



## **Ofcom Guidance**

# **Offensive language on radio**

## Introduction

1. Ofcom is providing this guidance note to assist radio broadcasters in their compliance with Ofcom Broadcasting Code (“the Code”) rules relating to offensive language on radio, in particular in relation to:
  - lyrics in music tracks;
  - live music performances/interviews/studio conversation; and
  - speech and comedy content.
2. Please note that Ofcom deals with every case according to the individual circumstances and issues.
3. This Guidance note should be read in conjunction with the existing guidance for Sections One and Two of the Code, which can be found at:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf> and

<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

## Why provide guidance?

4. Ofcom has a statutory duty to ensure that: under-eighteens are protected; and generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material. These are fundamental aspects of the Code and of Ofcom’s regulation of standards in broadcasting.
5. In recent months Ofcom has investigated a number of cases involving offensive language on radio stations. As a result, and in light of other recent work<sup>1</sup> in this area, Ofcom has been considering carefully the issues relating of offensive language on radio.
6. Since Ofcom was set up in 2003, we have regularly undertaken research concerning offensive language. This research has shown consistently audiences’ concern about offensive language, above all when children are particularly likely to be listening. Ofcom’s most recent research carried out in August 2010, and the detailed results are at: <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

## What did respondents say?

7. The key findings from the 2010 research in relation to radio were that:
  - acceptability of offensive language was linked to the time of day it is broadcast and the target audience for the radio station;

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<sup>1</sup> In 2010 the Government asked Reg Bailey, Chief Executive of the Mothers' Union, to review the pressures on children to grow up too quickly. The Bailey Review was published in June 2011 (<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/CM%208078>). In parallel to the Bailey Review, Ofcom published guidance on *Protecting the Under-Eighteens: Observing the watershed on television and music videos* (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>).

- many listeners consider the station and type of programme to be more important in determining audience expectations than time of day. However, in general listeners do not expect to hear strong language during the day on radio, regardless of whether children would likely to be listening to the station or type of programme in question; and
  - in live programming, it is difficult for broadcasters to prevent the use of potentially offensive language, on the occasions that this happens. However, in such circumstances, listeners would expect to see quick action from the broadcaster to prevent further incidents and an apology.
8. This guidance note is informed by the findings of this Ofcom research. It also highlights decisions already published in the Ofcom Broadcast Bulletin<sup>2</sup> showing how Ofcom has applied the rules in Sections One and Two of the Code in relation to offensive language on radio. Broadcasters may find these cases helpful when considering how best to interpret particular Code rules.
9. Ofcom is currently conducting a review of all Code guidance and the guidance contained in this note will then be incorporated into the next issue of the overall guidance accompanying Sections One and Two of the Code, which is expected to be published early in 2012.

### **Protecting the Under Eighteens: Offensive language and unsuitable material**

10. Ofcom has a statutory duty to ensure that under-eighteens are protected. The rules in Section One of the Code serve to ensure appropriate protection for under-eighteens from broadcast content that is unsuitable for them. A fundamental requirement underpinning these rules, in relation to radio, is the concept of “when children are particularly likely to be listening” (see below).
11. Rules 1.1 to 1.7 of the Code set out the general rules relating to the scheduling and content of material broadcast in such circumstances, with Rule 1.5 underlining the overall obligation on all radio broadcasters to “...have particular regard to times when children are particularly likely to be listening”.

#### **“When children are particularly likely to be listening”**

12. As set out above, a fundamental requirement for radio relating to the protection of under-eighteens is the concept of “when children are particularly likely to be listening”. The Code makes clear that this phrase particularly refers to “the school run and breakfast time, but might include other times”.
13. For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:
- between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time; and

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/?a=0>

- between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays.
14. Outside of the times listed in paragraph 13 above, care should be taken concerning the use of offensive language on radio, and any such use needs to be justified by the editorial context.

### **Offensive language**

15. The Code lays out clear rules about offensive language broadcast when children are particularly likely to be listening (Rules 1.14 to 1.16). In taking compliance decisions about material of this nature we suggest broadcasters refer to Ofcom's 2010 research *Audience attitudes towards offensive language on television and radio* (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

16. The two fundamental rules relating to offensive language are:

#### **Rule 1.14:**

**“The most offensive language must not be broadcast...when children are particularly likely to be listening”.**

#### **Rule 1.16:**

**“Offensive language must not be broadcast...when children are particularly likely to be listening, unless it is justified by the context”.**

17. Ofcom expects radio broadcasters to pay particular attention to the types of content detailed below with regard to offensive language. These are highlighted because they have frequently been the focus of complaints to Ofcom:
- lyrics in music tracks broadcast when children are particularly likely to be listening; and
  - live music performances/interviews/studio conversation when children are particularly likely to be listening.

