

Guidance Notes  
Issue Five: 16 December 2009



## 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 adult<sup>1</sup>. 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

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<sup>1</sup> 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.

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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' works<sup>2</sup>. 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'"<sup>3</sup>.

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.

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

<sup>3</sup> 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 <http://www.ofcom.org.uk/consult/condocs/bcode09/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](http://www.ofcom.org.uk/tv/obb/prog_cb)) and adjudications of the Content Sanctions Committee (see [ofcom.org.uk/tv/obb/ocsc\\_adjud](http://www.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.



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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 website<sup>4</sup> 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:

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<sup>4</sup> <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 is based on research carried out by Ofcom and input from stakeholders. It contains recommendations to help broadcasters achieve the appropriate level of protection for under eighteens in programmes and should therefore assist broadcasters when seeking 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 formats<sup>5</sup>. 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 research<sup>6</sup> 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 long-term consequences of participation can vary widely depending on age, maturity and individual circumstances.

Central to Rule 1.28 is the concept of "due care". Here "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". It is for the broadcaster to judge what is appropriate<sup>7</sup> in each case to ensure compliance with the Code. Whether these recommendations, or alternative measures, are the most appropriate, will vary according to the particular programme format and level of participation involved. Other relevant factors include the participant's age, maturity and capacity to make judgements about participation and its likely consequences.

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<sup>5</sup> 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.

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

<sup>7</sup> 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 CRB (Criminal Records Bureau) or equivalent disclosure may be necessary, and additional data protection considerations may apply when working with under eighteens.

In Rule 1.28, 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 vulnerability could vary significantly, depending on factors such as age, maturity, and personal circumstances.

Rule 1.29 states that under eighteens “must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes”. We recognise that some 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.

Our research indicates that the level of care taken by broadcasters to protect under eighteens is not always evident to the audience. In some cases, referring in the programme to the safeguards put in place could, if appropriate, help to reassure the audience that the requirements of Rules 1.28 and 1.29 have been adhered to and that the participant’s welfare and well-being were one of the broadcaster’s central considerations.

#### **Pre-production**

- It is important that production staff have an easily accessible source of clear information on the broadcaster’s key considerations when working with under eighteens. Depending on the programme genre 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.
- 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 programme genre. Where appropriate, a thorough risk assessment may help to ensure that the requirements of Rules 1.28 and 1.29 are met.
- 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.
- While we recognise that no-one can predict every impact, we suggest that broadcasters consult appropriately qualified experts on the likely impact of participation where they reasonably can, especially in extreme or unusual cases.

#### **Informed consent and assent**

##### *Participants aged under sixteen*

- For those participants aged under sixteen (“under sixteens”), the Code<sup>8</sup> 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 information to under sixteens about the nature and likely consequences of participation (to allow for “informed assent”) will vary according to their age, maturity and capacity to understand.

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<sup>8</sup> In addition to Rules 1.28 and 1.29, see also Practice 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 a programme maker'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*

- We recognise that those 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.

#### *Parents/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. Programme makers are advised to highlight both the positive and negative<sup>9</sup> 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.

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<sup>9</sup> For instance, our research highlighted that some parents would not necessarily consider potential negative consequences, such as bullying at school.

### Production

- 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.
- Depending on the programme genre, it may be beneficial to seek advice from an appropriately qualified professional, such as a child counsellor or psychologist, who does not have a vested interest in the child's participation.
- Where practicable, it is sensible to provide a single, consistent point of contact with whom the participant is able to liaise throughout the production. We recommend that an appropriate person is given responsibility to oversee the participant's welfare throughout. 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.
- Careful consideration of the programme format and its likely impact on the participant is recommended. For instance, springing high-impact surprises on under eighteens in 'live' or 'as live' programmes where conflict or highly emotional situations may be involved could cause harm and/or distress. Likewise, in genres which involve young children in competition with others, performance anxieties and pressure to succeed may be issues.

### Post-production

- Depending on the nature of the programme and the level of participation involved, it may be beneficial if production staff (preferably the participant's main point of contact during production), 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.
- Ofcom recognises that inviting participants 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.

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## Guidance Notes

Section 2:  
Harm and offence



## Section Two

# Harm and Offence 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."

This section addresses potential and actual harm and/or offence. Broadcasters may make programmes about any issue they choose, (so long as they comply with the general law and the Broadcasting Code). The rules and this guidance cannot anticipate every situation. Moreover, social mores and sensitivities change both over time and in response to events.

### **Rule 2.1 Generally accepted standards**

We recognise that some programming may include material that has the potential to be harmful or offensive. This puts a responsibility on the broadcaster to take steps to provide adequate protection for the audience. The criteria outlined in the meaning of "context" give an indication of what this may involve. Ofcom regularly publishes complaints bulletins which provide information on matters members of the public have found harmful or offensive and Ofcom's decision in those cases.

Broadcasters and the public view and listen to material measured against a background of generally accepted standards. Ofcom licenses an increasing number of satellite and cable channels, who broadcast solely to non-UK countries where different standards may apply. The understanding of what is "generally accepted standards" should be underpinned by relevant research.

Generally accepted standards will change over time and will also vary according to the context (as set out under Rule 2.3 of the Broadcasting Code).

Generally accepted standards also apply where programmes invite viewers or listeners to participate in them. Broadcasters should ensure that they take all due care to avoid disadvantaging any viewer or listener who votes, enters a competition, takes part in a poll or otherwise interacts with a programme by participating in some way. Further guidance is provided with reference to Rules 2.2 and 2.11.

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For further guidance on “generally accepted standards” please see rest of this guidance.

## Rule 2.2 Material misleadingness

Although it is a fundamental requirement of broadcasting that an audience should not be misled in the portrayal of factual matters, Ofcom only regulates the accuracy of programmes *per se* in News programmes.

Nevertheless, Ofcom is required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of misleading material in relation to the representation of factual issues. This rule is therefore designed to deal with content that **materially misleads the audience so as to cause harm or offence**.

It is not designed to deal with issues of inaccuracy in non-news programmes and complaints that relate solely to inaccuracy, rather than with harm or offence, will not be entertained.

Whether a programme or item is “*materially*” misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred.

This rule does not apply to News. News is regulated under **Section Five**.

Broadcasters should also refer to Rules 2.13 to 2.16 and associated guidance. These rules concern, among other things, the broadcaster’s responsibility to avoid materially misleading audiences that are invited on air to participate in broadcast competitions and voting schemes.

## Rule 2.3 Context and information

### 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.

The use of language (including offensive language) is constantly developing. Whether language is offensive depends on a number of factors. Language is more likely to be offensive, if it is contrary to audience expectations. Sensitivities can vary according to generation and communities/cultures.

Offensive material (including offensive language) must be justified by the context (as outlined under Rule 2.3 in the Broadcasting Code).

Broadcasters should be aware that there are areas of offensive language and material which are particularly sensitive.

Racist terms and material should be avoided unless their inclusion can be justified by the editorial of the programme. Broadcasters should take particular care in their

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portrayal of culturally diverse matters and should avoid stereotyping unless editorially justified. When considering such matters, broadcasters should take into account the possible effects programmes may have on particular sections of the community.

Similar considerations apply to other area of concern (as referred in the Broadcasting Code). For example, broadcasters should be aware that the use of bad language directly coupled with holy names may have a particular impact on people with strongly held beliefs which goes beyond any offence that may be caused by the bad language itself.

In addition to the editorial justification and context, broadcasters will wish to take into account:

- the individual impact of the particular swearword;
- the type of programme in which it appears. For example, in dramas and films, character and plot development may lessen the impact of such a phrase, whereas in a documentary, while a phrase can reflect the reality of a person or group, it may be less acceptable to the wider audience of viewers;
- whether information before or during the programme may lessen potential offence.

*Research: Delete expletives? (2000) ASA, BBC, BSC, ITC; Offensive Language and Imagery in Broadcasting: A Contextual Investigation (2005) Ofcom; Violence and the viewer (1998) BBC, BSC, ITC*

#### **Discriminatory treatment or language (for example, matters relating to age, disability, gender, race, religion and sexual orientation)**

There is a relationship between *representation* – the presence and inclusion of a diverse range of people on screen - and *portrayal* - the roles involved and the way that minority groups are presented in programmes. In standards regulation, the latter is assessed by *context* (as defined in the Code).

Research suggests that viewers and listeners appreciate programmes that are representative of the diverse society in which they live. If there is an under-representation, the use of stereotypes and caricatures or the discussion of difficult or controversial issues involving that community may be seen as offensive in that it is viewed as creating a false impression of that minority.

*Research: Multicultural broadcasting: concept and reality (2002) BSC, ITC, BBC, RA; Disabling prejudice (2003) BBC, BSC, ITC; Representations of ethnicity and disability on television (2003) BSC, ITC*

#### **Information, labelling and warnings**

Viewers and listeners are taking an increasing responsibility for what they watch and listen to and, for their part, broadcasters should assist their audience. Apart from the general considerations given in the Code about context, giving clear information and adequately labelling content may also reduce the potential for offence.

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Where a programme has dealt with a particularly sensitive issue, broadcasters may wish to provide a helpline specific to that issue.

*Research: The Broadcasting Standards Regulation (2003) BSC, ITC; Striking a balance: the control of children's media consumption (2002) BBCBSC, ITC; Dramatic Licence: fact or fiction? (2003) BSC; Audio Visual content information (2005) Ofcom*

### **Trailers and programme promotions**

Trailers come upon audiences unawares, so that people are not able to make informed choices about whether to watch or listen to them. Broadcasters should bear this in mind when scheduling trailers which may include potentially offensive material.

Broadcasters should also bear this in mind when scheduling trailers which may include challenging material (which includes but is not limited to, the use of the most offensive language, graphic violence or sexually explicit scenes).

The requirement in Rule 2.3 that broadcasters must ensure that material which may cause offence is justified by the context, equally applies to programme trailers. Therefore, trailers including challenging material (see above) may, in principle, be permitted post-watershed, provided they are sufficiently contextualised. It is therefore expected that:

- where such a trailer is broadcast during programming that is dissimilar in content – advance information should be given; or
- where the content of the trailer is substantially similar\* to the programming either side of it - no advance information may be necessary.

In such cases, where the content of the trailer is substantially similar to the programming either side of it, then, it is not likely to be necessary for broadcasters to provide further advance information if either:

- such information has already been given to the audience about the programme broadcast before the trailer (e.g. "the following programme contains language that some viewers might find offensive"); or
- the likely expectation of the audience is that the programme contains challenging material and the trailer contains substantially similar material.

\*Broadcasters should note the use of the term "substantially similar". Simply because programming either side of a trailer contains adult themes does not mean that any trailer would be permitted e.g. audiences watching a programme containing offensive language would not necessarily expect a trailer broadcast during that programme to contain graphic violence or sexually explicit scenes.

### **Rule 2.4 Violent, dangerous or seriously anti-social behaviour**

Broadcasters should have the creative freedom to explore areas which may raise serious social issues. This editorial freedom may extend to the style and tone of the programme as humour or dramatisation may provide easier access to difficult topics. However there are a range of activities that may be more problematic and the

approach, such as information given before the programme or before an activity and the tone of commentary, is important in setting the parameters.

Late night shows featuring extreme sports or stunts have raised issues about the glamorisation of such activities. Even when scheduled appropriately, late at night, they may still raise questions in terms of vulnerable and younger viewers who may be encouraged to believe such behaviour is easily/harmlessly copied or acceptable.

*Research: Dramatic Licence: fact or fiction? (2003) BSC; Violence and the viewer (1998) BBC, BSC, ITC; Knowing the score (2000) BSC, BBFC;*

### **Rule 2.5 Suicide and self-harm**

This rule reflects a continued concern about the impact of real or portrayed suicide, and self-harm, on those whose minds may be disturbed. Whilst it is always difficult to prove causality, various studies have shown that there may be a short-lived increase in particular methods of suicide portrayed on television. Broadcasters should consider whether detailed demonstrations of means or methods of suicide or self-harm are justified.

### **Rules 2.6, 2.7 and 2.8 Exorcism, the occult and the paranormal**

Broadcasters and members of the public's attention is directed to the *Fraudulent Mediums Act 1951*. If members of the public believe that practitioners are acting in a way that would be caught by the provisions of this Act, it is a matter for the law and not for this Code.

For the following topics see guidance to Rule 1.27:

- Exorcism
- Occult
- Tarot
- Spells
- Paranormal
- Divination
- Astrology

### **Rule 2.9 Hypnosis**

Elements of the hypnotist's routine may be broadcast to set the scene. However, it is important not to broadcast the routine in its entirety, nor to broadcast elements that may cause a member of the audience to believe they are being influenced in some way.

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Broadcasters and interested members of the public will wish to be aware of the provisions of the *Hypnotism Act 1952*. If members of the public believe that practitioners are acting in a way that would be caught by the provisions of this Act, it is a matter for the law and not for this Code.

### **Rule 2.11 Subliminal Images**

An image (however brief) that can be seen by viewers is not subliminal.

### **Rule 2.12 Flashing Images**

Flashing images and/or patterns can cause seizures in people with photosensitive epilepsy. The Ofcom guidelines, based on scientific research, are intended to limit the incidences of seizures and a warning should only be used in place of the guidelines if editorially justified.

See attached Annex 1

### **Rules 2.13 to 2.16 Broadcast competitions and voting**

#### **Audience participation**

Rules 2.13 to 2.16 apply to all broadcasters (Ofcom licensees, the BBC and S4C). Every Ofcom broadcast licensee is reminded that it is also ultimately responsible (as a condition of its licence to broadcast) for any communication with its audience that is publicised in (a) programme(s).

This section incorporates broader guidance on the use of participation techniques – notably premium rate telephone services (PRS) – within programmes. Such guidance is placed here, as much participation concerns broadcast competitions or voting, and, more generally, Section Two of the Code covers the subjects of harm and misleadingness, both of which are core concerns in the operation of participative interactivity.

When considering financial harm (and misleadingness resulting in financial harm), broadcasters should also bear in mind that where revenue is generated from interactivity this will generally be regarded as an aggravating factor for penalties in cases of proven compliance failure.

Where a broadcaster's compliance system for a broadcast competition or vote is inadequate or fails, this may give rise to a breach of Rule 2.13 and/or Rule 2.14 if the audience has been misled about the standards it can reasonably expect for treatment of its communication with broadcasters. (PRS are typical means by which broadcasters encourage participation – see below).

In these cases, harm or offence (or both) may arise in one of two ways:

- The audience's trust may have been abused, whether or not the interactive mechanism is free or charged for. Where the audience feels it has been misled or otherwise treated unfairly or negligently, this may cause serious

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offence; and where trust in broadcasting is undermined Ofcom is likely to conclude that harm has been caused; and/or

- Where a viewer or listener has paid a premium to interact with a programme, there is a clear potential for financial harm.

Voting schemes and competitions share certain characteristics, such as the imperative to aggregate interactions efficiently, the need to build in sufficient time for viewers to interact and for processing votes and entries, and the importance of contingency procedures in the event of technical or other problems. Guidance on these and other matters can be found below.

#### Premium rate telephone services in programmes

As broadcasters are responsible for 'means of communication' with the public, complaints to Ofcom about the use in programmes of telephone lines, SMS messaging, internet communication and so on will normally be dealt with at least by Ofcom. However, because the use of premium rate services will usually involve a specialist service provider regulated under the Code of Practice administered by PhonepayPlus (PP+), Ofcom and PP+ will co-ordinate investigations closely.

PP+ has a prior permission scheme for PRS service providers who provide services to broadcasters. A service provider must demonstrate that it has sufficient technical capacity, expertise and contractual clarity to be able to provide PRS services to broadcasters. If it deems it appropriate, generally because bad practice is established, PP+ can withdraw permission from a service provider, barring it from broadcast PRS operation.

Therefore, broadcasters should be aware that any service provider they contract with for broadcast PRS services must hold the necessary prior permission status. PRS have been the most usual source of problems in the area of audience participation and therefore require particular scrutiny.

Television broadcasters' licences issued by Ofcom therefore require verification by an independent third party in respect of PRS voting and competitions, where these are publicised in programmes – see separate guidance document at:

[http://www.ofcom.org.uk/tv/ifi/guidance/guidance\\_verification\\_obj.pdf](http://www.ofcom.org.uk/tv/ifi/guidance/guidance_verification_obj.pdf)

Television broadcasters' attention is also drawn to PP+'s *A Statement of Expectations on Call TV Quiz Services*, which can be found in Annex 2 of the document at:

<http://www.phonepayplus.org.uk/upload/Calltv.pdf>

This should, where relevant, be considered alongside the PP+ Code of Practice.

Ofcom radio broadcast licensees are reminded of their responsibility to adhere to the requirements of the RadioCentre's '*Code of Practice on Premium Rate Interaction*', which can be found at:

[http://www.radiocentre.org/documents/Commercial\\_Radio\\_Premium\\_Rate\\_Interaction\\_Code\\_01-04-10.pdf](http://www.radiocentre.org/documents/Commercial_Radio_Premium_Rate_Interaction_Code_01-04-10.pdf)

Ofcom is currently monitoring the efficacy of this Code. During 2011, we will assess whether it is necessary to consider varying radio broadcasters' licences to require

verification by an independent third party in respect of PRS broadcast competitions and voting that are publicised in programmes.

### **General fairness**

#### The general conduct and design of competitions (including Call TV quiz services)

Ofcom expects all competitions to be run fairly and honestly. Broadcasters who run them are inviting viewers and listeners to take part in schemes on terms that would be assumed to be equitable and free of deception. All aspects of a competition should therefore be clear and fair.

#### Technical issues and production pressures

Two features have been found particularly likely to produce difficulties with the proper running of competitions: the technical complexity of telephony and other communication technology chains, and the pressures of production, particularly live production. Each can give rise to problems by itself, but frequently the two effects interrelate.

#### Technical issues

Broadcasters are strongly advised to seek expert guidance on all parts of the systems used by the audience for entry to competitions and relied on by broadcasters for the administration of competitions. This will include, as appropriate, expertise in such matters as telecommunications network capacity, 'latency' in mobile networks, reliability of equipment, service provider and aggregator capability, and the efficiency and robustness of communication between producers, service providers and others.

Broadcasters may not always have direct operational control of elements within the supply chain, for example telephone networks. But broadcasters do have control over the choice of particular means of communication and of contractors and intermediaries, and over contracts and other agreed protocols. Bearing in mind that responsibility in this area cannot be reassigned by broadcasters, licensees are advised to be able to demonstrate that all due care has been taken with network selection and operational arrangements. In the case of mobile networks this should include decisions about the choice of billing method.

Ofcom understands that PRS provision now generally allows lines to be closed at the end of voting and competition entry periods such that calls made outside those periods do not incur a premium charge. Arrangements in which calls continue to be so charged outside allotted entry or voting periods are very much more likely to be found in breach of the Code (or of licence conditions, as appropriate). Broadcasters should make every effort to ensure that PRS charges are not applied in such circumstances. Generally, because network charges may be incurred, broadcasters should make clear to audiences that early or late calling may attract some charge.

In general, the robustness of systems should be assured whether interaction is free or charged for.

'Red button' activities on certain platforms can be subject to user interaction such that entries and votes can be charged without the relevant interaction having been fully registered. This happens if users interact (i.e. press the red button or equivalent)



in a way that requires an online connection but then 'navigate' away from that connection prematurely.

- Broadcasters using 'red button' routes for interactivity should ensure that where a risk of user navigation 'error' exists such that charges might be incurred without the relevant interaction having been completed, viewers who select the relevant chargeable option receive a specific visual on-screen warning explaining how to minimise any risk of their entry being charged but not received.

#### Production pressures

It is evident that some competitions have been operated improperly because production and editorial values have been placed before obligations of fairness: some broadcasters have regarded the maxim 'the show must go on' as trumping their regulatory (and ethical) duties.

One key consideration in the production planning for competitions is time. In live programming this concern is especially acute. Broadcasters will wish to consider carefully whether shorter live programmes are capable at all of providing sufficient time for the proper administration of competitions, mindful that some extra time may be necessary because of technical or other problems. **Similar considerations apply to voting schemes.**

Strains on the production process include competitions attracting no correct answers, technical problems leading to a breakdown in the process of gathering entries, choosing winners and communicating the necessary details, and difficulties with putting winners to air.

Broadcasters should, therefore, consider carefully whether the time for entry and for processing is safe and, importantly, be prepared to abort a competition and if necessary make clear to the audience that this has been done.

- The time for closure of the entries to a competition should take due account in each case of the technical capacity, the likely level of response, and the time needed for winners or successful entrants to be selected fairly.
- In the event of a significant failure in the process becoming known before a result is broadcast, the result should be withheld until the failure is rectified and the audience so notified, if appropriate.

There are further areas of advice indirectly related to production that broadcasters are reminded are also very important. For example, the handling of competition entries may be unfair if statistical flaws are introduced, for instance by selecting from proportions of entries from different routes (telephone, internet, post etc), or the exclusion of some entries by 'sampling' during an entry period. These techniques can easily bring about unfairness unless very close attention – likely to include expert statistical advice – is paid to the way they are used.

Further, it is Ofcom's view that competitions resolved through the random picking of a winner are generally understood by viewers to operate as simple draws analogous to raffles and similar 'winner out of a hat' schemes: in other words, that all entries from which a winner will be chosen are entered into the pool. The selection should of course be genuinely random.

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Where competitions are resolved in a different manner, for example by the first caller chosen or the automated elimination and selection of callers at the point of contact, it may be appropriate to adopt a different approach, but it is imperative that any selection method is fair and that great care is taken to ensure that viewers or listeners are made aware of the method of choosing winners or candidate winners.

- Without justifiable reason to do otherwise, any process of shortlisting or selecting winners or successful entrants should begin only after the time set for closure of entries and after an additional time calculated to enable all entries to be aggregated;

In all cases Ofcom's advice is that licensees should explain to viewers and listeners how a competition is run and the methods used for selecting winners.

## Pricing

This subject is of great importance. Licensees are advised to consider carefully the information they make available to viewers about costs and to give as much clear detail as is practicable.

Ofcom does not believe that cost messages in some programmes have placed sufficient stress on the higher charges likely to be incurred by some users of non-BT networks, particularly the mobile networks. Rather than merely saying that 'networks/mobiles may vary', Ofcom advises strongly that a more emphatic message is used, for example:

"Calls cost Xp from BT lines. Calls from other networks and from mobiles may vary and can cost a lot more. Contact your provider for details."

An alternative approach likely to be acceptable would be the use of a maximum mobile charge – an 'up to' price – where that can be established. Whatever form of words is chosen it should indicate that calls from mobiles may be significantly more expensive than the benchmark BT price.

Such information should always be delivered in a way that is clear and comprehensible to the audience.

## Repeat Broadcasts

- If a former live competition or programme containing live voting is re-run so that it is no longer possible for the audience to participate by contacting the number given on air, then Ofcom would expect this to be made clear to the audience. On television, text stating "pre-recorded" is likely to be insufficient unless the phone line is also dead or the number on screen is also illegible. Broadcasters may also need to be aware of PP+'s Code of Practice concerning this matter.

## Free Entry Route

The Gambling Act 2005 contains provisions for lotteries. These include the terms on which free entry routes can be offered and promoted as a means to avoid prize competitions becoming illegal lotteries. Licensees are urged to seek expert legal advice on the law in this area. The Gambling Commission has published guidance, available at:

<http://www.gamblingcommission.gov.uk/Client/mediadetail.asp?mediaid=304>

### Scope of Rules 2.13 to 2.16

These rules concern broadcast competitions (of whatever difficulty) and voting, and generally apply whenever a competition or vote is publicised or run, or when their results are reported on air.

Ofcom believes that participation in which viewers or listeners are likely to have a strong personal interest in the outcome requires the provision of specific protection for participants from harm. General entertainment programmes such as contests and gameshows are not therefore generally classified as broadcast competitions.

Likewise, voting does not generally include opinion polls. However, broadcasters should note Rule 2.2 of the Code, which concerns misleadingness of (other) factual matters.

### Rules and terms & conditions

Rule 2.15 refers to the requirement for broadcasters to draw up rules for broadcast competitions and votes. The term 'rules' here is used to mean any rules concerning, for example, the mechanic of a competition but also applies to any terms and conditions that, for instance, stipulate entry or participation requirements. This covers both general sets of terms and conditions that a broadcaster may have in place to cover all its broadcast competitions and/or votes, and any specific rules for each individual competition or vote.

In other words, Rule 2.15 is intended to cover all rules, terms and conditions that are applicable to the broadcast competition or vote.

Rule 2.15 requires that rules are "clear and appropriately made known". For example, we expect rules that limit those who can take part in a competition to be broadcast. (Note: their broadcast is not expected if specific individuals – e.g. previous prize winners – have been informed directly). In particular, where an entry limitation is considered to be significant (e.g. an age restriction for entering a competition) broadcasters should air them orally each time a competition is run and on a regular basis throughout longer sequences.

We strongly recommend that broadcasters produce written rules that support all and/or specific competitions being broadcast by them. Where the competition is broadcast on television, details of where the relevant rules are available (e.g. on the channel/programme's website) ought to be aired regularly, while on radio, where competition strands are often shorter, we would normally expect such details to be mentioned at least occasionally. Broadcasters may also need to be aware of PP+ requirements regarding this issue, including those in its Statement of Expectations.

Competitions are sometimes run simultaneously on various local/regional services (e.g. on a radio network), and this may result in participation being spread wider (i.e. beyond the local area) than might be obvious to the viewer/listener in any one area. In such circumstances, and where the main prize is not awarded by each service, we would normally expect that, in order to be fair, it has to be made clear that other services are participating. This should be done both on air and in any written rules, whenever the competition or its results are run.

