

Section Three

Crime

I General Summary of Responses

We have received substantive responses from the BBC, Channel 4 and Five, S4C, ITV, ITN, Chrysalis Radio, Capital Radio, the Commercial Radio Companies Association, MediaWise, the Royal Society for the Prevention of Accidents (RoSPA), Mediawatch, EMAP, and the Muslim Council of Britain. We also received responses from individuals.

Five individuals believe the principles and rules are adequate. The Churches' Media Council, Evangelical Alliance, Maranatha and Ligali also support the Ofcom draft.

Suggestions have been made about ways to improve all the principles and rules. The BBC, Channel 4 and Five, ITV and ITN, Capital Radio, and Emap raise significant concerns regarding draft Rule 3.3, regarding the payment and declaration of payments to criminals and/or their associates.

An individual thinks the public has a right to know about riots and other disturbances, so what is the point of prohibiting cameras from such disturbances, or even peaceful ones? S/he also argues that there is a duty to educate the public about criminal techniques so the public can protect itself, as the BBC did in its series on burglary. "The public cannot be protected from the criminal element by censorship. The law abiding public will not become criminal for the sake of seeing criminal techniques. This all sounds like censorship for censorship's sake; it serves no one."

One individual says that quite obviously the Communications Act 2003 ("the Act") needs to be reviewed. "Let us not assume everyone in the UK is a potential criminal and work from there."

II Principles

To ensure that material likely to encourage or incite crime is not included in television or radio services.

To ensure that material likely to lead to disorder is not included in television or radio services.

To ensure that broadcast material does not enable viewers or listeners to commit crime.

Responses to the consultation

The BBC suggests the first principle be rewritten as follows: "to ensure that material likely to incite crime is not included in broadcasts on TV or radio services", and that the second and third principles are deleted.

ITV believes the second principle is a repetition of the first and the third principle is too widely drawn, and it submits that principles two and three should be deleted. It proposes that a rewritten second principle ought to be instituted: "To ensure no detailed demonstration or depiction of criminal technique is broadcast unless editorially justified."

Capital Radio maintains that the third principle, referring to material not enabling viewers or listeners to commit crime, is too broad. For example, someone could mention on air they were going on holiday, thus alerting potential burglars to the likelihood that their house would be empty. A broadcaster cannot “enable a crime”, although it may aid and abet.

The Commercial Radio Companies Association also doubts the need for the third principle.

MediaWise notes that principles are repeated in the opening rules and suggests an overarching principle “to ensure that broadcasting services are not used to encourage or assist the commission of criminal acts”.

S4C believes that the first principle and draft Rule 3.1 as proposed may serve to suppress “anti-establishment views”. Broadcasters should be able to reflect more radical positions when editorially justified. S4C also warns of unintended consequences of the second principle, for example a broadcaster might theoretically breach the Broadcasting Code if broadcasting a football match contributed to post match disorder.

Ofcom response

As we explained in the introduction to this statement there are occasions where rules will duplicate principles (please see earlier in the statement).

For clarity and to bring the section more in line with the requirements of the Act, we have amalgamated the first and second principles and deleted the third principle.

The BBC, ITV, Capital Radio and CRCA sought to make changes to the principles. The BBC and ITV suggested that principles one and two were repetitive. We accept their point which is why we have amalgamated the first and second principles.

S4C expressed reservations about the first two draft principles and the draft rules based upon them. They were concerned that these could be used to suppress anti-establishment views. S4C did, however, acknowledge that these draft principles and draft rules are derived directly from the Act.

The BBC, ITV, Capital Radio and CRCA also argued that the third principle was too broad and lacked clarity. We accept that the third principle was drawn too widely and could capture programmes aimed at preventing crime. We have, therefore, deleted the third principle. We have not adopted MediaWise’s proposed principle for the same reasons.

III Rules

Draft Rule 3.1 (now Rule 3.1)

Material likely to encourage or incite crime, or likely to lead to disorder must not be included in television or radio services.

Responses to the consultation

Charity RoSPA endorses this rule, saying care should be taken in the way car chases are shown, particularly as part of entertainment shows rather than as news items.

Capital Radio requests guidance on what “likely to lead to disorder” might mean. It also requests guidance on the difference between “crime and disorder”.

mediawatch-uk believes success is achievable only if the interpretation laid out in Rule 3.1 is extended to violence in entertainment programmes.

MediaWise believes the expression “likely to lead to disorder” begs questions and will open the way for preventing programmes of strong public interest; the Public Order Act is sufficient to cover broadcasters.

Channel 4 and Five believe this rule should be qualified by the words: “unless it is editorially justified to do so”.

The BBC suggests this is a rule or a principle but not both.

