefit from being more specific.

One individual suggests that violence and drug use is part of life; children have knowledge of these subjects and to shield them creates more problems than it solves.

Ofcom Response

We conclude that such rules are necessary to help reduce the risk of children being influenced by or imitating dangerous and/or harmful behaviour. We also believe it is necessary to keep these as separate rules to reflect the different nature of the potential problem(s).

Question 4e: Which of the options described in the RIA regarding the watershed on premium subscription services is the best option and why? (If a new place is proposed for the watershed, what is it, and why?) What technical and other protections can broadcasters and platform operators put in place to protect children?

Responses to the Consultation

General comments

Two individuals think films should be available 24/7, provided appropriate safeguards are in place.

Trustar stresses that adequate levels of protections must be applied.

An individual believes the portrayal of graphic non fantasy violence and real violence must be limited to subscription services.

The AA stresses the importance of clearly defining the watershed and the role of labelling, perhaps incorporated into opening and closing credits, in preventing unsuitable viewing.

Channel 4 and Five believe what they refer to as a “triple watershed” is a threat to legitimate programming at 2100, that there should not be a watershed for premium subscription services which are PIN protected and no restrictions on the scheduling of films with reference to the BBFC classifications.

The On Demand Group believes that the consultation code does not accurately reflect the current watershed and scheduling requirements on pay per view.

mediawatch-uk believes the watershed is now redundant. An individual adds that modern equipment has made the watershed irrelevant.

Three individuals point out that encryption is not enough to stop underage access. In addition, parents cannot control what children might see at other people’s houses or while parents are sleeping. An individual noted that with the facility to record and copy, it is difficult for Ofcom to “guarantee” that scheduling or technical devices would provide adequate protection.

Another individual hopes the watershed laws will remain to protect not only children but also vulnerable adults. United Christian Broadcasting welcomes the reinforcement of the watershed principle and believes the rules on violence and dangerous behaviour need to be tightened.

Responses to Question 4e

Option One – maintain 2000 watershed

The Cornwall Community Standards Association believes option one is preferable, as the others offer an unfettered invitation for suitable material.

Ligali believes the watershed should be 2000 on premium subscription services.

Ofcom Response

See Ofcom's response below.

Option Two - move the 2000 watershed on premium subscription services

2100 Option

Six individuals believe the watershed on premium subscription services should be the same as other TV broadcasts, at 2100. The campaign group CPBF believes subscription services should have similar obligations and responsibilities to those which are free to air. The Church of England says the distinction between digital and analogue is disappearing; both watersheds should be at 2100 to prevent subscription services from enjoying an extra hour of adult material with which to capture audience, with a potential risk to children.

The BBC believes that the watershed on premium subscription services should move to 2100 to be consistent with other UK broadcasters and to maintain a level playing field.

ITV prefers a 2100 watershed across all channels, as material may be viewed while channel hopping. 37% of multi channel households have children, compared to the 27% average.

The Catholic Bishops' Conference of England and Wales would support option two so long as the watershed is moved to 2100, otherwise they support the existing system and point out that in the US the v-chip has proved a poor substitute for parental responsibility. The Church of Ireland Broadcasting Committee and Churches' Media Council both prefer option two and believe a 2100 watershed is appropriate.

The Evangelical Alliance and CBC support a rolling watershed that acknowledges that between 2100 and 2200 children will still be watching.

2300+ Option (not an option proposed by Ofcom in the RIA)

Five individuals believe the watershed is too early. Two of these suggest that the late evening news, at 2300 or 2330 is more appropriate as a natural break between "early" and "late" programmes. Another wants broadcasters to be prohibited from screening trailers before the watershed that show violence or sex from programmes to be broadcast after the watershed.

Maranatha believes that the watershed could be put back to 2330.

Ofcom Response

We reject this option.

A 2100 watershed would be more restrictive than at present. No evidence of harm from a 2000 watershed has been provided to support this approach. We believe that, in making a decision to subscribe to a premium subscription film channel, viewers consciously choose to have access to such a channel's content in a way that differs from their relationship with free to air channels.

We also receive very few complaints in this area which may be taken to suggest that viewers are content and understand the current watershed on premium subscription film services. The same objections apply to the suggestion that the watershed is set later still.

Option Three - if suitable protections are in place - remove the watershed and associated rules on premium subscription services altogether

One individual is satisfied with PIN technology and recommends relaxing the watershed on encrypted channels. Discovery Networks Europe believes that the watershed for subscription stations should be lifted given the PIN technology which now exists to protect young people.

