

Consultation response

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BCR: Commercial References in TELEVISION
programming
Ofcom
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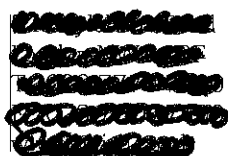
RE: CONSULTATION ON COMMERCIAL REFERENCES IN TELEVISION PROGRAMMING

Introduction

- 1 Which? is an independent, not-for-profit consumer organisation with around 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through the sale of Which? consumer magazines, books and online subscriptions.
- 2 We welcome Ofcom's consultation on the issue of commercial references in television programming and the opportunity to respond to it.
- 3 In this response Which? has focussed on the areas and corresponding consultation questions that we have data on and knowledge of. As a result we have not responded to every consultation question.

Product Placement

- 4 If new television content is to be funded in an era of declining advertising revenue and diversifying patterns of media consumption, it is argued by the





industry that fresh sources of revenue have to be generated. Research conducted by Which?¹ found that whilst a majority of consumers were not opposed to background product placement,² (67% found it acceptable) only a minority of 35% would accept noticeable product placement.³ The table below sets out the full results.

Table 1: Strength of agreement with product placement⁴

	Strongly agree	Slightly agree	Neither agree nor disagree	Slightly disagree	Strongly disagree	Net: agree	Net: disagree
Background product placement	23%	44%	26%	4%	4%	67%	8%
Noticeable product placement	10%	24%	34%	17%	14%	35%	31%

Base: 1,005 respondents.

- 5 More specifically Which? then questioned respondents about specific types of programmes that they would be concerned to see products placed in. The question asked: “To what extent do you agree or disagree that product placement in the following types of programmes is appropriate?” The results are as follows:⁵

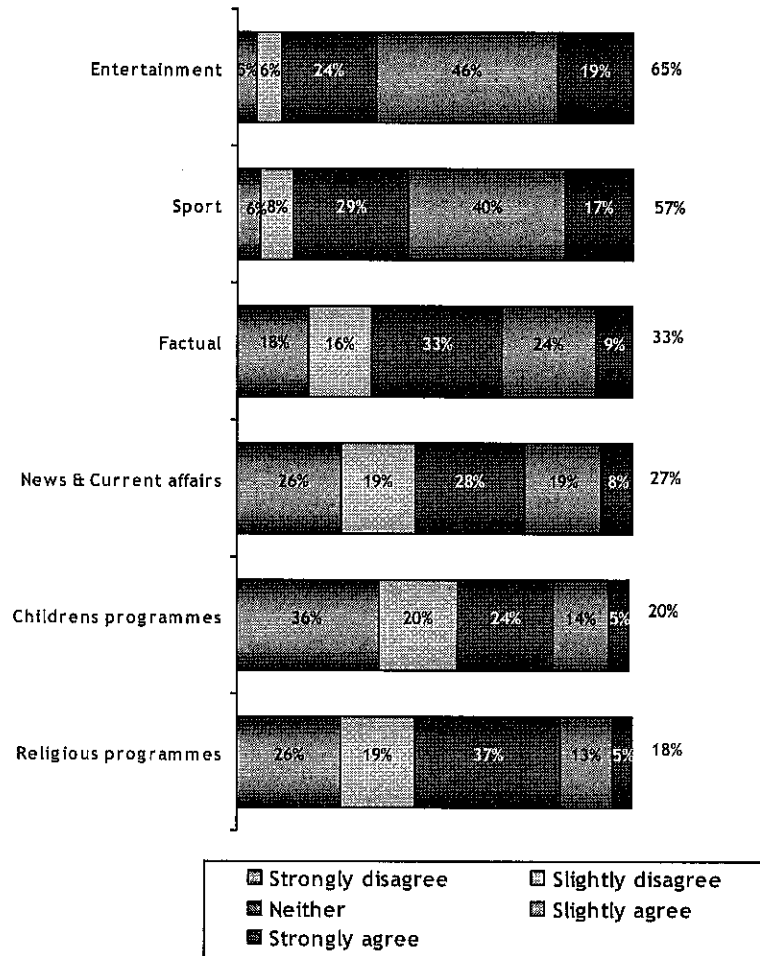
¹ Which? conducted a survey of 1,005 members of the general public between 22nd and 24th December 2009. The results were weighted to be reflective of the GB population.