ITV accepts and supports this rule.

Chrysalis Radio believes this rule should refer to the deliberate encouragement of crime and disorder, so as not to apply to news and political issues or sporting events.

Ofcom response

RoSPA (with reference to car chases) and mediawatch-uk are concerned about entertainment programmes and shows. It should be noted, the rules in this section cover all genres of programming, including entertainment. However, this rule is specifically aimed at material likely to incite the commission of crime or lead to disorder and their concerns are more likely to be dealt within Section Two: Harm and Offence.

We have removed the second “likely” from the rule to return to the exact wording of the Act.

As this is the wording of the Act we are not able to delete the rule (MediaWise) or to qualify it by adding the words “unless editorially justified” as suggested by Channel Four and Five to allow such programmes if they were in the public interest. For the same reason we are not able to include the suggestion by Chrysalis Radio to refer to the “deliberate” encouragement of crime and disorder so as not to apply to news and political events or sporting occasions.

Draft Rule 3.2 (now Rule 3.2)

Material that enables viewers or listeners to commit crime must not be included in television or radio services.

Responses to the consultation

ITN maintains that the broadcast of details of criminal techniques should be permissible in the context of news programmes giving background to a case following a conviction. It recommends new wording as follows: “Demonstrations of criminal techniques should not be broadcast unless editorially justified”.

ITV would like to amend this rule to: “Detailed demonstration or depiction of criminal technique should be broadcast only when editorially justified. The level of detail shown should not exceed that which is warranted in the public interest”.

The BBC also suggests the addition of an “editorial justification” exception and points out that exposing a security loophole may sometimes be in the public interest. They suggest the rule should be rewritten as: “Demonstrations of criminal techniques must not be broadcast unless editorially justified. Even then, it is important to avoid revealing too much detail or the ways in which such activity can be made more effective”.

Capital Radio recommends this rule be amended to make clear that easily imitable detailed criminal techniques must not be included in TV or radio services.

Chrysalis Radio believes this is unnecessary and that broadcasting such information can contribute to the public debate on the suitability of the criminality of certain acts.

MediaWise suggests that this be clarified to cover both the demonstration of criminal techniques and the publication of material that can assist criminals.

Ofcom response

ITN, ITV the BBC, Capital Radio, Chrysalis Radio and MediaWise requested that we amend this rule. ITN, ITV and the BBC suggested the addition of an “editorial justification” exception to the rule. ITN and ITV offered an alternative wording and Capital Radio recommended that we limit the rule to cover “easily imitable detailed criminal techniques”. Chrysalis Radio pointed out that the rule could mean that legitimate topics of debate could not be covered.

We accept that the original draft rule was broad and that there are occasions where the broadcasting of material that could theoretically enable viewers or listeners to commit crimes is editorially justified (e.g. when used to highlight security failings or to advise the public on home security). Therefore, we have redrafted this rule to provide an “editorial justification” exception.

We also recognise that “material that enables viewers and listeners to commit crime” is broad. The major concern here is descriptions or demonstrations which contain the essential details which could enable the commission of crime. We have therefore re-drafted accordingly.

Draft Rule 3.3 (now Rule 3.3)

No payment, promise of payment, or payment in kind, must be made to an individual convicted, by a court of a criminal offence, or to their family, friends or colleagues directly or through agents, for an interview or other contribution to a programme relating to their crimes. The only exception is where it is justified by the public interest, and the material cannot be obtained otherwise. In those circumstances the payment or benefit must be declared on air.

Responses to the consultation

ITN opposes the new requirement for payment to a criminal to be declared on air as there is no such requirement for the print media. Requiring disclosure could set up a “market” of tariffs. The requirement will deter people from talking to broadcasters because it stigmatises the individual and undermines what they have to say. The rule would be impractical to apply; for example, would a general audience discussion programme on crime require announcements of who has been paid in the audience? ITN recommends deletion of the last line of the paragraph.

Capital Radio asks why the prohibition on payment extends to friends, families and colleagues, and suggests that the rule be rewritten to mirror the Press Complaints Commission one so that payments are prohibited only where the story, pictures or information seeks to exploit a particular crime or glamorise crime in general. It seeks confirmation that the rule would not prohibit the employment by radio companies of presenters who may have past criminal convictions (which they may well speak about on air, thus inadvertently falling foul of the rules unless they acknowledged at the same time that they were paid to present programmes).

Emap says it sees no reason why they cannot pay family members not associated with the crime. The Commercial Radio Companies Association also believes that payments to friends and family of criminals or victims should be allowed.

