



Guidance Notes

**Section One:
Protecting the under 18s**

Section One

Protecting the Under Eighteens Guidance

This guidance is provided to assist broadcasters in interpreting and applying the Broadcasting Code. Research which is relevant to this section of the Code is indicated below.

Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

We draw broadcasters' attention to the legislative background of the Broadcasting Code which explains that:

"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."

Sections One and Two should be read together. The rules in Section Two: Harm and Offence, also act to protect the under eighteens.

Rules 1.1-1.7 Scheduling and content information

Concerns about children's viewing vary amongst parents and carers. Most, however, agree that children under 10 are the most vulnerable and so in need of protection. A key period, however, for parental concern about media consumption in general is when children are aged between 10 and 14. These general concerns should be taken into account when applying Rules 1.1 – 1.7 in this Section.

Viewers and listeners make a distinction between channels which appeal to a wide-ranging audience, including children, and those that attract a smaller, niche audience, unlikely to appeal to children. Although broadcasters of these niche channels still carry a responsibility towards a potential child audience, the majority of homes do not contain children and viewers and listeners have a right to expect a range of subject matter.

Broadcaster should note that Rule 1.3 reads across the entire section, for example it should be read in conjunction with Rule 1.6.

Rule 1.4 Watershed (including trails)

The 'watershed' is a well understood concept and audiences are concerned if they believe programme content is 'pushing the boundaries' of what is generally accepted close to the watershed. Audience research shows strong support and recognition for the watershed on all television channels. The watershed plays a crucial role for parents and carers with children aged 5 to 8 and trust in pre-watershed programming is essential, particularly leading up to 1930. It is also important that the content of pre watershed trails is appropriate for the time of broadcast.

Although the watershed is a useful tool for regulating viewing amongst older children, it is one of many factors taken into account when regulating their viewing.

Some programmes scheduled to start before the watershed and finishing after 2100 may be of special appeal to children, especially during school holidays. Depending on the channel and audience it attracts, viewers can be concerned at strong, adult material immediately after the watershed when a significant number of children could still be watching television.

Rule 1.7 Information

Even with appropriate scheduling, some additional information about pre-watershed and post - watershed programmes may be necessary. Where appropriate, viewers appreciate information about content that may be problematic for certain ages – particularly if a programme appeals to a wide-ranging audience.

Rule 1.7 Information, the watershed and news

It is accepted that it is in the public interest that, in certain circumstances, news programmes may show material which is stronger than may be expected pre-watershed in other programmes as long as clear information is given in advance so that adults may regulate the viewing of children.

Research: The Broadcasting Standards Regulation (2003) BSC, ITC; Striking a balance: the control of children's media consumption (2002) BBCBSC, ITC; Media consumption (2002) BBC, BSC, ITC; The Watershed: providing a safe viewing zone (2003) BBC, BSC, ITC; Viewers and Family Viewing Policy (2001) BBC, ITC, BSC

Rule 1.8 and 1.9 The coverage of sexual and other offences in the UK involving the under-eighteens.

This is a complex area and programme makers may wish to take legal advice.

There are certain statutory provisions in force which already prohibit direct identification of those who are not yet adult¹. However the statutory provisions dealing with indirect identification (the "jigsaw effect") have not been brought into force (these are contained in sections 44, 45 and 48 of the Youth Justice and

¹ The phrase "those who are not yet adult" is used in recognition that the legal definition of an adult varies within the different nations of the UK.

Criminal Evidence Act 1999). These could be enacted if regulatory bodies, such as Ofcom and the PCC, do not include like provisions in their own rules and codes of practice. Rule 1.8 therefore requires broadcasters to ensure they take particular care with respect to the jigsaw effect in the reporting of sexual offences.

The 'jigsaw' effect occurs when several reports in different media give different details of a case which, when pieced together, reveal the identity of the child involved.

We understand that it is impossible for broadcasters to eliminate all possibility of the jigsaw effect, given the sheer quantity and degree of media available, nevertheless broadcasters "should be particularly careful" (Rule 1.8) in this area.

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

Rule 1.10 Drugs, smoking, solvents and alcohol abuse

The issues and concerns surrounding smoking, the misuse of alcohol, drugs (both legal and illegal) and solvent abuse are varied and complex. They are all a feature of modern British society and clearly a legitimate component or theme for programming. The prevalence of use amongst this age group is given in annual reports from the *National Centre for Social Research* and *National Foundation for Educational Research*. The current figures highlight the vulnerable groups and the areas where broadcasters should exercise the most care.

