

# Introduction

## I General Summary of Responses

### Proposed Code Introduction

This Broadcasting Code is for the use of the public and for those who work in broadcasting or in connection with broadcasting. The Broadcasting Code is written to meet the requirements of the Communication Act 2003 (“the Act”) and the Broadcasting Act 1996 (“the 1996 Act”).

Broadcasting is a creative and evolving medium where choice, innovation and experimentation serve the interest of both citizens and consumers.

Freedom of expression is an essential human right. It is the right to hold opinions, to receive information and ideas and to impart them.

Broadcasting and freedom of expression are intrinsically linked. The one is the lifeblood of the other. Nowhere can that tension between the right to freedom of expression and its restriction be more acute than in drawing up a code which seeks to regulate broadcasting.

The main purpose of the Broadcasting Code is to set standards which will protect viewers and listeners whilst still enabling broadcasters to be creative and to express a full range of views.

The Broadcasting Code is laid out in terms of principles, meanings and rules. The purpose of the principles is to help broadcasters understand the standards objectives and apply the rules. Broadcasters must ensure that they comply with the rules as set out in the Broadcasting Code. The meanings help explain what Ofcom intends by some of the words and phrases used in the Broadcasting Code. Relevant legislation is noted under section headings so readers can turn to the actual legislation if they wish.

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

To further assist those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards or make a complaint, non-binding guidance to accompany the Broadcasting Code will also be issued by Ofcom on the Ofcom website ([www.ofcom.org.uk](http://www.ofcom.org.uk)) and will be regularly reviewed. Members of the public who have no access to the web can ask Ofcom to send them a copy by post.

Broadcasters should be familiar with their audiences and ensure that programme content can always be justified by the context and the editorial needs of the programme. (In the Broadcasting Code, the word “programmes” is taken to mean both television programmes and radio programming.) No subject matter is prohibited by this code. But it

is expected that broadcasters will ensure at all times that their programmes comply with the law, respect the truth and respect human dignity. These are minimum standards applicable to all programmes and are relevant as appropriate to all the standards objectives. They are set in accordance with Ofcom's general duties under sections 3(2)(e) and (f) and 3(4)(g)-(j) and section 319(5)(a) of the Act, and apply to all broadcasters. A programme which does not comply with the law, respect the truth or respect human dignity is likely to breach one or more standards objectives.

In setting standards for fairness and privacy and standards for the content of programmes to be included in television and radio services, Ofcom is required by the Communications Act 2003 (the Act) and also by the Broadcasting Act 1996 (the 1996 Act) to draw up a code or codes relating to standards in programmes, sponsorship and fairness and privacy. See sections 3(2)(e) and (f), 319, 320, 321 and 326 of the Act and sections 107(1) and (2) of the 1996 Act. (These extracts can be found in appendix 1 of the Broadcasting Code). Ofcom is required (under section 319(4) of the Act) to take account of each of the following matters, to the extent Ofcom thinks relevant in securing the standards objectives:

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

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

The Broadcasting Code applies to programmes and sponsorship on radio and television services licensed by the Office of Communications (Ofcom), to the British Broadcasting Corporation (BBC) and Sianel Pedwar Cymru (S4C) and S4C digital. Broadcasters are required by the terms of their Ofcom licence, and, in the case of the BBC by the BBC

Agreement<sup>1</sup>, and, in the case of S4C by statute, to observe the standards set out in this code.

However, Sections Five: Due Impartiality, Due Accuracy, and Undue Prominence of Views and Opinions and Six: Election and Referendum Reporting of this code, regarding impartiality and election and referendum coverage and Sections Nine: Sponsorship and Ten: Commercial References and Other Matters, regarding sponsorship and commercial references and other matters, do not apply to the BBC. The BBC is regulated separately by the BBC governors on matters of impartiality, accuracy in news and the undue prominence of views and opinions, which includes election and referendum coverage. The BBC does not take sponsorship, and section 13 refers to international obligations in the European Television Without Frontiers Directive (TWF Directive), which the UK Government has decided not to apply to the BBC. The relevant sections of the TWF Directive would apply to the BBC only if the Government was to issue a notification to that effect.