² “Background product placement” is product placement relevant to the programme. This is in contrast to noticeable product placement.

³ “Noticeable product placement” is product placement that is not really relevant to the programme but has been blatantly inserted for advertising purposes.

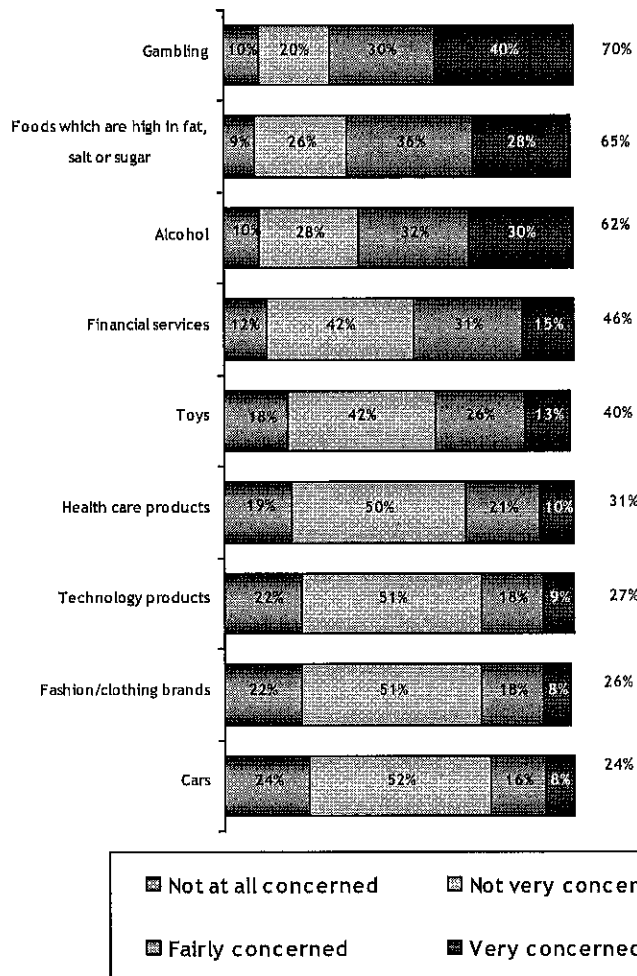
⁴ The full question put to respondents was: Product placement is currently not allowed in UK TV programmes but is under review by the government. To what extent do you personally agree or disagree with the following statements about advertisers generating money in the future?

⁵ Base: All respondents (1005).



6 Moving on from programme type, Which? also asked respondents how concerned they would be to see certain types of products placed in television programmes generally. The results are as follows:⁶

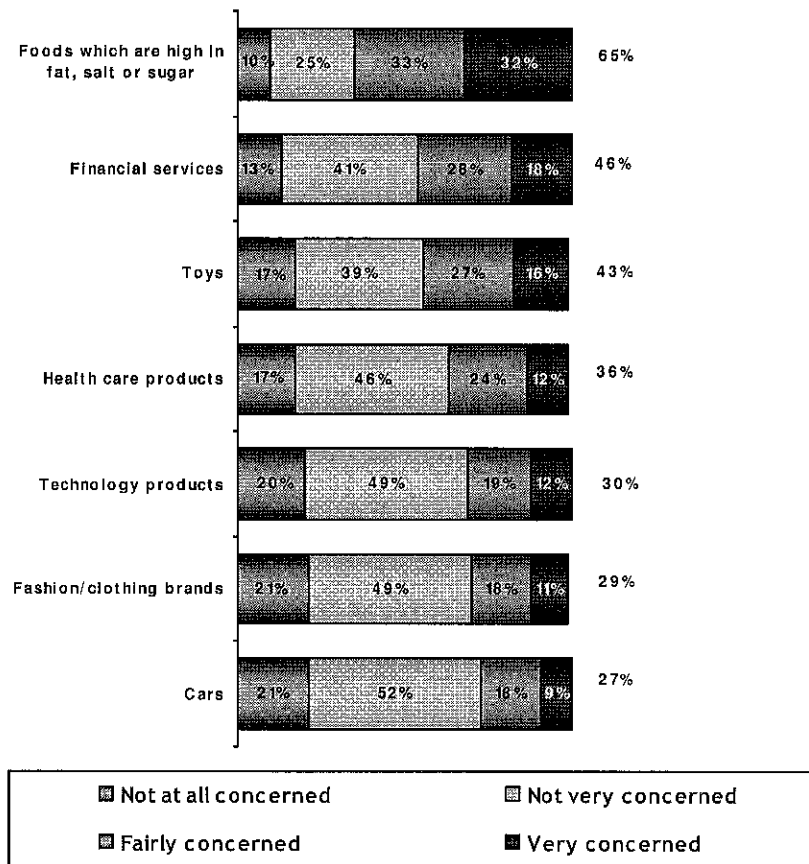
⁶ The question was: "Thinking about product placement in general, how concerned are you, if at all, about the possibility of the following types of product placement being allowed on television in the future?" Base: All respondents (1005).