Programme makers should always consider the impact that the representation of the use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol, may have on younger viewers and listeners. Any such inclusion pre-watershed or at times when children are particularly likely to be listening must therefore be editorially justified. Ofcom does not expect it to be a frequent occurrence that a broadcaster would wish to include material that condones, encourages or glamorises the use of or (where relevant) abuse of these substances. However where that occurs e.g. in a movie that pre-dates the understanding that smoking was linked to cancer and other health effects, then the editorial justification for such material must be carefully thought through. In this example the historical context and the integrity of the film, could be the editorial justification.

Research: Knowing the score (2000) BSC, BBFC; Smoking, alcohol and drugs on television (2005) Ofcom

Rule 1.11 to 1.13 Violence and dangerous behaviour

Violence exists in life and, as such, will be portrayed and reported on by television and radio programmes. Many citizen-consumers are very concerned about the potential impact of violence within broadcast material upon society and, in particular, children and young people. Violence covers a wide range of behaviour and different situations and children's reactions vary, depending on their age group and individual sensitivities. Audience research is inconclusive about the direct influence of violence on behaviour, but does highlight how children interpret violence and what reduces its impact and what causes distress.

Research shows that children may emulate what they see on television. This is mediated to a certain extent by factors such as a child's ability to distinguish between degrees of fantasy and reality and the identification with the character. Children have different stages of development and broadcasters should bear this in mind. Areas of concern include:

- the use of accessible domestic implements, such as knives, or other offensive weapons, articles or substances portrayed in a dangerous or harmful manner
- any portrayal of household items, such as micro-waves and tumble-dryers, which can cause harm if misused,
- certain locations, such as railway lines;
- certain material which may lead children to fail to recognise potentially dangerous play especially if there is no serious outcome; and
- hanging or the preparations for hanging, if easily imitable, particularly if shown before the watershed, unless the setting gives strong grounds for believing that imitation is unlikely.

Research: How children interpret screen violence (2003) BBC, BBFC, BSC, ITC; The Broadcasting Standards Regulation (2003) BSC, ITC; The Watershed: providing a safe viewing zone (2003) BBC, BSC, ITC; Viewers and Family Viewing Policy (2001) BBC, ITC, BSC; Emulation, fears and understanding (1998) ITC; Cartoon Crazy?: children's perceptions of 'Action' Cartoons (1998) ITC

Rule 1.14 to 1.16 Offensive language

It should be noted that audience expectations and composition vary between television and radio and each medium has different listening/viewing patterns. Broadcasters should know their audiences.

Offensive language is a feature of British life and, in certain contexts, it has an appropriate place in broadcasting. However it raises concerns about harm to children and offence in general. There is a concern that children may imitate offensive language or be upset to hear this language, when their parents or carers have told them it is wrong, before they have worked out their own attitude to its use.

Milder language in the early part of the evening may be acceptable, for example, if mitigated by a humorous context. However, in general, viewers and listeners do not wish to hear frequent or regular use of such language, including profanity, before 2100.

Abusive language relating to age, disability, gender, race, religion, beliefs and sexual orientation can be deeply offensive. Adverse reaction to the use of this language has increased over the past years. The level of offence can change as language acquires new meanings, for instance when mainstream culture adopts language from a minority group.

Children enjoy a wide variety of music. However, where lyrics in songs might cause offence, broadcasters will wish to consider the context which may increase or mitigate the offence, and the possible use of track remixes and edits.

Rolling live news channels face different challenges, in terms of compliance, to other broadcasters. These channels provide services which, as a matter of public interest, should be able to report accurately the news as it happens.

Because of the immediacy of news and the necessity to go to events live, at times, the broadcaster has less control of its editorial output. This is understood by the audience to these services which is both overwhelmingly adult and 'self-selecting'. There is therefore always a possibility that material transmitted on these channels may be unsuitable for children (see also the guidance to Rule 1.7 Information, the watershed and news).

While news channels should always aim to minimise the use of offensive language pre-watershed, there are exceptional occasions when, because of their nature, such language is broadcast. Under such circumstances, Ofcom will consider:

- The editorial justification for the coverage
- Whether it was live or pre-recorded
- Whether it was at a time when any children are likely to be in the audience
- The context in which the language was used
- Whether there was an apology made - this may help mitigate offence /distress

Research: Bad language: What are the limits? (1998) BSC; Viewers and Family Viewing Policy (2001) BBC, ITC, BSC; Delete expletives?(2000) ASA, BBC, BSC, ITC; Swearing & Sexual imagery in broadcasting (2005) Ofcom; The Broadcasting Standards Regulation (2003) BSC, ITC; The Watershed: providing a safe viewing zone (2003) BBC, BSC, ITC; Listening (2000) RA