Channel 4 and Five believe that there should not be a watershed for premium subscription services if protected by a PIN.

Ofwatch and Xplicit would choose option three and suggest two different types of broadcasting regime where broadcasts that need a mandatory PIN security code should not be subject to the 2100 watershed, those that do not should still be subject to this watershed.

S4C is not involved in this area but supports the notion of choice and competition in television services and believes that there is no longer any need for the watershed for subscription services as long as any technical problems are eliminated.

SDA believes that where the service is not PIN protected, then a watershed should be applied. Where the service is PIN protected then no watershed is needed. A broadcaster reiterates that premium services, pay per view or pay per night services should not be covered by watershed requirements provided there is sufficient protection for children and young people.

An individual notes that mandatory PIN protection would be more effective than a watershed in protecting children from unsuitable content. Seven other individuals, support this option, provided suitable protections are in place.

Another individual thinks that no watershed is necessary for subscription services, as parents should regulate children's access. A further individual sees no reason for a watershed as viewers cannot accidentally stumble across a PIN protected subscription based channel.

NTL details the steps it has taken to provide its digital TV customers with a comprehensive set of parental control tools.

Two individuals state that the watershed is well understood and parents can elect to use a PIN for material with certain ratings. There is no need for a watershed on premium subscription services, as they are encrypted, require deliberate choice by an individual and

payment for unencrypted reception. Responsibility for the protection of children should lie with parents, guardians, etc.

One individual argues that PIN encryption prevents underage access, so there is no need for a watershed; before any person subscribes to these channels they should sign a contract to acknowledge their responsibility for protecting young viewers.

SCBG asserts that technology provides adequate protection while enabling freedom of choice.

The campaign group Melon Farmers believes the watershed should be optional for subscription channels and otherwise constant. It also suggests that there be two levels of adult viewing and that PIN entry should not be per channel.

Ofcom Response

We adopted a variation of option 3 as Rule 1.22 in Section One: Protecting the under-eighteens.

We consider that those viewers that subscribe to premium subscription film services have accepted a greater share of responsibility for what is broadcast into the home. We have therefore decided that if such channels can provide sufficient protection (e.g. a mandatory PIN), they should be allowed to broadcast higher BBFC-rated films (i.e. up to 15-rated films or their equivalent) than previously permitted. The security systems should be clearly explained to the viewers.

We believe this will be a real benefit to viewers, while ensuring that children can still be protected.

Film subscription channels should use BBFC classifications or equivalent which are understood and must provide clear guidance to parents and responsible adults on content across these platforms. These are also easily linked in to PIN protection by rating.

If premium subscription film services can provide sufficient protection - in the form of mandatory PIN encryption or equivalent - for children, we have decided that they should be allowed to broadcast up to BBFC 15-rated films or their equivalent at any time. Any such protection system should be the default, with the onus on the service provider/platform rather than requiring viewers to set up levels of protection. For those premium subscription film services that choose not to encrypt in this way, the existing 2000 watershed remains and they can show up to BBFC PG-rated films or equivalent prior to 2000.

The approach that we have adopted is intended to protect the under-eighteens but also provides more opportunity to suppliers of premium subscription film services to transmit material pre watershed which might be more attractive to those aged fifteen and over. We believe this proportionate response protects under-eighteens, provides greater choice to consumers and enables channels to compete by offering a more varied service.

This policy is a progressive move which would support consumer choice and offer responsible broadcasters who choose to take advantage of it greater artistic and commercial freedom. However we believe that PIN protection for these channels is necessary to protect younger children who may be watching unsupervised from inadvertently accessing content which would be unsuitable for them. By restricting the PIN protected films to that of BBFC 15-rated or their equivalent, we believe there is less potential for harm than if a child was unintentionally exposed to much stronger content.

This gradual approach was similarly applied to the introduction of Pay Per View content. It will also be in the best interests of the broadcasters/platforms to inform the audience.

Question 4f: Which of the options described in the RIA on the scheduling of programmes regarding the paranormal is the best option and why?

Responses to the Consultation

Option one – maintain the present restrictions on PSB services

The Church of Ireland Broadcasting Committee prefers option one and thinks the issue of embedded content labelling should be explored.

An individual believes any free-to-air programming regarding the paranormal should be restricted to post 2200 and balanced with counter discussion.