### **Lyrics in music tracks**

18. Ofcom recognises that music is a fundamental component of radio programming. In addition, we recognise that there is a tradition of certain genres of music including potentially offensive lyrics in songs. In line with the broadcaster's right to freedom of expression and the audience's right to receive information and ideas, it is important that broadcasters have the editorial freedom to broadcast potentially offensive content, provided it complies with the Code.
19. Children enjoy a wide variety of music. However, where lyrics in songs might cause them or their parents' distress or offence, broadcasters should consider taking measures that may mitigate any potential offence e.g. the possible use of track remixes and edits. Broadcasters should take particular care when broadcasting music tracks at times when children are particularly likely to be listening.
20. On television, in some instances, song lyrics, when combined with clear, sexualised images (for example, in music videos) means that the strength of the material overall is raised in terms of its potential to cause offence. However, radio broadcasters should also be alert to the potential offence of such song lyrics being broadcast on their own (i.e. without the accompanying images).

21. Ofcom expects broadcasters to monitor, as appropriate, all output as broadcast. In the event that offensive language is broadcast at a time when children are particularly likely to be listening, the broadcaster should apologise, as appropriate, at the earliest opportunity, to mitigate any offence. Ideally this should occur during the relevant programming and where applicable, prompt action should be taken to prevent the broadcast of any further examples of potentially offensive language.
22. Ofcom's recent findings in this area include:

OnFM

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>

*Rory's Reggae Roots*, Brick FM

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

*Live music performances/interviews/studio conversation*

23. Ofcom recognises that it is important that broadcasters should be able to exercise the editorial freedom to transmit certain live material that has an element of risk attached. However, when broadcasting live, a careful balance needs to be struck between a programme's editorial freedom to feature material where there is an acceptable risk it might potentially contain offensive content, and a requirement to take all appropriate measures to ensure people under eighteen are protected.
24. Broadcasters should note that as well as taking steps beforehand to avoid strong language during live performances at times when children are particularly likely to be listening, they must also be vigilant during the broadcast itself for any potential breaches of the Code and where necessary take timely appropriate action during the broadcast, ideally to prevent or, if necessary, to mitigate them.
25. Where a radio broadcaster believes there is a risk that offensive language might be transmitted during an upcoming live broadcast: that is to be scheduled at a time when children are particularly likely to be listening; or by artist(s) who are likely to appeal to children, it could consider taking the following compliance steps:
  - undertaking an appropriate risk assessment of the likelihood of offensive language being used by particular artists;
  - warning artists and their representatives against the use of offensive language during live broadcasts, in advance, and if necessary, immediately prior to an artist's appearance;
  - providing appropriate warnings before and during the broadcast; and/or
  - if offensive language is used, providing appropriate apologies at the earliest opportunity, ideally during the relevant programming.
26. Ofcom's recent findings in this area include:

*Radio 1's Big Weekend*, BBC Radio 1

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

### **Material that is unsuitable for children**

27. When considering adult content and protection of under-eighteens, an overarching rule that broadcasters should consider when complying material is:

**Rule 1.3:**

**“Children must...be protected by appropriate scheduling from material that is unsuitable for them”.**

28. Appropriate scheduling is judged according to all the relevant factors. These include such points as: the nature of the content; the likely number and age range of children in the audience; and the nature of the station and the particular programming. (See the meaning of “appropriate scheduling” set out in Section One of the Code). For further guidance on compliance issues relating to Rule 1.3 (which applies to both radio and television services) please read Ofcom’s guidance *Protecting the Under-Eighteens: Observing the watershed on television and music videos* (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>).
29. In relation to radio, and when children are particularly likely to be listening, broadcasters should be aware of the following rules:

**Rule 1.5:**

**“Radio broadcasters must have particular regard to times when children are particularly likely to be listening”.**

**Rule 1.6:**

**“The transition to more adult material must not be unduly abrupt...after the time when children are particularly likely to be listening”.**

**Rule 1.7:**

**“...for radio programmes broadcast when children are particularly likely to be listening, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context)”.**