Rules 1.17 to 1.20 Sex

Research: The Broadcasting Standards Regulation (2003) BSC, ITC; Soap box or soft soap?(2002) BSC; Young people, Media and Personal relationships (2003) ASA, BBFC, BBC, BSC, ITC; Swearing & Sexual imagery in broadcasting (2005) Ofcom; Attitudes to Sexual Material on Television (2009) Ofcom

Rule 1.17 Material equivalent to BBFC R18-rating

In judging whether material is equivalent to the BBFC 'R18' rating, and therefore is subject to this rule, broadcasters should be guided by the BBFC guidelines on 'R18' works². The BBFC states that "The 'R18' category is a special and legally restricted classification primarily for explicit works of consenting sex or strong fetish material involving adults. Films may only be shown to adults [of not less than 18 years] in specially licensed cinemas, and videos may be supplied to adults only in licensed sex shops. 'R18' videos may not be supplied by mail order."

The BBFC makes clear that R18 material is distinct from BBFC classified "sex works at '18'" although both are sex works. The BBFC's classification guidelines explain that "Sex works are works whose primary purpose is sexual arousal or stimulation. Sex works containing only material which may be simulated are generally passed at '18'. Sex works containing clear images of real sex, strong fetish material, sexually explicit animated images or other very strong sexual images will be confined to the 'R18' category."

The BBFC further refers to content which is not acceptable at 'R18', for example material in breach of the criminal law, material involving lack of consent (whether real or simulated) and material involving the infliction of pain or acts which may cause lasting physical harm (whether real or simulated).

Rule 1.18 'Adult sex material'

In judging whether material is 'adult sex material', and therefore is subject to this rule, broadcasters should be guided by the definitions used by the BBFC when referring to "sex-works at '18'"³.

As discussed under the guidance for Rule 1.17, the BBFC's classification guidelines distinguish the "sex works at '18'" category from the 'R18' category. The guidelines explain that "Sex works are works whose primary purpose is sexual arousal or stimulation. Sex works containing only material which may be simulated are generally passed '18'. Sex works containing clear images of real sex, strong fetish material, sexually explicit animated images or other very strong sexual images will be confined to the 'R18' category."

Ofcom considers that 'adult sex material' is material that includes strong images and/or language of a sexual nature, which is broadcast for the primary purpose of sexual arousal or stimulation. For example, if the narrative of a drama or documentary is principally a vehicle for material whose primary purpose is sexual arousal or stimulation, it is likely to be 'adult sex material' because the strength of the material is unlikely to be editorially justified by context.

² BBFC Classification Guidelines 2009, <http://www.bbfc.co.uk/downloads>

³ BBFC Classification Guidelines 2009, <http://www.bbfc.co.uk/downloads>

Broadcasters are invited to note Ofcom's audience research on a range of sexual material, including 'adult sex material', which can be found at:
https://www.ofcom.org.uk/__data/assets/pdf_file/0023/32837/sextv.pdf

Ofcom has published a considerable amount of guidance on what it considers adult sex material. This is in the form of decisions published in the Broadcast Bulletin (see www.ofcom.org.uk/tv/obb/prog_cb) and adjudications of the Content Sanctions Committee (see ofcom.org.uk/tv/obb/ocsc_adjud). Licensees who broadcast material containing strong, sexually explicit images and/or language must ensure they are familiar with this guidance.

For the avoidance of doubt both programmes and trailers are subject to this rule.

Mandatory restricted access

We consider that those viewers that subscribe to premium subscription services have accepted a greater share of responsibility for what is broadcast into the home (and therefore have particular responsibility to oversee children's access to material in this area).

Services broadcasting material subject to this rule must provide mandatory restricted access as the default, rather than requiring PIN setting by the viewer. A mandatory PIN requires a viewer to input a PIN before accessing the material, irrespective of whether the viewer has set up any domestic security mechanisms, i.e. it is set by the broadcaster/platform provider.

Rule 1.19 Strong or explicit sexual material (not subject to Rule 1.18)

Rule 1.19 addresses material that may be of a similar strength to 'adult sex material', or may include explicit images of sexual activity, but which is not broadcast for the primary purpose of sexual arousal, and therefore not subject to the mandatory restricted access required by Rule 1.18 (nor to the prohibition of material equivalent to BBFC R18-rated material required by Rule 1.17).

Rule 1.19 cross refers to Rule 2.3, where the meaning of contextual justification is set out. The accompanying guidance to Rule 1.19 further sets out factors relating to strong, sexually explicit material that broadcasters should take account of. These might include (but are not limited to):

- the amount of sexual material;
- the explicitness of the material, i.e. the nature of the sexual activity and sexual language used, for example how graphic, prolonged or prominent it is;
- the purpose of the sex scenes within the programme, i.e. whether this is to support an editorial purpose. If the purpose is sexual arousal or stimulation of the viewer Rule 1.18 applies;
- whether any plot, narrative or other factors provide sufficient editorial context for its inclusion; and/or,
- whether there is an educational or other purpose to justify the inclusion of material of a strong sexual nature.

