

**Title:**

Mr

**Forename:**

**Surname:**

Turner

**Representing:**

Self

**Organisation (if applicable):**

**Email:**

**What do you want Ofcom to keep confidential?:**

Keep nothing confidential

**If you want part of your response kept confidential, which parts?:**

**Ofcom may publish a response summary:**

Yes

**I confirm that I have read the declaration:**

Yes

**Ofcom should only publish this response after the consultation has ended:**

You may publish my response on receipt

**Additional comments:**

**Question 1: a) Do you consider that the rule in relation to ?adult-sex? material needs to be clarified? b) Do you agree with our proposed amendments to the rule on ?adult-sex? material (Proposed Rule 1.18 to replace Rule 1.24)? c) If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.:**

We welcome the opportunity to respond to this Ofcom Broadcasting Code Review consultation. Our response answers questions 1 to 6 and 44 of this consultation on proposed changes to Section One of the Code in relation to the Sexual Material Rules.

**Question 2: a) Do you consider that the introduction of a new rule in relation to material of a strong sexual nature is appropriate? b) Do you agree with our proposed rule on material of a strong sexual nature (proposed Rule 1.19)? c) If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.:**

In reviewing this Code, Ofcom is said to have taken account firstly, of 'high profile compliance failings' (including sexual material); secondly, 'pre-consultation discussions' with stakeholders (including broadcasters and representatives of consumer groups); thirdly, 'consumer research' (in relation to commercial radio and in relation to sexual material); and fourthly, 'legislative change', in particular the European Commission Audio Visual Media Services (AVMS) Directive which must be implemented into UK legislation by 19th December 2009.<sup>1</sup>

**Question 3: a) Do you consider that the rule in relation to material equivalent to the BBFC R-18 rating needs to be separated from the rule in relation to R-18 rated works? b) Do you agree with our proposed rule on material equivalent to the BBFC R-18 rating (proposed Rule 1.17)? c) If you do not agree with our proposed new rule, please explain why and suggest alternative wording where appropriate.:**

The changes to the Code regarding sexual material that distinguish between strong sexual material requiring strong contextual justification and adult-sex material are said to be suggested for clarification purposes. However, in our opinion they actually weaken the Code and provide less protection for children and those under 18 years of age (hereafter referred to as 'minors').

**Question 4: a) Do you consider that the rule in relation to pre-watershed material needs to be clarified? b) Do you agree with our proposed amendments to the rule on pre-watershed material (proposed Rule 1.20 to replace Rule 1.17)? c) If you do not agree with our proposed amendments, please explain why and suggest alternative wording where appropriate.:**

The response to breaches of the Code and high-profile compliance failings should not be to weaken the Code by 'clarifying' it and relaxing the rules for strong sexual material, as this accommodates the industry, but does not assist the consumer. Instead, the appropriate response by Ofcom should be to clarify and strengthen the Code to prevent further breaches and to impose sanctions so that the industry is in no doubt that sanctions will be taken where necessary.

**Question 5: a) Do you consider that the associated revisions are appropriate following the other rule revisions outlined above? b) Do you agree with our proposed associated revisions in Section One? c) If you do not agree with our proposed revisions, please explain why and suggest alternative wording where appropriate.:**

The primary aim of regulating the broadcasting of sexual material should be to protect children and minors. In order to provide adequate protection for children and minors, both strong sexual material and adult-sex material should not be broadcast and should be reserved for adult channels that have mandatory access restrictions such as encryption and pin codes. It would appear that the legislation both here and in the AVMS Directive provide support for this approach.

**Question 6: a) Do you wish to suggest an alternative approach to the proposed set of rules in relation to sexual material? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003 and the European Convention on Human Rights).:**

It appears illogical for Ofcom to be suggesting additional rules that would allow the broadcasting of 'strong' sexual material after the watershed, whilst retaining the current rules (rule 1.22)<sup>2</sup> that disallow such material in BBFC 153 films in order to protect children. Strong sexual material should always require restricted access rules. The guidance on BBFC 15 ratings indicates that strong sexual material would not be included in such films as 'strong detail' is not allowed, so it should not be allowed after the watershed either, as children are not prevented from watching television after that time unless their parents are aware of the dangers and are conscientious.