7 Which? has also looked in to the general public's perception of specific types of products being placed in particular types of television genres. For example, Which? asked respondents: "Thinking about UK family programmes that are viewed by adults and children (e.g. The X Factor), how concerned are you, if at all, about the possibility of the following types of product



placement being allowed in these programmes in the future?" For children's programmes, the results were as follows:⁷



8 Which? responded to the Product Placement Consultation by the Department for Media, Culture and Sport in January 2010.⁸ Given the economic arguments for allowing product placement and the general consensus of the public that it was an acceptable practice, Which? offered cautious support for the lifting of the blanket ban on product placement.

⁷ Base: All respondents (1005).

⁸ Available online at: <http://www.which.co.uk/about-which/what-we-do/which-policy/regulation-and-consumer-policy/>.



- 9 Like advertising, product placement raises a number of issues that must be addressed. There are important and wide-ranging social consequences to both, especially when it comes to particular products and directing these at vulnerable groups - foods high in fat, sugar and salt (HFSS) and children, for example. It is for this reason that Which? urges caution and in light of this, in order to make product placement work effectively and avoid a number of potentially negative consequences, **Which? supported lifting the total ban on product placement subject to maintaining or establishing certain protections that will mitigate any negative fallout.**
- 10 Which? advocated the following specific protections:
- > Ensuring existing advertising prohibitions on products are maintained for product placement advertising - for example, tobacco.
 - > Banning all product placement in certain genres of programme aimed at vulnerable groups, such as children's programmes.
 - > Banning all product placement for certain types of products such as gambling, alcohol and HFSS foods.
 - > In all circumstances - where product placement takes place - it has to be signalled (in some form) to the viewer so that they are aware of it.
- 11 Which? has been pleased to see that its qualifications on the lifting of the product placement ban have largely been addressed by the Audiovisual Media Services (Product Placement) Regulations 2010. Which? supported a review of the Ofcom code to impose the additional safeguards listed above and welcomes the proposed changes to the code which address our concerns surrounding product placement on TV. Which? therefore supports this consultation's aim of establishing the specific amendments that should be made to the code in order to ensure consumers are protected from the negative effects of product placement.
- 12 Which? would like to take this opportunity to highlight a further issue with product placement that we feel may have been overlooked. Some brands are most commonly associated with HFSS foods. However, not all of their products are HFSS, and Which? is concerned that this will provide such brands an opportunity to circumvent any prohibitions of HFSS food placement rules. For example, a diet carbonated drink or a more generic branding product could be product placed, which would still give the brand maximum exposure. Which? would like to raise this issue and ask Ofcom to address it before finalising the Rules.



- 13 The introduction of product placement to our television screens should be very carefully monitored. It will therefore be essential to carefully observe the practical effects of the changes to the Ofcom code, in order to guarantee that the Code operates at the highest level of consumer protection. Which? believes that Ofcom should publish a review of the Code's performance with regards to product placement after one year's use.