Examples of the type of material where broadcasters should consider the factors above might be: a factual entertainment programme on the sex industry which includes graphic, repeated and/or prolonged footage of sexual activity; trailers for 'adult' programmes containing similar footage; or a film or educational documentary containing explicit images of sexual acts.

Broadcasters are invited to note Ofcom's audience research on a range of sexual material, including strong, sexually explicit material, which can be found at <http://www.ofcom.org.uk/consult/condocs/bcode09/sextv.pdf>

For the avoidance of doubt both programmes and trailers are subject to this rule.

(See also Rule 1.6, Rule 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes the meaning of "context" and related guidance.)

Rule 1.20 Pre-watershed sexual material

Broadcasters are invited to note Ofcom's audience research on a range of sexual material, including pre-watershed material, which can be found at <http://www.ofcom.org.uk/consult/condocs/bcode09/sextv.pdf>

Rule 1.21 Nudity

Research: The Broadcasting Standards Regulation (2003) BSC, ITC; The Watershed: providing a safe viewing zone (2003) BBC, BSC, ITC; Sex and Sensibility (1999) BSC

Rule 1.22 to 1.26 Films, premium subscription film services, pay per view services

The legacy code for television (The ITC Programme Code) regulated the scheduling of films by strict reference to their British Board of Film Classification ("BBFC") rating.

In terms of channels, which are not premium subscription film services, the Ofcom Broadcasting Code has in the main dispensed with these rules relating scheduling to ratings. Films, in the main, are like other content provided by broadcasters and as such they must be scheduled appropriately.

We think that in most cases recent BBFC classifications will offer a fairly clear indication of a film's suitability for broadcast at a particular time. This gives broadcasters greater flexibility to schedule for their particular audience while the general requirements on scheduling should prevent inappropriate content from being broadcast at a problematic time.

It should be noted, for example, that under the "meaning of the watershed" it states that "material unsuitable for children should not, in general, be shown before 2100 or after 0530". The "meaning of children" is "people under the age of fifteen. It is therefore unlikely that a recently BBFC 15-rated film could be scheduled during the day.

Rule 1.22

In relation to film and video/DVD material previously subject to cuts by the BBFC broadcasters may:

- ensure that any previously cut material which is present in the version to be transmitted was cut 'for category' only (ie to obtain a lower certificate than the uncut version would have received). This information is available on the BBFC website⁴ record for any work classified since 1 January 2000 BBFC staff can advise on earlier titles; or
- ask the BBFC to reconsider an historic decision regarding cut or rejected material only in the light of current standards. The BBFC can issue paperwork confirming that the previously cut or rejected material either would or would not be likely to be subject to compulsory cuts or rejected according to the standards operating today. In most cases the BBFC would be able to reach such a decision free of charge on the evidence of the file alone. However, in a few cases they would need to view the work again in order to reach a decision and in those cases they would charge a small fee to cover costs. The charging may be subject to review.

Rules 1.24 and 1.25 Premium subscription film services and pay per view

We consider that those viewers that subscribe to premium subscription film services have accepted a greater share of responsibility for what is broadcast into the home (and therefore have particular responsibility to oversee children's access to material in this area).

Services broadcasting material subject to this rule must provide mandatory restricted access as the default, rather than requiring PIN setting by the viewer. A mandatory PIN requires a viewer to input a PIN before accessing the material, irrespective of whether the viewer has set up any domestic security mechanisms, i.e. it is set by the broadcaster/platform provider.

Research: Film versus Drama: relative acceptability of the two genres on television (1998) ITC; The Broadcasting Standards Regulation (2003) BSC, ITC; Viewers and Family Viewing Policy (2001) BBC, ITC, BSC

Rule 1.27 Exorcism, the occult and the paranormal

This area is complex because what may be an acceptable paranormal practice to one person could be thought of as occult and negative by another. Every case will be dealt with on a case by case basis.

Taking into account the findings of the ITC/BSC 2001 research *Beyond Entertainment?* (see in particular charts 1-4) we interpret the meanings as follows:

⁴ <http://www.bbfc.co.uk/>

Exorcisms

Exorcism is the expulsion or banishing of unwanted forces or entities from a person place or thing. The expulsion may take place by ritual prayer, incantations, conjuration, spells, symbolism, commanding or persuasion. The force or entity may include Satan, one or more other demons, evil spirits or ghosts. It may be done in the name of religion or not.

Occult

The occult is secret knowledge or activity, usually of a religious/spiritual/mythical nature. It involves invoking unknown powers and/or forces. It risks a negative outcome and is generally perceived as having a potential for harm (see also Spells).