Channel 4 and Five believe that the draft rules that relate to payment for interviews with criminals are unduly onerous and do not serve the public interest. They propose that “payment in kind” becomes “significant payment in kind, not including out of pocket expenses, travel expenses or nominal matters such as refreshments”. They do not see the “mischief” that this section attempts to address and point out that family members, who are also subject to the law, are also often the victims. They also state that requiring broadcasters to “declare on air” any payments is neither necessary nor proportionate and could lead to former criminals attempting to boost their fees.

ITV believes that the rule should be rewritten to achieve consistency with the PCC code and that the final sentence should be deleted. The draft rule discriminates against broadcasters. The requirement to “declare on air” any payments would hinder broadcasters’ reporting of crime and potentially create a market or tariff for contributions.

The BBC believes this is more restrictive than previous rules and does not recognise that friends, family and colleagues of criminals may also be victims. The requirement for payments made to criminals and their family, etc. discriminates against broadcast media and will negatively impact reporting of crime stories. It suggests the following: “Broadcasters must not pay, or promise to pay, directly or through agents, any individual convicted by a court of a criminal offence, or their associates — who may include family, friends, or colleagues — for an interview or other contribution to a programme which seeks to exploit a particular crime or glamorise crime in general. The only exception is where it is justified by the public interest and the material cannot be obtained otherwise. In such cases, only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution will normally be reimbursed”

Ofcom response

There was a strong response to Rule 3.3. This draft rule stated that criminals, their family, friends and associates should not receive payment for interviews or other contributions related to their crimes unless it is in the public interest. The draft rule further proposed that if such a payment is made it should be declared on air.

The BBC, ITN, ITV, Channel 4 and Five were concerned about the requirement to make such a declaration on air. Several arguments were made. One of the most compelling reasons offered for this was the suggestion that in practice declaring payment to criminals for, for example, interviews on air could have the opposite of the desired effect and actually create a “market” of tariffs.

Ofcom also had concerns that a requirement to declare on air any payments made to criminals may not be sufficiently related to the standards objective as set out in the Act.

Overall, the arguments concerning on-air declarations for payments to criminals are finely balanced. Ofcom believes that there are benefits to the audience in terms of transparency but we also recognise that there may be unintended consequences of such announcements. Given the above we have decided against a rule requiring declarations on-air. Nevertheless, Ofcom still considers that there may well be occasions, in the interest of transparency, that broadcasters should declare when they have made a payment, (and how much), to a criminal for a contribution to a programme. Our guidance will make this clear.

Channel 4 and Five, Capital Radio, CRCA, the BBC and Emap also said that the rule was too widely drawn and should not automatically apply to the family, friends and colleagues of criminals who, in some cases, might actually be the victims. The intention of the draft rule was to ensure that criminals do not profit from their crimes, whether directly or indirectly, through third parties e.g. family and friends. We therefore agree that draft wording was ambiguous and have amended it accordingly to ensure that the wording reflects the policy intention.

Channel Four and Five also argued that the test that the "material cannot be obtained otherwise" is too restrictive. We believe that the public interest test that we include in the Broadcasting Code is the higher and a more appropriate test. We have therefore deleted these words "material cannot be obtained otherwise".

In addition we believe that the phrase "by a court" is unnecessary and we have followed the example of the PCC and widened the rule to include convicted or confessed criminals.

Regarding draft Rule 3.3 Capital Radio was concerned this might apply to presenters who have a record and who might mention their past on air. It is clear in the rule that we are referring specifically to payments to criminals that relate to their crime.

In their response to draft Rule 3.3, Channel 4 and Five raised the issue of expenses noting that it would be standard industry practice to compensate, for example, a prostitute for time she has spent being interviewed about violence from criminals. In the context of this rule, payments and expenditure incurred or loss of earnings are distinguishable and this will be explained in guidance.

Draft Rule 3.4 (now Rule 3.4)

While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor should any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

Responses to the consultation

ITN requests that it be involved in any future consultations with the Lord Chancellor's Department (now the Department for Constitutional Affairs) in relation to the issues surrounding this rule.

ITV would also like to be consulted when the issues surrounding both Rules 3.4 and 3.5 are discussed, as it understands that the BBC was consulted.

Channel 4 and Five state that no discussions pertaining to 3.4 and 3.5 should occur in the future without consultation with all broadcasters.

The BBC notes that this is the wording agreed on by the legacy regulators and the Lord Chancellor's department.

Ofcom response

We have not changed draft Rules 3.4 or 3.5. The respondents recognised that the wording of the rule was agreed with the Lord Chancellor's Department (now the Department of

Constitutional Affairs) by the legacy regulators. However Channel 4, Five, ITV and ITN asked to be consulted in any future discussions. Ofcom will consult on proposed rule changes and does not anticipate that the situation would arise whereby Ofcom would unilaterally agree a rule change with government.