Consultation Questions

Proposal 3: Clarification of the prohibition of product placement in news

3.1 *Please identify any potential impacts of the rule prohibiting product placement in news, and provide evidence, wherever possible. (See proposed Rule 9.9(a)).*

- 14 Which? does not think that the rule prohibiting product placement in news will have any impact. This is because product placement in news programming would be counter to the ethos of the programme; Which? believes it would be out of place to product place during the news, and consumers agreed. Our research asked respondents: "To what extent do you agree or disagree that product placement in the following types of programmes is appropriate?" When it came to news and current affairs programmes 44% did not believe it was acceptable to use product placement in news programmes, and only 27% thought this was a good idea.

3.2 *Please identify any areas of this rule which you consider Ofcom should issue guidance on.*

- 15 Which? believes that, as with all television genres, the definition of "news" will need to be clearly defined. It is not unusual for another genre of television programme to include a news segment, and Ofcom will have to be clear whether variations such as this are included in the prohibition. Ofcom will also have to qualify this; will only the news segment itself within another programme be prohibited from utilising product placement, or will the whole of any programme with such a feature also face the ban? Any guidance issued must be clear and easy to follow; any ambiguity is likely to generate further work for Ofcom and be difficult for television programme makers to follow.



Proposal 5: Specialist factual programming

5.1 *Do you consider that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction? If not, please explain why.*

16 Which? considers that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction. Again if the general ethos of the programme is taken into account, it is clear that product placement would be counter to the nature of a specialist factual programme. Research into product placement conducted by Which? included the question: “To what extent do you agree or disagree that product placement in the following types of programmes is appropriate?” When it came to factual programming, respondents were evenly split: 34% were against, 33% were in favour, and 33% had no strong feeling either way. Which? acknowledges that this question did not involve a distinction between “specialist factual programmes” and lighter entertainment factual programmes. This lack of distinction may account for the even divide in opinion on the issue. If “specialist factual programmes” are to be equated more readily with news and current affairs programmes, then Which?’s research indicates that viewers do not feel product placement is appropriate.

5.2 *Do you agree with the meaning for “specialist factual programmes”? (See proposed Rule 9.14). If not, please explain why, and suggest drafting changes, if appropriate.*

17 Again it is clear that “specialist factual programmes” will need a transparent definition; as it stands there is room for ambiguity for the reasons that follow. Firstly, as Ofcom have already identified, the distinction between purely factual and entertainment programmes may be easily identifiable. However, there is likely to be a large grey area in between which will create difficulties when it comes to applying the rule in practice. Secondly, the inclusion in the definition of “specialist factual programming” of the clause “investigative in nature” creates further ambiguity; it may be that programmes differ in the extent to which they are investigative and creating a threshold for prohibition of product placement may become arbitrary. These potential sources of ambiguity mean that Ofcom must ensure the guidelines are clear and that application of them is consistent. It may be that a blanket ban on product placement in factual programming more generally is the only workable option.



5.3 *Please identify any potential impacts of either permitting or prohibiting product placement in specialist factual programmes that you consider should be taken into account, and provide evidence, wherever possible.*

18 The most significant impact of either permitting or prohibiting product placement in specialist factual programmes will be whether the definition of the genre makes it workable in practice. Ofcom will need to take this into account, and it highlights the need for close monitoring of any changes to the Code. If it becomes apparent that the partial ban on product placement in factual programming that Ofcom is proposing is simply unworkable and creates discrepancies from one programme to the next, Which? believes that Ofcom should seriously consider installing a general ban on product placement in factual programming. This at least would ensure consistency and clarity for programme makers.

19 The above is also key because of the potential for a ban on product placement in specialist factual programming to create a situation whereby programme makers choose to spend less money on purely factual programming and invest instead in entertainment mixed factual programming. It would be preferable to avoid this outcome. Similarly it must be stressed that the need for editorial integrity in purely factual programming negates the possibility of product placement; consumers would be less inclined to trust a factual programme that used product placement because it counters the ethos of the genre.

5.4 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*

20 There is obviously a need for workable definitions of genres to be included in the Code. Once these have been prescribed Ofcom should closely monitor how they are working in practice, and ensure that they are reviewed on a regular basis. For product placement to work within the spectrum of factual programming clarity and consistency are essential.