Spells

Spells are generally considered to be occult practice (*Beyond Entertainment?*). Where they appear to be aimed at interfering with another's human rights they will be considered occult although it is possible for practitioners to offer 'good luck charms' which are not therefore occult in nature. 'Good luck charms' may therefore for the purposes of this section be considered as the paranormal.

Tarot

As can be seen from *Beyond Entertainment?* attitudes towards this practice vary; some see it as benign, while a significant number of people see it as an occult practice. Ofcom believes that the number of people who regard Tarot as occult is so significant that it will treat the use of these cards as such. However, other divination by cards generally, would be accepted as a paranormal practice.

Paranormal

The paranormal is phenomena, unexplained by, amongst other things, scientific means. It includes clairvoyance clairaudience and extra sensory perception. It is intended to lead to positive outcomes. It includes mediumship.

Divination

A method to foretell the future or to gain insight into the present or past, using magical, religious or supernatural means. It can be occultic but is generally defined as an aspect of the paranormal. There are many forms including: astrology, dice, cards, crystal balls, tarot (see above) tea leaves, the pendulum, runes, and scrying.

Astrology

Astrology can be a discrete practice that is not predicated on any religious or paranormal belief-system. In its simplest form – a daily horoscope - it is suitable for broadcast at any time of the day and it will not be deemed for the purpose of this section as paranormal. When it involves a paranormal belief system then it falls under paranormal practices and those scheduling restrictions set out in Rule 1.19. It is also for many a religious practice. If it is examined or demonstrated within a religious programme then the rules in Section Four: Religion apply.

Research: Beyond entertainment (2001) ITC, BSC

Rule 1.28 to 1.30 The involvement of people under eighteen in programmes

If anyone aged under eighteen appears in, or participates in any respect in a programme, the broadcaster must ensure that it complies with Rules 1.28 and 1.29. Broadcasters should take due care to protect the interests of any participants aged under eighteen. This applies whether the material is originally produced or is acquired from another source. Consideration of the child's welfare should be at the heart of the production.

Introduction

This guidance has been updated to reflect the findings of recent investigations in this area and in consultation with stakeholders.

It contains recommendations to assist broadcasters achieve the appropriate level of protection for under-eighteens in programmes so as to ensure a programme's compliance with Rules 1.28 and 1.29.

As always, however, responsibility for ensuring compliance rests with the broadcaster who will need to decide what measures are appropriate in the particular circumstances of individual programmes, genres and formats⁵. The rules apply to all broadcasters, whether television or radio. The primary focus of this guidance however is the participation, in any respect, of under-eighteens in television programmes, given their more widespread participation in television as compared to radio. Many of these recommendations may also be considered in radio programming.

Our research⁶ has demonstrated that both adults and children value and enjoy under- eighteens being represented in programming. Children form strong views and feelings from a very early age and these deserve to be seen and heard in programmes. However, the ability of participants to weigh up the potential consequences of participation can vary widely depending on age, maturity and individual circumstances.

⁵ As broadcasters are aware, there are additional considerations and requirements to be taken into account in the professional involvement of under eighteens in programmes, for instance as actors. In particular, broadcasters should see the latest legislation and guidance on child performance licensing issued by the Department for Education: (<http://www.legislation.gov.uk/ukxi/2014/3309/contents/made> (legislation and <https://www.gov.uk/government/publications/child-performance-and-activities-licensing-legislation> (guidance)). In addition the National Network of Child Employment and Entertainment (NNCEE) has also issued best practice guidance in this area. See: <http://www.nncee.org.uk/attachments/article/198/PDF%20Examples%20of%20best%20practice%20final-2>.

The Scottish Government has also recently published new rules and guidance for licensing the participation of children and young people in performances and specified sporting and modelling activities. The rules, general guidance and guidance on risk assessments can be found here: <http://www.gov.scot/Topics/People/Young-People/families/young-performers.pdf>

⁶ *Children in Programmes: An independent research report for Ofcom by Sherbert Research (2007):* http://www.ofcom.org.uk/research/tv/reports/children_in_programmes/. Also see earlier research conducted by the BSC: *Consenting children: the use of children in non-fiction television programmes (2001)*; *Consenting adults (2000)*.

Key Issues

Rule 1.28

“Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.”

There are three key principles broadcasters should take into consideration when applying this rule:

1) Central to Rule 1.28 is the concept of *due care*:

“*Due*” is used in the same way as in other areas of the Code. It indicates that the level of care must be “appropriate to the particular circumstances”.