The Broadcasting Code has been drafted in the light of the Human Rights Act 1998 (the HRA) 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 required 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, can be found in appendix 3 of the Broadcasting Code.

The Broadcasting Code also gives effect to a number of requirements relating to television in the TWF Directive. The relevant extracts can be found in appendix 2 of the Broadcasting Code. It is the responsibility of the broadcaster to ensure compliance with the Broadcasting Code. Programme makers who require further advice on applying this code should, in the first instance, talk to those editorially responsible for the programme and to the broadcaster's compliance and legal officers.

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

### **Responses to the Consultation**

We have received substantive responses from the BBC, ITV, Channel 4 and Five, Enteraction Television, Discovery Networks Europe, S4C, Chrysalis Radio, Capital Radio, Digital TV Production Company, UK Film Council and the British Film Institute (BFI), Sustain, Ofwatch, Commercial Radio Companies Association (CRCA), Commission for Racial Equality (CRE), Emap, XplicitXXX, Cornwall Community Standards Association, mediawatch-uk, MediaWise, the Association of TV on Demand (ATVOD), Teletext, Webmaster for Melon Farmers, Christian Broadcasting Council

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<sup>1</sup> The BBC Agreement is the Agreement dated 25 January 1996 between Her Majesty's Secretary of State for National Heritage (now the Secretary of State for Culture, Media and Sport) and the British Broadcasting Corporation as amended by the Amendment dated 4 December 2003

(CBC), Satellite and Cable Broadcasters' Group (SCBG), the Broadcast Journalism Training Council (BJTC), Ligali, Office of the Chief Rabbi (OCR), Church of England, Church of Ireland Broadcasting Committee, Churches' Media Council, Evangelical Alliance, Libertarian Alliance and Libertarian International, the Maranatha Community, Scottish Media Group (SMG) and Periodical Publishers Association (PPA), and two organisations that responded in confidence. We also received responses from a number of individuals.

### **General Positive Responses**

An individual believes the proposed Broadcasting Code is both clear and pragmatic, and will benefit the broadcast sector. Four individuals and four organisations (Teletext, Christian Broadcasting Council, SCBG and Ligali) believe the Broadcasting Code strikes the right balance between the creative needs of broadcasters and the protection of the audience.

### **General Comments**

Channel 4 and Five welcome the introduction of one shorter code to replace the six legacy codes. They welcome the review of existing codes and the commitment to Article 10 of the European Convention of Human Rights (the Convention), but believe that all regulation must be in keeping with modern society, not in isolation from society.

The Church of England wants to ensure that the Broadcasting Code is clear enough that the public can respond, with a clear complaints procedure, particularly in light of Ofcom's "truthful assertion" that complaints can be evidence of broadcasters' exploration of fresh ideas and new boundaries. The Church of England asks that the introduction include an explicit acknowledgement that standards could tighten in response to complaints.

Chrysalis Radio suggests that radio and TV have not converged as much as suggested in the Broadcasting Code.

SMG notes the need to avoid duplication but believes that "signposting" between different sections can be useful.

Discovery Networks Europe strongly believes that in order to produce a targeted framework of regulation in which the broadcasting sector is not disadvantaged over television delivered via the Internet and or 3G systems, the TWF Directive should be adopted as the benchmark of regulation.

The Cornwall Community Standards Association believes that sanctions, not mentioned in the Broadcasting Code, are vital to ensuring compliance and convincing broadcasters and the public of its commitment.

mediawatch-uk believes that, without some definition by the regulator, the notion of "respect for the truth and respect for human dignity" will mean "whatever the broadcasters want". It does not feel that the Broadcasting Code describes mechanisms to "promote informed citizens".