Proposal 6: Additional prohibited categories

6.1 *Do you agree that it is appropriate to prohibit the placement of those products and services that are not allowed to be advertised on television? (See proposed Rule 9.15). If not, please explain why.*



- 21 Yes. It would be illogical and circumvent the purpose of the UK Code of Broadcast Advertising (the BCAP Code) and - in the case of tobacco - the relevant European legislation, to allow products that are banned from advertising on television to be viable candidates for product placement. More significantly, if products such as cigarettes and tobacco were not on the list of products barred from advertising, Which? hopes that Ofcom would act to include them on the list in Rule 9.15 of products banned from placement during television programmes. Which? therefore welcomes Rule 9.13 in addition to 9.15.
- 6.2 *Do you consider that the wording of proposed Rule 9.15(f) is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.*
- 22 Yes. Which? is satisfied that the wording of proposed Rule 9.15(f) is clear; this is qualified below.
- 6.5 *Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.*
- 23 Which? is in favour of the wording of proposed Rule 9.15. However, for clarity either the rule itself or the guidance issued alongside it should include a reference to where the list of products, services and trade marks banned from advertising on television can be located. This will ensure there is no ambiguity or excuses for contravening it when it comes to application, and will enable consumers to easily access the list.

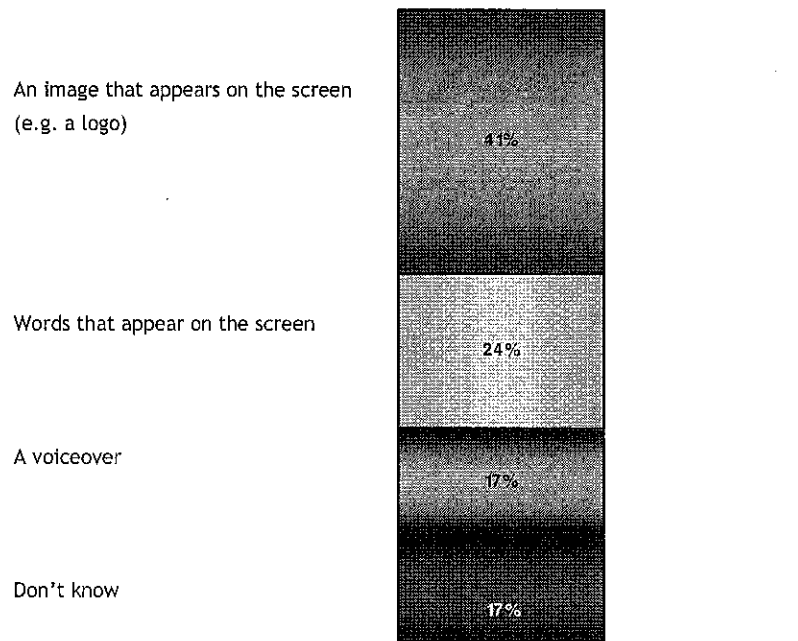
Proposal 7: Signalling

- 7.1 *Do you consider it is appropriate to require broadcasters to identify product placement by means of a universal neutral logo and universal audio signal? (See proposed Rule 9.16). If not, please explain why, suggesting alternative approaches where appropriate.*
- 24 Which?'s research on this issue found that 51% of respondents wanted to be notified - in some way - of product placement taking place in a programme. Of those respondents who made up this group, 41% wanted to be notified via an image that appears on the screen (i.e. a logo). Given that a sizeable minority - some 38% - of our respondents didn't want to be informed at all when product placement was occurring, Which? would agree that a discrete method of communicating when product placement was happening would be preferable. A universal neutral logo would hopefully strike the right balance



for those who wanted to be aware of product placement, with those who did not.

- 25 Regarding the universal audio signal, Which?’s research showed that of the 51% of respondents who wanted to be informed, only 17% wanted the method to be a voiceover (i.e. an audio announcement). This research suggests that the viewing public are unlikely to appreciate an audio announcement signalling product placement. One issue for consideration by Ofcom is whether it would be possible for consumers to turn the audio announcement on and off, to avoid if they wish. The question Which? asked respondents: “And which of the following ways best describes the way in which you would like to be told about product placement?” The results were as follows:⁹



⁹ Base: All who want to be informed about product placement (619).