### Solutions and Methodology

A cause of complaint has been that, at the end of a competition, the way in which the solution is reached ('methodology') has not been explained on air and, in some cases, the answer has not been given. As many competitions are cryptic, this leads some of the audience to doubt whether the solution given is correct and to question the legitimacy of the competition. This is often because the complainant cannot understand the methodology. A further concern expressed by complainants is that as many competitions have more than one possible solution, the broadcaster may change the answer while a competition is on air, preventing it being solved too early. Sufficient transparency is therefore necessary in order to ensure that competitions are both conducted fairly and seen to be conducted fairly, to avoid unnecessary audience concern.

- Except where the logic behind an answer to a competition question is readily recognisable to a reasonable viewer, the methodology used to produce it should be adequately explained during the broadcast at the time the answer is given. The same guidance – the broadcast of both the answer and any explanation of how it was arrived at – applies in the event that no entrant is successful.

It is expected by Ofcom that explanations of methodologies will normally be given during a programme. But there may be occasions where it is appropriate for licensees to provide that explanation in additional ways, such as on a website. When this is done, clear directions to viewers about how to access the methodology should be given. With complicated methodologies, it is likely that a web page or other medium that can allow viewers time to study the explanation or make a copy of it will be particularly appropriate, although licensees should always expect to give the methodology on air as well.

None of the guidance given above about disclosing methodologies should be understood as justifying any methodology that is unfair. Ofcom regards obscure or absurd methodologies, of any sort, as unfair. The Code is most likely to be breached in this respect where arbitrary or contrived puzzles are presented in a way that suggests they can be solved by straightforward means. Further discussion about this is given below.

- Where a competition is cryptic or ambiguous, or there appears to the audience to be more than one possible answer to a competition, broadcasters must, when requested by Ofcom, provide evidence that the competition has been run fairly. Broadcasters should be able to provide Ofcom with the correct answer and the methodology used to arrive at that answer, together with evidence that it could not have been changed after the competition started. For example, a broadcaster may choose, before a competition is run, to place its chosen methodology and/or answer with an independent professional third party (e.g. an auditor or solicitor).
- Ofcom recognises that competitions may be carried forward to another time/day. Appropriate transparency about this is important. However, where competitions form the essential feature of a programme (e.g. in the case of Call TV quiz services or similar) an audience should be given the correct solution and its associated methodology, when a competition ends.

- For a competition to be conducted fairly, we believe its correct solution should be reasonable (i.e. not unfairly obscure) and certain. This applies to all competitions, including those that Ofcom judges to be dependent to any extent on factual recall and/or the application of established protocol (e.g. accepted mathematical process). However difficult or cryptic the competition, where a specific methodology is used, we would expect application of that methodology to produce only the correct solution. All methodologies should be clear, comprehensive and precise.
- If a methodology is re-used in any later but similar competition by a broadcaster, the instructions or questions given to viewers and listeners in the subsequent quizzes should not differ materially from those given to the audience when the methodology was used previously. It is expected that the audience shall not be led to believe that a different methodology applies in the later competitions. For example if a methodology is re-used, any instruction or question given to the audience in the first broadcast of the competition (e.g. "add all the numbers") and the name of the competition should remain the same, and not be changed (e.g. "add all the numbers" to "solve the sum"). Equally, if the name of a quiz, and the instructions or questions issued to the audience, are repeated in a subsequent competition, and if the information the audience has to consider is in a similar format, the methodology should be the same.
- In order to conduct a competition fairly, an audience should not be misled by a broadcaster stating or implying that a competition is simple if it is actually difficult or cryptic.

## Prizes and winners

- Prizes should be despatched within a reasonable time (note: where relevant, PP+'s requirements may apply), unless indicated otherwise when the prize is described.
- If particular prizes become unavailable post-broadcast, we would expect comparable substitutes to be provided.
- We would strongly advise broadcasters not to present a monetary prize as a possible resolution of financial difficulty (e.g. as a means of paying off credit card debt). See also Rule 2.1.
- As best practice and to forestall audience concern, broadcasters may wish to consider listing the names of all winners, with their permission, on an appropriate website as soon as possible after their wins.

## Annex 1

# Ofcom Guidance Note on Flashing Images and Regular Patterns in Television

Re-issued as Ofcom Notes (25 July 2005)

Revised and re-issued by the ITC in July 2001

Editorial amendment June 2002

1. Flickering or intermittent images and certain types of regular pattern can cause problems for some viewers who have photosensitive epilepsy. These guidelines have been drawn up following consultation with leading medical opinion in this area with the aim of reducing the risk of exposure to potentially harmful stimuli.

2. Television is by nature a flickering medium. In Europe each transmitted picture is refreshed 50 times each second and interlaced scanning generates flicker 25 times each second. It is therefore impossible to eliminate the risk of television causing convulsions in viewers with photosensitive epilepsy. To reduce risk the following guidelines on visual content should be applied when flashing or regular patterns are clearly discernible in normal domestic viewing conditions. It should be noted that the level of any cumulative risk arising from successive sequences of 'potentially harmful' flashes over a prolonged period is unknown. If, as medical opinion suggests, the risk of seizures increases with the duration of flashing, broadcasters should note that it is possible that a sequence of flashing images lasting more than 5 seconds might constitute a risk even when it complies with the guidelines below.

3. A **potentially harmful flash** occurs when there is a pair of opposing changes in luminance (i.e., an increase in luminance followed by a decrease, or a decrease followed by an increase) of 20 candelas per square metre ( $\text{cd.m}^{-2}$ ) or more (see notes 1 and 2). This applies only when the screen luminance of the darker image is below  $160 \text{ cd.m}^{-2}$ . Irrespective of luminance, a transition to or from a saturated red is also potentially harmful.

3.1.1. Isolated single, double, or triple flashes are acceptable, but a sequence of flashes is not permitted when both the following occur:

- i. the combined area of flashes occurring concurrently occupies more than one quarter of the displayed (see note 3) screen area; and
- ii. there are more than three flashes within any one-second period. For clarification, successive flashes for which the leading edges are separated by 9 frames or more are acceptable, irrespective of their brightness or screen area.

4. **Rapidly changing image sequences** (e.g. fast cuts) are provocative if they result in areas of the screen that flash, in which case the same constraints apply as for flashes.

5. A **potentially harmful regular pattern** contains clearly discernible stripes when there are more than five light-dark pairs of stripes in any orientation. The stripes may be parallel or radial, curved or straight, and may be formed by rows of repetitive

elements such as polka dots. If the stripes change direction, oscillate, flash or reverse in contrast they are more likely to be harmful than if they are stationary. If the patterns obviously flow smoothly across, into, or out of the screen in one direction they are exempt from restriction.

5.1. Potentially harmful patterns are not permitted when either of the following two conditions apply:

- i. the stripes are stationary and the pattern occupies more than 40% of the displayed screen area; or
- ii. the stripes change direction, oscillate, flash, or reverse in contrast and the pattern occupies more than twenty five per cent of screen area; and in addition to either of the above two conditions applying, when
- iii. the screen luminance of the darker bars in the pattern is below 160 cd.m-2 and differs from the lighter bars by 20 cd.m-2 or more (see notes 1 and 2).

#### Footnotes:

1. Video waveform luminance is not a direct measure of display screen brightness. Not all domestic display devices have the same gamma characteristic, but a display with a gamma of 2.2 may be assumed for the purpose of determining electrical measurements made to check compliance with these guidelines (see appendix I).
2. For the purpose of measurements made to check compliance with these guidelines, pictures are assumed to be displayed in accordance with the 'home viewing environment' described in Recommendation ITU-R BT.500 in which peak white corresponds to a screen illumination of 200 cd.m-2.
3. It may be assumed that overscan on modern domestic television receiver displays will normally be in the range 3.5% ± 1% of the overall picture width or height (as indicated in EBU Technical recommendation R95-2000).

First issued as an ITC Guidance Note November 1994, first revised September 1999, revised and re-issued July 2001. Re-issued by Ofcom (date tbc)

#### Further References

##### Relevant Codes

The ITC Programme Code, *Autumn 1998, Section 7.3 revised September 1999, Section 1.12(iii) revised Spring 2001*

Ofcom Broadcasting Code, Harm and Offence, Section 2.10 (date tbc)

The ITC Advertising Standards Code, *September 2002*

##### External Publications

Harding, Graham F.A., & Jeavons Peter M. *Photosensitive Epilepsy (1994) ISBN: 0898683 02 6*

Harding, Graham F.A. *TV can be bad for your health, Nature Medicine Vol.4 No.3 March 1998*

Wilkins, Arnold J. *Visual Stress (1995) ISBN 0 19 852174 X*

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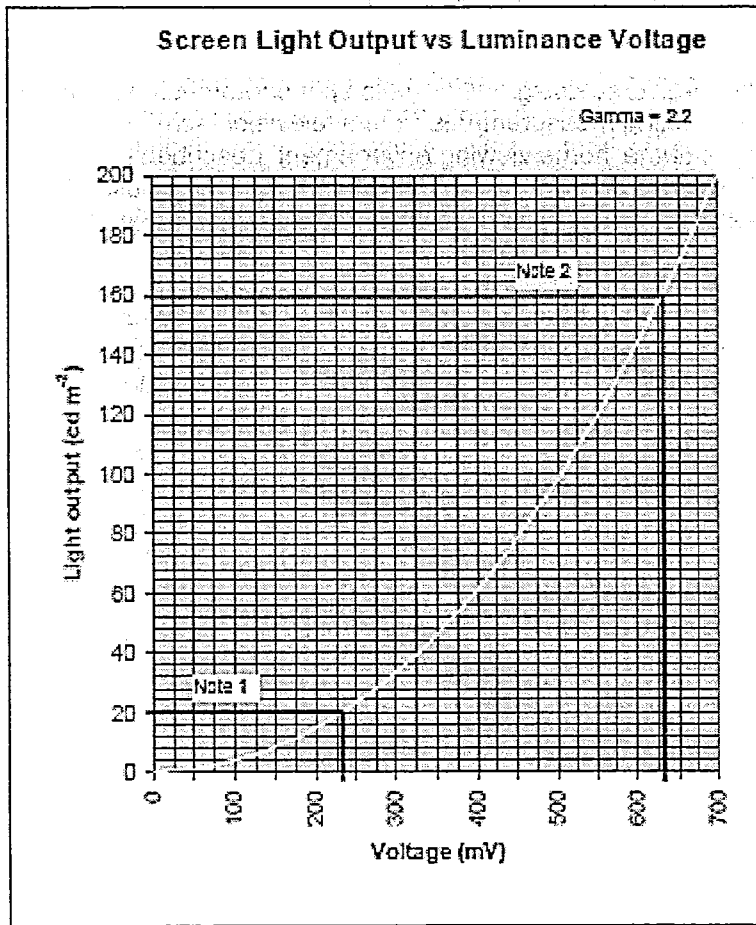
**Ofcom Guidance Note on Flashing Images and Regular Patterns:  
Luminance Measurement**

Screen luminance may be measured using a hand-held spot photometer with a CIE characteristic designed for making measurements from a television screen. The display conditions are those of the 'home viewing environment' described in Recommendation ITU-R BT.500. For accurate results, the display brightness and contrast should first be set up using PLUGE (Rec. ITU-R BT. 814) with peak white corresponding to a screen illumination of 200 cd.m<sup>-2</sup>.

As an alternative, the following graph and table may be consulted if electrical measurements are more convenient. This shows the typical relationship between luminance (monochrome) voltage and the emitted light output of a television display.

There are measurement uncertainties associated with both methods. Nevertheless, flashing images or regular patterns described in this Guidance Note as being potentially harmful can be expected to be obviously discernible. Such potentially harmful images occur only rarely during the course of programme material with scenes that appear natural or represent real life; examples include photographers' flashlights or strobe lights in a disco. Part of the purpose of the Guidance Note is to assist programme producers to avoid inadvertently creating video effects that contain flashing images or patterns likely to be harmful.





Voltage (mV)	Light (cd/m <sup>2</sup> )
0	0.1
25	0.4
50	1.2
75	2.3
100	3.8
125	5.8
150	8.3
175	11.2
200	14.6
225	18.6
234	20.1
250	23
275	28
300	33.5
325	39.5
350	46.1
375	53.2
400	61
425	69.3
450	78.1
475	87.6
500	97.6
525	108.3
550	119.5
575	131.4
600	143.9
625	157
631	160
650	170.7
675	183
700	200

Notes:

1. A luminance voltage of 234 mV results in light output of 20.1 cd.m-2. If the **brighter** image of a flash or pattern is **above** this level, then it is potentially harmful if the light output between the darker and brighter images differs by 20 cd.m-2 or more.
2. A luminance voltage of 631 mV results in light output of 160 cd.m-2. If the **darker** image of a flash or pattern is **below** this level, then it is potentially harmful if the light output between the darker and brighter images differs by 20 cd.m-2 or more.

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## Guidance Notes

Section 3:  
Crime

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### Section Three

# Crime Guidance

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

#### **Rules 3.1 Material likely to encourage ...crime or to lead to disorder**

In Rule 3.1, "crime" relates to offences under criminal law punishable by a fine or imprisonment. "Disorder" may relate to the criminal offence of civil disorder or may be more generic, including acts that might lead to or provoke the commission of crime.

Caution may be required in programmes covering relatively common but illegal behaviour such as dangerous driving, speeding or criminal damage.

Broadcasting sports or party election/political broadcasts would not be caught by this rule.

This rule concerns the likelihood of the encouragement or incitement of crime (or disorder). For example, the filming of a criminal activity is not in itself, necessarily, an encouragement or incitement.

#### **Rules 3.3 Payment to criminals**

Rule 3.3 refers to payments made to convicted or confessed criminals for a programme contribution related to their crimes. Under the Proceeds of Crime Act 2002, criminals should not benefit from their crimes. Family members, friends and associates may be paid in money or in kind for a contribution to a programme about the crime but not if it is known that such payment will benefit the criminal.

This rule is not designed to inhibit the rehabilitation of criminals and would not automatically disqualify anyone convicted of a crime being paid for a programme contribution as long as that contribution was not about his/her crime.

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There may be occasions where a broadcaster takes the view that it is appropriate to inform the audience that a payment (and how much) has been made to a contributor to a programme. Ofcom believes that there may be benefits to the audience, in terms of transparency, of declaring on-air when a payment has been made to a convicted or confessed criminal about his or her crime for a contribution to a programme.

**Rules 3.4 Payments while proceedings are active**

Expenditure refers to legitimate costs (expenses) reasonably incurred in the production or pre-production of a programme or part of programme; for example, travel and subsistence.

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## Guidance Notes

Section 4:  
Religion

## Section Four

# Religion Guidance

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

## Religious Programmes

The meaning of religious programmes demonstrates that this section of the Code does not apply simply to a programme containing devotional material, an act of worship or prayerful reflection, but includes other types of programming, including for example, current affairs programmes or history programmes where religion or belief is a *significant part* of the programme.

The meaning given in this section does not include comedies, drama or general entertainment programmes demonstrably of a non-religious nature.

Ofcom acknowledges that religion in itself is not harmful. However, Parliament, in this area, has specifically required Ofcom to set standards to protect listeners and viewers from the failure of a proper degree of responsibility, improper exploitation and abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

## Rule 4.3 and 4.4 The identity of a religion

Ofcom research shows that audiences of all faiths and none are prepared to accept another belief-system making clear its beliefs in its own terms, provided they know who is addressing them and why (e.g. what religion or denomination). What is of concern to audiences (and particularly for those that are vulnerable) is when a programme or item aims subversively to promote a religion.

This rule does not apply to drama and entertainment programmes.

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*Research: Religious Programmes: a report on the key findings of a qualitative research study*

#### **Rule 4.5 Seek recruits**

Recruitment is a *direct* call to action from a person or within a programme that the audience consider actively the possibility of joining a particular religious group or subscribe to a particular religious doctrine.

Many religious programmes may involve some level of suggestion concerning the positive, life-affirming nature of the belief featured, or at least an un-stated wish that an audience might subscribe to the views being expressed. This is not, in terms of the Broadcasting Code, recruitment.

Recruitment, where this Code is concerned, is therefore best described as the difference between a direct appeal to an audience that they should, ought or need to join a faith and the proclaiming of benefits of a particular doctrine or belief-system.

#### **Rule 4.6 Improperly exploit...susceptibilities**

Respondents to Ofcom research on religious programmes believe that all people are susceptible at one time or another. There are times when it will be clear to the broadcaster that they are soliciting an actual response from their audience. At these times broadcasters need to take care and recognising the possible risk to audience members particularly the vulnerable.

'Proper exploitation' includes, for example, where, a religious radio or television service solicits contact from people interested in furthering their understanding following an item or particular point of view expressed in a programme.

'Improper exploitation' would for example include the abuse or denigration of a person's belief in order to convince that person that they should change their beliefs and subscribe to the beliefs of the person challenging them, on the grounds that if they don't, some negative outcome might result.

#### **Rule 4.7 Special powers and abilities**

The purpose of this rule is to prevent the susceptible from being abused, by those who purport to have gifts and abilities of a religious or similar nature in order to encourage people to support them e.g. financially.

Such programmes may not be shown when children, who are as yet unable to form mature judgements on such matters, may be watching in significant numbers, or are particularly likely to be listening.

This rule does not apply to the founders of recognised religions and/or belief-systems (for example Jesus Christ and Buddha).

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## Guidance Notes

Section 5:

**Due Impartiality and Due Accuracy and Undue  
Prominence of Views and Opinions**



## Section Five

# Due Impartiality and Due Accuracy and Undue Prominence of Views and Opinions Guidance

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

### Rule 5.1 due accuracy in news

Accuracy entails getting the facts right. In complying with the requirement to report news with 'due accuracy', broadcasters should refer to the clarification of 'due' set out in the meaning of 'due impartiality'.

In terms of this section of the Code (i.e. the requirement for "due impartiality" and "due accuracy"), news in whatever form would include news bulletins, news flashes and daily news magazine programmes.

*Impartiality and the News*, a research study conducted by Ipsos-RSL on behalf of Ofcom/ITC in December 2003 (*Ofcom review of public service television broadcasting phase 1 annex 7.11, 2004*) examined attitudes to news impartiality in the UK. Over three-quarters of the 4000 respondents said impartiality in news was a good thing. Accuracy was viewed as even more important. The survey demonstrated that there are greater expectations for news channels that are perceived to be aimed at a UK audience than there are for channels with a global audience or for retransmitted news services made originally for non-UK audiences.

### Rule 5.3 Politicians

The use of politicians as reporters or presenters in news programmes could be problematic in the context of the requirement for due impartiality. A politician is likely

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to include an elected representative e.g. an MP or councillor, a candidate, an applicant to be a candidate or a prospective candidate (that is a candidate for election who knows they have been chosen to represent a party at an election), an employee of a political party or an activist.

### **Special impartiality requirements**

The rules apply to national and international matters although the impartiality due to a non-national matter *may* be less. To give an example, broadcasters are expected to apply impartiality rules to a subject such as the American elections. For those Ofcom licensees who are not broadcasting to the United Kingdom, the impartiality requirements still apply but the amount due *may* be less depending on the subject matter and the original country of reception.

### **Rule 5.4 The person providing the service**

'The person providing the service' is a concept used in connection with the legal requirements for the licensing and compliance of broadcasting services. In this rule, it refers to the licensee, the company officers and those persons with an editorial responsibility for the service or part of the service rather than, for example, the programme presenter.

### **Rule 5.5 The meaning of 'series of programmes taken as a whole'**

The expression 'aimed at a like audience' means that the linked programmes that make up a 'series' should be broadcast when it is likely that those who watched or listened to the first programme can choose to watch or listen to the second programme. In other words, if the first programme goes out at 2000 it is most unlikely that it would be acceptable for a single linked 'balancing' programme to go out at 0300. The broadcaster is not expected, however, to predict the audience make-up and try to achieve a similar audience for the second or subsequent programmes.

### **Rule 5.7 Due weight**

In understanding what is meant by 'due weight', it is useful to refer to the discussion of 'due' in the meaning of 'due impartiality'.

### **Rule 5.8 Personal interests**

Ofcom would expect that, when dealing with matters covered by special impartiality requirements, broadcasters have put in place procedures so that reporters and presenters are at least aware of this rule and have an opportunity to make a declaration to the broadcaster. If the broadcaster could not have reasonably known of such an interest, then Ofcom would take that into account in the event of a case or complaint.

It is not expected that presenters or reporters should make known personal and private medical matters to the public.

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### **Rule 5.9 Alternative viewpoints**

The representation of alternative viewpoints may be achieved differently in different programmes.

### **Rule 5.10 Signalling personal view or authored programmes or items**

Personal view and authored programmes and items have an important place in a diverse schedule. We recognise that audiences are comfortable with adjusting their expectation of due impartiality when they know that they are watching or listening to such programmes. The signalling of an item or programme as a personal view or authored is a matter for the broadcaster.

### **Rules 5.11 and 5.12 Major matters**

These additional rules are necessary because of the nature of the subject matter concerned: it is of a significant level of importance and is likely to be of the moment.

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## Guidance Notes

Section 6:  
Elections and Referendums

## Section Six

# Elections and Referendums Guidance

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

### Rule 6.1

See under 6.12 below.

### Rule 6.2 Coverage

There is no onus on broadcasters to do election coverage.

### Rule 6.8 to 6.13 Constituency reporting

Previous restrictions concerning constituency reporting placed on broadcasters by the Representation of the People Act 1983 ("RPA") before it was amended have been removed. Put simply, under the old rules if a broadcaster wished to interview a candidate about his/her constituency then the broadcaster was obliged to offer an opportunity to *all* the candidates standing (whether or not they wanted to take part). In effect this meant that one candidate from any party could veto the whole report. The result was that broadcasters rarely actually interviewed any of the candidates. Instead they used natural sound ("natsot") of some of the candidates and/or interviewed representatives of the relevant parties (e.g. the party Chairman).

Before repealing this part of the RPA, Government (and political parties) wanted to be satisfied that the broadcasters and regulators would agree on new guidelines aimed at creating a more workable set of rules but ensuring that due impartiality (as required by statute) was maintained. A specific role for the Electoral Commission

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was introduced, whereby its views must be taken account of before any rules are introduced or amended.

## Rules 6.9 and 6.10

Rule 6.9 requires that if a candidate takes part in an item about his/her constituency then the broadcaster must ensure that each of the major parties (as explained in the Broadcasting Code under Rule 6.2) is offered an opportunity to take part, as well as those with evidence of significant previous or current electoral support (Rule 6.10).

This requirement is for *constituency* reports only i.e. when the report or the candidate focuses on his/her constituency. However, it should be noted that a report could unintentionally become constituency-focussed, by merely promoting a candidate in a certain manner.

Profiling candidates raises slightly more difficult issues and is dependent on the type of profile and how the report was scripted. A report in the 2005 UK general election period on Michael Howard, and what sort of Prime Minister he would be, would have been acceptable. But a profile which examines a candidate simply because they or their constituency may be of interest and raises their profile in connection with their constituency e.g. Martin Bell in Tatton in the general election of 1997 could be problematic

Overall, the key here is to ensure that when interviewing candidates in reports that either raise elements about their constituency or raises the profile of the candidate in connection with their constituency, other candidates in the constituency (as described in Rules 6.9 and 6.10) have an opportunity to take part.

A useful test for broadcasters is to ask whether a report could be seen as promotional for a candidate within his/her constituency. If it is, then it requires input from, at least, the other main parties and potentially others depending on the constituency.

## Rule 6.11 and 6.13 Constituency/electoral area report

Although the Broadcasting Code does not require it, the Electoral Commission recommends that it is best practice that on every occasion that a constituency (or electoral area) report/discussion/debate takes place on radio a full list of candidates standing should be given for that constituency (with a similar provision for referendums).

On television when lists of candidates for constituency or electoral coverage are broadcast, broadcasters should make sure that the lists are on screen for an appropriate period of time and in a suitable size so that viewers can read them.

## Rule 6.12 Constituency points

A broadcaster can include comments from a candidate about wider political or policy matters (not directly connected with his/her constituency). For instance, a report about women-only shortlists for the Labour party could interview a number of women candidates standing for Labour, which would be from different constituencies.

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However, these reports should not touch on matters relating to the constituency (e.g. the local schools or hospitals).

Another regulatory issue for such reports is that broadcasters should ensure due impartiality is maintained over the service during the election period. (Rule 6.1) So similar opportunities to explore different policy matters within other parties should be given. A broadcaster may take a party-wide approach to such an issue, involving a number of candidates from different parties in one report.

There is then no problem in interviewing candidates, in the round, about policy issues. Broadcasters are free to take issues as a region e.g. unemployment in the North and interview candidates across the parties – so long as the points raised are not constituency ones and so long as there is no promotion of the candidate in respect of his/her constituency.

A report which examined independent candidates from around the country could be acceptable as long as there was no promotion of any one constituency. But as independent candidates are more likely to focus on constituency issues (e.g. the MP elected for Wyre Forest in 2001) this might prove difficult.

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## Guidance Notes

Section 7:  
Fairness



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## Section Seven

# Fairness 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 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."

### Practice to follow 7.3

It should be noted that the measures outlined in "practice to follow" 7.3 are not a definition of "informed consent". In particular, there may be times when it is unnecessary to follow each and every point, for instance in the production of a news item. There are other occasions, for instance in the interest of a legitimate investigation when the broadcaster may withhold certain information. Conversely, there may be circumstances where other information should be provided to the contributor.