Trustar supports a level-playing field between cable/satellite and PSB channels. Ligali prefers option one to best protect children. Maranatha warns of the dangers of presenting witchcraft, pagan and occult practices.

Four individuals say that the watershed for paranormal programmes should remain as for normal broadcasting in order to provide a consistent approach.

Option two – bring all television services under one rule so that the distinction regarding PSBs could be removed

Churches' Media Council favours option two with a watershed restriction, if all television services cannot be brought under one rule. If this is not possible, they favour the retention of the existing rule.

The Church of England suggests that all television broadcasters be brought under one Rule to ensure the maximum protection of children and young people in the context of increased digital television uptake. Paranormal programming should be restricted to after the watershed. Any programmes should be carefully assessed to ensure that audience susceptibilities are not exploited. As astrology and spiritualism are included as religions, the distinction between religion and paranormal becomes uncertain.

The Catholic Bishops' Conference of England and Wales supports option two and sees no reason why religious programming should be exempted.

Discovery Networks Europe believes there should be no distinction made between regulations for satellite and terrestrial television and that the regulations on the occult should be lightened for serious documentary makers who wish to investigate the issues involved. Draft Rules 1.1 and 1.2 may provide adequate protection or Draft Rule 1.21 may need to be expanded.

Ofwatch would choose option two as there is no actual evidence of harm, despite public opinion.

Six individuals support this option to limit unnecessary regulation and maintain consistency. Another says that programmes about the paranormal should be limited to premium services and accessed only by secure means, such as a PIN code. If this option was implemented, one individual thinks there should be a content warning before such programming broadcast before the watershed.

S4C agrees with this recommendation.

One individual asks that differences be allowed for specialised channels. The National Secular Society prefers this option: “to bring all TV services under one rule concerning restrictions on the demonstration of the paranormal”.

General comments

ITV refers to its response to draft Rule 1.22.

Channel 4 and Five believe the current distinction is not lawful. They think PSBs should be able to show such programming.

An individual says care should be taken in defining the paranormal and further research conducted to determine what harm, if any, this material has on children and young people.

The Evangelical Alliance and CBC support the exclusion of examples of exorcism, occult or the paranormal before the watershed but believe that children should be able to hear about these in discussions before 2100.

An individual believes this depends upon the treatment and should be subject to tough scrutiny and tight guidelines.

Another individual says that it is too difficult to predict “when significant numbers of children may be listening/watching”.

An individual says there is no need to restrict “the occult and paranormal superstitious nonsense more than necessary to protect impressionable minds”. If religious programming can be constantly broadcast, other viewpoints ought to be similarly permitted to broadcast. SCBG thinks the retention of this rule is an “accident of history” and does not see the need for a rule on this.

The AA believes this should not preclude responsible representation in fiction and drama or popular children’s classics.

Campaign group Melon Farmers believes the only restrictions should be age related.

The BBC needs more information to answer this more fully.

Ofcom Response

See [response to comments received on draft Rule 1.21](#).

Question 4h: *Should there be rules linking the scheduling of films to the BBFC classifications?*

Responses to the Consultation

Link scheduling of films to BBFC classifications

The Church of Ireland Broadcasting Committee believes the BBFC classifications provide some guidance.

The Catholic Bishops' Conference of England and Wales does not understand the reasoning of Ofcom, given that parents have already outlined that the BBFC system is the simplest and most informative. The CBC and the Evangelical Alliance both suggest the BBFC classifications be taken into account.

An individual believes most people understand the BBFC classifications and would appreciate these guidelines, and that any film granted a BBFC certificate be permitted to air.

Seven individuals believe that scheduling of films should be linked to BBFC classifications. Another individual states that rules linking the scheduling of films to BBFC classifications would help parents monitor children's viewing, but the rule should be clear that a film is not necessarily suitable for broadcast at a particular time merely because of its BBFC classification and could ensure that no film rated "15" is broadcast before 2100.

Ligali and the AA would also prefer links. The Church of England suggests BBFC classifications are a minimum standard that should be used as a baseline. Campaign group CPBF also believes a link with BBFC classification is very useful, especially if they are harmonised to some degree. They believe a strict observance of the watershed may be preferable to the practice of editing TV versions of films.

The BBFC itself believes that rules of some kind should be used and should acknowledge the public expectations that are likely to be attached to BBFC ratings. It further suggests that the 10 year rule can be used to make sure that their decisions are not out of date and any films outside this timeframe should be left more to the discretion of the broadcaster.