The CRE believed that the Broadcasting Code should take the opportunity to increase awareness of the laws around incitement to racial hatred and the new offence of incitement to religious hatred. They were also concerned that there was no evidence

that Ofcom had taken into account, when drafting the Broadcasting Code, its responsibilities under the Race Relations Act (1976) (as amended).

An individual does not see sufficient information, and another individual thinks that the Broadcasting Code should recognise the fact that television is essentially home entertainment.

Channel 4, Five and ITV all advocate that the statements be laid out as a set of clear principles, rather than as a detailed narrative. They ask whether a broadcaster could be in breach of the Broadcasting Code if they breach these provisions.

An individual says that broadcasters grossly abuse their creative and editorial freedom to achieve ratings and so much greater emphasis needs to be on the “protection of health or morals” as contained in point 2 of Article 10 of the Convention.

### **Ofcom response**

We have decided to aid the reader by dividing the introduction to the Broadcasting Code into three sections. The first part, the Foreword, addresses the wider media landscape and Ofcom’s philosophy in setting the Broadcasting Code. The second part deals with legal aspects of the Broadcasting Code (“The Legislative Background to the Code”). This section, as requested by some, includes a reference to our complaints procedures and the imposition of sanctions. The third part is on “How to use the Code”.

In annex seven of the consultation document we had explained that various legacy guidelines and codes would lapse – amongst them the ITC Guidance to Broadcasters on the regulation of Interactive Services. We said that the content part of that Guidance would be covered by the Broadcasting Code. Therefore, “The Legislative Background to the Code” now includes a reference to interactive services and how they may be regulated. In particular circumstances, we may ask for a link to be removed where the broadcaster has general, rather than editorial control.

In general the replacement of six codes by one has been welcomed.

As borne out by research ‘standards’ in society change. This is acknowledged by the requirement in the Act to apply “generally accepted standards”. Non binding web-based guidance will seek to reflect this.

We have addressed various issues raised by the radio sector regarding the convergence (or not) of radio and television and places where the rules can be the same or should be different in the individual sections.

We have inserted some signposts and cross-references between sections to aid readers where issues are dealt with in more than one place.

We have added the “violation of human dignity” to Rule 2.3 of the Broadcasting Code regarding offence.

Ofcom is required to promote information and choice for citizens-consumers. Enabling freedom of expression in broadcasting and plurality of supply, wherever possible by

removing unnecessary regulation and barriers to commercial development, is a mechanism in itself for achieving this.

The principles throughout the Broadcasting Code have been redrawn so that the wording reverts wherever possible to the language of the Act or other relevant legislation. They express the intention and objective of the section. Some respondents queried why it was necessary to incorporate within the rules the wording of the principles. This is because it is important that the rules fully reflect the objectives which Ofcom is seeking to secure. It is not possible to be in breach of the Foreword or of the section examining the legislative background to the Broadcasting Code. However, broadcasters should bear these in mind when interpreting and applying the rules.

It has been suggested that, given the importance of the Broadcasting Code, there should be a further consultation. We have identified and explained in the opening chapter of this statement which issues we intend to consult on further. They are all issues which may have a significant commercial impact.

It has also been suggested that we should consult on guidance. As guidance is non-binding and will be subject to change we do not intend to consult on the guidance. However we are very willing to listen to representations about our guidance after it has been placed on the web site or if fresh circumstances come to light.

Incitement to racial hatred is covered by criminal law. The Broadcasting Code does not seek to duplicate the law outside of broadcasting law. Consideration was given to race issues particularly in the context of harm and offence. Further changes have been made to the Broadcasting Code in the light of submissions. Please also see the Race Impact Assessment later in this statement, which refers to Ofcom's new obligations under the relevant Race Relations legislation.

## **Media Literacy**

### **Responses to the Consultation**

The UK Film Council and the BFI are pleased that the Broadcasting Code is sensitive to different levels of media literacy and urge Ofcom to develop a programme of work in that area. The BFI believes the Broadcasting Code should actively encourage broadcasters to drive the development of the public's media literacy, rather than simply allowing for members of the public to complain about offensive material. The Institute would like to see a clear distinction made between citizens and consumers, with preference given to the definition of "citizen". mediawatch-uk agrees that "a well-defined Code is a key factor in improving media literacy among the viewing and listening public" and believes the Broadcasting Code should include specific mention of responsibility.