Complaints about fairness may occur some time after the programme is transmitted and after relevant freelance staff have left or independent production teams have been disbanded. (Time limits within which complaints are considered are given on the Ofcom website). Therefore broadcasters may find it helpful to make and maintain written records of discussions with contributors before filming and/or broadcast and obtain informed consent in writing. It may also be helpful to the broadcaster to provide information on the areas of questioning, where practicable, in writing.

### Significant changes

In these circumstances, "significant changes" could include changes to the programme title, changes to when and where the programme is to be first broadcast (particularly if the timing and location of broadcast is particularly sensitive), changes to the other likely contributions, or a decision to edit a contribution where assurances had been given to the contrary. However, as the "practice to follow" points out these would only be relevant where not doing so might result in material unfairness.

### **Practice to follow 7.7 Guarantees given to contributors relating to protection of identity**

Complaints in this area may arise through a lack of understanding about what was actually agreed in the first instance.

If a contributor has concerns about protecting their identity and the programme maker agrees to take steps to protect their identity, it is important that the contributor is given sufficient information to be able to understand in advance what steps the programme maker proposes to take, including the degree of protection that will result from any steps taken.

In some circumstances it may be sufficient to ensure that the contributor is simply not specifically identified (e.g. by being named). In other (more sensitive) circumstances, it may be necessary to ensure that they are not rendered identifiable to a particular person or persons, including their own family or friends (e.g. as a result of the broadcast of certain images, the divulging of personal details or characteristics etc).

It should not be assumed that a contributor will necessarily appreciate the fine distinction between not identifying them in the programme and making sure they are not identifiable. Programme makers should judge the sensitivity of the particular circumstances when considering what level of protection is appropriate to protect a participant's identity.

To reduce the possibility of any subsequent misunderstanding, television programme makers should ensure participants understand exactly how their image and voice will be disguised (e.g. by using an actor's voice or by blurring, pixilation or silhouetting).

### **Practice to follow 7.9 Contribute**

In these circumstances, "contribute" can include an interview, live or recorded, or a report of a written or oral statement or comments.

### **Practice to follow 7.10 Factually-based dramas**

When dramas are based on facts and on real characters it may help avoid later complaints of unfairness if it is clear to audiences whether they are watching or listening to dramatised documentaries, presented as reconstructing actual events, or dramas more loosely-based on real-life characters or incidents.

### **Practice to follow 7.11 Opportunity to respond**

An individual or organisation needs to be given sufficient information concerning the arguments and evidence to be included in the programme to enable them to respond properly. The programme should fairly represent the substance of any response but it is not normally necessary, in the interests of fairness, to reproduce a response in its entirety.

Where an individual or organisation withdraws their proposed response, there is still an obligation on the broadcaster to achieve fairness (for example broadcasters are still obliged under section 7.9 of the Broadcasting Code to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation). This does not mean that the broadcaster should transmit all or part of a withdrawn statement, nor that the broadcaster should break any pre-transmission agreements over its use. However the broadcaster should explain the reasons for the absence of a contribution, and reflect any material facts in relation to the position of the individual or organisation in the programme, if it would be unfair not to do so.

### **Practice to follow 7.12 Non-participation**

Anyone has the right to refuse to participate in a programme, but the refusal of an individual or organisation to take part need not normally prevent the programme from going ahead.

### **Practice to follow 7.14 Surreptitious filming or recording**

Surreptitious filming or recording includes the use of clandestine long lenses or secret recording devices, as well as leaving an unattended camera or recording device on private property without the informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

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## Guidance Notes

Section 8:  
Privacy

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Issue Four: 16 December 2009

## Section Eight

# Privacy Guidance

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

### **Practice to follow 8.1 An infringement of privacy in connection with obtaining material**

Ofcom may only consider an infringement of privacy in the making of a programme if the programme is broadcast.

### **Private lives, public places and legitimate expectation of privacy**

Privacy is least likely to be infringed in a public place. Property that is privately owned, as are, for example, railway stations and shops, can be a public place if readily accessible to the public. However, there may be circumstances where people can reasonably expect a *degree* of privacy even in a public place. The degree will always be dependent on the circumstances.

Some activities and conditions may be of such a private nature that filming, even in a public place where there was normally no reasonable expectation of privacy, could involve an infringement of privacy. For example, a child in state of undress, someone with disfiguring medical condition or CCTV footage of suicide attempt.

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### **Practice to follow 8.11 Doorstepping**

Doorstepping may be used (depending on the circumstances) where there has been repeated refusal to grant an interview (or a history of such refusals) or the risk exists that a protagonist might disappear. In such circumstances, broadcaster may themselves require programme-makers to refer to the responsible editor first.

Doorstepping in public places is most frequently and in most circumstances acceptably used in news programmes, where journalists often film and record those in the news without having pre-arranged the interview.

### **Practice to follow 8.12 Telephone calls**

It is acceptable to record telephone calls for note taking purposes.

### **Practice to follow 8.13 Surreptitious filming or recording**

Broadcasters normally have their own procedures in place to authorise such filming or recording. In such circumstances, broadcaster may themselves require programme-makers to refer to the responsible editor first.

### **Practice to follow 8.14 The broadcast of material gained by surreptitious filming and recording**

When broadcasting material is obtained surreptitiously, whether in a public or private place, broadcasters should take care not to infringe the privacy of bystanders who may be caught inadvertently in the recording e.g. by obscuring the identity of those recorded incidentally.

Broadcasters should be aware that 'innocent' bystanders can be inadvertently caught (potentially causing an unwarranted infringement of privacy) with the transmission of material gained through surreptitious filming or recording.

Broadcasters should apply the same practice to follow to material shot surreptitiously by others (including CCTV footage) as they do to their own recordings in taking the decision whether to broadcast the material.

### **Practice to follow 8.16 People caught up in emergencies, victims of accidents, or those suffering a personal tragedy**

As has been explained in the foreword to Section Eight: "there may be a strong public interest in reporting on an emergency situation as it occurs and ...there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints." For instance, when news crews arrive at the scene of emergencies etc, they often film and record as much

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information as possible (which could result in infringements of privacy). However, it is then later, when the broadcaster actually transmits the footage that appropriate decisions can be made in an edit suite in the 'cold light of day'. Ofcom has a statutory duty to consider unwarranted invasions of privacy irrespective of the circumstances and genre of programmes. Nevertheless, in the light of a complaint, Ofcom will always take the full circumstances into account as well as the context in which the original footage was obtained.

At funerals, programme-makers should respect requests that they should withdraw.

Broadcasters should also respect any reasonable arrangements made by the emergency services to supervise media access to victims of crime or accident or disaster, or their relatives, in the immediate aftermath of a tragedy.

### **Practice to follow 8.17 People in a state of distress**

Even if grieving people have been named or suggested for interview by the police or other authorities broadcasters and programme makers will need to make their own judgements as to whether an approach to such people to ask them to participate in a programme or provide interviews may infringe their privacy.

### **Practice to follow 8.22 Persons under the age of sixteen and vulnerable people**

A child of five has a very different view and understanding of the world around it than a 15 year old teenager has. Questions need to be appropriate to both age and development whether the child or young person is taking part in a factual programme or an entertainment programme.

Care must be taken to not to prompt children and that they should be allowed to speak for themselves. Questioning that is likely to cause distress should be kept to a minimum.

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## Guidance Notes

Section Nine:  
Commercial references in television programming



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## Guidance on Section Nine of the Broadcasting Code (2011) Commercial references in television programming

### Introduction

1.1 This guidance is non-binding. It is provided to assist broadcasters in interpreting and applying Section Nine (2011) of the Broadcasting Code ("the Code"). This Section of the Code applies to all references in television programming to products, services or trade marks ("commercial references"). "Television programming" is all broadcast content apart from spot advertising and teleshopping.

1.2 The guidance sets out:

- a general explanation of the purpose and principles of Section Nine;
- information and guidance on individual rules;
- where relevant, weblinks to illustrative and precedent cases (already published in the Ofcom Broadcast Bulletin)<sup>1</sup> relating to particular rules which broadcasters may find helpful when considering how to interpret and apply a particular Code rule;
- where appropriate, a set of questions and answers ('Q&As') intended to anticipate the more common or fundamental questions that might arise;
- in relation to product placement, details of the legislation upon which each rule is based; and relevant details of legislation in relation to other rules in Section Nine, where appropriate; and
- a full glossary of terms used in Section Nine.

1.3 When Ofcom assesses programming against the requirements of Section Nine, every complaint or case will be dealt with on its own merits.

1.4 We draw broadcasters' attention to what is said in the Code about its legislative background. The Code 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."

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<sup>1</sup> From time to time, Ofcom will add and update the weblinks to precedent cases within this guidance document. Broadcasters should refer regularly to the Ofcom Broadcast Bulletin (available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>) for the most up-to-date information about Ofcom's decisions under the Code.

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***What is the purpose of Section Nine?***

- 1.5 The rules in this section have been drafted to ensure that editorial content remains distinct from advertising. They require broadcasters to retain editorial control over the programmes they transmit. The rules serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:
- limiting the extent to which references to products, services and trade marks can feature in programming;
  - requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
  - helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.
- 1.6 When interpreting and applying any of the rules in this section, the purpose of the rules, as set out above, should be borne in mind at all times.

***The principles underpinning Section Nine***

- 1.7 The principles that underpin the rules in Section Nine are stated in the Code as:
- To ensure that broadcasters maintain editorial independence and control over programming (editorial independence).
  - To ensure that there is distinction between editorial content and advertising (distinction).
  - To protect audiences from surreptitious advertising (transparency).
  - To ensure that audiences are protected from the risk of financial harm (consumer protection).
  - To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).
- 1.8 The purposes and principles will guide interpretation of the rules. Informed by editorial context in each case, Ofcom's decisions will always reflect the purposes and principles.
- 1.9 Further, broadcasters should note that the rules in Section Nine are largely based on (and in some cases directly derived from) the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive, which are implemented into UK law through the Communications Act.

**General rules**

- 1.10 Rules 9.1 to 9.5 apply to all commercial references that appear within all programming. They apply irrespective of whether a reference is featured solely for an editorial reason or as a result of a commercial consideration. These rules help maintain a clear

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distinction between editorial and advertising content by limiting the impact commercial arrangements can have on editorial content.

**Rule 9.1**

**Broadcasters must maintain independent editorial control over programming.**

- 1.11 There may be circumstances in which it is acceptable for a person or organisation other than the broadcaster or programme-maker to provide input into the editorial of a programme. For example, in the case of an advertiser-funded programme. However, in all cases broadcasters are responsible for the programmes they transmit. Therefore, while other parties may contribute to programme content, broadcasters must retain ultimate editorial control over the programmes they transmit.
- 1.12 It should be stressed that permissible commercial arrangements made in respect of programming – i.e. programme sponsorship or product or prop placement – do not affect the licensee's responsibility for ultimate editorial control. Therefore it is the licensee that remains wholly accountable to Ofcom for ensuring that such arrangements meet the rules in this section.
- 1.13 See also rules on product placement (9.6 to 9.14) and sponsorship (9.15 to 9.25).

**Rule 9.2**

**Broadcasters must ensure that editorial content is distinct from advertising.**

- 1.14 Advertising<sup>2</sup> involves the promotion of products and services. Such promotions may be paid for, or transmitted by the broadcaster for self-promotional purposes.
- 1.15 Ofcom's Code on the scheduling of television advertising ("COSTA") limits the amount of advertising that a broadcaster can show (known as "advertising minutage"). It also requires that broadcasters ensure that "television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service".
- 1.16 While COSTA applies to the content of advertisements, Rule 9.2 applies to the content of programming. The rule's purpose is to prevent editorial content being distorted for advertising purposes, so ensuring that editorial control is reserved to the licensee and that programming is understood by viewers as not being subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising, protecting them from surreptitious advertising (see Rule 9.3).
- 1.17 There are certain, limited situations in which programme time may be used to promote the availability of products and services. These situations concern products and services linked to the television channel. For example, announcements made in relation to the

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<sup>2</sup> The Code on the scheduling of television advertising ("COSTA") defines 'television advertising' as "any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment".

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- broadcaster's own programmes (e.g. trailers) and products and services derived from programmes ("programme-related material"), related channels or to programming carried on these channels.
- 1.18 The limit on the amount of advertising a broadcaster can transmit is based on Article 23 of the AVMS Directive. The Directive exempts announcements made by the broadcaster in connection with its own programmes from this limit. Promotions for programmes and related products and services therefore do not count as advertising for the purposes of calculating advertising minutage. In such cases, broadcasters should note the requirements of Rule 9.2 and ensure that any promotion of products and services that meets the definition of advertising is distinct from editorial. Further guidance on how distinction can be achieved in respect of these different types of promotions can be found in the guidance related to: programme-related material (Rule 9.31); sponsorship (Rules 9.15 to 9.25); the Cross-promotion Code (attached as an appendix to the Broadcasting Code); use of premium rate telephony services (Rules 9.26 to 9.30); and appeals for funds (Rules 9.36 to 9.39).
- 1.19 Use of advertisements in programmes: There may be editorial justification for featuring advertisements, or extracts of advertisements, in programming. For example, in the context of an entertainment programme looking at humorous advertising from around the world. In such circumstances, the material is unlikely to meet the definition of advertising as it is broadcast for the editorial purpose of entertainment and not in order to promote the supply of goods or services. To ensure that such content is not treated as advertising, it should not be featured in a programme as a result of payment or other valuable consideration to the broadcaster or programme-maker. Further, the rules on editorial justification and undue prominence will apply (see Rules 9.1 and 9.5).

### Rule 9.3

#### **Surreptitious advertising is prohibited.**

- 1.20 The prohibition on surreptitious advertising supports the requirement that advertising must be distinct from programming. It ensures that viewers are made aware when a commercial reference is made in programming in return for payment or other valuable consideration. It should be read in conjunction with Rule 9.2 and the rules that require the signalling of commercial arrangements (i.e. those for product placement and sponsorship).
- 1.21 When determining whether a programme contains surreptitious advertising, Ofcom will apply the AVMS Directive's definition of a "surreptitious audiovisual commercial communication", which is:
- 1.22 "the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration" (Article 1(1)(j)).
- 1.23 A programme is likely to be judged to contain surreptitious advertising where it features a reference to a product, service or trade mark and this reference:

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- a) is included as a result of a commercial arrangement;
  - b) is intended by the broadcaster to serve as advertising; and
  - c) might mislead the public as to its nature.
- 1.24 In determining whether it is the broadcaster's intention that a reference is included for the purpose of advertising, we will take into account whether the broadcaster has received any direct benefit for including the reference in a programme (e.g. a payment or other valuable consideration in return for agreement that the reference will be broadcast)<sup>3</sup>. Broadcasters should note, however, that there may be some circumstances in which Ofcom judges surreptitious advertising to have occurred where the broadcaster has not received payment or other valuable consideration to include the reference.
- 1.25 Product placement in acquired programmes: Rule 9.14 sets specific signalling requirements in relation to product placement included in programmes that have been commissioned or produced by the broadcaster that transmits the programme or by any person connected with that broadcaster.
- 1.26 Where a broadcaster acquires a programme that contains product placement (but does not produce or commission it) Rule 9.14 does not apply. However, any such acquisitions agreed on the basis that references to placed products or services remain within the programme when it is transmitted (subject to compliance with the applicable product placement rules) are likely to conflict with the requirements of Rule 9.3, unless the broadcaster ensures that audiences are made aware that the programme includes product placement. In such circumstances, broadcasters may wish to adopt the universal signalling requirements (see Rule 9.14).
- 1.27 Where a broadcaster acquires a programme but does not directly benefit from any product placement arrangements, references to products, services or trade marks that appear within the programme are unlikely to be treated as surreptitious advertising. This is because such references are not intended by the broadcaster to serve as advertising. However, as always, broadcasters are expected to ensure that any commercial references are not promotional or unduly prominent and are justified by the editorial requirements of the programme. Where appropriate, broadcasters should edit or obscure commercial references that do not meet these tests.

**Rule 9.4**

**Products, services and trade marks must not be promoted in programming.**

- 1.28 For specific, limited, exemptions to this rule see rules on premium rate telephony services (Rules 9.26 to 9.30), rules on programme-related material (Rules 9.31 and 9.32) and the Cross-promotion Code (attached as an appendix to the Code).

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<sup>3</sup> Licensees should note that Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 lists "Commercial practices which are in all circumstances considered unfair". Paragraph 11 of Schedule 1 describes "Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)".

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- 1.29 This rule applies to all references to products and services featured in programming, regardless of whether their appearance is a result of a commercial arrangement between the broadcaster or producer and a third party funder or not. Where a reference is made as part of a commercial arrangement (i.e. it has been included in the programming in return for payment or other valuable consideration by a third party), broadcasters should note the guidance associated with the specific circumstances in which such a reference may be permitted (see guidance on product placement, sponsorship, premium rate telephony services, programme-related material, and appeals for funds).
- 1.30 Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed. However, there may be circumstances that justify a greater degree of information about products or services within programmes. For example:
- Consumer advice programmes – such programmes are likely to refer to the price, availability or attributes of specific products or services, often in a comparative context. A positive review or product recommendation in a consumer advice programme is unlikely to be treated as a promotional reference. However, reviews of products or services must not be subject to product placement arrangements (see Rule 9.12(b) below).
  - Competitions – descriptions of prizes can help audiences decide whether or not to enter a competition. Therefore, references to the brand of a prize or its main features are likely to be justified editorially. Prize descriptions should not sound or look like advertisements. References to the attributes of a prize should be limited to those major features likely to influence a prospective entrant's decision to take part. Competitions should never be, or appear to be, created for the purpose of promoting a product or service. Broadcasters, programme producers or associates of either party should not provide prize donors with any guarantees in relation to the level of exposure a prize will receive in a programme or the manner in which it will be described. See also guidance on Rule 9.9 on competition prizes and product placement.
  - Guests' 'plugs' – it is common for celebrity guests on chat shows and magazine-style programmes to refer to their latest venture. This is often an autobiography or an artistic endeavour directly linked to the guest's profession, e.g. an actor discussing their latest film or play. In most cases such references will be justified editorially. In all circumstances broadcasters should ensure that any references to products, services or trade marks are appropriately limited so as not to become unduly prominent.
  - References to social networking sites – see guidance on programme-related material (Rules 9.31 and 9.32).

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## Rule 9.5

No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming.

- 1.31 Whether a product, service or trade mark appears in a programme for solely editorial reasons (e.g. in the case of a prop in a drama) or as a result of a commercial arrangement between the broadcaster or producer and a third party funder (e.g. product placement), there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. A product that is integral to a scene may justify a greater degree of product exposure, for example shots of a car during a chase scene. However, where a product is used as a set prop, care should be taken to avoid close-up or lingering shots. Spoken references to a product or service will generally assume a greater degree of prominence than will purely visual references, although this is a very rough rule of thumb.
- 1.32 The degree of prominence it may be acceptable to afford a brand will also depend on the context in which a brand reference appears. For example, when filming coverage of events (e.g. sports and music), it is accepted that a programme is likely to reflect the higher level of branding that is present at venues.
- 1.33 The National Lottery – Ofcom recognises the national and statutory status of the National Lottery and will apply an appropriate degree of flexibility in interpreting and applying this rule in the context of references to the National Lottery in programming.
- 1.34 There are specific “undue prominence” rules that apply to different types of commercial references. See also rules and guidance on: Rule 9.10 (product placement); Rule 9.22(b) (sponsorship credits); Rules 9.27 and 9.28 (PRS); Rule 9.31 (programme-related material); 9.34 (charity appeals) and 9.39 (appeals for funds).

### The use of message boards and social networking sites in programmes for audience comment

- 1.35 Encouraging comment from audiences is something that viewers are used to and expect. Traditionally, non-proprietary forms of communication like post, email, telephone calls and texts, have been used as means to facilitate such comment.
- 1.36 We accept that broadcasters may wish to utilise proprietary communication platforms in programming as a means for viewers to make contact with the programme or broadcaster. By proprietary communication platforms we mean services such as Twitter, Facebook, Bebo, MySpace and the like.
- 1.37 Unlike the more traditional methods of contact, proprietary communication platforms are exclusive, branded commercial services. Broadcasters may refer to such services in



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programming to allow communication between broadcasters and audiences, subject to certain considerations.

1.38 The points that follow all derive from the Code rules and Ofcom policy and apply only to methods of communication that are themselves cost-free for viewers.

1.39 Licensees should bear in mind that the Code contains particular provision for premium rate telephony services (see Rules 9.26 to 9.30, and associated guidance below) – whether telephone or internet based – and these are generally to be regarded as commercial products, whoever the beneficiary of the premium rate charges may be.

- Where only non-proprietary, unbranded means of communication are used – such as email and (“ordinary” rate: i.e. not premium rated) telephone calls and texts – no particular considerations of undue prominence attach to their use and Rules 9.4 and 9.5 are most unlikely to be engaged;
- Proprietary means of communication must attract no charge to viewers to use (this does not preclude registration requirements);
- References to proprietary platforms that include invitations to viewers to use such platforms should not result from product placement arrangements (see definition of product placement in the glossary);
- Where proprietary means of communication are used care should be taken to avoid them being featured unduly prominently;
- Undue prominence is much more likely where proprietary platforms are used without also supplying details of general means of communication such as email;
- Logos, typefaces and the like owned by proprietary platforms or associated with them may be used for ease of identification. However, such logos should not be given undue prominence. No more than a platform name and the other minimum necessary contact details should be given;
- The frequency with which the proprietary platforms are mentioned should be justifiable editorially. Programming that relies on audience comment heavily might justifiably make more frequent reference – but if it does so, the absence of alternative, non-proprietary platforms is likely to assume greater significance in deciding whether undue prominence is present;
- Discussion of proprietary communication platforms beyond simple information about how to use them to contact the broadcaster may lead to undue prominence in cases where there is inadequate, broader editorial justification.

1.40 Please note that if the inclusion of any reference to a proprietary communication platform in these circumstances meets the definition of product placement, such an arrangement would be likely to raise issues under Rule 9.9 (references to placed products, services or trade marks must not be promotional).

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**Product placement (and prop placement)**

- 1.41 Rules 9.6 to 9.14 apply to programmes produced after 19 December 2009<sup>4</sup> that contain product placement.
- 1.42 Any acquired programmes originally produced before 19 December 2009 that contain product placement must comply with all other relevant Code rules, in particular Rules 9.1 to 9.5.

**Introduction**

***What are product and prop placement?***

- 1.43 Section Nine of the Code sets out a number of statutory definitions relating to product and prop placement, as required by the Communications Act 2003<sup>5</sup> (as amended). Below are summaries of the key meanings:
- 1.44 **“Product placement”** is the inclusion of a reference (in vision or audio) to a product, service or trade mark within a programme as a result of payment or other valuable consideration made to the broadcaster, programme producer or a person connected to either.
- 1.45 **“Prop placement”** involves the supply of production props free of charge (or at a reduced cost) where the provision of the prop does not involve payment or other valuable consideration to the broadcaster, programme producer or a connected person and the prop does not represent a “significant value” to any of these parties.
- 1.46 **“Significant value”** is when the value of a prop to the broadcaster, programme producer or a connected person is more than a trivial “residual value”.
- 1.47 **“Residual value”** is a value that is greater than the cost saving a broadcaster, programme producer or connected person has made as a result of acquiring the prop for use in the programme. For example, if a valuable prop was kept by a producer for personal use or re-sale it would have a “residual value” that was more than trivial. If a consumable low-value prop, like a food product, was retained, for instance, its “residual value” would be likely to be trivial.
- 1.48 **Prop placement involving no “significant value”** (i.e. a trivial or no residual value) is not required to comply with the product placement rules, but must comply with all other relevant Code rules (see in particular, Rules 9.1 to 9.5). However, in such circumstances, broadcasters, programme producers or connected persons should not enter into agreements guaranteeing that placed props will receive exposure in a programme.
- 1.49 **Prop placement involving “significant value”** (i.e. a more than trivial residual value) is treated as product placement and must comply with the relevant rules.

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<sup>4</sup> This is the date that the relevant requirements set out in the AVMS Directive came into force.

<sup>5</sup> All references to the Communications Act 2003 or “the Act” in this guidance relate to the version of the Act as amended by The Audiovisual Media Services (Product Placement) Regulations 2010.

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1.50 “**Connected person**” has a specific legal meaning and its definition cannot easily be put in simple terms. In brief, it relates to situations where one company or entity controls or is associated with another.

1.51 Broadcasters should ensure that they are fully aware of, and understand, the statutory definitions (set out in the introduction to Section Nine).

***What do the product placement rules cover?***

1.52 The rules cover the product placement of all products, services and trade marks, whether branded or generic, and whether a placement is included in a programme for a commercial purpose, or for any other reason. For instance, the rules apply to circumstances in which a non-commercial organisation that does not provide products or services may place a reference to its trade mark in a programme, e.g. some charities paying for a programme to include a reference to their name or logo.

1.53 It should be noted that the rules permit the paid-for placement of references in programmes to products, services and trade marks only (subject to various restrictions). They do not permit the paid-for placement of references in programmes to the aims, objectives, beliefs etc. of third party funders.

1.54 The rules implement various requirements of the EU AVMS Directive and the Communications Act. They cover:

- the programme genres in which product placement is permitted;
- the types of products, services and trade marks that can be subject to product placement arrangements;
- the treatment of placed products, services and trade marks within programmes; and
- circumstances in which product placement must be signalled to the audience.