Draft Rule 3.5 (now Rule 3.5)

Where criminal proceedings are likely and foreseeable, payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it will be appropriate to disclose the payment to both defence and prosecution if the person becomes a witness in any subsequent trial.

Responses to the consultation

ITN again requests that it be involved in any future consultations with the Lord Chancellor's Department (the DCA). ITV would also like to be consulted when the issues surrounding both Rules 3.4 and 3.5 are discussed, as it understands that the BBC was consulted.

Channel 4 and Five state that no discussions pertaining to 3.4 and 3.5 should occur in the future without consultation with all broadcasters.

The BBC notes that this mirrors the agreed wording with the omission of "normally". It suggests the following be inserted: "where such a payment is made it will normally be appropriate..."

Ofcom response

We have not changed Rules 3.4 or 3.5. The respondents recognised that the wording of draft Rule 3.5 was agreed with the Lord Chancellor's Department (now the Department of Constitutional Affairs) by the legacy regulators. However Channel 4, Five, ITV and ITN asked to be consulted in any future discussions. Ofcom will consult on proposed rule changes and does not anticipate that the situation would arise whereby Ofcom would unilaterally agree a rule change with government.

The BBC noted that Rule 3.5 mirrored agreed wording with the omission of "normally" and suggested that we alter it to "where such a payment is made it will normally be appropriate". We have not altered the rule as the word "normally" was included in the BBC guidelines by the BBC and did not appear in the wording agreed with the Lord Chancellor's Department.

Draft Rule 3.6 (now Rule 3.6)

Material must not be broadcast that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

Responses to the consultation

The CRCA wonders whether coverage encourages potential kidnappers.

Channel 4 and Five believe that this should be left to the police and that this rule should not be a matter for the regulator. The BBC agrees this is an issue between the broadcasters and police, and suggests the rule be deleted and moved to guidance. ITV does not believe that this is an appropriate rule and thinks it should only be as part of guidance within the Broadcasting Code.

ITN suggests deleting this rule as the regulation is unnecessary, the wording too vague and open to interpretation and it may not be appropriate for Ofcom to make judgments on these issues.

Ofcom response

This rule has been used in the past to hold the line on police blackouts in the UK when there has been a kidnap or a hijack has taken place.

Given that some consider this to be a matter between the broadcasters and the police and therefore not a matter for the regulator, we gave consideration to losing this rule. Nevertheless, we believe that this is an important rule and acts as a reminder to those reporting on such incidents, in particular but not exclusively to smaller and/or less experienced broadcasters.

However, we recognise that the risks of terrorism now bring a new dimension to broadcasting and reporting. This may lead to broadcasters becoming unwittingly involved in such incidents – making the rule as drafted impossible to comply with. We have therefore redrafted the rule to ensure that the onus is on the broadcaster to ensure it uses its best endeavours not to endanger lives or prejudice hijacks or kidnappings.

IV Proposed New Rules

Responses to the consultation

One organisation suggests careful consideration be given to the dangers of replication of material showing antisocial behaviour; i.e. vandalism, graffiti and car abuse.

The BBC recommends an additional rule to complement rule 3.3: “Broadcasters must not normally pay people who have not committed a crime or been convicted of a criminal offence, but whose behaviour is either seriously antisocial or whose activities have attracted such notoriety that any payment would be inappropriate”.

The Muslim Council of Britain proposes that the following wording be incorporated into the proposed Broadcasting Code: “Material not relevant to the subject matter of a programme and having the propensity to lead the viewer to stigmatise communities should not be broadcast, unless an effort is made to provide a balanced viewpoint and afford representatives of the communities concerned to express their point of view. This is proposed in light of the many programmes, particularly news programmes, dealing with terrorism and extremism post 11 September 2004 and the MCB believes it is congruent with the stated aim of Ofcom that material “likely to lead to disorder is not included in TV or radio services”.

Additionally, MediaWise feel that broadcasters’ relationships with the police ought to be covered in this section.

Ofcom response

The issue of anti-social behaviour is dealt with in Section Two: Harm and Offence and not in this section concerning crime.

We believe that suggested additional rule by the Muslim Council of Britain is unnecessary as, if such material meets the test of being “likely...to lead to disorder”, it is covered by Rule

3.1. Discriminatory treatment is also covered in the section on Harm and Offence. Additionally, existing legislation on incitement to racial hatred covers this and the Broadcasting Code should not duplicate the law.

The BBC also suggested a new rule regarding behaviour that was not criminal and which we therefore felt was not sufficiently related to the standard objective in the Act. Therefore we have not included it.

As we explained in the draft code consultation document we believe the relationship broadcasters have with the police is a matter for them and so we have not included rules on that subject.