**Question 7: a) Do you consider that the introduction of new rules in relation to competitions and voting is appropriate? b) Do you agree with our proposed new rules in relation to competitions and voting (proposed Rules 2.11 to 2.13 to replace Rule 2.11)? c) If you do not agree with our proposed new rules, please explain why and suggest alternative wording where appropriate.:**

We do not agree with Ofcom's proposed changes to the sexual material code and believe that they should be weighted in favour of the important objective of protecting minors rather than facilitating the commercial aims of those who wish to broadcast potentially harmful material.

**Question 8: a) Do you consider that the introduction of new meanings in relation to competitions and voting are appropriate? b) Do you agree with our proposed new meanings in relation to competitions and voting? c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.:**

Ofcom have stated that one of the matters that particularly required consideration in reviewing the Code, was the degree of harm or offence likely to be caused by the inclusion of any particular sort of material.<sup>4</sup> In our opinion, Ofcom have failed to have 'particular regard' to the aforementioned objective in the proposed revision of this Code, to the detriment of the need to protect minors.

**Question 9: a) Do you wish to suggest an alternative approach to the proposed set of rules in relation to competitions and voting? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the**

## **AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights.:**

The Code should be strengthened, both in the 'sexual material' and in the 'harm and offence' sections. A much more precautionous approach should be taken, with the emphasis being upon proving that harm is not likely to result from material shown, rather than allowing for excuses such as 'editorial justification'.

**Question 10: a) Do you consider that the rules on commercial television would benefit from being separated from those for radio? b) Do you agree with the introduction of the proposed new Section Nine on commercial references in television programming? c) If you do not agree with the proposed new Section Nine, please explain why and suggest alternative wording where appropriate.:**

The harmful influence upon minors of watching television programmes that feature sex scenes cannot be underestimated. The vulnerable and impressionable young mind requires the protection of the Code. For example, a study found that teens who watch Sex in the City are more likely to get pregnant.<sup>5</sup>

**Question 11: a) Do you consider that it is appropriate for Ofcom to include the enforceable provisions relating to product and prop placement, replicated from the AVMS Directive (Implementation) Regulations, as rules in the revised Code? b) If you do not consider this to be appropriate, please explain why.:**

Efforts to combat the rising levels of teenage pregnancies<sup>6</sup>, abortions<sup>7</sup> and sexually transmitted diseases<sup>8</sup> may do well to concentrate upon the removal of programmes that feature sex scenes and thus glamorise sexual activity in the perception of impressionable and vulnerable teenagers. Code revisions regarding sexual material in programmes and programme content could prevent this from happening.

**Question 12: a) Would you consider that it appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so please explain why. If not, please explain why not. b) If Ofcom were to introduce rules in relation to Public Information Programming: i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details. ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and any other parties? iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why. iv. Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary? If so, please provide details.v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information**

**Programming, and if so, what restrictions? vi. Do you consider it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.:**

Ofcom proposes in this Consultation to introduce new Code rules on Public Information Programming, which is described in the Consultation as 'programming which has as its purpose a public interest benefit'. It may be funded only by a non-commercial, not-for-profit entity. The consultation gives as examples of matters in the public interest in this context: public health or safety, crime detection/ prevention and education. We have answered the recent BCAP Code Review Consultation by saying that we would strongly oppose the advertising of abortion on television (please see link).<sup>9</sup> For the same reasons as specified there, we would strongly oppose any Public Information Programming for either radio or television regarding abortion, which abortion sponsors could use to promote such clinics contrary to the strongly-held religious beliefs of so many people in this country. In addition, we consider programming regarding abortion to be a highly controversial and political area that should be banned in the same way that there are rules to prevent political advertising. The Code and guidance notes should make this absolutely clear. This type of coverage should not be brought in 'through the back door' by exploiting new Public Information Programming rules.