***What is the purpose of the rules?***

1.55 The rules seek to ensure that product placement does not undermine broadcasters’ editorial independence by requiring that placements fit the editorial context in which they appear and do not promote or give undue prominence to placed products, services or trade marks. The rules protect viewers from the product placement of certain products, services and trade marks. In addition, they help protect viewers from surreptitious advertising by requiring the signalling of programmes containing product placement that are produced or commissioned by the broadcaster or a connected person.

***Which product placement rules apply to which programmes?***

1.56 A flowchart is provided on page 14 to help broadcasters and producers understand how the rules work, and summarise what they cover.

1.57 In brief, the rules fall into three broad categories:

- those applying to all programmes (whether acquired or originated) (Rules 9.6 to 9.11);

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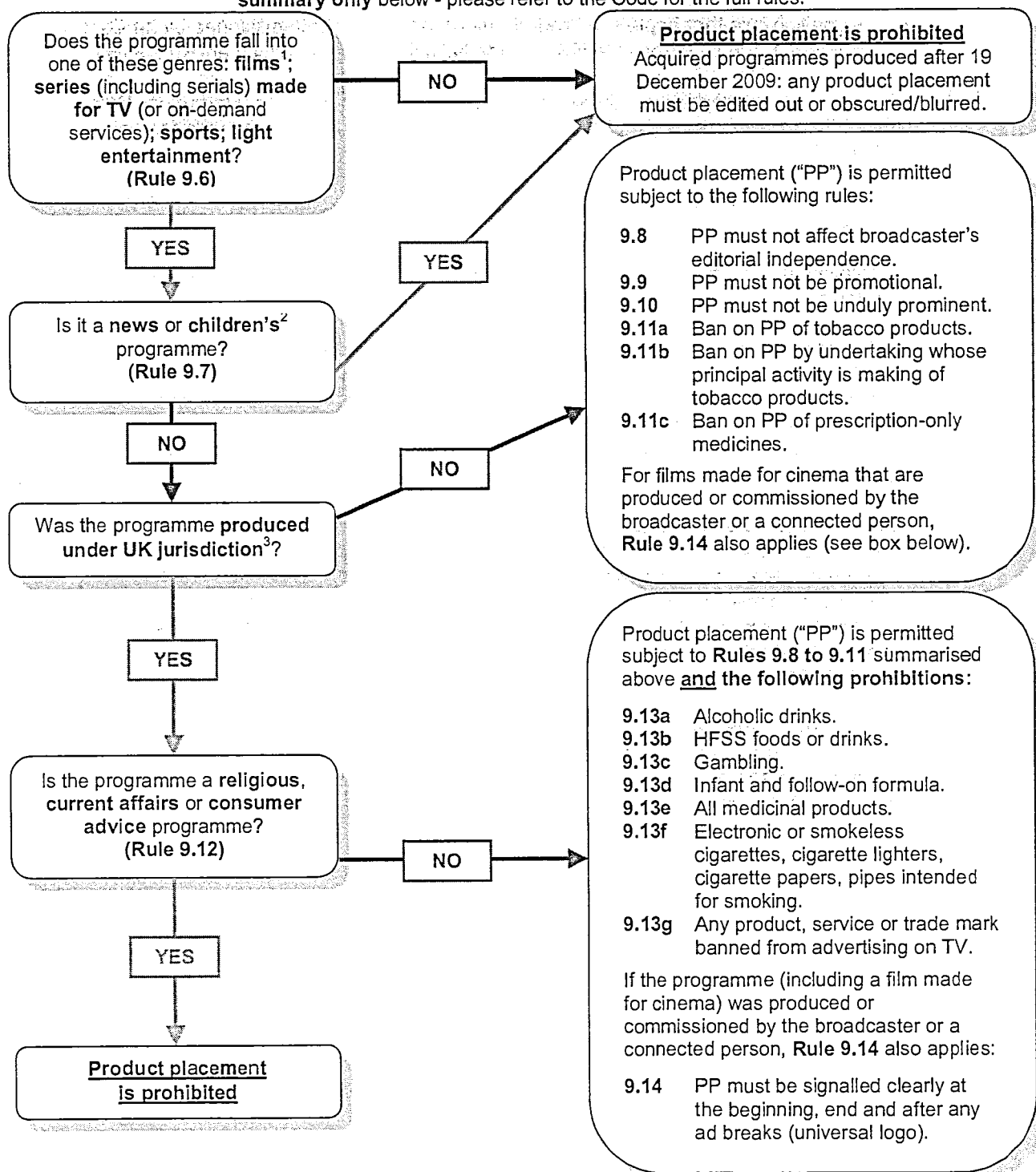
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- additional rules that also apply to programmes “produced under UK jurisdiction” (Rules 9.12 and 9.13); and
  - a signalling rule that applies to programmes produced or commissioned by an Ofcom-regulated broadcaster or a person connected with such a broadcaster (Rule 9.14).
- 1.58 The meaning of “programmes produced under UK jurisdiction” is included under Rule 9.11 of the Code. In summary, this means programmes (but not films made for cinema) that are either:
- i) produced or commissioned by an Ofcom-regulated broadcaster or a connected person; or
  - ii) programmes made by anyone for first showing on an Ofcom-regulated television service.
- 1.59 If a broadcaster acquires programming (originally produced after 19 December 2009) from outside the UK and edits it for compliance, compilation and/or re-versioning purposes, this is unlikely to amount to the programming being “produced under UK jurisdiction” (provided it was not originally produced or commissioned by a connected person to the Ofcom-regulated broadcaster, and depending on the extent of any re-versioning).
- 1.60 Similarly, when a broadcaster produces or commissions programmes that feature elements of acquired content containing product placement (e.g. music videos, programme clips), the references to products, services or trade marks in the third party content are unlikely to meet the definition of product placement provided the broadcaster, producer or a person connected to either has not directly benefited from the product placement arrangement. (See also guidance below under Rule 9.7 and the meaning of “programmes produced under UK jurisdiction”).
- 1.61 If a programme that was originally produced before 19 December 2009 has product placement added after this date (e.g. virtual product placement) by the broadcaster, a connected person or anyone else with a view to showing on an Ofcom regulated service, it should comply with the relevant product placement rules.
- 1.62 Questions and answers on the interpretation of various aspects of the rules can be found at Annex 2.

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**Can a programme contain product placement and which rules apply?**

This flowchart applies to all programmes (whether acquired or originated). The rules are set out in summary only below - please refer to the Code for the full rules.



<sup>1</sup> "films" includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services (e.g. on-demand services).

<sup>2</sup> "children's programme": a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen.

<sup>3</sup> "programme produced under UK jurisdiction": any programme produced or commissioned by either: the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).

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## Guidance on individual product placement rules

### *What programmes can contain product placement?*

*Relevant legislation:*

- *Article 11 (3)(a) of the AVMS Directive*
- *Schedule 11A paragraph 7(2) of the Communications Act*

### Rule 9.6

Product placement is prohibited except in the following programme genres:

- a) **films;**
- b) **series made for television (or other audiovisual media services);**
- c) **sports programmes; and**
- d) **light entertainment programmes.**

1.63 In line with the requirements of the AVMS Directive, the Code places a general prohibition on product placement but allows the practice in the programme genres listed in Rule 9.6.

1.64 To comply with the product placement rules, broadcasters must first determine whether a particular programme can contain product placement. See the flowchart on page 14, above.

1.65 The genres listed under Rule 9.6 cover a wide range of programmes and it is not practical to identify every type of programme in this guidance and give a definitive view on whether product placement is permissible or not. However, broadcasters should note the following:

- the term “**films**” includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services (e.g. on-demand services).
- the term “**series**” comprises a group of programmes in which the editorial content is clearly linked. For example, a series encompassing a story, theme or narrative that develops across episodes, with the appearance of regular characters/presenters. In this context “**series**” includes serials such as soaps.
- “**sports programmes**” may include coverage of sporting events and programmes involving discussion and analysis of sports (but see below for details of the prohibition of product placement in news).
- “**light entertainment programmes**” is a very broad term that encompasses a wide range of programmes such as game shows, chat shows, comedy, music programming, reality programmes and factual entertainment.

1.66 Product placement is permitted in single programmes in all genres that can carry product placement.

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- 1.67 While many programmes are likely to fall within these categories, broadcasters should pay particular attention to the prohibitions set out in Rules 9.7 and 9.12 in relation to specific types of programmes that may fall within the permitted genres; but nevertheless must not contain product placement.
- 1.68 If an Ofcom-regulated broadcaster acquires a programme that was originally produced after 19 December 2009 and it contains product placement, the programme must fall within the permitted genres set out in Rule 9.6. If it does not, it will require editing to cut out or obscure (e.g. blurring or masking) the instances of product placement before it is transmitted on the Ofcom-regulated television service, to comply with Rule 9.6. See also guidance to Rule 9.7 regarding acquired news.

***Which programmes cannot contain product placement?***

*Relevant legislation:*

- *Article 11(3) of the AVMS Directive*
- *Schedule 11A paragraph 3(2) of the Communications Act*

**Rule 9.7**

**Programmes that fall within the permitted genres must not contain product placement if they are:**

- a) news programmes; or
- b) children's programmes.

- 1.69 Product placement is prohibited in all programmes (whether acquired or originated) except in the case of programmes in the permitted genres set out at Rule 9.6.
- 1.70 Rule 9.7 sets out two specific types of programmes within which product placement is prohibited, even if they fall within the permitted genres. Broadcasters should note that there are further genre-based prohibitions applying to product placement in programmes produced under UK jurisdiction (see Rule 9.12 and associated guidance).
- 1.71 See also guidance on Rule 9.12 relating to prohibitions relating to programmes produced under UK jurisdiction.

**News programmes**

- 1.72 A news programme is a programme (or a news flash), that includes local, national or international news.
- 1.73 Acquired news: The prohibition on product placement in news covers all news programmes made for audiovisual media services (e.g. television channels and on-demand services) regardless of their country of origin. Therefore the prohibition extends to news programmes acquired from outside the EU. Where acquired news contains product placement (or in the case of live acquired news, is likely to contain product placement), careful thought should be given to whether it is suitable for broadcast, bearing in mind the general requirements of editorial independence and due accuracy and impartiality in news (see Section Five of the Code).

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- 1.74 In circumstances in which a broadcaster acquires news that is produced primarily for broadcast outside of the EU, we acknowledge that the broadcaster's ability to identify and cut out or obscure references to placed products, services and trade marks may be limited. This is particularly likely to be the case where live simulcasts are transmitted. In such cases, we expect that, where it is practically possible, broadcasters should take reasonable steps to determine whether the broadcast contains product placement and obscure or mask such placements.
- 1.75 Extracts of programmes/live feeds in news: There are limited circumstances in which a news programme may legitimately feature content that contains product placement. For example, where the news covers a story about a television programme and includes a clip from that programme that happens to contain a placed product. Or when a news programme cuts to a foreign news feed as part of its coverage of a breaking news story. In such circumstances, references to products, services or trade marks in the third party content are unlikely to meet the definition of product placement provided the broadcaster, producer or a person connected to either has not directly benefited from the product placement arrangement. However, broadcasters and programme producers should take particular care to avoid unnecessary references to products, services or trade mark in news programmes, and such references must comply with all other relevant Code rules, e.g. Rules 9.1 to 9.5.
- 1.76 News reports in programmes: Where news is provided as part of a programme that may contain product placement – for example, in the case of a daily magazine show that features hourly news updates – broadcasters should ensure that the news element of the programme does not contain, or appear to contain, product placement. For example, where set dressings (e.g. a studio sofa) have been product placed, it may be appropriate to transmit the news from a separate part of a studio that does not contain product placement.
- 1.77 Specialist reports: Some short specialist reports that accompany news (e.g. sport, travel and weather reports) may be suitable for product placement provided that such content does not itself comprise material that constitutes news. To avoid the impression that content containing product placement forms part of news, reports featuring placed products must be distinct from the news (e.g. by using different presenters and sets).

### Children's programmes

- 1.78 For the purposes of the product placement prohibition, the Communications Act defines a children's programme as "a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen"<sup>6</sup>.
- 1.79 Where a children's programme is included as a segment of a programme that may contain product placement, broadcasters should note the guidance above for news programmes and adapt it accordingly, i.e. licensees should ensure that where a children's programme is scheduled within a programme containing product placement, the children's content should be set clearly apart and demonstrably free from product placement.

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<sup>6</sup> This definition for a "children's programme" applies solely in the context of product placement. Licensees should note that other criteria are used in different regulatory circumstances (e.g. for advertising regulation).



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- 1.80 If an Ofcom-regulated broadcaster has acquired a children's programme that was originally produced after 19 December 2009 and contains product placement, the product placement must be edited out or obscured (e.g. blurring, blurring or masking) before it is transmitted on the Ofcom-regulated service, to comply with Rule 9.7(b).

**Can programmes be created to feature product placement or be scheduled to suit the interests of the placer?**

*Relevant legislation:*

- Article 11(2)(a) of the AVMS Directive
- Schedule 11A paragraph 7(B) of the Communications Act

### Rule 9.8

**Product placement must not influence the content and scheduling of programme in a way that affects the responsibility and editorial independence of the broadcaster.**

- 1.81 Rule 9.8 should be read in conjunction with Rule 9.1 (editorial independence) and the associated guidance. As stated in the guidance for Rule 9.1, the Code does not prevent parties other than the programme-maker and broadcaster from providing input into programmes. However, broadcasters must retain ultimate control over the content of the programmes they transmit and also the positioning of programmes in their schedules.
- 1.82 Broadcasters should not enter into commercial arrangements that impair, or appear to undermine, editorial judgements. This does not prevent legitimate instances of product placement: product placement arrangements will necessarily involve contractual agreements relating to references to products, services or trade marks in programmes. Broadcasters or programme-makers may wish to enter into agreements about the manner in which a placed product will appear in a programme (e.g. whether it will be used by a particular character, in what scenes it will be used etc.). Likewise, the Code does not set restrictions on what point during the production process product placement arrangements are agreed. Ofcom acknowledges that, in some circumstances, it may be appropriate to determine product placement arrangements alongside the creation of the editorial content itself.
- 1.83 While such practices are acceptable in principle, broadcasters should take care to ensure that product placement arrangements do not take precedence over a programme's editorial needs. There must be sufficient editorial justification for references to placed products, services and trade marks. In this respect, Rules 9.8 (editorial independence), 9.9 (no promotion) and 9.10 (no undue prominence) are three key protections to ensure that editorial content is not distorted for the purpose of featuring placed products, services or trade marks.
- 1.84 Broadcasters should be able to demonstrate that neither they nor a programme producer (or a connected person) have provided guarantees relating to placed products etc that could result in, or amount to, the broadcaster relinquishing its editorial control. In particular, broadcasters must retain the right to amend, remove or obscure product placement references if they judge that these do not comply with the Code.

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***How can product placement be included in programmes?***

*Relevant legislation:*

- *Article 11, (3)(a), (b) and (c) of the AVMS Directive*
- *Schedule 11A, paragraph 7(3) to (7) of the Communications Act*

**Rule 9.9**

**References to placed products, services and trade marks must not be promotional.**

- 1.85 This rule supports Rule 9.4 (see above). Where a product, service or trade mark is included in a programme as a result of a product placement arrangement, a positive reference to it, whether in vision or audio, is likely to be perceived to be promotional in intent.
- 1.86 Factors that are likely to be considered promotional include, but are not limited to, the following:
- encouragements to purchase (whether direct or indirect);
  - advertising claims;
  - price or availability information;
  - references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark;
  - slogans associated with the placed product, service or trade mark; and/or
  - endorsements (either explicit or implicit).
- 1.87 A breach of Rule 9.9 is likely to occur where a clear promotional statement about a placed product is made (e.g. a comment about the superlative nature of a product) or where repeated implicit promotional content is broadcast (e.g. multiple references to a product that cannot be justified by the editorial requirements of the programme).
- 1.88 Implicit promotions are likely to arise, for example, when a character is, or a range of characters are, shown repeatedly using the same placed product. However, each case will be judged on its individual merits: there are some situations in which there is likely to be stronger editorial justification for showing a character repeatedly using the same placed product, e.g. a character in a soap or a drama series owning a particular make of car.
- 1.89 The use of a placed product by a programme presenter or a character will not, in itself, necessarily be treated as endorsement. However, this may depend on, for example, the individual in question and the manner in which they use or refer to the placement. The potential for promotion in verbal references to placements by presenters or characters will require careful consideration. Another important consideration may be any commercial arrangement the individual has with the placed brand (for example, where a presenter is contracted by a brand to be its ambassador, product placement involving the individual using that brand in a programme may be viewed as promotional, particularly if the placement coincides with an advertising campaign for the brand that features the individual).

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- 1.90 Product placement and competition prizes (including sponsor's products as prizes): The donation of a competition prize is likely to be treated as prop placement provided the broadcaster, the programme-maker or a connected person receives no benefit beyond the value of the prize itself for featuring the prize in a programme. If the broadcaster, programme-maker or a connected person receives payment or other valuable consideration in return for including prizes in a programme, this is likely to be treated as product placement. Given the manner in which prizes are generally described to enable the audience to decide to enter a competition (see guidance on Rule 9.4), the product placement of competition prizes is unlikely to comply with Rule 9.9.
- 1.91 Broadcasters should note that, the donation of competition prizes via prop placement arrangements should not involve agreements with prize donors in relation to the manner in which competition prizes are featured in programmes (e.g. the amount of exposure or number of references to the prize).
- 1.92 In cases where a sponsor donates a prize to be given away in the programme it is sponsoring, any donation that forms part of the sponsorship agreement is likely to be treated as product placement. Donations that are made outside of the sponsorship arrangement and are not subject to any agreement in relation to on-air mentions of the prize or donor are likely to be treated as prop placement.
- 1.93 Product placement and programme-related material ("PRM"): Where a reference to PRM meets the definition of product placement, the promotion of the PRM within a programme is unlikely to comply with Rule 9.9. See additional guidance under Rule 9.31.

#### Rule 9.10

#### References to placed products, services and trade marks must not be unduly prominent.

- 1.94 This guidance should be read in conjunction with the guidance for Rule 9.5.
- 1.95 We recognise that the purpose of product placement is the exposure of products, services or trade marks in programmes in return for payment or valuable consideration. This is a significant change to the previous longstanding regulatory regime for commercial references in television programmes, which had at its heart an absolute prohibition on product placement in programmes produced or commissioned by Ofcom licensees.
- 1.96 As such, we accept that, alongside the introduction of product placement, the existing concept of undue prominence must develop and evolve, and we intend to issue regular updates to the guidance supporting this rule as the product placement market establishes itself. However, broadcasters should note that Rule 9.10 is an explicit requirement of both the AVMS Directive and the Communications Act. In short, the prominence with which products, services and trade marks can be placed in programmes has limits, and these limits are required by EU and UK law.
- 1.97 Editorial justification is one of the fundamental tests by which undue prominence will be assessed. In particular, storylines, themes and narratives that appear to have been constructed for the purpose of giving exposure to or featuring placed products, services or trade marks, with a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent. However, where a storyline or theme fits comfortably

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with the programme's understood character, issues of undue prominence (and also promotion and editorial independence) may be less likely to arise.

1.98 Examples of format or storyline construction that are likely to lead to issues of undue prominence may include:

- a reality format in which participants are required to perform tasks or challenges that feature strongly or frequently a placed product, service or trade mark; or
- improbable or contrived character or plot development, presenter behaviour, location, setting or other structural elements of a programme resulting from or linking to a product placement.

1.99 Broadcasters will need to exercise particular care to ensure that there is clear and sufficient editorial justification when a placed product is integral to the storyline/theme of a new programme or format. In such cases, consistency with an established programme format or profile will be more difficult, or impossible, to demonstrate.

1.100 Generally, broadcasters should always bear in mind that the placing of products or services should be defensible editorially. The extent and nature of the exposure always needs to be considered against the editorial requirements of the programme.

1.101 In this respect, questions broadcasters and producers should consider include:

- is the placement easily accommodated editorially, or do significant changes have to be made to integrate the placement?
- similarly, would viewers be likely to perceive the placement as natural and in keeping with the programme's style and content?
- does any repetition of reference to the product, in vision or sound or both, suggest that the placement is guiding or distorting editorial content?

1.102 Judging how much placement can be supported by a programme will be a matter for the broadcaster in the first instance; but as the number of references to a placed product increases, or indeed the number of placements in any one programme overall, so should the broadcaster's caution.

#### **Prop placement and undue prominence**

1.103 Prop placement – where a product is supplied without consideration and the prop has no significant value – is as much subject to the undue prominence rule as is product placement. See guidance for Rule 9.5.

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**What restrictions are there on the types of products, services and trade marks that can be placed in programmes?**

*Relevant legislation:*

- Article 11(4) of the AVMS Directive
- Schedule 11A, paragraph 4 of the Communications Act

**Rule 9.11**

The product placement of the following products, services or trade marks is prohibited:

- a) cigarettes or other tobacco products;
- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
- c) prescription-only medicines.

1.104 The prohibition listed at b) includes non-tobacco products or services which share a brand name associated with a tobacco product (e.g. clothing items). See guidance on Rule 9.13 in relation to the use of prohibited products as props.

1.105 Broadcasters should also ensure they consider legal advice on wider legal controls over the promotion and exposure for sale of tobacco and tobacco-related products, and prescription-only medicines.

**What are the additional rules that apply to product placement included in programmes produced under UK jurisdiction?**

*Relevant legislation:*

- Schedule 11A, paragraph 6 of the Communications Act

1.106 Rules 9.12 and 9.13 of the Code apply to programmes produced under UK jurisdiction. A meaning of "programmes produced under UK jurisdiction" is set out above Rule 9.12 in the Code. In summary, a programme will be subject to Rules 9.12 and 9.13 if it:

- i) has been produced or commissioned by an Ofcom-regulated broadcaster, or a person connected to such a broadcaster, and is not a film made for cinema; or
- ii) has been made by anyone with the intention of its first broadcast being on an Ofcom-regulated television service

1.107 Edits to acquired programmes: In the case of acquired programmes or content (produced after 19 December 2009<sup>7</sup>) that does not meet the criteria set out above, we do not expect that general edits (e.g. for compliance, compilation or re-versioning purposes) would result in such material being considered as produced under UK jurisdiction.

<sup>7</sup> This is the date that the relevant requirements set out in the AVMS Directive came into force.

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However, where a programme is heavily re-versioned, it may become subject to Rules 9.12 and 9.13, depending on the extent of the changes made.

- 1.108 Use of third party content in programmes produced under UK jurisdiction: When a programme that meets the criteria set out above features third party content - such as music videos, film or programme clips - references to placed products, services or trade marks in the third party content are unlikely to meet the definition of product placement *provided the broadcaster, producer or a person connected to either has not directly benefited from the original product placement arrangement*. To ensure such references are not subject to the product placement rules, the broadcaster, producer (or person connected with either) should not enter into any agreement in relation to retaining references to placed products in their own programme.

**What programmes produced under UK jurisdiction cannot contain product placement?**

*Relevant legislation:*

- *Schedule 11A, paragraph 6 (1)(a) of the Communications Act*

**Rule 9.12**

**Product placement is not permitted in the following:**

- a) religious programmes
- b) consumer advice programmes
- c) current affairs programmes.

1.109 For the purposes of applying Rule 9.12, Ofcom will adopt the following meanings:

- **A religious programme** is a programme that covers religious acts of worship or whose main focus is religious belief (but is not a news or current affairs programme).
- **A consumer advice programme** is a programme offering advice, or including reviews, on products or services (including 'what to buy', 'where to go' and 'what to see').
- **A current affairs programme** is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.

1.110 Where a programme produced under UK jurisdiction does not fall within the prohibited genres listed in a) to c) above, but contains an **element of content** that falls within these genres (e.g. a magazine format programme featuring a regular consumer affairs item), broadcasters should ensure that the relevant element of the programme does not contain, or appear to contain, product placement (see also guidance on Rule 9.8).

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**What are the additional restrictions on the types of products, services and trade marks that can be placed in programmes produced under UK jurisdiction?**

Relevant legislation:

- Schedule 11A, paragraph 6(2) of the Communications Act

### Rule 9.13

The product placement of the following is prohibited:

- alcoholic drinks;
- foods or drinks high in fat, salt or sugar ("HFSS");
- gambling;
- infant formula (baby milk), including follow-on formula;
- all medicinal products;
- electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or
- any product, service or trade mark that is not allowed to be advertised on television.

1.111 For the purposes of a), "alcoholic drinks" means drinks that contain above 0.5% ABV.

1.112 In respect of b), **HFSS food and drink products** are defined by the nutrient profiling scheme which was devised by the UK's Food Standards Agency for use by Ofcom. This can be found at:  
<http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

1.113 When considering the appropriateness of allowing the product placement of a **trade mark associated with HFSS foods or drinks**, broadcasters should follow the guidance issued by the Broadcast Committee of Advertising Practice (BCAP) on differentiating HFSS *product* television advertisements from *brand* television advertisements and apply it accordingly. The guidance can be found at: <http://www.cap.org.uk/Media-Centre/2007/Advertising-guidance-note-on-differentiating-HFSS-product-TV-ads-from-brand-TV-ads.aspx>

1.114 For the purposes of c) "gambling" includes:

- any activity that falls within the meaning of "gambling" given in section 3 of the Gambling Act 2005;
- spread betting; and
- National Lottery products.

1.115 In respect of d) "infant formula" and "follow-on formula" have the meanings given in Article 2 of Commission Directive 2006/141/EC amending Directive 1999/21 EC.