2) The broadcaster must judge what is appropriate in each case⁷:

Whether these recommendations, or alternative measures, are the most appropriate will vary according to the particular programme and the nature and degree of the child’s involvement. . Other relevant factors include the participant’s age, maturity and capacity to make judgements about participation and its likely consequences.

3) The phrase “physical and emotional welfare and the dignity of people under eighteen” indicates the broad potential impact that participating in a programme might have on this age group:

Expert opinion indicates that a child’s vulnerability and resilience can vary significantly, depending on factors such as: age; gender; maturity; cultural, ethnic and religious background; personal circumstances; and previous life experiences. Broadcasters should not assume that every young person will respond in the same way when participating in a production.

Rule 1.29

“People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.”

The key issues broadcasters should take into consideration when applying Rule 1.29 are as follows:

Some programme genres and formats focus on conflict and crisis. These can often feature experiences that have caused, or may cause, distress and anxiety.

Broadcasters need to make very careful decisions when involving under-eighteens in such programmes and consider, for example, the age, maturity and personal

⁷ Broadcasters are reminded of their legal obligations in this area and the need to comply with other requirements that may apply for the protection of under eighteens. For example, a DBS (Disclosure and Barring Service) or equivalent disclosure may be necessary, and additional data protection considerations may apply when working with under-eighteens.

circumstances of the young person before deciding on their involvement. Broadcasters should also consider the nature and content of the programme and the nature and extent of the child's involvement.

Rule 1.29 does not require the elimination of all distress or anxiety for under-eighteens taking part in programmes. This reflects the fact that there may be some editorial contexts in which it is justified for a child participating in a programme to be shown experiencing distress or anxiety. The word “unnecesssary” in the rule refers to a level of distress and anxiety that is not justified by the editorial context and may risk harm to an under-eighteen's physical and emotional welfare and dignity.

Rule 2.3

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.”

The key principle broadcasters should take into consideration when applying Rule 2.3 in respect of the participation of under-eighteens in programmes is as follows:

The level of care taken by broadcasters to protect under-eighteens is not always evident to the audience. When children and young people participate in programmes, broadcasters should consider whether “appropriate information” could be broadcast to avoid or minimise any offence.

There is no explicit requirement under Rule 2.3 for the broadcaster to provide the audience with information about the measures it has taken to protect under-eighteens. Appropriate information about the safeguards in place can assist in some circumstances to adequately protect viewers by mitigating the risk of offence (as is made clear under Rule 2.3: “Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”).

Broadcasters have the editorial freedom to decide if, when and how it is most appropriate to provide information to mitigate offence in particular situations. The level of any “appropriate information” will be dependent on all the relevant circumstances the nature and content of the programme and/or the nature and extent of the child's participation.

Best practice

Ofcom has monitored and assessed the way a number of broadcasters have ensured compliance with Rules 1.28 and 1.29 of the Code. As a result, and in consultation with stakeholders, we advise broadcasters to consider the summary of current best industry practice set out below when applying these rules. This covers all stages of production: pre-production; during production; and post-production (including the period after transmission). Ofcom acknowledges that the extent to which a broadcaster decides to follow this best practice will depend on the individual child, the level and nature of their participation and the nature of the programme.

Pre-production

Documented guidelines for in-house and independent production teams

Production staff should have an easily accessible source of clear information on the broadcaster's key considerations when working with under-eighteens.

Depending on the nature and content of the programme and the level of participation involved, Ofcom recommends the development of documented guidelines for working with under-eighteens, and that production staff are made fully aware of these.

Independent production companies who work with children may also wish to consider drafting their own safeguarding protocols in addition to the broadcaster's guidelines and Ofcom's guidance.

Background checks

We recommend that broadcasters ensure that appropriate background checks are made on an under-eighteen's social, family, health and educational circumstances. These checks will vary depending on the nature and content of the programme and the level of participation of the young person.

In some cases, it may be helpful for programme makers to keep a documented trail of relevant checks, correspondence and any concerns raised throughout the process.

Risk Assessments – both physical and emotional/mental

Where appropriate, thorough risk assessments may help to ensure that the requirements of Rules 1.28 and 1.29 are met.

Children and young people differ in their vulnerabilities and resilience; their age, gender, physical and mental capacity, their maturity, their cultural, ethnic and religious background and their previous life experiences can all affect how they might respond to specific circumstances and nature of performance. Therefore these are factors that should be considered in assessing risks.

Productions regularly consider physical health and safety risk assessments. Ofcom recommends that a documented risk assessment of the impact of participating in the production on a young person's emotional and mental wellbeing and welfare may also be appropriate in some circumstances (see also 'qualified experts' below). For example: where the child is particularly young or new to acting; where they are participating in a production which may exceed their emotional maturity or experience; or where the format/genre or a particular scene in the production may involve potential negative risks.