The BJTC believes the document is unclear and unnecessarily complex and that there should be greater reference to training in order to reduce future problems and complaints. It would like to see training around the Broadcasting Code as a licence condition.

MediaWise suggests the Broadcasting Code should be a form of quality guarantee; it is unfortunate the Broadcasting 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.

## **Ofcom response**

Ofcom has a duty to promote media literacy and is presently undertaking a programme of research work. Where appropriate the research will inform the web-based guidance which accompanies the Broadcasting Code.

The Broadcasting Code is not the appropriate place to deal with training. A co-regulatory body has been set up to regulate training in the broadcasting industry.

We have noted MediaWise's point regarding "protection". Given the language of the Act we do have to consider the protection of both the under-eighteens and adequate protection of the public from offensive and harmful material.

## **Diversity**

### **Responses to the Consultation**

The BJTC believes the policy on diversity is not sufficiently robust.

The UK Film Council and the BFI seek to encourage the industry to extend further anti-discrimination rules. They also seek to encourage the industry to avoid discrimination in all media and to combat such discrimination.

The CRE were concerned that the Broadcasting Code made no specific reference to race.

## **Ofcom response**

We have addressed the issue of diversity in the Harm and Offence section where we have also addressed the concerns raised by the CRE. There is now a specific reference to race. We have also cross-referenced between Section One: Protection of the under-eighteens and Two: Harm and Offence of the Code and explicitly between Rule 2.3 (which deals with diversity) and Section One: Protection of the under-eighteens of the Broadcasting Code, which is concerned with the protection of the under-eighteens.

## **Freedom of Expression**

### **Responses to the Consultation**

The Church of England notes that where there are rights such as freedom of expression, there are also obligations. This tension in the framing of what is "generally acceptable" must be acknowledged. It further notes that it is vital to recognise that technical problems require technical solutions in the digital age; it is not possible to balance freedom of expression with the protection of under-eighteens without considering the technical solutions. The Church of England recommends that Ofcom explicitly state that, as per the Commonwealth Statement on Freedom of Expression 1998, "freedom of expression is not licence". The Broadcasting Code is dependent on a suitable definition of "generally accepted standards" and on developing a means of foreseeing potential harm.

The OCR says it is right that freedom of expression should be applied to the communications industries, but this must be qualified. The regulator has a crucial role in protecting viewers and listeners, particularly the most vulnerable sections of society, including minors, old people and the mentally disturbed.

The webmaster for the campaign group Melon Farmers suggests this is a balanced approach that has not extended into the Ofcom discussions of R18. Another individual believes that the Broadcasting Code is too censorious in terms of material for adult viewers.

The River of Life Church and Associated Ministries believes that the new Broadcasting Code swings too heavily on the side of giving broadcasters creative and editorial freedom, at the expense of protecting listeners and viewers, particularly the under-eighteens.

One individual suggests that the emphasis should be on allowing freedom of expression and terms such as “human dignity” should not be used by Ofcom. Six individuals believe there does not need to be more freedom of expression. Two individuals believe more freedom of expression will lead to even more corrupting influences on the viewing public.

The Libertarian Alliance and Libertarian International assert that all broadcasting should be free of any form of regulation, control or censorship by the state. Hence, there is no need for Ofcom. The Church of Ireland Broadcasting Committee appreciates the spirit of the Broadcasting Code and suggests that freedom of expression involves responsibility. The BJTC views the Broadcasting Code as passing considerable authority to the judiciary, which it believes is contrary to the spirit of the free press. The BBC supports the recognition of freedom of expression but notes that principles should be distinct from rules.

### **Ofcom response**

The right to freedom of expression is contained in both the European Convention on Rights (“the Convention”) and the Act. It is therefore right that it should be specifically referred in the Broadcasting Code and its Introduction. Freedom of expression can be restricted if it prescribed by law and “is necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary” and is proportionate.