1.116 In respect of e), Schedule 11A of The Communications Act makes clear that "**medicinal product**" has the meaning given in section 130 of the Medicines Act 1968. For further guidance, please see the note "A guide to what is a medicinal product" produced by the Medicines and Healthcare products Regulatory Agency ("MHRA"), which can be found at: <http://www.mhra.gov.uk/home/groups/is-lic/documents/publication/con007544.pdf>

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Please note that this guidance only applies to those medicinal products licensed in the UK.

1.117 In respect of g), details of **prohibited advertisers** can be found in Section 10 of The UK Code of Broadcast Advertising ("BCAP Code") which can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

1.118 The prohibitions on the product placement of these specific types of products and services do not prevent the legitimate use of such products or services as props, subject to prop placement arrangements. Broadcasters should note the relevant definitions of "product placement", "prop placement", "significant value" and "residue value" included at the beginning of Section Nine and in the introduction to the product and prop placement guidance.

***When do broadcasters have to signal that a programme contains product placement?***

*Relevant legislation:*

- *Article 11 (3)(d) of the AVMS Directive*
- *Schedule 11A, paragraph 8 of the Communications Act*

**Rule 9.14**

**Product placement must be signalled clearly, by means of a universal neutral logo, as follows:**

- a) at the beginning of the programme in which the placement appears;
- b) when the programme recommences after commercial breaks; and
- c) at the end of the programme.

1.119 Rule 9.14 applies to programmes (including films made for cinema) produced or commissioned by the broadcaster or any person connected with the broadcaster.

1.120 The universal neutral logo must be used. Please see Annex 1 of the guidance for the technical criteria which must be applied to the logo.

1.121 Two versions of the universal logo<sup>8</sup>



White outer P, black inner P ("Logo 1")  
(the black background shown above is not part of the logo, but is for illustrative purposes here only)



Black outer P, white inner P ("Logo 2")

<sup>8</sup> © Ofcom 2011. All copyright, trade mark and other rights residing in or attaching to the product placement logos are the property of Ofcom.



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- 1.122 Identifying product placement in non-English language services: For those Ofcom-regulated television services that do not broadcast in English, we may offer limited flexibility in relation to the use of the universal logo, taking into account language differences and viewer familiarity with product placement logos that may be used in other countries. In such circumstances, licensees should contact Ofcom directly for case-by-case guidance.
- 1.123 Providing details of placed products: If broadcasters wish to provide viewers with a list of placed products, services or trade marks, they may do so in the end credits of the programme or by other means (for example, on a channel or programme website). However, if such information is provided in programme credits, to comply with Rule 9.9 and 9.10 (no promotion; no undue prominence), this may only be done in a neutral, non-promotional manner, without the inclusion of any information about the placed products, services or trade marks (e.g. no brand slogans; advertising messages etc).
- 1.124 Identifying generic placement: Product placement may involve the placement of generic references to products or services (for example: a placed type of product on which no branding or brand-associated features are evident). In such cases, the universal signal may be insufficient to alert viewers to the product placement. This is because viewers are less likely to associate references to non-branded products and services with product placement. The risk of surreptitious advertising may therefore increase. To ensure that instances of generic product placement do not raise issues of surreptitious advertising (and therefore potentially breach Rule 9.3), broadcasters who wish to enter into such generic product placement arrangements should consider taking additional steps to ensure adequate signalling of generic placements (for example, it may be appropriate to provide further information in the programme's end credits naming the placer and stating what the placed product or service was). However, if such information is provided in programme credits, to comply with Rule 9.9 and 9.10 (no promotion; no undue prominence), this may only be done in a neutral, non-promotional manner, without the inclusion of any information about the placed products, services or trade marks (e.g. no brand slogans; advertising messages etc).
- 1.125 Acquired programmes and signalling: When a broadcaster acquires a programme containing product placement (i.e. the broadcaster has not produced or commissioned the programme, and it has not been produced or commissioned by a connected person), there is no signalling requirement. However, please note that such programmes must comply with other relevant Code rules (and in particular, Rules 9.1 to 9.5).
- 1.126 Nevertheless, if a broadcaster acquires a programme from a third party on the condition that product placement within the programme will be broadcast (subject to compliance with relevant rules), the requirements of Rule 9.3 (surreptitious advertising) should be noted. In such circumstances, Ofcom expects broadcasters to ensure that audiences are made aware that the programme includes product placement.

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## **Sponsorship**

### **Introduction**

#### ***What is sponsorship?***

- 1.127 Rules 9.15 to 9.25 apply to broadcast sponsorship arrangements. Section Nine of the Code sets out the meanings for the following terms relevant to these rules: "sponsored programming"; "sponsor"; "sponsor reference"; and "costs". These can also be found in the Glossary at the end of these Guidance Notes.
- 1.128 In summary, programme sponsorship involves the funding of a programme, or a contribution to the funding of a programme, by a third party (i.e. not the programme producer of the broadcaster) for the purpose of promoting its products, services, trade mark or activities.
- 1.129 Sponsors can fund programmes at any stage of the production process. For example, a broadcaster may sell the sponsorship of a programme that it has commissioned or produced, or an advertiser may directly fund the production of content (an advertiser-funded programme).
- 1.130 Sponsorship may also involve the funding of blocks of programmes, entire television channels or programme segments.
- 1.131 Rules 9.15 to 9.25 apply to all sponsored content.

#### ***What is the purpose of the rules?***

- 1.132 While the rules allow a sponsor the promotional benefit of being associated with the content it is sponsoring, they also help ensure that sponsorship arrangements do not lead to a blurring of the boundaries between editorial and advertising (for instance, by preventing the editorial of a sponsored programme promoting the sponsor's interests). The rules require broadcasters to retain editorial independence over sponsored content, ensure the audience is told when content is sponsored, and prevent unsuitable sponsorship.
- 1.133 Subject to relevant restrictions, sponsors may product place in the programmes they are sponsoring. When a reference to the sponsor within a sponsored programme meets the definition of product placement, licensees should note the requirements of Rules 9.6 to 9.14 and the associated guidance.

### **Content that may not be sponsored**

#### **Rule 9.15**

#### **News and current affairs programmes must not be sponsored.**

- 1.134 The prohibition on the sponsorship of news and current affairs programmes is a direct requirement of the AVMS Directive (Article 10(4)).
- 1.135 News includes any programme or newflash containing local, national or international news.

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- 1.136 A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.
- 1.137 Short specialist reports that accompany news (e.g. sport, travel and weather reports) may be sponsored – provided that such content does not itself comprise material that constitutes news or current affairs. To avoid the impression that news content is part of a sponsorship arrangement, the sponsored report must be distinct from the news (e.g. by using different presenters and sets).

**Prohibited and restricted sponsors**

**Rule 9.16**

**Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television.**

- 1.138 Examples of prohibited advertisers include: political parties; tobacco brands; prescription only medicines; guns and gun clubs; and obscene material. Full details of prohibited advertisers are included in the BCAP Code, which can be found at:  
<http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-TV-Code.aspx>

**Rule 9.17**

**Sponsorship must comply with both the content and scheduling rules that apply to television advertising.**

- 1.139 Sponsorship arrangements and sponsorship credits must comply with advertising content and scheduling rules, as set out in the BCAP Code. This means, for example, a children's programme cannot be sponsored by a food or drink high in fat, salt or sugar and sponsorship credits must not include material likely to lead to harm. Full details of the relevant content and scheduling restrictions can be found at:  
<http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-TV-Code.aspx>
- 1.140 Licensees should note that sponsorship credits are also subject to Rules 9.19 to 9.25.

**Content of sponsored output**

**Rule 9.18**

**A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.**

- 1.141 Rule 9.18 should be read in conjunction with Rule 9.1 (editorial independence).
- 1.142 Rule 9.18 does not prevent sponsors from having an involvement in the commissioning and creation of programmes (as is likely to be the case with advertiser-funded programmes). However, sponsorship arrangements should not lead to the creation of content that is a vehicle for the purpose of promoting the sponsor or its interests, or the distortion of editorial content for that purpose. As stated in the guidance for Rule 9.1, the

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- broadcaster must ensure that it retains ultimate control over the programmes it transmits.
- 1.143 There are limited circumstances in which a sponsor (or its interests) may be referred to during a programme it is sponsoring as a result of a commercial arrangement with the broadcaster or programme-maker. For example, in the case of a product placement arrangement or when the sponsorship arrangement is identified (see Rules 9.19 to 9.25).
- 1.144 Where a sponsor reference in a programme meets the definition of product placement, it must comply with the relevant product placement rules (see Rules 9.6 to 9.14 and the associated guidance).
- 1.145 An incidental reference to the sponsor (i.e. a reference that does not result from a commercial arrangement between the sponsor and the broadcaster and/or programme maker or a connected person) must comply with Rules 9.1 to 9.5. Such circumstances may arise, for instance, when a product is acquired for use as a prop or when a reference to one of the sponsor's products is unintentionally included in a programme as a result of filming on location.
- 1.146 In the case of an advertiser-funded programme, where the sponsor has been involved in the creation of the programme, any reference to the sponsor or its interests is likely to be considered to be deliberate and therefore subject to the product placement rules. References to generic products or services that are associated with the sponsor may also be treated as product placement depending on the circumstances. For example, a generic reference to a product that is synonymous with the funder is more likely to be treated as product placement than a generic reference to a product that is not associated with a particular brand.
- 1.147 In cases where a sponsor donates a prize to be given away in the programme it is sponsoring, broadcasters should note the guidance on Rule 9.9.

### Identifying sponsorship arrangements

#### Rule 9.19

**Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:**

- a) **the identity of the sponsor by reference to its name or trade mark; and**
  - b) **the association between the sponsor and the sponsored content.**
- 1.148 Viewers should be told when a programme is sponsored and who the sponsor is. The sponsor's association with the sponsored content must be clear to the audience in all sponsorship credits. Broadcasters are free to use various and different creative messages to identify sponsorship arrangements, for example: "sponsored by..."; "in association with..."; "brought to you by...". However, care should be taken to avoid ambiguous statements that may lead to viewer confusion over the nature and purpose of the announcement.

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1.149 Sponsorship messages should not suggest the sponsorship arrangement has in any way compromised the requirements of the Code.

1.150 For guidance on the content of sponsorship credits, see Rule 9.22 below.

**Rule 9.20**

**For sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of the programme.**

1.151 To ensure viewers are made aware when a programme is sponsored, credits must be broadcast at either the beginning, during, or end of the programme. To help ensure transparency, credits may be broadcast at each of these junctures as well as entering and/or leaving a commercial break.

1.152 However broadcasters should note the rules on undue prominence will apply. For example, excessively long sponsorship credits or frequent internal credits are likely to be judged to be unacceptably prominent.

1.153 For additional guidance on the appearance of sponsorship credits during programmes ("internal credits"), see guidance under Rule 9.22(b) below.

1.154 For sponsored content other than programmes (e.g. channels, programme segments) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audience members are able to identify sponsored content. For instance, where a programme segment or item is sponsored - such as a cookery spot in a magazine format programme or a sports programme - credits could be broadcast at the time the segment/item is shown.

1.155 See also additional guidance on channel sponsorship below, and the guidance against Rule 9.19 above.

**Sponsorship credits**

**Rule 9.21**

**Sponsorship credits must be distinct from editorial content.**

1.156 This rule supports the requirement that viewers should be able to distinguish between editorial content and paid for commercial references. Particular care is needed when a credit is broadcast during a programme to ensure that it is not confused with editorial material.

1.157 The use of programme elements in sponsorship credits: There is no prohibition on the use of programme elements (e.g. presenter/characters) appearing in sponsorship credits. However, the use of such elements in credits may lead to a blurring of the distinction between sponsorship credits and editorial content. Broadcasters should therefore exercise caution in such circumstances.

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## Rule 9.22

Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor's products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.
- 1.158 As stated in the guidance for Rule 9.2, the AVMS Directive (Article 23) limits the amount of advertising that can be transmitted on a television channel. However, it exempts sponsorship announcements from this limit. Rule 9.22 helps ensure that sponsorship credits are not used as a means of circumventing the restrictions on the amount of advertising that can be shown.
- 1.159 Sponsorship credits are an intrinsic part of the sponsored content (albeit distinct from editorial) and their purpose is to identify sponsorship arrangements: they are not a platform for a sponsor to sell its products or services. Article 10(1)(b) of the AVMS Directive states that sponsored programmes "must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services". Credits should therefore fulfil the role of identifying the sponsorship arrangement and not be capable of being confused with advertising by, for example, focusing on the products or services of the sponsor.
- 1.160 Guidance previously issued by the European Commission in relation to sponsorship arrangements<sup>9</sup> stated that there should be "no explicit reference to the products or services of the sponsor during the [sponsored] programme, except where the reference serves the sole purpose of identifying the sponsor or making explicit the link between the programme and the sponsor" (emphasis added). On this basis, Rule 9.22 permits references to the products and services of a sponsor in sponsorship credits. However, care is needed to ensure that such references do not constitute advertising messages.
- 1.161 Ofcom recognises that when judging whether the various components of a sponsorship credit broadcast around a sponsored programme amount to the credit being sufficiently distinct from advertising, fine editorial judgements are often required. We are likely to take into account a number of factors including, but not limited to:
- 1.162 Focus of the credit: credits that focus predominantly on the sponsorship arrangement, rather than the sponsor or its products/services, are more likely to be compliant with the Code. The following are some of the features that Ofcom is likely to consider when judging whether the focus of a credit is the sponsorship arrangement:

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<sup>9</sup> This guidance was included in the Commission's Interpretative Communication on certain aspects of the provisions on televised advertising in the "Television without frontiers" Directive (see [https://www.ebu.ch/CMSimages/en/COM\\_2004\\_1450\\_TV\\_advertising\\_TWF\\_EN\\_tcm6-11666.pdf](https://www.ebu.ch/CMSimages/en/COM_2004_1450_TV_advertising_TWF_EN_tcm6-11666.pdf)). It should be noted that the Commission is likely to update the Interpretative Communication in the near future in relation to the requirements of the AVMS Directive.

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- the use of a creative approach that thematically links the sponsor to the programme (e.g. by genre or using characters which have similar characteristics to the people/characters in the programme). Such links, when used effectively, highlight the fundamental difference between sponsorship and advertising, i.e. sponsorship is about the sponsor's association with the programme, not selling the sponsor's products/services;
  - detailed descriptions of products/services or references to multiple products. These are likely to detract from the sponsorship message and result in content that is more akin to advertising. For example, excessive use of footage from DVDs or computer games (in cases where a DVD or computer game sponsors a programme) or references (both visual and oral) to the range of a sponsor's products;
  - the use of the sponsor's slogans, straplines, jingles and so on. It is possible for some sponsor's slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor's products/services (e.g. by featuring claims). However, broadcasters should take extra care when using such straplines, particularly in combination with footage from a sponsor's advertising campaign that the primary focus of the credit is *clearly* on the sponsorship arrangement.
- 1.163 Claims about the sponsor's products/services: claims about the sponsor's products/services (in particular those that are capable of objective substantiation), are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. Examples include:
- claims about market leadership, health benefits, efficacy; and
  - the use of promotional language and/or superlatives to describe the sponsor and/or its products and services (e.g. referring to: the breadth of range of products a sponsor provides or how easy a sponsor's product is to use).
- 1.164 Calls to action: credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code. However, basic contact details (e.g. websites or telephone numbers) may be given in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor. In this respect:
- If sponsorship credits contain contact details, these should be minimal;
  - any direct appeals to the viewer to buy or try the sponsor's goods or services or to contact the sponsor for more information are likely to breach Rule 9.22;
  - mandatory price information (such as the cost of premium rate telephony services) is acceptable provided it does not form part of an advertising message. Any price information that is not mandatory will normally be considered an advertising message.

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**Rule 9.22 (cont.)**

**b) Sponsorship credits broadcast during programmes must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks.**

- 1.165 In addition to ensuring that sponsorship credits are distinct from advertising, the intention of part (b) of Rule 9.22 is to ensure that credits transmitted during programmes (“internal credits”) are not overly intrusive. Internal credits carry a greater risk of impacting negatively on the content of sponsored programmes.
- 1.166 Broadcasters should note that, as well as the content of credits, Ofcom is likely to take into account the size, frequency and duration of internal credits when applying this rule. Licensees are advised to approach internal credits with the aim of ensuring no greater prominence than is necessary for the audience to see or hear the credit and acknowledge it.
- 1.167 Broadcasters may wish to schedule internal credits at specific points during a programme, e.g. during coverage of a sports match, alongside match statistics displayed on-screen in a graphic overlay, rather than during play. When scheduling internal credits, broadcasters should bear in mind the requirements of Rules 9.1 (editorial independence), Rule 9.4 (no promotion of goods and services) and Rule 9.5 (undue prominence). Care should be taken to ensure that internal credits do not appear to have been scheduled with a view to providing the sponsor with an undue level of prominence. In particular, sponsorship credits should not be, or appear to be, placed purposefully to coincide with references to the sponsor (including its products, services or trade marks) during the programme.

**Rule 9.23**

**Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.**

- 1.168 There are limited circumstances in which a product, service or trade mark that cannot be product placed in a programme (or a programme that cannot contain product placement) can nevertheless be subject to sponsorship arrangements. For example, where a programme is prohibited from containing product placement (e.g. a children’s programme) or where the sponsor would be prohibited from placing its products in a programme (e.g. when the sponsor is an alcoholic drink brand). In such circumstances, Rule 9.25 prevents the broadcast of internal sponsorship credits during the programme.
- 1.169 The rule prevents a reference to a product, service or trade mark appearing in a programme as a result of a commercial arrangement where a reference to the same product, service or trade mark could not be made as a result of a product placement arrangement.



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1.170 Broadcasters should refer to Rules 9.6 to 9.13 for details of those programmes, products, services and trade marks that are subject to product placement restrictions.

**Rule 9.24**

**Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.**

1.171 The purpose of a programme trail is to alert viewers to a forthcoming programme. References to a programme sponsor should not distract from this purpose and generally should be limited to a brief on-screen reference to the sponsorship arrangement.

**Rule 9.25**

**Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.**

1.172 As with references to programme sponsors in trails, any reference to the sponsor of programme-related material ("PRM") must be limited. When crediting sponsors of PRM, broadcasters should take into account the requirements of Rule 9.22(b).

1.173 Viewers should be able to distinguish easily between credits for sponsors of PRM and sponsors of other broadcast content.

**Channel sponsorship**

1.174 The Code permits the sponsorship of programmes, programme segments and channels. Ofcom recognises that the sponsorship of entire channels may raise specific issues in relation to compliance with the sponsorship rules. The following guidance is intended to assist broadcasters when entering into channel sponsorship arrangements.

Which channels can be sponsored?

1.175 There are certain rules that may render the sponsorship of some channels unacceptable.

1.176 Rule 9.15 prohibits the sponsorship of news and current affairs programmes. Channel sponsorship involves the sponsorship of a service as a whole rather than individual programmes. Therefore the sponsorship of a channel that broadcasts some news and current affairs programmes is not necessarily incompatible with the Code. However, broadcasters need to take care that channel sponsorship arrangements do not result in the sponsorship of programmes that cannot be sponsored, nor appear to apply to such programmes. When assessing whether a channel can be sponsored, Ofcom will take into account the following factors:

1.177 The amount of sponsorable content on the channel: where a channel broadcasts content that consists wholly or mainly of programmes that can be sponsored, channel sponsorship may be acceptable. As a rough guide, these programmes should normally account for around 75% or more of the channel's output. Channels that broadcast a significant amount of unsponsorable programmes are likely to be considered unsuitable

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for sponsorship. For example, unsponsorable programmes that account for around 25% or more of channel's output are likely to be considered a significant amount.

1.178 Positioning of channel/audience expectations: regardless of the proportion of sponsorable programmes it transmits, a channel is unlikely to be considered suitable for channel sponsorship if it: promotes itself predominantly as a news and/or current affairs service; is positioned in the news section of an electronic programme guide; or is recognised by audiences primarily as a news and/or current affairs channel.

1.179 The Code rules prohibiting the sponsorship of news and current affairs supports the important principle that news must be reported with due accuracy and presented with due impartiality (see Section Five of the Code). A broadcaster's editorial control over the content of its news and current affairs content should not be, or appear to be, compromised. Where a broadcaster is regarded primarily as a news provider, a commercial arrangement such as channel sponsorship risks undermining the perception of the broadcaster's editorial independence and will not be compatible with the Code.

Channel sponsorship must comply with both the advertising scheduling rules (Rule 9.17).

1.180 Certain programmes cannot be sponsored by certain types of sponsors (e.g. an alcohol brand cannot sponsor a children's programme). If a broadcaster is considering a channel sponsorship arrangement that involves a sponsor that is subject to advertising scheduling restrictions, they are advised to apply similar criteria to those stated above, e.g. a channel that broadcasts a significant amount of children's programmes should not be sponsored by an alcohol brand.

1.181 See the BCAP Code, which can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

Identifying channel sponsorship arrangements

1.182 Rule 9.19 of the Code requires sponsorship to be clearly identified. It is important that credits for channel sponsors make clear what is sponsored (i.e. the channel, not the programmes) and by whom.

1.183 Because it is possible for a brand that is better known in another field to own a channel (e.g. NME TV), credits should ensure that audiences can distinguish between a channel ownership and channel sponsorship arrangement. A credit for channel sponsorship should therefore name the channel and explain who the sponsor is (e.g. channel X is sponsored by Y). It is particularly important that the credit makes clear that the channel is sponsored rather than individual programmes it is broadcasting.

Placing of channel sponsorship credits (Rule 9.20)

1.184 Unlike most programmes, channels do not have a clearly defined beginning and end at which credits can be placed. Broadcasters will therefore need to judge when and where to identify channel sponsorship to ensure that the Code requirements on transparency and distinction are met while avoiding undue prominence for the sponsor.

1.185 Natural breaks in the schedule (e.g. before and/or after commercial breaks, between programmes etc.) provide suitable junctions at which to place channel sponsorship

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- credits. However, care needs to be taken to avoid confusion if a programme sponsorship credit is also broadcast near to a channel sponsorship credit.
- 1.186 Channel sponsorship credits, like programme sponsorship credits, must be distinct from both editorial and advertising content. Channel sponsorship may be identified when channel 'idents' are broadcast. However, the size and duration of credits should be limited to avoid giving undue prominence to the sponsor.
- 1.187 Where a sponsored channel broadcasts a limited amount of programmes that cannot be sponsored, or is sponsored by a brand that cannot sponsor all the programmes it broadcasts (see guidance above on which channels can be sponsored), the channel sponsorship credits must be kept away from the unsponsorable content. Credits should therefore not be broadcast directly before, during or after the programme that cannot be sponsored e.g. news. Additionally, credits should not be broadcast around trails for the unsponsorable programmes.

#### **Premium rate telephony services**

- 1.188 In this section, premium rate telephony services (PRS) are those regulated by PhonepayPlus.

#### **Rule 9.26**

**Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements.**

- 1.189 This rule serves to ensure that paid-for interaction between a viewer and a broadcaster takes place through a means of communication rather than merely a money transfer instrument. In other words, it seeks to prevent participation in programming by payment methods like credit or debit cards, for example. In short, it ensures that a distinction is maintained between editorial content and advertising, and that programmes do not become mediums for carrying advertising.

#### **'Apps' and paid-for audience participation in programming**

- 1.190 'Apps' are software applications downloaded to mobile phones and related devices.
- 1.191 It has become reasonably common for some broadcasters to include references within their programmes to free apps. These apps include, for example, offers of programme-themed games, or those that enable users to access behind-the-scenes footage of a particular programme. In general, this type of app would meet the Code's definition of programme-related material (PRM), and Rules 9.31 and 9.32 apply.
- 1.192 However, this guidance addresses the suitability under the Code of apps as a way to charge the audience to participate in programming, e.g. an app which enables the user to buy votes or broadcast competition entries, and so participate or interact in programming.
- 1.193 If a broadcaster invites its audience to participate in or interact with programming, Rule 9.26 of Code requires that it may only charge for such activities "...by means of premium

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rate telephone services or other telephony services based on revenue-sharing arrangements”.

- 1.194 Is a paid-for app a telephony service?: As stated, Rule 9.26 serves to ensure that paid-for interaction between a viewer or listener and a broadcaster takes place through a means of communication rather than merely a money transfer instrument. To date, paid-for participation in programming has therefore been limited to telephony services (phone/text).
- 1.195 However, Ofcom recognises the pace of change and innovation in the sector, and the advantages that evolving technologies offer to viewers and listeners. We also understand that licensees will want to add emerging proprietary platforms to ways that viewers and listeners can contact them or interact with them, where this involves an additional element of financial benefit for the licensee.
- 1.196 We have therefore concluded that, in principle, the use of apps to charge the audience for participation is an acceptable form of premium-rated telephony service for the purposes of Rule 9.26. This applies in cases where the app itself is paid-for, or where the app is free but enables payment to be taken – for example, to purchase a number or block of votes or competition entries. (The effect of this decision is confined to the Broadcasting Code: it does not affect the status of apps as premium rate telephony services or otherwise under other codes or rules, such as the PhonepayPlus Code or other provisions of the Communications Act 2003). Currently, we envisage that such apps will be linked to telephony platforms, i.e. they will not be self-standing mechanisms such as websites, independently existing payment methods and the like. We are however prepared to re-examine this area should developments make it desirable to do so.
- 1.197 What are the key considerations for broadcasters?: To comply with Rule 9.26, a key requirement for broadcasters to consider is whether revenue from the audience’s use of such an app is shared, for example with the platform owner or service provider.
- 1.198 The app must also meet the requirements of Rule 9.27 (“...enabling viewers/listeners to participate directly in or otherwise contribute directly to the editorial content of the programme” or meeting the definition of PRM) and Rule 9.28 (“...where a premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate telephony service must be clearly subsidiary to that primary purpose”).
- 1.199 As with the use of conventional premium-rated telephony, apps will be subject to all other relevant rules in the Code. These include, in particular, Rules 9.1 to 9.5 which govern editorial independence and the need to avoid it being compromised by the promotion, or unjustifiable exposure, of products and services in programming.
- 1.200 Undue prominence: Licensees should feature acceptable paid-for participation routes only in a manner and to an extent that can be justified editorially. General guidance on undue prominence and editorial justification can be found in the guidance to Rule 9.5 above. This contains advice on the use of PRS which is directly relevant to the use of apps.