7.4 Please provide comments on whether you consider that such criteria should be specified in the Code or in Ofcom's guidance. If you consider that the criteria should not be specified in either, please explain why.

26 Which? is of the opinion that such criteria should be specified in both the Code and Ofcom's guidance for full accessibility during the initial introduction of product placement. In terms of the criteria for both the audio signal and neutral logo Which? would like to stress the importance of the universal nature of both. In order to ensure that both are consumer friendly all television producers must use universal signals for product placement and these must be applied consistently.

7.5 Do you consider it is appropriate to require broadcasters to provide the audience with a list of products/services that appear in a programme as a result of product placement arrangements, either in the end credits or on the broadcaster's website? (See Rule 9.17(a) and (b)). If not, please explain why.

27 Whilst Which?'s research found that there was majority support for notification, there was a relatively even split around whether there should be a general notification of product placement or specific notification of the various products featured in the relevant programme.

Table 2: Notification of Product Placement¹⁰

I would like to be notified that product placement is taking place, but not necessarily told which products advertisers are paying to appear	27%
I would like to be notified of each of the products that advertisers are paying to appear	24%
I do not want to be informed at all	38%
Don't know	10%

Base: All respondents (1,005)

28 If those who have no desire to be informed and those who want to be generally notified are combined the results suggest that a more unobtrusive general notification would stand a greater chance of being accepted by the public. Which? would welcome both of Ofcom's suggestions - a list in the end

¹⁰ The full question asked of the respondents was: "If product placement is allowed in UK TV programmes in the future, advertisers may be required by law to tell viewers when product placement is taking place. Which of the following best describes how you would like to be informed about product placement, if at all?"



credits of a television programme and/or on the broadcaster's website; both would appear to suit the needs of the consumer.

- 29 Which? is aware of the additional issue regarding whether notification of individual products being placed in a programme will form a further type of advertising. Which? is therefore mindful that any list of products appearing in the end credits or separately on the broadcaster's website must be non-promotional in character and appearance. This should also be monitored during the initial stages. Which? does not consider that the upkeep of such a list would be a disproportionate burden on the broadcaster.
- 7.6 *Do you consider that the wording of proposed Rule 9.17(a) and (b) is appropriate? If not, please explain why, and suggest drafting changes, if appropriate.*
- 30 Yes. Which? is satisfied with the wording of proposed Rule 9.17(a) and (b).

Relevant requirements of the AVMS Directive and the Act

- 16.1 *Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate.*
- 31 The explicit requirements of the AVMS Directive and the Act are, on the most part, reflected appropriately in Ofcom's proposed rules for product placement. In particular Which? is pleased to find the prohibition on product placement in children's programming, and prohibition of tobacco product placement generally, carried through from the Directive to the Act to the Rules. Likewise Which? welcomes the signalling of product placement at the start and end of affected programmes, and when a programme resumes following an advert break. This sensibly reflects the reality that many viewers join and leave programmes part way through, and the need for them to nonetheless be aware when product placement occurs.
- 32 Which? welcomes the fact that the Act itself goes further than the Directive in some circumstances. In particular Which? research supports a ban of HFSS foods, alcohol and gambling services. When asked "Thinking about product placement in general, how concerned are you, if at all, about the possibility



of the following types of product placement being allowed on television in the future?" Which? recorded the following results:

Product or Service:	Fairly - Very Concerned:
Gambling	70%
Foods which are high in fat, salt or sugar	65%
Alcohol	62%

Base: 1,005 respondents.

- 33 Whilst Which? welcomes the prohibition on placing alcohol products in programmes aimed specifically at persons under the age of 18 or in circumstances where placement encourages immoderate consumption of alcohol, Which? would prefer a blanket prohibition on the product placement of alcohol. Likewise whilst Which? is in favour of the prohibition of gambling services, HFSS foods and alcohol in religious, consumer affairs and current affairs programmes, Which? would strongly favour a blanket prohibition of these products.
- 34 As mentioned above Which? research supports a prohibition on product placement in news programming. Which? therefore welcomes Ofcom's move to add this prohibition to those already set out in the Directive and Act.

If you have any questions or would like further information, please contact Mark McLaren ~~020 7066 1111~~