



# 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.)

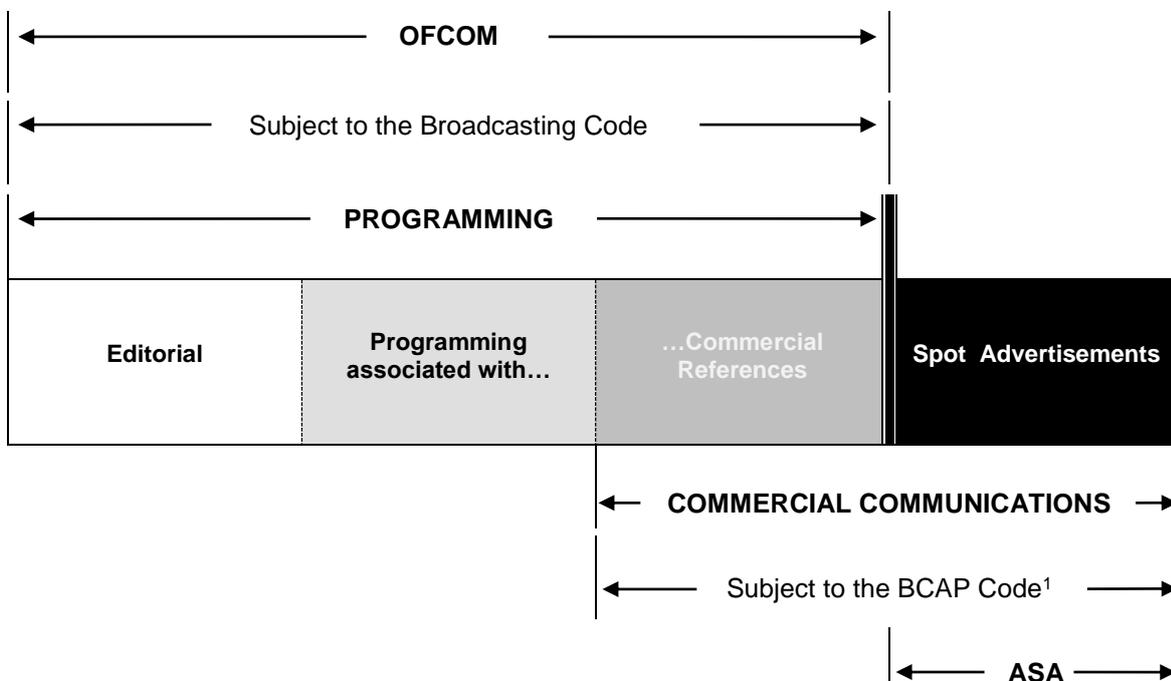
Every complaint or issue will be dealt with on its own merits according to the individual facts of the case.

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: <https://www.cap.org.uk/Advertising-Codes/Broadcast.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;

Commercial references do not generally include:

- promotions of the licensed service itself, through station idents/jingles etc; or
- trails for programming on the licensed service;

However, such promotions or trails may contain commercial references – for example, sponsorship credits;

- **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 is programming (including a programme, channel, programme segment or block of programmes) that has had some or all of its costs met by a sponsor and includes advertiser-funded programmes.

A sponsor is any public or private undertaking or individual (other than a broadcaster or programme producer) who contributes to the costs of programming with a view to promoting the name, image, products, services, trade marks or activities of that undertaking or individual.

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 Radiocentre-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: <https://www.cap.org.uk/Advertising-Codes/Broadcast.aspx>

- 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)

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

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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.

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:

<b>Commercial Communications on Community Radio</b>			
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)			
<b>Does not count towards funding limit</b>		<b>Counts towards funding limit</b>	

## 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 references 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.

#### 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 (Note: With regard to e-cigarettes and refill containers, see below under “Prohibited and restricted communications”);
- 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;
- 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; and
- electronic cigarettes and refill containers or any advertisement which has the aim or direct or indirect effect of promoting such a product.

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))

As a consequence of the Government’s implementation of the Tobacco Products Directive 2014, Rule 10.6 excludes electronic cigarettes and refill containers from the prohibition on commercial arrangements between programming and third parties that are prohibited from advertising on radio. Rule 10.6(a) makes clear that sponsored programming with the aim or direct or indirect effect of promoting electronic cigarettes and/or refill containers is prohibited. “Electronic cigarette” and “refill container” have the meanings given to them by the definitions in the Code.

### **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:

<http://www.gamblingcommission.gov.uk/pdf/Industry%20code%20of%20practice%20-%20August%202007.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 Radiocentre – <https://clearance.radiocentre.org/login.aspx> and <https://www.cap.org.uk/Advertising-Codes/Broadcast.aspx>) 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 Controlled 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 controlled premium rate services ("CPRS").

Controlled PRS are those services which are subject to Ofcom's PRS Condition which Ofcom has made for the purpose of regulating the provision, content, promotion and marketing of PRS in accordance with Section 120 of the Act.

Controlled PRS are premium rate goods and services that viewers can buy by charging the cost to their phone bill or pre-pay account. These services tend to cost more than a normal phone call or text message and are regulated by PhonepayPlus.

Broadcasters should therefore note that, when CPRS, or other communications services for which the revenue generated is shared between the broadcaster and other relevant parties, 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 CPRS) 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 CPRS or communications other services for which the revenue generated is shared between relevant parties.

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

Such communication services include Unbundled Tariff Numbers (UTN) which are those telephone numbers starting 084, 087, 09 and 118.<sup>4</sup>

The principle underpinning UTN ensures listeners are aware how much of their money is paid to their phone company and how much is passed to others (such as the organisation or service being called). The ‘unbundled tariff’ structure involves the separation of the retail price into two separate elements consisting of:

- a) the Access Charge: which is paid to the phone company originating the call; and
- b) the Service Charge: which is paid to the phone company terminating the call and the entity which operates the service on that number (e.g. the broadcaster).

The Access Charge is a single, pence per minute amount, for each consumer’s tariff package and is the same across all UTNs. Consumers can find out their Access Charge through their provider. Each individual 084, 087, 09 or 118 number has a single service charge that applies to calls to that number from all fixed and mobile phones.

The Service Charge is the charge linked to each individual 084, 087, 09 or 118 number. It is the amount which applies to calls to that number from all fixed and mobile phones. Importantly, the Service Charge must be identified whenever the number is presented (i.e. in advertising and programming).

Broadcasters are required to give viewers specific pricing information when UTN are used; in particular broadcasters are required to make clear in a prominent position and in close proximity to the UTN, the relevant Service Charge<sup>5</sup>. Ofcom advises that one of the following messages are used, either:

*“Calls cost [i.e. service charge] per minute plus your phone company’s access charge”, or*

*“Calls cost [i.e. service charge] per minute plus your network access charge”.*

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<sup>4</sup> Some UTNs are also classified as controlled PRS, specifically 087 numbers with a service charge higher than 5.83p (excluding VAT), 09 and 118 numbers.

<sup>5</sup> The Telephone Numbering Condition binding non-providers is set out in a condition in Annex 12 of the 2013 NGCS statement, and the requirement for Communications Providers (i.e. “phone providers”) is set out in the amended General Condition 14 in Annex 8 (available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf>)

Further information on the unbundled tariff structure is available at: [www.ukcalling.info](http://www.ukcalling.info). Broadcasters may want to refer to this website in the terms and conditions attached to the use of the relevant UTN.

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/>

### **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:

- promotes itself predominantly as a news service; or
- 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:

<https://www.cap.org.uk/Advertising-Codes/Broadcast.aspx>

## **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.

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.