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- 1.201 However, a significant difference between conventional premium rate telephony services and apps is that the former are non-proprietary and the latter are not. Apps are created for particular platforms and devices. This gives rise to additional questions of undue prominence where programming references to participation or interaction through a particular app gives exposure to a specific platform operator or device manufacturer, or both.
- 1.202 Undue prominence will be a particular concern where a premium-rated app tied to only one platform is the sole means for viewers to participate. One way of managing this risk is to ensure that such an app is one of a range of possible other entry routes, such as conventional voice and text mechanisms. Of course, even in such circumstances, exposure for the app must be appropriately limited so as to comply with the undue prominence rule.
- 1.203 Voting and competition entry – licence conditions and verification: In 2008 Ofcom varied all its categories of television licence to include conditions that made clear that the licensee remains responsible for all communication with viewers. The conditions cover all forms of communications that are publicised in programmes. In particular, the conditions specify what constitutes a PRS, and require that where PRS are used for the purpose of viewer voting or competition entries, third party verification is required.
- 1.204 Where one of the possible entry routes is a PRS and verification is therefore required, all votes and entries, including those submitted via non-PRS routes, must be verified for the PRS verification to retain its integrity. For example, this applies to free entries to audience competitions that also include PRS entry routes.
- 1.205 Therefore in cases where paid-for participation via apps does not fall within the definition of PRS, those apps would not, in themselves, require third party verification for their use in voting or competitions. However, licensees who use such apps alongside conventional PRS should be aware that all votes and entries made through apps (and other non PRS-means) should be included in a scheme of verification, in line with the licence conditions.

**Rule 9.27**

**Premium rate telephony services will normally be regarded as products or services, and must therefore not appear in programmes, except where:**

- a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or
- b) they fall within the meaning of programme-related material.

- 1.206 Each case must be assessed on its particular facts. However, in considering whether a particular instance of promotion of PRS complies with the requirement regarding direct contribution to editorial content, the following questions are likely to be relevant:
- Is it clear that the PRS enables viewers to participate directly in or contribute directly to the editorial content of the programme? Such interaction could include voting, competition entry, or texting in views on a particular issue.
  - Is the degree to which a PRS is referred to within the programme clearly justified by the degree to which the PRS contributes to editorial content? If, for example, there

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are very frequent and prominent messages to viewers to call a premium rate telephone number to give their views on air on a particular issue, but the programme in fact includes little or no discussion of views submitted by callers this tends to suggest that the PRS does not satisfy the requirement for direct contribution to editorial content.

- Does the PRS involve the provision of a private consultation or conversation similar in nature to other commercial services provided by non-broadcasters, typically promoted in newspapers, magazines, or broadcast advertising (as opposed to programming)? If so, this tends to suggest that the PRS is primarily a commercial service rather than a genuine means of contributing to editorial content, and should therefore not be referred to within programming.

1.207 See also guidance on programme-related material below.

**Rule 9.28**

**Where a premium rate telephony service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate telephony service must be clearly subsidiary to that primary purpose.**

1.208 Programme content should clearly be editorially driven and not be essentially a vehicle for the promotion of PRS.

1.209 In interpreting Rule 9.28, we consider it relevant to take into account a Judgment by the European Court of Justice ('ECJ') on 18 October 2007<sup>46</sup> regarding interpretation of the TWF Directive. In its judgment, the ECJ ruled that:

*"a broadcast or part of a broadcast during which a television broadcaster offers viewers the opportunity to participate in a prize game by means of immediately dialling a premium rate telephone number, and thus in return for payment, is covered by the definition given by Article 1(f) [of the TWF Directive] of teleshopping if that broadcast or part of a broadcast represents a real offer of services having regard to the purpose of the broadcast of which the game forms part, the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole and also to the type of questions which the candidates are asked".*

1.210 Whilst the ECJ's ruling was made in the course of proceedings between the Austrian communications authority and an Austrian broadcaster regarding a particular quiz show broadcast by that broadcaster, Ofcom considers that the ruling is of wider significance. If it is possible for a quiz show, which invites viewers to call a premium rate telephone number for a chance to answer a question and win a prize, to represent "a real offer of services", then it follows that other genres of broadcast content predicated on the use and promotion of premium rate telephony services may – depending on the particular facts – also represent a "real offer of services" and therefore be a form of advertising.

1.211 In assessing compliance with Rule 9.28, broadcasters should therefore consider each of the following questions:

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- What is the nature of the programme? If a programme consists primarily of promotional messages for the PRS and there is little recognisable editorial content, it is unlikely to be compliant with Rule 9.28 (and will also raise issues under Rules 9.1 to 9.5). If, however, PRS is only one element of the broadcast content, e.g. as may be the case in a studio based game show, a magazine-format show, a sports discussion show, or a reality show, then references to it within the show are more likely to be acceptable (provided they are not unduly prominent).
  - Is the degree to which the PRS is referred to within the programme clearly justified by the degree to which it contributes to editorial content? If, for example, a programme includes frequent and prominent exhortations to viewers to call a premium rate telephone number in order to speak to a presenter on air but, of the calls received, disproportionately few are in fact put through to the studio (and therefore the contribution to editorial content is minimal), this may well be problematic. To take a contrasting example, where the presenter is seeking input from viewers but in fact few people are calling the show, there may be editorial justification for the presenter to repeatedly ask viewers to call (or text) a PRS, in order to generate sufficient editorial content for the show.
  - What is the cost to an audience member of calling the PRS? This may be relevant in considering whether a PRS is genuinely intended to encourage audience participation or whether a viewer is in effect purchasing a service or product, e.g. a private consultation.
- 1.212 Even where the PRS does clearly contribute to editorial content, broadcasters must take care to ensure compliance with other aspects of the Code. For example, if on calling the PRS number promoted in the programme, a caller is presented with advertising messages or with options other than direct participation as promoted within the programme, this would tend to suggest that the programme is seeking to promote a product or service (other than the legitimately promoted PRS) and be in breach of the Code. Advertising-type claims about the PRS that go beyond what is editorially justified (and what is required under PhonepayPlus regulations) are also likely to be in breach e.g. "cheaper call rates".
- 1.213 Broadcasters should also note that particular care must be taken with pre-recorded broadcast content which encourages viewers to call a PRS. Such material has the potential to mislead viewers if there is a suggestion that using the service offers the opportunity for viewer interaction with the programme. In addition to raising issues under Section Nine, such content may also raise questions of fairness and audience trust. See also Rule 2.2.
- 1.214 Where PRS is used and promoted in a programme in a way that is not consistent with the rules in Section Nine, Ofcom may judge that such content is in effect advertising. In such cases, it must comply with the relevant advertising content and scheduling rules.

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- 1.215 From 1 September 2010 'participation TV' (PTV) services have been regulated as teleshopping (i.e. advertising) material<sup>10</sup>. Channels predicated on such output have had adjustments made to their licences to reflect this change.
- 1.216 Such material – whether provided as whole channels or as blocks ('windows' of programming) – is now regulated by Ofcom under the BCAP Code, ASA/BCAP<sup>11</sup> is not responsible for this category of advertising, though it retains responsibility for spot advertising of services of this type on non-PTV channels, where it is permitted.
- 1.217 PTV is television content whose purpose is to generate interaction by viewers. PTV's funding model is to encourage such interaction through premium rate telephony (therefore including voice, text, MMS and so on) and in some cases through the use of credit and debit card payment. The most common genres of PTV programming are 'flirt' chat, 'adult' chat and 'psychic' readings<sup>12</sup>.
- 1.218 Whether in any particular case the use of PRS or other, related pay mechanisms can be accommodated within the rules for programming or whether the licensee should regard the material as teleshopping (and therefore in some cases change the nature of the content to promote the pay mechanism more frequently explicitly) must be assessed on its individual facts.
- 1.219 This rule ensures that licensees do not employ non-telephony methods of charging for participation in or interaction with programming. The use of credit or debit cards, for example, or other money transfer arrangements cannot be used for this purpose.

**Rule 9.29**

**Any use of premium rate telephony numbers must comply with the Code of Practice issued by PhonepayPlus.**

1.220 See <http://www.phonepayplus.org.uk/output/Code-of-Practice-1.aspx>

**Rule 9.30**

**The cost to viewers for using premium rate telephony services must be made clear to them and broadcast as appropriate.**

1.221 Where viewers are charged for interaction with or participation in programming, Ofcom expects that costs are made clear as fully as is necessary for callers or potential callers to understand what the cost will be. PhonepayPlus rules on the disclosure of call costs should be observed (in line with Rule 9.29), but further considerations may apply.

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<sup>10</sup> See Ofcom Statement "Participation TV: Regulatory Statement" at <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>

<sup>11</sup> For the purposes of this guidance, 'ASA' is the Advertising Standards Authority (Broadcast) Ltd and 'BCAP' is the Broadcast Committee of Advertising Practice Ltd. Further details can be found at <http://www.asa.org.uk/>

<sup>12</sup> At the same time that Ofcom assumed responsibility for chat and 'psychic' PTV output it also brought back to Ofcom output offering long-form gambling services and message board-style channels (most of which offer dating services).



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1.222 Licensees are advised to consider carefully the information they make available to viewers about costs and to give as much clear detail as is practicable. Where costs are provided in on-screen text, this must be legible. We advise broadcasters to refer to the following: <http://www.cap.org.uk/Resource-Centre/Advice-and-guidance/Broadcast-guidance-and-help-notes/Advertising-guidance-notes/Advertising-guidance-1.aspx>

1.223 Ofcom believes adequate emphasis should be placed on warnings about the higher charges likely to be incurred by some users of non-BT networks, particularly the mobile networks. Rather than merely saying that 'networks/mobiles may vary', Ofcom advises strongly that a more emphatic message is used, for example:

*"Calls cost Xp from BT lines. Calls from other networks and from mobiles may vary and can cost a lot more. Contact your provider for details."*

1.224 An alternative approach likely to be acceptable would be the use of a maximum mobile charge – an 'up to' price – where that can be established. Whatever form of words is chosen it should indicate that calls from mobiles may be significantly more expensive than the benchmark BT price.

1.225 Licensees must make clear the costs of interaction or participation whether the mechanism to do so is formally a PRS or is otherwise acceptable under Rule 9.26. Where apps are used, for example, the costs must be clearly publicised in programming even where charges are applied at a later stage.

1.226 **Broadcasters should note that at the time of publication of this guidance Ofcom was in the process of considering the structure of non-geographic tariffs. Outcomes of that consideration may affect the form of price warnings: we will update the rule and this guidance as necessary.**

**Programme-related material (PRM)**

**Rule 9.31**

**Programme-related material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified.**

1.227 "Programme-related material" consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from; or to interact with, that programme.

1.228 Broadcasters may refer to the availability of programme-related material without such references counting towards the amount of advertising they are permitted to transmit (as specified in Ofcom's Code on the scheduling of television advertising (COSTA)). The following rules support the key principle of editorial independence by ensuring that references to programme-related material are made primarily for editorial and not advertising reasons. As stated under Rule 9.2, the AVMS Directive (Article 23) limits the amount of advertising a broadcaster can transmit. However, it exempts from this limit "announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes".

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- 1.229 Recital 98 of the AVMS Directive makes clear that "In order to avoid distortions of competition, this derogation should be limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned. The term "ancillary" refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes".
- 1.230 The following guidance is intended to assist broadcasters in determining the appropriateness of promoting programme-related material.
- 1.231 In considering whether or not a product or service is 'programme-related', it is important to bear in mind the principles set out in Section Nine. Broadcasters must maintain the independence of editorial control over programme content, ensure that programmes are not distorted for commercial purposes and ensure that the advertising and programme elements of a service are distinct. It is upon these principles that Rule 9.4, which prohibits the promotion of products and services within programming, is based. The promotion of 'programme-related material' is permitted purely by way of exception to Rule 9.4.
- 1.232 Broadcasters should note that for material to qualify as programme-related, it must not only be directly derived from a specific programme but also intended to allow viewers to benefit fully from, or interact with, that programme. Both elements of the meaning of 'programme-related material' must therefore be satisfied. Further guidance by way of clarification is provided below:
- 1.233 "Directly derived from a specific programme": The product or service must be 'directly derived' from a specific programme and therefore it is very unlikely that we would consider a product or service which existed before that programme to meet the definition of programme-related material.
- 1.234 Broadcasters should also note that similarity, in terms of genre or theme(s), between a programme and a product or service (for example, where both are about football, cookery or gardening) is not in itself sufficient to establish that the product or service is directly derived from the programme. A product or service directly derived from more than one specific programme may be considered to be programme-related material in relation to those programmes but the scope for this is limited. Ultimately this will depend on the facts of an individual case. In each case, in order for the material to be considered programme-related material and promoted accordingly, a broadcaster would need to be able to demonstrate to Ofcom's satisfaction that the material in question was directly derived to a **significant extent** from each of those programmes.
- 1.235 "Benefit fully from or interact with": Moreover, the material must be intended to allow viewers to benefit fully from, or to interact with, that specific programme. This will often be material that is editorially based, for example, a website, podcast, CD or DVD. Where the material is not editorially based, a broadcaster will need stronger editorial justification that the material is intended to allow viewers to benefit fully from, or interact with, the programme.
- 1.236 Where goods or services are **offered** in return for payment and/or are **referred to** in return for payment or other valuable consideration to the broadcaster, programme producer or connected person, broadcasters should note the requirements of Rule 9.2 and the product placement rules (Rules 9.6 to 9.14).

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- 1.237 In particular, broadcasters should refer to the statutory definition of product placement (see meanings and rules after Rule 9.5). Where the inclusion of references to PRM during programmes could meet the definition of product placement, the promotion of such material should be kept distinct from editorial content to avoid issues being raised under Rule 9.9.
- 1.238 Likewise, where the PRM involves the promotion to the audience of the availability of products or services in return for payment, it is possible that this could meet the definition of television advertising (see COSTA). Therefore, such promotions should be kept distinct from editorial content (see Rule 9.2).
- 1.239 In such circumstances, broadcasters should ensure that any promotion of PRM is distinct from editorial. Distinction can be achieved by, for example, placing the promotion outside of the body of the programme; by using split screen techniques; or by including a distinct short segment or VT insert within the programme. In all cases, the focus of a programme must remain its editorial content, as opposed to any promotional message for programme-related material. The programme must not be primarily a vehicle for promotion of the product or service. Rule 9.5 (no undue prominence) also applies.
- 1.240 Programme-related material may be sponsored (see Rule 9.25).

**Rule 9.32**

**The broadcaster must retain responsibility for ensuring the appropriateness of promoting programme-related material.**

- 1.241 This rule places a responsibility on broadcasters to satisfy themselves that any product or service promoted under Rule 9.31 does in fact satisfy the definition of programme-related material. This does not mean that broadcasters may only promote programme-related material which they themselves own. The material may come from third parties, for example material created, manufactured, and/or distributed by persons other than the broadcaster. However, the broadcaster is the person with responsibility for ensuring that it may be promoted as programme-related material.
- 1.242 In promoting a product or service as 'programme-related material', broadcasters must have regard to the rules in Section One, Protecting the Under-eighteens, and Section Two, Harm and Offence. Particular care should be taken where broadcast advertising of the product or service is prohibited or restricted. For example, the promotion of a video game rated 16+ derived from a programme that attracts a child audience is likely to be unacceptable.
- 1.243 A promotion for programme-related material in or around a children's programme should normally be in terms of general information only, for example about the availability of the product; it would normally not be appropriate for such a promotion to invite a direct response.

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### **Charity appeals**

- 1.244 The rules on the broadcast of charity appeals in programmes are underpinned by the consumer protection, distinction and undue prominence principles.
- 1.245 Charity appeals are allowed in programming only if they are broadcast free of charge. Where a charity appeal is broadcast in return for payment or other valuable consideration, it should be broadcast as television advertising and comply with the relevant advertising rules.

### **Rule 9.33**

**Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:**

- a) the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and
  - b) the organisation concerned is not prohibited from advertising on television.
- 1.246 While charitable status can be demonstrated via charity registration, an organisation may not need to be registered to have charitable status. If a broadcaster has any doubts or concerns about a charitable appeal, the Charity Commission may be able to provide advice.
- 1.247 Details of those organisations that are prohibited from advertising on television can be found in the BCAP Code at <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

### **Rule 9.34**

**Where possible, the broadcast of charity appeals, either individually or taken together Over time, should benefit a wide range of charities.**

- 1.248 Charity appeals are subject to Rule 9.5 (undue prominence). This does not prevent a whole programme, or significant part of a programme, being dedicated to a charity appeal. However, the purpose of applying the undue prominence rule and Rule 9.34 to charity appeals is to ensure that such appeals benefit a wide range of charities. Not every charity appeal has to benefit a range of charities and it is acceptable for a broadcaster to partner with a particular charity for an appeal. However, broadcasters should aim to ensure that over time they run appeals for a range of charities.
- 1.249 When transmitting charity appeals, broadcasters should pay particular attention to the requirements of Section Five of the Code (Due Impartiality).

### **Appeals for funds**

- 1.250 As stated in the guidance on the rules for programme-related material, Article 23 of the AVMS Directive limits the amount of advertising that can be transmitted on a television channel. The Directive exempts from this limit "announcements made by the broadcaster in connection with its own programmes ...". The Code rules allowing broadcasters to

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solicit donations from viewers to fund programmes or a channel are based on this exemption.

- 1.251 The following rules should be read in conjunction with Rules 9.1 to 9.5. In particular, as appeals for funds are seeking payment from viewers in return for the provision of a service, such appeals should be kept distinct from editorial content (see Rule 9.2). Distinction can be achieved by, for example, broadcasting appeals around programmes or by using split screen or caption techniques (but see below for further guidance on undue prominence).
- 1.252 Broadcasters should take care to ensure that the acceptance of donations does not prevent them from meeting the Code's requirements relating to due impartiality, no undue prominence of views and opinions, and editorial independence. See Rules 5.1, 5.5, 5.13 and 9.1. Donations should not be used as a way of circumventing the prohibition on political advertising and sponsorship or the restrictions in Schedule 2 of the Broadcasting Act 1990 on bodies whose objects are wholly or mainly of a political nature from influencing "by the giving of financial assistance or otherwise" persons who hold broadcasting licences.
- 1.253 Broadcasters who transmit appeals for funds are encouraged to consider joining self-regulatory bodies such as the Institute of Fundraising, and adopting its Code of Conduct and Donors' Charter: <http://www.institute-of-fundraising.org.uk/>

#### Rule 9.36

**Viewers must be told the purpose of the appeal and how much it raises.**

- 1.254 Donations can be sought solely for the purpose of funding a particular programme, or a broadcasting service overall.
- 1.255 When transmitting appeals for funds, broadcasters should ensure that the audience is told about the purpose of the appeal for which they are soliciting donations.
- 1.256 The broadcaster may choose to inform viewers about the amount of money raised by an appeal in a number of different ways, such as by an on-air announcement, or through information provided on a programme or channel website. However, where the information is not provided on air, its availability elsewhere must be made clear to viewers on air.

#### Rule 9.37

**All donations must be separately accounted for and used for the purpose for which they were donated.**

- 1.257 Broadcasters should keep accurate and detailed records of donations and how they are spent. Records should demonstrate how donations received are used to fund the service.
- 1.258 Ofcom strongly recommends that donations are kept in a separate, specific account so that information relating to donations and how they are spent is clear and easy to access. It is also recommended that audits of such accounts are conducted.

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- 1.259 If Ofcom investigates the compliance of a broadcaster's appeal for funds with the Code rules, it is likely to request the provision of copies of the relevant records, accounts and/or audits. Broadcasters should be able to supply this information to Ofcom promptly and in a clear and accessible manner.

**Rule 9.38**

**Broadcasters must not offer any additional benefits or other incentives to donors.**

- 1.260 As appeals for funds offer a limited exemption to the restrictions imposed on the amount of advertising a broadcaster can transmit, viewers should not be invited to make a donation in return for anything other than the provision of the service. For example, viewers should not be offered gifts or the promise of an on-air mention in return for providing funding. Broadcasters may choose to transmit on-air acknowledgements of donations if they wish. However, such acknowledgements must not be a condition of the donation, or referred to as an incentive to donate. Particular care is needed when an on-air acknowledgement refers to a business. Such references may raise issues under Rule 9.4. In particular, details of the donor's business, such as its type or its address, should not be given.
- 1.261 Broadcasters should avoid creating unrealistic expectations about what will or may happen if viewers make a donation. Appeals should not improperly exploit any susceptibilities of the audience. See also Rules 2.1 (generally accepted standards) and 4.6 (religious programmes must not improperly exploit any susceptibilities of the audience).
- 1.262 When broadcasters of religious programmes are soliciting funds from their audience in the form of an appeal, they should be aware of Ofcom's published guidance on Rule 4.6 which states: "respondents to Ofcom research on religious programmes believe that all people are susceptible at one time or another. There are times when it will be clear to the broadcaster that they are soliciting an actual response from their audience. At these times broadcasters need to take care and recognise the possible risk to audience members particularly the vulnerable."
- 1.263 Ofcom considers that vulnerable people, such as those experiencing financial or emotional difficulties, may be unduly encouraged to give donations. In particular, Ofcom considers that persuading viewers to donate money on the basis of inducements such as a offering a prayer for or on behalf of the donor; the promise of better health; or that a religious figure will create further wealth for donors or take particular care of donors is unacceptable. In Ofcom's view, such inducements carry the risk that susceptible members of the audience may be exploited – and as a result persuaded to donate where they would not otherwise have done so.

**Rule 9.39**

**Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service.**

- 1.264 Appeals for funds are permitted on the basis that they help broadcasters to raise funding to provide a programme service. Any airtime used for this purpose should be

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- proportionate to that used for programmes. A channel should not be, or appear to be, primarily a vehicle for seeking funding.
- 1.265 When reaching decisions on a broadcaster's compliance with this rule, Ofcom is likely to assess the proportion of a service's overall output that such appeals take up, and the frequency with which such appeals are broadcast.

**Cross-promotion (Television)**

- 1.266 The Cross-promotion Code sets the parameters for the types of products and services that can be cross-promoted. These rules are also based on the AVMS Directive's exemption of announcements made by the broadcaster in connection with its own programmes from advertising limits (Article 23(2)).
- 1.267 The Cross-promotion Code is included as an appendix to the Broadcasting Code and should be read in conjunction with it. Cross-promotions must be compliant with the Rules in Section Nine of the Code.
- 1.268 Neutrality requirements: Under the Cross-promotion Code, Channel 3 licensees, Channel 4 and Five are required to ensure that promotions are neutral in the way that they refer to digital retail television services and platforms<sup>13</sup>.
- 1.269 Whilst other broadcasters are not subject to this neutrality requirement, the primary purpose of any promotion should be to promote a broadcasting-related service: any additional reference regarding how to get that service, e.g. a reference to the platform or retail service on which the broadcasting-related service is provided, including price information, should not be unduly prominent in the context of the promotion. If it were, that would tend to suggest that that additional reference had been made in return for payment or other similar consideration, i.e. the promotion is in fact an advertisement for that third party<sup>14</sup> and, as such, is subject to advertising minutage restrictions.
- 1.270 Examples:
- If Channel A, were to run a promotion which trailed one of its programmes and also said "Channel A is available on Platform X – the UK's favourite cable company", we would be likely to consider the reference to Platform X unduly prominent.
  - If Channel A were available on both Platform X and Platform Y but promotions for it referred only to its availability on Platform X then, in the absence of editorial justification, this might be considered to be unduly prominent.

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<sup>13</sup> For full details, see the Cross-promotion Code which is an Appendix to the Broadcasting Code.

<sup>14</sup> These 'undue prominence' considerations also apply to promotions broadcast by Channel 3 licensees, Channel 4 or Five which are not subject to the neutrality requirement set out in the Cross-promotion Code, e.g. a promotion for mobile phone content which mentions a participating mobile phone network.

## Annex 1: Technical criteria for universal product placement logo (see Rule 9.14 of the Code for relevant requirements)

Two versions of the universal logo<sup>1</sup>



White outer P, black inner P ("Logo 1")  
(the black background shown above is not part of the logo, but is for illustrative purposes here only)



Black outer P, white inner P ("Logo 2")

### How the logo must be used

**Logo 1** should be used over predominantly dark backgrounds. It can be downloaded at:  
<http://www.ofcom.org.uk/static/pp/logo1.tif>

**Logo 2** should be used over predominantly light backgrounds. It can be downloaded at:  
<http://www.ofcom.org.uk/static/pp/logo2.tif>

Whichever version is used, the full logo should be clearly visible throughout its duration on screen.

The .tif files contain broadcast-quality, oversized alpha elements of the logo. You must re-size these to meet the line height specifications below. An embedded grayscale (alpha channel) in the .tif files indicates the required transparency levels of the outer and inner Ps. The required transparency specifications are also detailed below, in case you wish to re-create the transparency settings.