**Question 13: a) Do you consider that the proposed new Section Nine would benefit from the introduction of new meanings? b) Do you agree with our proposed new meanings for Section Nine? c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.:**

**Question 14: a) Do you consider that the introduction of new Principles in relation to Section Nine is appropriate? b) Do you agree with the proposed new Principles for Section Nine? c) If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.:**

**Question 15: a) Do you consider that the proposed Rules 9.1 to 9.5 are broadly the same, in terms of both scope and intent, of current Rules 10.1, 10.2, 10.3, 10.4 and 10.12? b) If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate. c) Do you agree with the introduction of the proposed new Rule 9.6? d) If you do not agree with the proposed new Rule 9.6, please explain why and suggest alternative wording where appropriate.:**

**Question 16: a) Do you consider it appropriate to introduce the proposed new Rule 9.9? b) If you do not consider it appropriate to introduce the proposed new Rule 9.9, please explain why and suggest alternative wording where appropriate.:**

**Question 17: a) Do you consider that the introduction of a new competition and voting section is appropriate? b) Do you agree with the proposed new competition and voting section for Section Nine? c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate. d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee? e) If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why.:**

**Question 18: a) Do you consider that the rules in relation to programme-related material would benefit from clarification? b) Do you agree with the introduction of the proposed programme-related material section for Section Nine? c) If you do not agree with the proposed programme-related material section, please explain why and suggest alternative wording where appropriate.:**

**Question 19: a) Do you consider that the proposed cross reference to the Cross-promotion Code would assist stakeholders? b) If you do not consider that the proposed cross reference to the Cross-promotion Code would assist stakeholders, please explain why and suggest alternative wording where appropriate.:**

**Question 20: a) Do you consider that the meanings in relation to sponsorship of television would benefit from revision? b) Do you agree that the revised meanings are consistent with those currently used, but more accurately reflect the definition of sponsorship as set out in the AVMS Directive? c) If not please explain why, suggesting drafting changes where appropriate.:**

**Question 21: a) Do you consider that the rules in relation to the content of sponsored output would benefit from clarification? b) Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Nine? c) If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.:**

**Question 22: a) Do you consider that the rules in relation to sponsorship credits would benefit from clarification? b) Do you agree with the introduction of the proposed rule? c) If you do not agree with the proposed rule, please explain why and suggest alternative wording where appropriate.:**

**Question 23: a) Do you consider that the rules in relation to appeals for funds would benefit from clarification? b) Do you agree with the introduction of the proposed Rule 9.29 and the section on appeals for funds for programming or services? c) If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.:**

**Question 24: a) Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements? b) If you not, please explain why and suggest alternative wording where appropriate.:**

**Question 25: a) Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on television? b) If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights.:**

**Question 26: a) Do you consider that the rules on commercial radio would benefit from being separated from those for television? b) Do you agree with the introduction of the proposed new Section Ten on commercial references in radio programming? c) If you do not agree with the proposed new Section Ten, please explain why and suggest alternative wording where appropriate.:**

**Question 27: a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning content-related promotions? If so, please explain why. b) If not, please explain why. c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer. d) Do you consider that the proposed rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? e) If not, please explain why, suggesting drafting changes where appropriate.:**

**Question 28: a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning outside broadcasts sponsored by the venue? If so, please explain why. b) If not, please explain why. c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer. d) Do you consider that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements? e) If not, please explain why, suggesting drafting changes where appropriate.:**

**Question 29: a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning sponsored listener competition features? If so, please explain why. b) If not, please explain why. c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer. d) Do you agree that the proposed rules would provide adequate consumer protection, subject to the maintenance of full**

transparency concerning sponsorship arrangements? e) If not, please explain why suggesting drafting changes where appropriate.:

