

Part One: Broadcasting Code

The Legislative Background to the Code¹

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

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

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

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

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

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

In drafting, reviewing and revising the Code, Ofcom has had due regard to the matters specified in section 149(1) of the Equality Act 2010 (“the public sector equality duty”) and section 75 of the Northern Ireland Act 1998.

Unless expressly stated otherwise, the Code applies to radio and television content in services licensed by Ofcom, to UK broadcasting services funded by the licence fee provided by the British Broadcasting Corporation (“the BBC”), to BBC UK On Demand Programme Services funded by the licence fee (“BBC ODPS”)² and to Sianel Pedwar Cymru (“S4C”)³.

Broadcasters are required by the terms of their Ofcom licence to observe the Standards Code and the Fairness Code, which are to be interpreted as references to this Code. Observance of this Code is also required in the case of the BBC by the BBC Agreement⁴ and, in the case of S4C, by statute. Except where the Code states otherwise, the term “television broadcasters” refers to providers of television programme services (including any local services such as restricted television services), the BBC and S4C; “radio broadcasters” refers to providers of radio programme services (including local and community radio services and community digital sound programme services) and the BBC; “broadcaster” includes the BBC as provider of BBC ODPS; and “broadcast” and “broadcasting” include making programmes available on BBC ODPS. No part of the Code applies to the BBC World Service.

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

2. Such as the BBC iPlayer and iPlayer Kids (both audiovisual and sound programmes).

3. Providers of on demand programme services (ODPS) requiring notification to Ofcom under section 368BA of the Act are not subject to the rules in Sections One to Ten of the Code, but to the statutory ODPS rules which can be found in Part Three of the *Ofcom Broadcasting Code (with the Cross-Promotion Code and the On Demand Programme Service rules)*.

4. The BBC Agreement is the Agreement dated November 2016 between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation as may be amended from time to time.

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

Although a link included in the service may lead to features outside of that service which are not regulated by Ofcom, the provision of access to those features by, for instance, the inclusion of a link, is within the control of the broadcaster and so within Ofcom's remit. Ofcom may therefore require such a link or facility to be removed where Ofcom has concerns, in the light of its statutory duties and, in particular, the standards objectives set out in section 319 of the Act, about the material to which it leads. In any event, the transition from broadcaster to third-party control must be clear to the viewer, so as to manage both audience expectations regarding the material to which they are being led and the risk to the broadcaster of being found in breach of this Code (for example Rules 1.2 and 2.1).

Where the Code has been breached, Ofcom will normally publish a finding and explain why a broadcaster has breached the Code (these findings are available in Ofcom's Broadcast and On Demand Bulletins at www.ofcom.org.uk). When a broadcaster breaches the Code deliberately, seriously, repeatedly or recklessly, Ofcom may impose statutory sanctions against the broadcaster.⁵ Ofcom's procedures for investigating cases (following the receipt of a complaint or otherwise) and applying statutory sanctions to broadcasters are also on the website. Members of the public who have no access to the web can ask Ofcom to send them a copy of the procedures by post.

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

5. In the case of the BBC, Ofcom's power to impose sanctions is set out in the BBC Charter.