### Required technical criteria

When either Logo 1 or Logo 2 appears on screen, it must be:

- placed in any corner within the 4:3 safe area (but not conflicting with other on-screen graphics, logos or text);
- static on screen for a duration of no less than 3 seconds (75 frames); and
- of the following size and transparency:

Outer P		Inner P	
<u>Line Height</u>		<u>Line Height</u>	
Standard Definition:	36 lines	Standard Definition:	26 lines
High Definition (1080):	68 lines	High Definition (1080):	49 lines
Transparency:	35%	Transparency:	50%

When calculating line height, the measurement should be taken from the top to the bottom of the 'P' and only non-antialiased pixels should be counted<sup>2</sup>.

<sup>1</sup> © Ofcom 2011. All copyright, trade mark and other rights residing in or attaching to the product placement logos are the property of Ofcom.

<sup>2</sup> Further guidance on determining line height is available at: <http://www.cap.org.uk/Resource-Centre/Advice-and-guidance/Broadcast-guidance-and-help-notes/Advertising-guidance-notes/Advertising-guidance-1.aspx>



**Annex 2: Q&As – product and prop placement**

The following Q&As are intended to assist broadcasters with specific questions they may have about product and prop placement, and to provide cross-references to relevant parts of the guidance above.

Ofcom will regularly add to and update these Q&As to assist broadcasters. If you have an additional product or prop placement question which you would like answered and added to this list, or you wish to discuss a product or prop placement Code issue confidentially, please contact Suzanne Wright ([suzanne.wright@ofcom.org.uk](mailto:suzanne.wright@ofcom.org.uk)) or Lauren Cleverley ([lauren.cleverley@ofcom.org.uk](mailto:lauren.cleverley@ofcom.org.uk)).

**1. How do I know which product placement rules to apply to a programme?**

The guidance above on the product placement rules contains a flowchart to help broadcasters determine whether a programme is permitted to contain product placement and identify which product placement rules apply to different types of programmes. The flowchart can be found on page 14 of this guidance.

**2. How many products can be placed in a programme or series?**

There is no set limit, but there are rules that prevent the promotion of placed products and prevent placed products being featured in a manner that is unduly prominently. See Rules 9.9 and 9.10 and the associated guidance.

**3. If a programme features a clip from another programme in which product placement is included, does this mean it then includes product placement?**

Not necessarily, as the product placement arrangement is likely to relate to the original content. See guidance on Rules 9.7 and 9.12 for further information.

**4. Do edits to an acquired programme (e.g. for compliance purposes) result in the programme becoming “produced under UK jurisdiction”?**

It is unlikely that edits to acquired content will lead to a programme becoming treated as being produced under UK jurisdiction. See guidance to Rule 9.11 for further information.

**5. If a programme made before 19 December 2009 has products placed in it by virtual means after this date, do the product placement rules apply?**

Yes, if the placement is by an Ofcom regulated broadcaster (or connected person) or with a view to the re-versioned programme first being shown on an Ofcom regulated service. See paragraph 1.61 of the guidance.

**6. Can competition prizes be of “significant value”?**

The significant value test is based on any residual value of a prop to the broadcaster/programme producer after it has been used in a programme. In the case of competition prizes, there is unlikely to be any residual value for the broadcaster after it has awarded the prize to a competition winner. See guidance accompanying Rules 9.4 and 9.9 for further information.

**7. Can a filming location be of “significant value”?**

As above, the use of a location is unlikely to provide the broadcaster/programme producer with residual value. However, if the broadcaster, programme producer or connected person provides a representative of a location with an incentive in return for permission to film at the location (e.g. guarantees of on-air mentions), this is likely to meet the statutory definition of product placement.

**8. Will a prop be considered to have a residual value if it is retained by a broadcaster for future use as a prop in other programmes?**

The purpose of the residual value test is to prevent the broadcaster, programme producer or connected person from receiving any incentive for featuring props in programmes. It is therefore unlikely that a product that is acquired and used solely as a prop, albeit for more than one programme, would be likely to be treated as having a residual value.

**9. Can products that are prohibited from product placement be prop placed?**

Yes, in most cases. See guidance to Rule 9.13 for further details.

**10. If a broadcaster receives a revenue share of sales from programme-related material (PRM) do references to such PRM within programmes count as product placement?**

Yes, the revenue share is likely to be treated as a “valuable consideration”. The promotion of such products during programmes is therefore likely to be incompatible with the Code (see guidance under Rule 9.9).

**11. When acquiring programmes from outside the UK, should broadcasters request details of product placement arrangements?**

Broadcasters should take reasonable steps to identify instances of product placement in programmes they acquire and take appropriate action to ensure compliance with Rules 9.6 to 9.11. See guidance to Rules 9.6 and 9.7.

**12. Can types of products be placed, for instance, bottled water or mobile phones?**

Yes, the rules permit such generic placements, and these must still comply with the product placement rules irrespective of whether any branding or trade marks are evident. However, see guidance to Rule 9.14 for further details.

**13. Can a prohibited product be placed if just a brand name or trade mark is seen or mentioned, and not the product itself?**

No, but see the question below in relation to brands associated with both permitted and prohibited products.

**14. If a brand sells both prohibited and permitted categories of product – for example HFSS foods and non-HFSS foods – can it product place a brand reference?**

Licensees are advised to adapt the guidance BCAP has issued in relation to differentiating HFSS product advertising from brand advertising in such circumstances. See guidance to Rule 9.13 for further details.

**15. Does a paid-for reference to a colour, design etc. that is usually associated with a particular brand count as product placement?**

Yes, see the statutory definition of “trade mark” included under the product placement rules in the Code.

**16. What are acceptable methods of removing prohibited product placement from programmes?**

The key aim is to try and ensure that placed products are not identifiable. Either editing out or obscuring (e.g. by pixellating, blurring or masking) references to placed products is acceptable.

**17. What is a medicinal product?**

A medicinal product is defined in section 130 of the Medicines Act 1968. For further guidance, please see the note "A guide to what is a medicinal product" produced by the Medicines and Healthcare products Regulatory Agency ("MHRA"), which can be found at: <http://www.mhra.gov.uk/home/groups/is-lic/documents/publication/con007544.pdf> Please note that this guidance only applies to those medicinal products licensed in the UK.

**18. Is the product placement of alcoholic drinks in acquired programmes acceptable?**

The prohibition on the product placement of alcoholic drinks applies to programmes produced under UK jurisdiction. See guidance to Rule 9.11 for the meaning of "programmes produced under UK jurisdiction". If a broadcaster acquires a programme that does not fall into this category and it contains product placed alcoholic drinks, they should pay particular attention to Rules 9.1 to 9.5, as well as the requirements of Sections One and Two of the Code to assess whether the references to the alcoholic drink are appropriate under the Code.

**19. Do low alcohol drinks or liqueur chocolates count as prohibited products?**

In relation to low alcoholic drinks, see guidance to Rule 9.13. Liqueur chocolates are likely to be classified as an HFSS food and, if so, cannot therefore be product placed in programmes produced under UK jurisdiction. For acquired programmes featuring placed liqueur chocolates, broadcasters should note the answer to the question above.

**20. Can alcoholic drinks be placed in a film made for the cinema that has been produced by a company connected to an Ofcom regulated broadcaster?**

Yes, the prohibitions sets out in Rule 9.13 do not apply to films made for cinema.

**21. Do bingo, pools and lotteries count as gambling for the purpose of the product placement prohibition?**

Yes, see guidance to Rule 9.13.

**22. If a programme trail features a product that was placed in the programme, does the trail need to show the product placement signal?**

No, provided there is no product placement agreement in relation to the product appearing in the trail.

## Annex 3: Glossary

The following is a glossary of television broadcasting terms to assist readers of these guidance notes:

<b>Advertiser-funded programming</b>	Advertiser-funded programming is <b>sponsored programming</b> .
<b>Advertising</b>	Any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment <sup>1</sup> .
<b>Associate</b>	In relation to <b>connected person</b> , "associate" has the same meaning as set out in paragraph 1, Part 1, Schedule 2 of the Broadcasting Act 1990.
<b>AVMS Directive</b>	The Audiovisual Media Services Directive (Directive 2010/13/EU) – the European legislation relating to audiovisual media services which amended and replaced the <b>TWF Directive</b> .
<b>Children's programme</b>	A children's programme, in the context of <b>product placement</b> only, is "a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen" <sup>2</sup> .
<b>Commercial references</b>	Any visual or audio reference within <b>programming</b> to a <b>product, service or trade mark</b> (whether related to a commercial or non-commercial organisation).
<b>Connected person</b>	In summary, the following persons are connected with a particular person ('person' includes an individual as well as a body corporate and other incorporated and unincorporated legal entities): a) a person who controls that person; b) an associate of that person or of the person in (a); and c) a body which is controlled by that person or an associate of that person.
<b>Control</b>	In relation to <b>connected person</b> , control has the same meaning as set out in paragraph 1, Part 1, Schedule 2 of the Broadcasting Act 1990.

<sup>1</sup> This definition is from Article 1(ii)(i) of the AVMS Directive and is replicated in Ofcom's Code on the scheduling of television advertising: <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.

<sup>2</sup> See Schedule 11A, paragraph 3(2), of the Act.

<b>Costs</b>	In relation to <b>sponsorship</b> , costs means any part of the costs connected to the production or broadcast of the <b>programming</b> .
<b>Current affairs programme</b>	A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.
<b>Films</b>	"Films" includes films made for cinema and films (including single drama and single documentaries) made for television or other audiovisual media services.
<b>HFSS foods and drinks</b>	Foods and drinks which are high in fat, salt or sugar ("HFSS"). HFSS foods and drinks are defined by the nutrient profiling scheme which was devised by the UK's Food Standards Agency for use by Ofcom. This can be found at: <a href="http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod">http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod</a>
<b>Product placement</b>	"The inclusion in a programme of, or of a reference to, a <b>product, service or trade mark</b> where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any <b>relevant provider</b> or any <b>connected person</b> with a relevant provider, and is not <b>product placement</b> " <sup>3</sup> (emphases added).
<b>Programme-related material "PRM"</b>	Consists of <b>products</b> or <b>services</b> that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or to interact with, that programme.
<b>Programmes produced under UK jurisdiction</b>	Any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the <b>AVMS Directive</b> ).
<b>Programming</b>	All broadcast content except spot advertising and teleshopping. Programmes, trailers, cross-promotions and sponsorship credits are all forms of programming.
<b>Prohibited categories</b>	Categories of <b>products, services and trade marks</b> that cannot be advertised on television, as set out in the Broadcast Committee of Advertising Practice (BCAP) UK Code of Broadcast Advertising.
<b>Promotional reference</b>	This includes, but is not limited to, references (either explicit or implicit) that encourage, or are intended to encourage, the purchase or rental of a <b>product</b> or <b>service</b> .

<sup>3</sup> See Schedule 11A, paragraph 1(1) of the Act.

<b>Prop placement</b>	“The inclusion in a programme of, or of a reference to, a <b>product, service or trade mark</b> where the provision of the product, service or trade mark has no <b>significant value</b> , and no <b>relevant provider</b> , or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the <b>product, service or trade mark</b> , or a reference to it, in the programme” <sup>4</sup> (emphases added).
<b>Premium rate telephony services (PRS)</b>	Premium rate telephony services as defined by PhonepayPlus.
<b>Relevant provider</b>	“The provider of the television programme service in which the programme is included or the producer of the programme” <sup>5</sup> .
<b>Residual value</b>	In the context of <b>prop placement</b> , “residual value” means “any monetary or other economic value in the hands of the <b>relevant provider</b> other than the cost saving of including the <b>product, service or trade mark</b> , or a reference to it, in a programme” <sup>6</sup> (emphases added).
<b>Signalling</b>	The means of informing audiences of instances of <b>product placement</b> .
<b>Significant value</b>	In relation to <b>prop placement</b> , “significant value” is a <b>residual value</b> that is more than trivial.
<b>Sponsor</b>	Any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the <b>programming</b> with a view to promoting its <b>products, services, trade marks</b> and/or its activities.
<b>Sponsor reference</b>	Any reference to the sponsor’s <b>products, services or trade marks</b> .
<b>Sponsored programming/channel</b>	Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes <b>advertiser-funded programmes</b> .
<b>Sponsorship credit</b>	An announcement which informs the audience when content is sponsored and by whom.

<sup>4</sup> See Schedule 11(A), paragraph 1(2), of the Communications Act 2003.

<sup>5</sup> See Section 321(1)(c) and Schedule 11A, paragraph 6(1)(c) of the Communications Act 2003.

<sup>6</sup> See Schedule 11(A), paragraph 9, of the Communications Act 2003.

<b>Spot advertisement</b>	Sometimes referred to as a 'commercial' or 'spot ad', this is an advertisement found in an <b>advertising break</b> .
<b>Surreptitious advertising</b>	Surreptitious advertising involves a reference to a product, service or trade mark within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising is likely to be considered intentional if it occurs in return for payment or other valuable consideration.
<b>Trade mark</b>	In relation to a business: "includes any image (such as logo) or sound commonly associated with that business or its <b>products or services</b> " <sup>7</sup> (emphases added).
<b>TWF Directive</b>	The Television Without Frontiers Directive – the European legislation relating to television broadcasting services, which has been amended and replaced by the <b>AVMS Directive</b> .

## Useful links

The Code on the scheduling of television advertising:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

The UK Code of Broadcast Advertising ("BCAP Code"):

<http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

The PhonepayPlus Code of Practice:

[http://www.phonepayplus.org.uk/upload/PhonepayPlus Code of Practice.pdf](http://www.phonepayplus.org.uk/upload/PhonepayPlus%20Code%20of%20Practice.pdf)

Nutrient profiling scheme:

<http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

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<sup>7</sup> See Schedule 11A, paragraph 9, of the Communications Act 2003.

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## Guidance Notes

Section Ten:  
Commercial Communications in Radio Programming



# Guidance to Code Section Ten: Commercial Communications in Radio Programming

This guidance is provided to assist radio broadcasters in interpreting and applying the Broadcasting Code (“the Code”). It applies to all commercial communications in radio programming.

Television and radio are subject to different legislative requirements and terminology is therefore specific to radio in this (i.e. Code Section Ten) guidance. (Guidance to Section Nine concerns commercial references in television programming.)

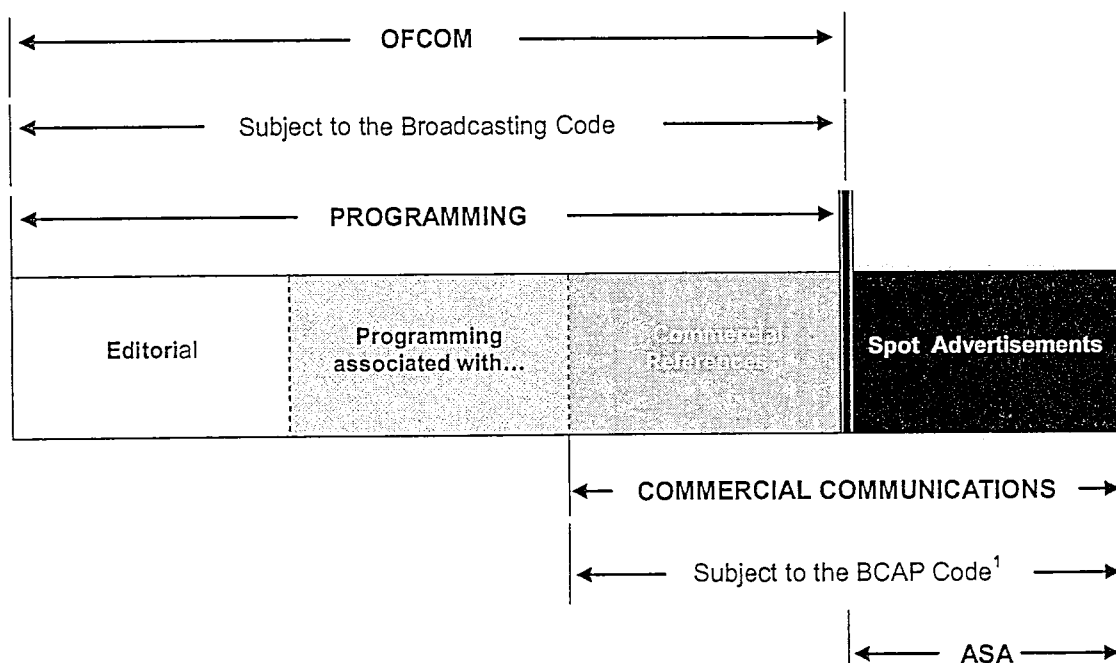
Every complaint or issue will be dealt with on its own merits according to the individual facts of the case.

We draw broadcasters’ attention to ‘The Legislative Background to the Code’, which states:

“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.”

## Introduction: General guidance

The following is a diagrammatic representation of radio output classification and regulation:



<sup>1</sup> The UK Code of Broadcast Advertising, issued by the Broadcasting Committee of Advertising Practice (BCAP), available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>

The following descriptions apply to terms used throughout Section Ten guidance (other terms are described under guidance to specific rules):

- **programming** – defined in the Code as “all broadcast material other than spot advertisements”, this includes, but is not limited to, the following, each of which can be of any duration:
  - programmes (e.g. breakfast show);
  - segments within programmes (e.g. ‘the golden hour’);
  - features within programmes (e.g. ‘song of the hour’);
  - stand-alone features (e.g. drivetime travel updates); and
  - commercial references (as, or within, any of the above);

- **commercial arrangement** – this is a contract, or any other formal understanding, between a broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties).

Examples of a commercial arrangement include: programming sponsorship (for description of ‘sponsorship’, see below), competition prize donation and premium rate (or similar revenue-share) service provision. Programming that is subject to a commercial arrangement will therefore generally include payment and/or the provision of some other valuable consideration in return for a commercial reference – whether promotional or not (for description of ‘commercial reference’, see below).

Commercial arrangements are generally written and, for the avoidance of doubt, include marketing agreements and contra-deals (i.e. ‘barter’ arrangements between parties concerning the exchange of goods or services without any payments being made);

- **third parties** (with which commercial arrangements are made) – these include not-for-profit organisations and those with a non-commercial purpose;
- **commercial reference** (for the purposes of Section Ten of the Code *only*) – this is a reference in programming to a brand, trade mark, product and/or service that:
  - is subject to a commercial arrangement between the broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties); or
  - promotes the station/broadcaster’s own products or services.

Commercial references therefore include, for example:

- sponsorship credits;
  - donated prize descriptions;
  - paid-for product references;
  - referral of listeners to a station’s website; and
  - the promotion of a station event;
- **brand** – this is a marketing identity (by name or sound) associated with an idea, event, product or service, or a range and/or mix of these; and
  - **sponsorship** – sponsored programming (which may include a radio service, programmes or features) is programming that has had some or all of its costs met by a sponsor (where ‘costs’ means any part of the costs connected to the production or broadcast of the programming).

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A sponsor is any public or private undertaking or natural person (other than the broadcaster or programming producer) who is funding the programming with a view to promoting its products, services, trade marks, image, name, and/or activities.

Advertiser-funded programming is sponsored programming.

A sponsorship credit (or sponsor credit) identifies the sponsor and the programming that is sponsored. It is a form of commercial reference (see above).

## Principle of transparency

Listeners should know when material is broadcast in return for payment or other valuable consideration. Signalling is the means by which transparency is achieved and consumer protection ensured.

## Consumer protection

Regulation 3(4)(d) and Schedule 1(11) of the Consumer Protection From Unfair Trading Regulations 2008 state that the following practice is unfair:

"Using editorial content ... to promote a product where a trader has paid for the promotion without making that clear in the content or by ... sounds clearly identifiable by the consumer..."

*Consumer protection is therefore at the heart of Ofcom's requirement for the timely transparency of commercial arrangements that affect radio programming.*

Listeners should not only know when they are being sold to or promoted at, but when any broadcast material has been paid for. Rule 10.1 is intended, among other things, to avoid surreptitious commercially-driven brand awareness (where programming that is subject to a commercial arrangement does not contain a commercial reference or where it features a commercial reference that does not contain an advertising message).

## Rule 10.1 Signalling of commercial arrangements

### Programming "subject to" or "associated with" a commercial arrangement

Programming "subject to" a commercial arrangement comprises broadcast material that forms part of that arrangement (e.g. commercial references). It may therefore include an entire programme/feature (i.e. sponsored programming) and commercial references within the sponsored output (e.g. sponsor references within the sponsored programming).

Programming "associated with" a commercial arrangement comprises broadcast material that is related to that arrangement but the content of which has not necessarily formed part of it. Such content is often material that could have been broadcast even if the commercial arrangement had not been formed (e.g. the general content of a sponsored breakfast show).

### Appropriate signalling

Broadcasters are required to give, at appropriate times, clear information in and around programming, to inform listeners of any commercial arrangement affecting that programming. (Note: see also, *additional* guidance concerning appropriate signalling on radio services primarily aimed at children, below)

Transparency of a commercial arrangement is achieved through appropriate signalling. There are four aspects to consider when assessing the signalling appropriate to ensure compliance with Rule 10.1:

- Wording

For example, it may be appropriate to signal:

- general third party involvement in programming (normally sponsorship) with such statements as "...sponsored by..." or "...with our friends at..." or "...in association with...";
- prize donors by stating that prizes are "...donated by..." or "...courtesy of..." or "...with thanks to...";
- venue-sponsored outside broadcasts by reference(s) to being "here with our friends at...";
- the direct offer of a product or service (on behalf of a third party) by acknowledging that the promotion is "...by/with/from our friends at...".

Broadcasters should ensure that broadcast material appearing either to be a station campaign or to provide any independent assessment of products/services is genuinely independent and not subject to a commercial arrangement. Signalling commercial references in, for example, consumer advice/affairs programming therefore requires particular care, as it is essential that any broadcast of paid-for promotion of goods and services is not presumed to be independent observation/comment.

- Positioning

Whenever any programming is subject to a commercial arrangement (whether it is a commercial reference in a programme/feature or the entire programme/feature itself) Ofcom considers that, to comply with Rule 10.1, appropriate transparency of the arrangement generally requires signalling *at the outset of each instance*. (Please also see guidance under 'Frequency', immediately below)

In particular, when commercial references (see also guidance to Rules 10.6 to 10.8, below) take place in related programming (e.g. paid-for sponsor references within a sponsored breakfast show or the promotion of a product within a feature that opens with non-promotional material), transparency of any commercial arrangement should take place at the earliest opportunity – i.e. at or near the start of the programming concerned.

Further, a commercial reference (made as part of a commercial arrangement and whether or not it is clearly promotional) may require further signalling as such – for example, a paid-for reference to a hotel, within a feature sponsored by a travel company, may need to be specifically signalled as paid for.

However, it may be appropriate for the signalling of, for example, a short sponsored programming feature that contains no commercial reference to the sponsor within it (e.g. a typical weather bulletin), to be made at the end of such programming.

- Frequency

To ensure appropriate transparency of a commercial arrangement affecting longer output, it would be reasonable to expect, for example, sponsorship credits to appear in programming about every 20 minutes. However, circumstances may demand otherwise (e.g. live concert coverage).

- Identity (of third parties)

Generally, to ensure appropriate transparency, the third party/parties with which the commercial arrangement is made should be identified by name, especially where that third party is, or includes, a commercial brand. However, there are occasions when transparency may be best-achieved by identifying the organisation on whose behalf a commercial arrangement has been made – for example, identifying a particular government campaign title rather than the government department with which the commercial arrangement has been made.

### **Consumer affairs programming**

As set out in the Notes included in Section Ten of the Code, broadcasters should ensure that broadcast material appearing either to be a station campaign or to provide any independent assessment of products/services is genuinely independent and not subject to a commercial arrangement. Signalling commercial references in, for example, consumer advice/affairs programming therefore requires particular care, as it is essential that the broadcast of paid-for promotions of goods and services is not presumed to be independent observation/comment.

### **Station/broadcaster's own products or services**

Referred to in the description of 'commercial reference' (see 'Introduction', above, and the Notes to general rules 10.1 to 10.8, in the Code), these refer to all station-branded/related or broadcaster-branded/related products and/or services. Broadcasters should note that a third party may be involved in the production of such products/services. However, where a commercial arrangement concerning such involvement does not include an agreement to refer to the third party on air (which would otherwise be a commercial reference), signalling is not required under Rule 10.1.

### **Factual programming, including matters of political or industrial controversy and matters relating to current public policy**

Commercial references that are subject to a commercial arrangement with a legitimate 'political advertiser' – i.e. one that is not prohibited under Rule 10.6 (e.g. a government department, a local authority or a trade union) – are subject to Section 7 of The UK Code of Broadcast Advertising<sup>2</sup>, issued by the Broadcast Committee of Advertising Practice ("the BCAP Code"). Broadcasters are reminded that such commercial references may also require RACC-clearance prior to broadcast (see 'Clearance', under guidance to Rules 10.6 to 10.8, below). Among other things, Section 7 of the BCAP Code requires that no advertisement may:

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<sup>2</sup> Code available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>

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- be inserted by or on behalf of a body whose objectives are wholly or mainly of a political nature;
- be directed towards a political end; or
- have a connection with an industrial dispute.

In relation to the above, "objectives of a political nature" and "political ends" include each of the following:

- influencing the outcome of elections or referendums in the UK or elsewhere;
- bringing about changes of the law in the UK or elsewhere or otherwise influencing the legislative process in any country or territory;
- influencing the policies or decisions of local, regional or national governments in the UK or elsewhere;
- influencing the policies or decisions of persons on whom public functions are conferred by or under law of the UK or of a country or territory outside the UK;
- influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
- influencing public opinion on a matter that, in the United Kingdom, is a matter of public controversy; and
- promoting the interests of a party or other group of persons organised, in the UK or elsewhere, for political ends.