Documented risk assessments completed during the pre-production stages (which cover both health and safety and physical and emotional wellbeing) may be particularly useful for reference should regulatory matters arise after transmission.

Where necessary, risk assessments should be ongoing during the production and post-production stages as well so as to ensure that the physical and emotional welfare is considered throughout the production process.

(Note: Further helpful guidance on risk assessments, issued by the Scottish Government, can be found here: <http://www.gov.scot/Resource/0047/00471863.pdf>. Scottish regulations for licensing the participation of children and young people require that a risk assessment be submitted as part of a licensing application.)

Experts

Ofcom recognises that no one can predict every impact. However we suggest that broadcasters decide at the earliest stage in pre-production whether to seek advice from an appropriate expert – such as a counsellor, child psychologist, a doctor or a teacher – on the likely impact of participation on the under-eighteen.

The genre and format of the programme, a specific scene and/or the age of the young person and their life experience and maturity may influence the extent of any expert opinion considered appropriate.

It is for the broadcaster, in consultation with the production team, to identify what circumstances may warrant expert advice. Broadcasters should however particularly consider: the nature and extent of the participation of the under-eighteen; whether their participation may have any impact on their emotional or physical welfare; whether the scene has the potential to harm a vulnerable under-eighteen; and whether there could be any potential negative consequences arising from their involvement.

If it is considered that expert advice is appropriate broadcasters and production companies should, dependent on the relevant circumstances, consider the level of expertise necessary (e.g. an appropriate understanding of the process of TV production) in order to ensure that the expert can advise on the possible impacts on the under-eighteen(s) participating.

In some circumstances, it may be beneficial to retain the same expert throughout the production to contribute to ongoing risk assessment.

Record-keeping

Production teams can often disperse quickly after production. Therefore it may be appropriate, in certain circumstances, for copies of key relevant documents to be made available to broadcasters during the course of the production, or at least soon after production has concluded, should Ofcom require information relating to compliance with Rules 1.28 and 1.29 following the programme's transmission.

Participants aged under sixteen

For those participants aged under-sixteen (“under sixteens”), the Code⁸ requires that broadcasters should normally obtain consent from a parent, guardian or other person over-eighteen or in loco parentis. However, Ofcom reminds broadcasters that their obligations under Rules 1.28 and 1.29 apply irrespective of such consent.

On the basis of expert advice, Ofcom understands that from an early age, children are capable of indicating their willingness (“assent”) to participate or be involved in a programme. The appropriate delivery of meaningful information to under-sixteens about the exact nature of their involvement as well as any likely consequences of participation (to allow “informed consent”) will vary according their age, maturity and capacity to understand.

⁸ In addition to Rules 1.28 and 1.29, see also Section 7: Rule 7.4

In the case of those unable to give informed assent, such as toddlers and babies, extra considerations, including the need for appropriate expert advice, may be necessary.

An adult is often seen by a child, especially a young child, as an authority figure. As such, the child may find it difficult to contradict an adult's suggestion to participate. It is therefore important that programme makers make it clear to the child that it is acceptable to agree or disagree when asked to participate.

Children are unlikely to understand fully the process by which content is recorded, edited and broadcast, or how their participation relates to this, so a simple child-friendly explanation is recommended. It is important the child does not feel pressured and is given adequate time to process the information provided. It might be helpful, particularly for young children, to ask the child to say what they think their participation will involve.

Expert advice suggests that young children cannot always put anxiety or uncertainty into words, especially with an unknown adult. Non-verbal indications may reflect a child's reservations about participating.

Where appropriate, it is recommended that under-sixteens are given meaningful, child-friendly information on any likely positive and negative consequences of participation. Depending on age and maturity, it may be difficult for children to imagine long-term outcomes. It may help if this information is provided in terms appropriate to the child's age, maturity and circumstances. If a programme has previously involved other children, information written by earlier participants on the pros and cons could be useful. We accept that programme makers may not be able to predict every outcome, but the delivery of clear information on likely outcomes is a core element of "due care".

Ofcom suggests that, where appropriate, programme makers ensure that checks are made regularly during production that a child remains willing to participate.

Participants aged under eighteen

Ofcom recognises that those aged over sixteen are able to give their own consent to participate. However broadcasters might find it helpful to consider the extent to which the above recommendations may apply when seeking the informed consent of older teenagers. Background checks undertaken on the young person over sixteen as well as awareness of their maturity and experience may prove a helpful guide in identifying whether a greater level of due care is required.