Ofcom believes that the rules in this Broadcasting Code, insofar as they restrict freedom of expression, do so in a way that meet the above requirements while ensuring that an appropriate level of freedom of expression is maintained given Ofcom’s duties under the Act. This balancing act is necessarily a question of judgement (in each case) and we appreciate that respondents take very different views as to how that can be best achieved.

### **Scope of Regulations**

#### **Responses to the Consultation**

The Digital TV Production Company refers to paragraph four of the introduction to the consultation, “Regulation should be transparent, accountable, etc”, and suggests that some proposed rules be reviewed with this in mind.



The Chartered Institute of Journalism believes that the recommendations are over-prescriptive and do not represent the “lighter touch” that they expected.

The Evangelical Alliance believes the Broadcasting Code achieves a good balance but is concerned about the motivation of programme makers and broadcasters. It endorses the recommendation that “broadcasters should be familiar with their audiences and ensure that programme content can always be justified by the context and the editorial needs of the programme”.

The Maranatha Community believes there is insufficient protection for listeners and viewers. The CBC generally welcomes the Broadcasting Code but is concerned that it does not lay down guidelines, targets or standards for what broadcasters should aim for, given the current fragmentary nature of society.

mediawatch-uk is concerned that this code gives control over to the broadcasters, with little role for the regulators. It believes that the regulators’ primary concern will be labelling rather than content, as the consultation document makes reference to increased “labelling by broadcasters”.

### **Ofcom response**

Some found the proposed Broadcasting Code over-regulatory in tone and others under-regulatory. In finalising the Broadcasting Code we have reviewed every point made by the nearly one thousand responses received. Where the law allows, and where evidence or argument has pointed to a need for greater or lesser intervention we have adjusted the final wording. Individual points are addressed under each section. Web-based guidance will be provided. We note mediawatch-uk’s concern regarding content but point out that whilst labelling is very important to aid viewers and listeners and those responsible for the viewing and listening of minors and it is still developing.

### **Concerning the BBC**

#### **Responses to the Consultation**

Emap is pleased that regulations have not increased and believes that a single code that also applies to the BBC is the correct route. However, Capital Radio is concerned that none of Section Ten: Commercial References and Other Matters has been applied to the BBC.

### **Ofcom response**

Section Ten: Commercial References and Other Matters is based in large part upon international obligations. Ofcom would only be required to regulate the BBC on these matters if the government notified Ofcom to that effect. The government has not done this and so that section does not apply to the BBC.

### **Specific points regarding the wording of the introduction**

#### **Responses to the Consultation**

Capital Radio notes that the reference to respect for human dignity in the introduction appears to supersede the Broadcasting Code and represent a minimum standard. The meaning of “respect for the truth” should be set out in the Broadcasting Code. It

recommends ending paragraph three of the proposed inclusions with the sentence, “No subject matter is prohibited by this code”.

S4C has no major objections to the proposed introduction to the Broadcasting Code though it does feel that the Broadcasting Code is bare and legalistic and it would like to see the following wording from the consultation document added to the introduction: “the Act clearly envisages both audiences and broadcasters taking more responsibility for what is broadcast on the one hand and what is received on the other.”

ATVOD believes the Introduction to the Broadcasting Code should clearly state that on-demand services are not regulated by Ofcom. They suggest the following wording: “On-demand services are subject to self-regulation by the Association of TV on Demand (ATVOD). The ATVOD Code of Practice requires that its members’ services are provided in accordance with the prevailing broadcasting codes, except where ATVOD has issued its own rules and guidelines”.

Another organisation notes that the broadcasting industry exercises immense power, the abuse of which can be disastrous.

In the fifth paragraph of the Introduction section, Channel 4 and Five suggest inserting the word “adequately” between “to set standards which will” and “protect viewers and listeners”.

Campaign group mediawatch-uk believes the “lightest possible touch” wording is tantamount to giving broadcasters free rein.