The above prohibition on political advertising does not apply to:

- an advertisement of a public service nature inserted by, or on behalf of a government department; or
- a party political or referendum campaign broadcast.

Broadcasters should also note that *all* programming, *including* broadcast material that is subject to a commercial arrangement with a legitimate 'political advertiser' (as described above), must comply with Section Five of the Broadcasting Code.

In addition, broadcasters are reminded that Rule 2.2 (of the Broadcasting Code – i.e. factual items must not materially mislead the audience) applies to *all* factual programming.

### **Premium rate and similar services**

When premium rate services (PRS), and other services based on similar revenue-sharing arrangements (e.g. some mobile and computer apps), feature in programming, they are commercial references.

Generally, however, PRS are unlikely to necessitate on-air signalling beyond PhonepayPlus' requirements concerning their promotion – see Rule 10.9. (Note: this guidance refers to signalling, *not* the provision of call cost information – see Rule 10.10)

## Sponsorship

Broadcasters are reminded that station/programming sponsorship credits and prior-agreed references to a sponsor and/or its brand(s), trade mark(s), product(s) and/or service(s) in programming are forms of commercial reference. (See also, additional guidance concerning station sponsorship, below).

## Community Radio

### Commercial references as revenue streams

Community radio broadcasters are reminded that, while sponsorship credits and references in programming to the sponsor and/or its brand(s), trade mark(s), product(s) and/or service(s) are permitted, licence conditions either prohibit programming/station sponsorship and paid-for advertisements or restrict the amount of programming/station sponsorship and paid-for advertisements that can be taken (under The Community Radio Order 2004). The following is therefore of particular relevance to community radio broadcasters, which may wish adopt additional revenue streams:

- For the purposes of community radio funding assessment, commercial references generally either form part of a sponsorship arrangement or are paid-for advertising\* (where 'advertising' is "any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment"<sup>3</sup>).
- Community radio programming funded by a non-commercial, not-for-profit entity that seeks solely to educate or inform the audience on matters in the public interest *is not* sponsored programming or a commercial reference and income from such funding is not considered to fall within the legislative limits on community radio stations' income from remunerated on-air advertising or sponsorship.\* (Note: Such programming could be broadcast as part of a service level agreement, when it could also be promotional – see additional guidance, which follows – 'Services Level Agreements (SLAs)')

### Service Level Agreements (SLAs)

As part of an SLA, a community radio broadcaster may accept funding from a statutory or voluntary sector organisation, to deliver programming of social benefit, which may:

- seek to inform the audience on matters in the public interest (for example, the availability of information concerning lifelong learning); and/or
- promote goods/services (for example, the opening of adult literacy courses at a local library)

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<sup>3</sup> This is the definition of 'television advertising' in the Audiovisual Media Services Directive. While not produced with radio in mind, Ofcom regards this definition as most appropriate to best-reflect the intention of The Community Radio Order 2004.

In such cases, and where the funded content also contributes towards the delivery of the social gain objectives that form part of the broadcaster's licence, Ofcom recognises that the programming itself is likely to provide sufficient transparency of the SLA (commercial arrangement) and is not considered to be sponsored programming. (Note: income from SLAs is not considered to fall within the legislative limits on community radio stations' income from remunerated on-air advertising or sponsorship. \*)

\*Community radio funding summary:

Commercial Communications on Community Radio			
Commercial References			Remunerated Spot Advertisements
'Paid-for' Non-commercial messages from non-commercial funders	Sponsorship	Other 'paid-for' material in programming	
and Broadcast material as part of an SLA			
		(Remunerated advertising)	
Does not count towards funding limit		Counts towards funding limit	

### Rule 10.2 Separation

Programming and spot advertisements (i.e. advertising broadcast in commercial breaks) should be distinguishable from one another. Note: A commercial break may comprise either a stand-alone (solus) advertisement or number of advertisements.

To ensure that spot advertisements are clearly separated from programming there are generally two issues to consider:

- Providing a significant barrier (e.g. a pause, a jingle, an ident, an obvious change in presentation style etc.). The most appropriate choice of barrier depends on the circumstances of the particular case (i.e. the nature of the programming in or between which an advertisement is placed); and
- Ensuring that an advertisement does not sound like programming. This is generally achieved by using a different presentation style, whether pre-recorded or presenter-read. If the advertisement is presenter-read, not deviating from the advertisement script and/or placing the advertisement centre-break may assist clear separation.

### Advertising featured in programming

Broadcasters must ensure that any advertisements featured in programming for editorial purposes – i.e. as part of the programming (e.g. to examine on air the way a particular product type has been advertised) – do not appear to be spot advertisements (which must be kept separate from programming), by being fully contextualised for the listener.



## Rule 10.3 News

Section 319(2)(j) of the Communications Act ("the Act") requires that "unsuitable sponsorship" is prevented. Sections 319(2) (c) and 319(2) (d) of the Act also require "that news included in television and radio services is presented with due impartiality..." and "...is reported with due accuracy." Commercial arrangements (as defined in the Notes to Rules 10.1 to 10.8) must not compromise these requirements.

Commercial communications may not therefore feature in or around news output.

### Current affairs and features within News

Programming with a current affairs background may be sponsored on radio and/or contain (other) commercial references, as may specialist factual strands (i.e. weather, finance, sports and/or travel bulletins etc.) that are broadcast in or around news broadcasts.

### Material that implies a commercial arrangement (in news)

Prohibiting in news any material that *implies* a commercial arrangement is intended to prevent the more general promotion or unjustified prominence of products and services in news. (See also, guidance to Rules 10.6 to 10.8, below, which concerns more generally, among other things, material that sounds like a commercial reference.)

Further, care must be taken with the positioning, in particular, of sponsorship credits, to avoid the impression that a news bulletin or the station's news output is sponsored.

### Reference to a news supplier for the purpose of identifying that supplier as a news source

Stations may credit news sources with a simple factual acknowledgement of the news provider (e.g. a news agency or local newspaper). However, the credit must avoid the perception of news sponsorship and particular attention should be paid to this.

### Acceptable arrangements

If a news provider supplies stories, through a formal arrangement, for inclusion within a news bulletin, it can be credited as a news source, if:

- the reference does not sound like a sponsorship credit or an advertising call to action (in particular, see first paragraph under, 'Phrases', below);
- the reference is factual (e.g. "...with the resources of...") and not promotional;
- the reference is true (i.e. the provider *is* a source);
- the reference is only made in relevant bulletins (e.g. only local bulletins to which a local paper has actually contributed); and
- the station retains editorial control.

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### Phrases

Phrases such as "...in association with...", "...brought to you by..." or "...from your friends at..." and the like, infer sponsorship and would, therefore, be unacceptable.

"From Station X with the resources of Y" or similar statements of fact would be acceptable, but "from Station X and Y, combining to bring you..." could be seen as promotional.

"From the news desk of Y" would be acceptable only if this were actually the case and the news was totally outsourced to, and delivered from, the provider involved. There are clear editorial control implications in this scenario.

## **Rule 10.4 Children's programming and services**

Section 319(2)(j) of the Act requires that "unsuitable sponsorship" is prevented. Sections 319(2) (a) and 319(2) (f) of the Act also require "that persons under the age of eighteen are protected" and "that generally accepted standards are applied to the contents of ... radio services so as to provide adequate protection for members of the public from the inclusion in services of offensive and harmful material." Commercial arrangements (as defined in the Notes to Rules 10.1 to 10.8) must not compromise these requirements.

### **Radio services primarily aimed at children**

These are radio services targeted at children throughout daytime (generally 06:00 to 19:00).

### **Children's programming (included in any service)**

This is any programming that is primarily listened to by persons under the age of sixteen.

### **Protection issues**

Ofcom recognises that particular protection issues may arise from the integration of commercial communications into children's programming and services – in particular, the difficulty younger children have in recognising commercial messages and differentiating them from other broadcast material.

Ofcom also recognises that radio is not a medium through which programming aimed at children is generally featured. However, applying Rule 10.4 to all children's programming (as defined above) offers appropriate and proportionate additional consumer protection in the event of the majority of an audience comprising children.

Should broadcasters operate a service for children (i.e. targeted at children in daytime), Ofcom considers it appropriate to apply the additional consumer protection afforded by Rule 10.4 across the entire daytime output of the service, irrespective of audience composition.

Ofcom therefore considers it appropriate to prohibit the integration of commercial references into both programming on radio services that are primarily aimed at children and children's programming included in any service. This provides appropriate consumer protection.

However Rule 10.4 sets out that this prohibition does not apply to:

- credits for third party association with either programming or broadcast competition prize donation (please see immediately below);

- the use of premium rate services (e.g. for broadcast competition entry); and
- references that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event).

### **Credits for third party association with either programming or broadcast competition prize donation**

Under Rule 10.4, programming on services primarily aimed at children, and children's programming included in any service, may be sponsored. Broadcasters are reminded that any credit for such "third party association with ... programming" (i.e. a sponsorship credit), must identify the sponsor and the programming that is sponsored. As a form of commercial reference, and therefore being subject to a commercial arrangement (in this case, a sponsorship arrangement), appropriate signalling is required – see guidance to Rule 10.1, above. In the case of sponsorship, this signalling ensures that any sponsorship credit is distinct from those commercial references prohibited under Rule 10.4.

Likewise, broadcasters may also credit on air (on services primarily aimed at children and in children's programming included in any service), those who donate competition prizes, whether or not a sponsorship agreement also exists. Ofcom therefore considers that, generally, the aired description of donated prizes is also likely to be acceptable under Rule 10.4.

Further, where a sponsorship arrangement is in place, and with specific regard to broadcast competition features, reference to the sponsor, or its relevant products and services, within the competition itself, are also likely to be acceptable. Ofcom has considered the general nature of both sponsorship credits and broadcast competition features, and considers that sponsor references broadcast in such features are likely to be perceived as, or as part of, permitted sponsorship credits, rather than additional commercial references in their own right.

### **Material that implies a commercial arrangement (in children's programming and services)**

With protection of the under eighteens in mind, Ofcom considers it appropriate to prevent the more general promotion or unjustified prominence of products and services in children's programming and services. (See also, guidance to Rules 10.6 to 10.8, below, which concerns more generally, among other things, material that sounds like a commercial reference.)

### **Rule 10.5 Music**

Broadcasters should note that *any* commercial arrangement involving payment (or the provision of some other valuable consideration) to the broadcaster – including, for example, programming sponsorship and the sale of music downloads in programming – is prohibited from influencing the purposeful selection or rotation of music for broadcast.

### **Rules 10.6 to 10.8 Advertising rules apply**

#### **Types of advertising rules**

For the purposes of compliance with Section Ten advertising rules, the BCAP Code contains rules with regard to advertising prohibitions, scheduling restrictions, content requirements and clearance requirements. While the BCAP Code does not refer specifically to "content

rules”, these are simply rules that do not concern advertising prohibitions, scheduling restrictions or clearance requirements.

Rules 10.6 to 10.8 contribute to ensuring appropriate consumer protection. In summary:

- Advertisers that are prohibited from advertising under the BCAP Code may not make any form of commercial communication on radio;
- BCAP content and scheduling rules apply to all commercial references (Note: When applied together with the transparency requirement – Rule 10.1 – this also ensures BCAP scheduling rules apply to programming that is subject to commercial arrangements with third parties); and
- BCAP clearance requirements apply only to commercial references that require confirmation or substantiation prior to broadcast. (Examples include, but are not limited to: complex factual claims – including those that are capable of objective substantiation; market leadership claims; special offer prices; comparisons with competitors; superlative claims; claims and offers involving significant limitations and exclusions; “free” claims; testimonials; endorsements; and claims that may be of particular interest to children.) See also, ‘Clearance’, below.

### **Material that sounds like a commercial reference**

For the avoidance of doubt, any material that sounds like a commercial reference but does not form part of a commercial arrangement with a third party (e.g. references to the third party but not subject to the commercial arrangement, or a presenter’s personal views, concerning any product or service, that stray into making overt advertising claims about that product or service), remains subject to the rules of the Broadcasting Code. The Broadcasting Code has rules to ensure appropriate consumer protection – e.g. Rules 2.1 (harm) and 2.2 (misleadingness). However, broadcasters should note that, in the event of investigating complaints concerning such material, Ofcom is likely to refer to advertising requirements for appropriate guidance. (See also guidance with regard to ‘clearance’, below, concerning – among other things – ‘natural’ references to brands etc., and guidance to Rule 10.3, above, concerning, specifically, material that appears to be a commercial reference within news).

### **Prohibited and restricted commercial communications**

Broadcasters should refer to Section 10 (Prohibited Categories) of the BCAP Code, which details prohibited categories of advertising. Advertisements currently prohibited from broadcast on radio include those coming within the recognised character of, or specifically concerned with, the following:

- breath-testing devices;
- betting systems/products intended to facilitate winning games of chance;
- all tobacco products, rolling papers and filters;
- guns (including replica guns), gun clubs and offensive weapons;
- prostitution and sexual massage services;
- obscene material;

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- products for the treatment of alcohol and illegal-substance dependence;
- pyramid promotional schemes;
- the acquisition or disposal of units in collective investment schemes not authorised or recognised by the FSA, without the prior approval of BCAP.

Broadcasters should note that, in addition to Section 10 (Prohibited Categories) of the BCAP Code, there are other advertising prohibitions (detailed within specific advertising categories) – e.g. Section 7 (Political and Controversial Matters), Rule 7.2.1: “No advertisement may be inserted by or on behalf of a body whose objectives are wholly or mainly of a political nature.” (Note: Other Sections of the BCAP Code that contain specific prohibitions comprise: 5 (Children); 11 (Medicines, Medical Devices, Treatments and Health); 14 (Financial Products, Services and Investments); 15 (Faith, Religion and Equivalent Systems of Belief); 24 (Homeworking Schemes); 25 (Instructional Courses); and 30 (Pornography))

### **Advertising scheduling rules**

Advertising scheduling rules can be found in Section 32 (Scheduling) of the BCAP Code. In addition, and in particular, broadcasters considering a commercial arrangement with any gambling company are reminded that the Gambling Act 2005 does not apply outside Great Britain. Specialist legal advice is therefore advised for those considering the broadcast of commercial references (as part of such an arrangement) in Northern Ireland or the Channel Islands. Broadcasters should also be aware that, in August 2007, the gambling industry published its voluntary code, the Gambling Industry Code for Socially Responsible Advertising. It is for the gambling industry itself to observe the voluntary code, available at:

[www.rga.eu.com/shopping/images/Code%20on%20SR%20in%20advertising.pdf](http://www.rga.eu.com/shopping/images/Code%20on%20SR%20in%20advertising.pdf)

Broadcasters should note that, in addition to Section 32 (Scheduling) of the BCAP Code, there are other rules associated with scheduling (detailed within specific advertising categories) – e.g. Section 19 (Alcohol), Rule 19.16.1: “Alcohol advertisements must not be targeted at those under 18 years...”

### **Clearance**

The purpose of Rule 10.8 (appropriate clearance) is to provide adequate consumer protection, while allowing ‘natural’ references to brands, products and/or services – i.e. a reference within programming that may have occurred even if a commercial arrangement had not been in place (e.g. passing observations made by a presenter during an outside broadcast that is sponsored by the venue).

Broadcasters should take special care to ensure that claims etc. within commercial messages are validated or adequately substantiated prior to broadcast (including all such claims etc. made as commercial references).

Broadcasters are reminded that central copy clearance (by the RACC – [www.racc.co.uk/racc/showCategories.aspx?catID=1](http://www.racc.co.uk/racc/showCategories.aspx?catID=1)) is required for any ‘special category’ commercial reference that requires confirmation or substantiation prior to broadcast. The list of categories (as for advertisements) can be found in Section 1 (Compliance) of the BCAP Code, at:

[www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

### **Brand-associated characters**

Broadcasters should also note that Ofcom considers any brand-associated character featured in programming as part of a commercial arrangement, to be a commercial reference for the brand with which it is associated. It is therefore subject to the content and scheduling rules applicable to the advertising category/ies appropriate to that brand.

With particular regard to children, broadcasters should note BCAP Code Rule 13.2, which states: "Advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially in children".

Further, Ofcom will generally consider that any brand-associated character featured in programming, but *not* as part of a commercial arrangement with a third party, is likely to sound like a commercial reference – therefore, see guidance ('Material that sounds like a commercial reference'), above.

### **Donation acknowledgement**

For information concerning the acknowledgement of donations received by a broadcaster, see 'Acknowledgement of Donations...' guidance, below, under Rule 10.12.

### **Rules 10.9 and 10.10 Premium rate and similar services**

Ofcom recognises the pace of change and innovation in the communications sector, and the advantages that evolving technologies can offer listeners. We also understand that licensees will want to add emerging proprietary platforms to ways that listeners can contact them or interact with them, where this involves an additional element of financial benefit for the licensee.

For example, 'apps' (i.e. software applications downloaded to mobile phones and related devices) may enable their users to buy votes or broadcast competition entries, and so participate or interact in programming, in the same way as they would using premium rate services ("PRS").

Broadcasters should therefore note that, when PRS, or other services based on similar revenue-sharing arrangements, feature in programming, they are commercial references (and Rules 10.1 to 10.8 also apply).

Full details of the PhonepayPlus Code of Practice (which concerns PRS) can be found at:

[www.phonepayplus.org.uk](http://www.phonepayplus.org.uk)

### **Pricing**

Listeners should be aware of the cost of interactivity that is promoted on air and uses either PRS or other services based on similar revenue-sharing arrangements.

Under no circumstances would the absence of any aired pricing information comply with Rule 10.10.

See also guidance to Rules 2.13 to 2.16 concerning broadcast competitions and voting that use PRS as the entry mechanism.

## Rule 10.11 Charity appeals

The purpose of this rule is to ensure that a broadcaster neither overtly nor covertly profits from any appeal it conducts on air on behalf of a charity.

This rule does not preclude a charity conducting its own appeals:

- in spot advertisements; or
- as commercial references – note: broadcasters need to take special care that such appeals are appropriately signalled and do not appear (at any time) to be conducted by the broadcaster (on behalf of the charity).

Broadcasters should bear in mind that an organisation may not need to be registered to have charitable status. If a broadcaster has any doubts or concerns about a charitable appeal, the Charity Commission may be able to provide advice.

## Rule 10.12 Appeals for funds for programming or services

Broadcasters should keep accurate and detailed records of donations and how they are spent. Records should demonstrate how donations received are used to fund the service. Ofcom strongly recommends that donations are kept in a separate, specific account so that information relating to donations and how they are spent is clear and easy to access. It is also recommended that audits of such accounts are conducted.

If Ofcom investigates the compliance of a broadcaster's appeal for funds with the Code rules, it is likely to request the provision of copies of the relevant records, accounts and/or audits. Broadcasters should be able to supply this information to Ofcom promptly and in a clear and accessible manner.

Broadcasters should avoid creating unrealistic expectations about what donations can achieve and appeals should not improperly exploit any susceptibilities of the audience. See also Rules 2.1 (generally accepted standards) and 4.6 (religious programmes must not improperly exploit any susceptibilities of the audience).

Broadcasters should take care to ensure that the acceptance of donations does not prevent them from meeting the Code's requirements relating to due impartiality, no undue prominence of views and opinions, and editorial independence. See Rules 5.1, 5.5 and 5.13.

In addition, broadcasters should avoid accepting donations to fund programmes or channels from bodies whose objects are wholly or mainly of a political nature. See the restrictions in Schedule 2 of the Broadcasting Act 1990 in relation to political bodies influencing "by the giving of financial assistance or otherwise" persons who hold broadcasting licences. See also the prohibition on political advertising (and sponsorship etc.).

Broadcasters who transmit appeals for funds are encouraged to consider joining self-regulatory bodies such as the Institute of Fundraising, and adopting its Code of Conduct and Donors' Charter:

<http://www.institute-of-fundraising.org.uk/>

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## **Acknowledgement of Donations (including philanthropic funding/assistance received by community radio broadcasters)**

A donation of funds may be acknowledged on air.

Any broadcaster that wishes to broadcast acknowledgement of donations given in response to a broadcast appeal for funds, or any community radio station that wishes to air acknowledgements concerning philanthropic funding/assistance, may do so with reference to any third party that could otherwise advertise on radio.

If a broadcaster and donor agree that a donation is to be subject to the broadcast of an acknowledgement, a commercial arrangement exists between the two parties and such an acknowledgement is therefore a commercial reference. Community radio broadcasters should note that revenue raised from such an arrangement would form part of their commercial funding (see also, 'Community Radio' guidance to Rule 10.1, above).

**This completes Code Section Ten guidance concerning programming (Section Ten guidance concerning station sponsorship follows).**

## **Station Sponsorship**

### **Which stations can be sponsored?**

*This guidance is intended to help broadcasters determine whether a station can be sponsored. It is not exhaustive and if broadcasters are in any doubt about whether a station may be sponsored, they should seek guidance from Ofcom before entering into any sponsorship arrangement.*

The Code permits the sponsorship of entire stations. However, there are specific requirements that may render the sponsorship of certain stations unacceptable. These are:

- "No commercial reference, or material that infers a commercial arrangement [between the broadcaster (or any agent or employee of the broadcaster, and a third party (or third parties)], is permitted in or around news bulletins or news desk presentations..." (This is an extract from Rule 10.3); and
- Programming subject to a commercial arrangement with a third party (or third parties) must comply with the advertising scheduling rules that apply to radio broadcasting. (This actually results from the implementation of Rules 10.1 and 10.7).

### **News**

Sponsorship of a station involves the sponsorship of the service as a whole rather than the sponsorship of specific programming. The sponsorship of a station that broadcasts some news is not therefore necessarily incompatible with the Code.

However, a broadcaster's editorial control over the content of its news should not be, or appear to be, compromised.

Broadcasters need to take care that station sponsorship arrangements do not result in the sponsorship of programming that cannot be sponsored, nor appear to apply to such programming. When assessing whether a station can be sponsored, Ofcom will take into account the following factors:



- The amount of sponsorable content on the station

Where a station broadcasts content that consists wholly or mainly of programming that can be sponsored, station sponsorship may be acceptable. As a rough guide, this programming should normally account for around 75% or more of the station's output.

Stations that broadcast a significant amount of unsponsorable programming are likely to be considered unsuitable for sponsorship. As a general rule, unsponsorable programming that accounts for around 25% or more of station's output are likely to be considered a significant amount.

- Positioning of station / Audience expectations

Regardless of the proportion of sponsorable programming it transmits, a station is unlikely to be considered suitable for station sponsorship if it:

- o promotes itself predominantly as a news service; or
- o is recognised by audiences primarily as a broadcaster of news.

This is because the Code rules on news support the important principle that news must be reported with due accuracy and presented with due impartiality. Where a broadcaster is regarded primarily as a news provider, a commercial arrangement such as station sponsorship risks undermining the perception of the broadcaster's editorial independence of its news output and will not be compatible with the Code.

### Programming subject to scheduling restrictions

Programming subject to any commercial arrangement must comply with BCAP advertising scheduling rules (note: this actually results from the application of Rules 10.1 and 10.7). This means that certain programming cannot be, for example, sponsored by certain types of sponsor (e.g. an alcohol brand cannot sponsor children's programming etc.). If a broadcaster is considering a station sponsorship arrangement that involves a sponsor that is subject to scheduling restrictions, they are advised to apply similar criteria to those stated above (e.g. a station that broadcasts a significant amount of children's programming should not be sponsored by an alcohol brand).

Full details of scheduling and content restrictions can be found in the BCAP Code, at:

[www.bcap.org.uk/The-Codes/BCAP-Code.asp](http://www.bcap.org.uk/The-Codes/BCAP-Code.asp)

### Identifying station sponsorship arrangements

Rule 10.1 of the Code requires that commercial arrangements affecting programming (e.g. sponsorship) are transparent to listeners. It is therefore important that credits for station sponsors make clear what is sponsored (i.e. the station, not specific programming) and by whom.

Because it is possible for a brand that is better known in another field also to own a station (a significant historic example is Saga Radio), credits should ensure that audiences can distinguish between a station ownership and station sponsorship arrangement. A credit for station sponsorship should therefore name the station and explain who the sponsor is (e.g. *station X is sponsored by Y*). It is particularly important that the credit makes clear that the station is sponsored rather than the programming it is broadcasting.

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Ofcom considers that simply naming a station after its sponsor will not make the nature of the commercial relationship between the sponsor and the station sufficiently transparent (as it implies ownership, not sponsorship) and is therefore incompatible with Rule 10.1.

### **Placing of credits**

Unlike most programming, stations do not have a clearly defined beginning at which credits can be placed. Broadcasters will therefore need to judge when and where to identify station sponsorship, to ensure that the Code requirement on transparency is met.

Care needs to be taken to avoid confusion if a programming sponsorship credit is also broadcast near to a station sponsorship credit.

Station sponsorship credits, like programming sponsorship credits, must be separate from spot advertisements. Broadcasters must therefore employ suitable separation to ensure that station sponsorship credits do not form part of commercial breaks. Station sponsorship could be identified when station idents are broadcast, for example.

Where a sponsored station broadcasts a limited amount of programming that cannot be sponsored, or is sponsored by a brand that cannot sponsor all the programming it broadcasts (see guidance above on which stations can be sponsored), the station sponsorship credits must be kept away from the unsponsorable content. Credits should therefore not be broadcast directly before, during or after the programming that cannot be sponsored. Additionally, credits should not be broadcast around trails for unsponsorable programming.