Parents and Guardians

Ofcom reminds broadcasters that their obligations under Rules 1.28 and 1.29 apply irrespective of consent given by parents, guardians or anyone in *loco parentis*. We do not seek to lessen the importance of the views of parents or guardians on children's participation. However, many parents and guardians will not be familiar with the production process or have a full understanding of the implications of their child's participation. They may only be able to see what they perceive to be the benefits of their child taking part in a programme, rather than any potential negative outcomes. Programme makers are advised to highlight both the positive and negative likely outcomes with parents or guardians. In particularly sensitive situations, we recommend that a documented note of this is kept.

Once fully informed, most parents or guardians are likely to be better able to help their child understand what participation means. Giving them adequate time to consider the consequences of their child's participation is advisable.

Broadcasters are advised to form their own judgements on whether an under sixteen's participation is appropriate and not to rely solely on the assurances of parents or guardians, particularly where vested interests may be involved. Responsibility for ensuring compliance rests with the broadcaster not the parent, guardian or anyone in loco parentis. It is for the broadcaster to decide what measures are appropriate in the particular circumstances of the child and the individual programme, genre and or format.

Production

Physical and emotional wellbeing of the child must be the priority

Whilst Ofcom appreciates that production can be an intense and stressful period, it is important that all production staff are made fully aware that the physical and emotional welfare and well-being of under-eighteens is a central concern throughout the process.

Single point of contact

Where practicable, it is sensible to provide a single, consistent point of contact with whom the participant is able to liaise throughout the production, and who has been given responsibility to oversee the participant's welfare. It may also be helpful for parents or guardians to have access to this contact.

We suggest that broadcasters consider that in some circumstances, under-eighteens may benefit from the presence of a familiar person with whom they have a positive attachment, such as a parent, sibling, friend or teacher. In certain circumstances, given the nature and degree of the child's involvement, it may be appropriate to make other expert support available such as access to a counsellor or psychologist.

Format considerations

Careful consideration of the nature and content of the programme and its likely impact on the participant is recommended. For instance, springing high-impact surprises on under eighteens in 'live' or 'as live' programmes, in front of studio audiences, or where conflict or highly emotional situations may be involved could cause harm and/or distress. Likewise, in genres which involve young people in competition with others, performance anxieties and pressure to succeed may be issues.

Post-production

Contact with participants

Depending on the child, the nature of the programme and the level of participation involved, it may be appropriate for production staff (preferably the participant's main point of contact during production), to keep in touch with the participant in the short-term and monitor any specific after-effects that might result. In some circumstances, it may be helpful for production staff to provide access to sources of professional help or support.

Updating the participant on their participation pre-transmission

Ofcom recognises that inviting child participants and/or parents to view the final cut of a programme pre-transmission is and should remain at the discretion of the broadcaster.

In some circumstances, under-eighteens may benefit from being given appropriate information before transmission about how their contribution has evolved during post-production.

Advising pre-transmission on social media and media interest

A potential negative impact of participating in a production is the social media and media attention which may be generated following transmission. This is an area of risk which may benefit from consideration at an early stage in production, depending on the circumstances.

Broadcasters should consider the impact of social media and the risk of bullying (including online bullying) on the child participant and take appropriate steps to advise the young person(s) and/or their parents/carers in advance of transmission. This advice might include guidance on privacy settings on social media sites and/or providing a designated contact to assist the young person/parents/carers with any media attention post-transmission.

Precedent cases

Benefits Street, Channel 4, various dates and times, January 2014 (Not in breach of Rules 1.29 and 1.29)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb257/obb257.pdf>

Jeremy Kyle, ITV, 23 September 2013, 09:25 (Breach of Rule 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb252/obb252.pdf>

Big Fat Gypsy Weddings, Series 2, Channel 4 and More4, 14 February 2012 to 26 July 2012, various times (Not in breach of Rules 1.28, 1.29, 2.1, 2.2 & 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2402/obb241.pdf>

Big Fat Gypsy Weddings: Born to be Wed, Series 1, Episode 1, More4, 7 June 2012, 23:05 (Not in breach of Rules 1.28, 1.29, 2.1, 2.2 & 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2402/obb241.pdf>

Thelma's Gypsy Girls, Channel 4 and Channel 4seven, 8 July 2012 to 21 August 2012, various times (Not in breach of Rules 1.28, 1.29, 2.1, 2.2 & 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2402/obb241.pdf>

Dick and Dom's Hoopla, CBBC, 9 November 2012, 18:00 (Breach of Rules 1.28 and 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

I'm a Celebrity Get Me Out of Here, ITV1, 27 November 2012, 20:13 (Breach of Rule 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

Line of Duty, BBC 2, 17 July 2012 & 24 July 2012, 21:00 (Breach of Rule 1.28)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>

Boys and Girls Alone, Channel 4, 3 to 24 February 2009, 21:00 (Breach of Rule 2.3)

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb144/Issue144.pdf>