Do not link to BBFC classifications

The BBC believes there should be no link as this would be overly prescriptive. The Churches' Media Council thinks there should not be but suggests that the web guidance should explain the BBFC classifications.

Discovery Networks Europe believes BBFC classification is unnecessary and that draft Rules 1.1 and 1.2 are sufficient.

Ofwatch believes that there should be no fixed rules covering this matter.

S4C believes the BBFC classifications should inform but not dictate the scheduling of films.

Xplicit believes that this would represent over regulation and broadcasters should exercise discretion.

Campaigning charity ASH is concerned that BBFC classification guidelines have no reference to smoking for any classification and asks Ofcom to ensure that film scenes portraying smoking without a clear educational purpose should not be broadcast uncut. The Norfolk Alliance Against Tobacco shares this view.

An individual believes that BBFC classifications should be updated to take into account films for children where smoking is portrayed as glamorous or desirable.

An individual believes that any classification of films should be done on the basis of the rest of a channel's output.

Eleven individuals do not believe links are necessary; provided safeguards are in place and that there is a constantly reviewed set of guidelines. These individuals think broadcasters should be free to make their own judgements on film scheduling. One individual thinks all categories of films should be available all the time, as adults often work shifts and children can be safeguarded by PIN numbers and parental locks.

Trustar expects the provisions of draft Rules 1.1 and 1.2 to adequately address the intention of the previous scheduling guidance.

An individual believes BBFC classifications should only operate as a guide (and not a rule) as to when broadcasters' may air programmes. Maranatha suggests there is a breakdown in public confidence in the BBFC and there should be no links to this body.

One individual suggests that broadcasting, cinema and video are different media that require different rules; also, BBFC standards from 1986 might be hopelessly out of date. SCBG believes that such a link is inconsistent with the Introduction criteria, and that BBFC classifications are intended for very different material.

mediawatch-uk believes Ofcom "should in no circumstances link scheduling of films to BBFC guidelines...these have been drawn up by the Board and unilaterally relaxed by filmmakers".

Campaign organisation Melon Farmers thinks that channels should be able to override the BBFC advice when the film is "within current day guidelines".

Channel 4 and Five believe there is no logic in treating films differently from drama. BBFC rules can be outdated and, in the case of videos, are guidance rather than outright restrictions. BBFC classifications often relate to one scene that broadcasters can edit. ITV sees no need to treat films differently from other programming items.

Ofcom Response

We recognise that BBFC classifications do not apply to all film content shown on television, since not all films are BBFC classified and the BBC is accustomed to operating under a different regulatory regime to commercial broadcasters.

Under the ITC Programme Code, commercial broadcasters should not transmit:

- BBFC 12-rated films until after 2000;
- BBFC 15-rated films until after 2100 (2000 for premium subscription channels);
- BBFC 18-rated films until after 2200 (though the rule could be relaxed, if the film is older than 10 years).

Under the BSC Code on Standards, the BBC had no rules based on BBFC classification but had to ensure that films transmitted were scheduled appropriately.

Although we think that in most cases recent BBFC classifications will offer a fairly clear indication of a film's suitability for broadcast at a particular time, we do not propose, in the main, to restrict scheduling by classification. This will give broadcasters greater flexibility to schedule for their particular audience while the general requirements on scheduling should prevent inappropriate content from being broadcast at a problematic time (for instance, it is unlikely that a recently BBFC 15-rated film could be scheduled during the day).

Films, in the main, are like other content provided by broadcasters and as such they must be scheduled appropriately. It is also true that the guidelines to classify films have over the years changed and will continue to do so. On some occasions, older films if they were re-submitted today would gain much lower certification. The guidance to this section will explain how we expect broadcasters to bear in mind BBFC ratings.

However, Ofcom considers that given there is a very clear 2100 watershed on almost all services, there still needs to be one absolute: that is that no BBFC 18-rated film or its equivalent, can be transmitted before 2100 (Rule 1.21 in the Broadcasting Code). Whether a film is suitable for transmission at 2100 will depend on a number of factors, but most of all the content of the film, given that there can be a large variation in content within ratings e.g. because of its age. Therefore the Broadcasting Code recognises that stating, “...even then they [BBFC 18-rated films or their equivalent] may be unsuitable for broadcast at that time [2100]”.