**Question 30:** a) Would you consider that it is appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so, please explain why. If not, please explain why not. b) If Ofcom were to introduce rules in relation to Public Information Programming: i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details. ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on listeners, the radio industry and any other parties? Please provide any evidence or data to support your answer. iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why. iv. Do you consider that additional or alternative safeguards to those included in the draft proposed rules are necessary? If so, please provide details. v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions? vi. Do you consider that it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why. :

**Question 31:** a) Do you consider that the proposed new Section Ten would benefit from the introduction of new meanings? b) Do you agree with our proposed new meanings for Section Ten? c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.:

**Question 32:** a) Do you consider that the introduction of new Principles in relation to Section Ten is appropriate? b) Do you agree with the proposed new Principles for Section Ten? c) If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.:

**Question 33:** a) Do you consider that the proposed Rules 10.1 to 10.5 are broadly the same, in terms of both scope and intent, as current Rules 10.1, 10.2, 10.3, 10.4, and 10.12? b) If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate. c) Do you agree with the introduction of the proposed new Rule 10.6? d) If you do not agree with the proposed new Rule 10.6, please explain why and suggest alternative wording where appropriate.:



**Question 34: a) Do you consider it appropriate to introduce the proposed new meaning of product placement, to reflect the definition required for television? b) If not please explain why, suggesting drafting changes where appropriate.:**

**Question 35: a) Do you consider it appropriate to introduce the proposed new Rule 10.10? b) If not please explain why, suggesting drafting changes where appropriate.:**

**Question 36: a) Do you consider that the introduction of a new competition and voting section is appropriate? b) Do you agree with the proposed new competition and voting section for Section Ten? c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate. d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee? e) If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why and suggest drafting changes where appropriate.:**

**Question 37: a) Do you consider that the rules in relation to programming-related material would benefit from clarification? b) Do you agree with the introduction of the proposed programming-related material section for Section Ten? c) If you do not agree with the proposed programming-related material section, please explain why and suggest alternative wording where appropriate.:**

**Question 38: a) Do you consider that the meanings in relation to sponsorship of radio would benefit from revision? b) Do you agree that it is appropriate for Ofcom to introduce the proposed meanings in relation to radio sponsorship? c) If not please explain why, suggesting drafting changes where appropriate.:**

**Question 39: a) Do you consider that the rules in relation to the content of sponsored output would benefit from clarification? b) Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Ten? c) If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.:**

**Question 40: a) Do you consider that introduction of rules in relation to Service Level Agreements is appropriate? b) Do you agree with Ofcom's proposed rules on Service Level Agreements? c) If not please explain why, suggesting drafting changes where appropriate.:**

**Question 41: a) Do you consider that the rule in relation to appeals for funds would benefit from clarification? b) Do you agree with the introduction of the proposed Rule 10.55 and the section on appeals for funds for programming or services? c) If you do not agree with the proposals, please explain why and suggest alternative wording where appropriate.:**

**Question 42: a) Do you consider that the proposed rule revisions are appropriate and would remain consistent with current rule requirements? b) If you not, please explain why and suggest alternative wording where appropriate.:**

**Question 43: a) Do you wish to suggest an alternative approach to the proposed revisions in relation to the regulation of commercial references on radio? b) If so please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, Article 10 of the European Convention on Human Rights, Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 and The Community Radio Order 2004). :**

**Question 44: a) Do you agree with the proposed approach which only proposes changes to Section One of the Code in relation to material of a sexual nature, only proposes changes to Section Two in relation to Competitions and Voting, and proposes no changes to Sections Three to Eight. b) If you do not agree with our approach, please explain which other sections of the Code you consider should be reviewed and why. c) Do you agree with Ofcom's approach which will be to provide, and update, guidance to all sections on an on-going basis? If so, are there particular areas where you consider an updating of guidance would be helpful?:**