### **Adult/sexualised themes**

30. Radio broadcasters should take care when broadcasting songs which include clearly adult-oriented material. Ofcom recognises that there is a tradition of certain genres of music (e.g. Urban and R&B), at times, referencing various adult themes in their songs, such as the taking of drugs and sexual activity. However, radio broadcasters should avoid broadcasting lyrics that clearly focus on the taking of drugs, sexual acts or behaviour, or convey a clearly sexualised theme, when children are particularly likely to be listening.
31. Radio broadcasters should pay particular regard to this rule where the content of the station or particular programming is specifically aimed at young people.
32. Ofcom’s recent findings in this area include:

Rinse FM

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb192/obb192.pdf>

*Schools Out*, Bishop FM

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

### **Application of generally accepted standards: Offensive language and offensive content**

33. As well as ensuring the protection of under-eighteens, radio broadcasters must also apply generally accepted standards. The two principal rules in this area are:

**Rule 2.1:**

**“Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material”.**

**Rule 2.3:**

**“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.**

34. Rule 2.3 requires broadcasters to ensure that potentially offensive material is justified by context. Ofcom will consider each case on its merits. In particular we will have regard to the relevant contextual factors such as: the time of broadcast; the likely size and composition of the potential audience; the station on which the material was broadcast; and the likely audience expectation. A factor that is of particular importance is the editorial justification for broadcasting content that may be potentially offensive.

### **Offensive language in music programming**

(Broadcasters should refer to the Guidance at paragraphs 15 to 26 above).

35. Broadcasters should refer to Ofcom's 2010 research *Audience attitudes towards offensive language on television and radio* (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf> ).
36. At times when children are not particularly likely to be listening, there is no prohibition on offensive language being broadcast on radio, as long as it complies with the Code. However, Ofcom's 2010 audience research found that in general, listeners do not expect to hear strong language during the day on radio, regardless of whether children would likely to be listening to the station or programme in question.
37. Therefore, when potentially offensive language is broadcast during the daytime, but not at a time when children are particularly likely to be listening, broadcasters should still ensure that any potential offence that might be caused to adult listeners is justified by the context. In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast.

38. Ofcom's previous decisions on these issues include:

*Howard Taylor at Breakfast, Total Star – Wiltshire*

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb191/obb191.pdf>

*Radio 1's Big Weekend, BBC Radio 1*

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb189/obb189.pdf>

*Jon Gaunt – Bosch Breakfast Show Promotion - Talksport*

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb98/issue98.pdf>

### **Live speech radio**

39. Ofcom recognises that a substantial amount of radio output is devoted to the live reporting, discussion and analysis of news and current affairs issues. We recognise that there is a rich and welcome tradition of live, hard-hitting, speech-based current affairs content, featuring presenters (e.g. 'shock jocks') or other contributors, which may present challenging listening to some audience members. Consistent with the right to freedom of expression, Ofcom recognises the importance of broadcast content of this type, provided that any potential offence is justified by the context.
40. During daytime, broadcasters should ensure that presenters and contributors in all types of live radio programming are mindful of their language at all times. Guests or one-off contributors to such programmes should be adequately briefed on the requirements of the Code to avoid using offensive language, unless it is justified by the context.
41. In a live programme, when a contributor uses offensive language (including discriminatory language) in live programming, it may be possible to mitigate and reduce any potential offence caused by the presenter promptly apologising for and/or challenging the contributor about the use of the offensive language. It is an editorial decision for the broadcaster as to how it deals with any unexpected use of offensive language during a live radio broadcast. However, given that the broadcaster has full responsibility for any live broadcast, it is essential that the broadcaster retains control, as appropriate, over all output.
42. Ofcom's previous decisions on these issues include:
- Nemone, BBC 6 Music*
- <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb123/issue123.pdf>

### **Comedy**

43. Comedy and general entertainment have a long tradition of tackling challenging and sensitive subjects as well as pushing boundaries. Ofcom considers that, in principle, recognising the importance of freedom of expression, no subject or language is taboo. Any subject could potentially be the subject of comedy, so long as any potential offence is justified by the context.

44. Consistent with the right to freedom of expression, Ofcom will give appropriate latitude to comedy content, when considering whether contextual factors can justify potential offence in any particular case. However, broadcasters should take care when using humour to refer to contemporaneous and potentially distressing events happening in the news. Humour concerning such events generally has less potential to cause offence, the greater the time that has elapsed since the event which is the object of the humour has taken place.
45. Ofcom's previous decisions on these issues include:

*Steve Penk at Breakfast*, The Revolution 96.2 FM

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb155/Issue155.pdf>

*Nemone*, BBC 6 Music

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb123/issue123.pdf>