The Church of England feels that although the Internet is not a regulated medium, this should not be an excuse to permit lower broadcasting standards.

PPA welcomes the liberalisation of the proposed Broadcasting Code and the adoption of a principle-oriented rather than a rules-based approach, though has issues in relation to “masthead” programmes.

### **Ofcom response**

We note the comments made by Channel 4 and Five and by S4C. However the introduction has changed and the word they mention is no longer included or has been dealt with in a different way.

We note the comment made by ATVOD. However, as on-demand services are not regulated by Ofcom, we do not think it helpful to refer to them in the Broadcasting Code.

We note that concerns of the Church of England. We do not seek to lower standards to those of the Internet or to give broadcasters free reign or allow. Ofcom has a duty to secure the standard objectives set out by the Act. The Broadcasting Code has been set in order to enable us to secure the standards objectives.

We have also clarified what is covered by the Broadcasting Code including the position with regard to interactive services.

## II Questions

### *Question 3b*

*Should there be one code or more than one code?*

### **Responses to the Consultation**

#### **Option one – one Code**

Four individuals support the idea of a consolidated Broadcasting Code that recognises the distinction between TV and radio, supplemented by guidance.

Capital Radio, Maranatha, mediawatch-uk, SCBG, ITV, Channel 4 and Five favour a single code in order to avoid confusion (however, Capital Radio suggests that for radio purposes companies may decide to issue a cut-down radio specific version), streamline regulation and provide a lighter touch – recognising the distinction between TV and radio – and supplemented by guidance.

The CBC says that there should be one code with small differences for the two services. The Evangelical Alliance believes there should be only one code with minor adjustments and not those that affect faith or broadcaster revenue.

#### **Option two – multiple codes**

The Church of England agrees there should be separate rules for radio and TV. Melon Farmers also favour separate sections for different media.

An individual suggests a number of codes to take into account specialised channels and audience expectations; specialised channels such as pay-per-view and the adult channels need leeway to include material that is not permissible on other channels.

Another individual prefers more than one code to cover different media. He suggests that one code cannot cover all media of TV, radio, and the Internet, except in terms of overall legality, which is already covered by law. Thus, the question should be whether any code is needed. S4C favours the single code for all programme compliance matters but believes that two codes are appropriate for radio and television.

#### **Other Options**

Ofwatch believes that there is little to choose between the options and would recommend that Ofcom makes the choice that fits. An individual remarks that any code must be flexible enough to allow for an audience that may or may not be self-selecting and should regulate as appropriate.

#### **Ofcom response**

In general the response to having one code has been positive and we have kept one code but have sought to ensure that the differences between radio and television services are recognised where necessary.

### *Question 3c*

*Is the approach suggested by Ofcom the best approach to the proposed new code/s? If not, is there a better approach and, if so, what?*

## Responses to the Consultation

### Option one – an approach to the Broadcasting Code which continued the legacy regulator’s approach.

### Option two – an approach which separates principles, rules and guidance.

The CBC, Evangelical Alliance and five individuals agree that the Broadcasting Code needs to be very general and less specific. The Church of England agrees but wants to ensure a mechanism is built into the code for review to match significant changes in the broadcasting ecology.

SCBG welcomes the six criteria by which acceptable standards are to be judged and suggests that any rule in the Broadcasting Code link to at least one of the principles. Discovery Networks Europe believes that every rule in the Broadcasting Code should be linked to at least one of the main six principles.

XplicitXXX believes the Broadcasting Code should be more general and less specific and that guidance should be just that and nothing more.

One individual supports a wide range of programming provided that that the existing watershed is maintained and protected subscription remains in place.

The Churches’ Media Council believes that this is the approach envisaged in the Act, but hopes it will not be used to dilute standards.

The CRE were concerned that the proposal to cover race as a detail in “guidance” meant that this element would not be part of the consultation process. The CRE said that removal of the explicit reference to racial offence made the process more complicated and therefore the Broadcasting Code would be more difficult to understand and use. This omission would also lose public and professional credibility.

### Other Options

The BBC welcomes the separation of binding rules and non-binding guidance.

Capital Radio and ITV recommend the separation between rule and guidance; when principles are duplicated as rules, it is unclear what purpose the principles have – principles are the goals; rules are the requirements to achieve goals.

An individual objects that Ofcom has assumed the role of “moral guardian”; audience expectations are more important than the moral offence of a minority of viewers, and secular harm should be the benchmark. Another individual states that there is little evidence that these rules have been made on the basis of public consultation. A further individual believes that the Broadcasting Code should differentiate between different types of services.

Maranatha suggests that Ofcom’s approach is too libertarian and does not address the root causes of offence and harm. Ligali suggests that the Broadcasting Code’s focus must be on the protection of listeners and viewers, not the convenience of broadcasters. The Broadcasting Code must be easy to read and accessible to those outside the industry.

Ofwatch would like to see a clear policy laid down defining a transparent procedure and that guidance changes are mainly determined directly from large-scale annual public surveys. They believe there should always be a public consultation and this should be the deciding factor.

S4C is concerned about the lack of narrative and about the unfamiliar terminology used in certain sections, which is largely drawn from underlying legislation. They believe that additional, more frequent web-based guidance would help to resolve these issues.

An individual says that regulations must allow for the broadcast of all legal, albeit sometimes contentious, material provided reasonable precautions are taken that will protect others. However, nothing should be “outlawed” on any channel that is PIN or in another way security protected.

### **Ofcom response**

We have found the responses to the consultation helpful in clarifying the role of principles, meanings, rules and guidance. We have endeavoured to meet objections and, as explained above, have reverted to the wording of the legislation for the principles. We understand the importance that has been attached by respondents to the guidance and will seek to make it clear, relevant and as up to date as possible.

We have found the point raised by the CRE helpful. It was open to respondents to raise issues such as race with Ofcom as the CRE and others did.

The Broadcasting Code reflects the input of the CRE.

#### *Question 3d*

*Should the Broadcasting Code differentiate between different types of services with different rules for different services, or does the proposed approach allow sufficient latitude for services to interpret the rules appropriately for their audiences?*

### **Responses to the Consultation**

#### **Different rules**

Melon Farmers suggests there should be warnings on “free-to-air” programmes that would be unnecessary on a service where a presumption of interest can be made upon subscription. Two individuals agreed with this point. Ofwatch believes that the Broadcasting Code should differentiate between different types of services and R18 material should be broadcast where it is protected by PIN number and encryption. XplicitXXX also believes that R18 content should be restricted to encrypted services that are only supplied to adults with proof of age and which have mandatory PIN protection at all times.

Nine individuals believe there should be different rules for specialised services, providing scope for differing audience expectations. Some rules may not be relevant to all media or broadcasters.

The Church of England notes that both the consultation document and Independent Television Commission (ITC) research acknowledge the differing emotional impacts of radio and television; this ought to be reflected by creating some separate rules for the different media.

### **Sufficient latitude**

Several organisations (CBC, Evangelical Alliance, Maranatha, mediawatch-uk) believe there should be one standard for all broadcasters. SCBG believes strongly that any framework must apply without exception across the audio-visual sector. ITV, Channel 4 and Five see no justification for different rules. Capital Radio notes that the draft code adequately identifies when rules should apply only to certain types of services.

S4C favours a level playing field for broadcasters but feels that there should be different regulations for free-to-air and subscription broadcasters and this could be better expressed. The BBC agrees that the Broadcasting Code should differentiate between types of services in line with audience expectations, but worries that the Broadcasting Code imposes inappropriate regulatory burden on radio services in the section on Protection.

### **Ofcom response**

We have sought, wherever possible, to create rules which apply across all services. We have, however, acknowledged the differences between radio and television services in several parts of the Broadcasting Code. We have also taken into account the different protections that can be applied to premium subscription services and the different audience expectations that may apply.