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The Legislative Background to the Code¹

Ofcom is required under the Communications Act 2003 (as amended) (“the Act”) and the Broadcasting Act 1996 (as amended) (“the 1996 Act”) to draw up a code for television and radio, covering standards in programmes, sponsorship, product placement in television programmes, fairness and privacy. This Code is to be known as the Ofcom Broadcasting Code (“the Code”).

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.

In setting these standards, Ofcom must secure the standards objectives set out in the Act. This not only involves setting minimum standards but also such other standards as may be appropriate. (See sections 3(1)(a) and (b), (2)(e) and (f) and (4)(b)(g)(h)(j)(k) and (l), 319, 320, 321, 325, 326 and Schedule 11A of the Act and sections 107(1) of the 1996 Act. These extracts can be found in Appendix 1 of the Code.)

The Code also gives effect to a number of requirements relating to television in EC Directive 2010/13/EU (“The Audiovisual Media Services Directive”). Extracts can be found in Appendix 2 of the Code.

The Code has also been drafted in the light of the Human Rights Act 1998 and the European Convention on Human Rights (“the Convention”). In particular, the right to freedom of expression, as expressed in Article 10 of the Convention, encompasses the audience’s right to receive creative material, information and ideas without interference but subject to restrictions prescribed by law and necessary in a democratic society. This Article, together with Article 8 regarding the right to a person’s private and family life, home and correspondence; Article 9, the right to freedom of thought, conscience and religion; and Article 14, the right to enjoyment of human rights without discrimination on grounds such as sex, race and religion, can be found in Appendix 3 of the Code.

1. In this Broadcasting Code, where the context admits, references to any legislative provisions, whether in primary or secondary legislation, include a reference to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time; any reference to a statutory provision shall include any subordinate legislation made from time to time under that provision..

Unless expressly stated otherwise, the Code applies to radio and television content (with certain exceptions in the case of the British Broadcasting Corporation (“the BBC”) – see below) in services licensed by Ofcom, services funded by the licence fee provided by the BBC and to Sianel Pedwar Cymru (“S4C”).

Broadcasters are required by the terms of their Ofcom licence to observe the Standards Code and the Fairness Code, which are to be interpreted as references to this Code. Observance of this Code is also required in the case of the BBC by the BBC Agreement² and, in the case of S4C, by statute. Except where the Code states otherwise, the term “television broadcasters” refers to providers of television programme services (including any local services such as restricted television services), the BBC and S4C, and “radio broadcasters” refers to providers of radio programme services (including local and community radio services and community digital sound programme services) and the BBC. Sections Five, Six, Nine, with the exception of the relevant product placement rules (see Section Nine), and Ten of the Code do not apply to BBC services funded by the licence fee. No part of the Code applies to the BBC World Service funded by grant in aid.

Under the Act, the provider of a service is the person with “general control” over which programmes and other facilities and services are comprised in the service (section 362(2) of the Act).

General control is wider than editorial control in that it includes control over services and facilities to which access is provided (for example through the inclusion in the main service of a link or facility to interactive features) and over which the broadcaster may not have editorial control.

Although a link included in the service may lead to features outside of that service which are not regulated by Ofcom, the provision of access to those features by, for instance, the inclusion of a link, is within the control of the broadcaster and so within Ofcom’s remit. Ofcom may therefore require such a link or facility to be removed where Ofcom has concerns, in the light of its statutory duties and, in particular, the standards objectives set out in section 319 of the Act, about the material to which it

2. The BBC Agreement is the Agreement dated July 2006 between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation as may be amended from time to time.

leads. In any event, the transition from broadcaster to third-party control must be clear to the viewer, so as to manage both audience expectations regarding the material to which they are being led and the risk to the broadcaster of being found in breach of this Code (for example Rules 1.2 and 2.1).

Where the Code has been breached, Ofcom will normally publish a finding and explain why a broadcaster has breached the Code (these findings are available in Ofcom's Broadcast Bulletins at www.ofcom.org.uk). When a broadcaster breaches the Code deliberately, seriously or repeatedly, Ofcom may impose statutory sanctions against the broadcaster. Ofcom's procedures for investigating cases (following the receipt of a complaint or otherwise) and applying statutory sanctions to broadcasters are also on the website. Members of the public who have no access to the web can ask Ofcom to send them a copy of the procedures by post.

The Code is divided into sections which are primarily drawn from the objectives as set out in section 319(2) of the Act and section 107(1) of the 1996 Act, as well as the Representation of the People Act 1983 (as amended).

How to Use the Code

The Code is set out in terms of principles, meanings and rules and, for Sections Seven (Fairness) and Eight (Privacy), also includes a set of “practices to be followed” by broadcasters. The principles are there to help readers understand the standards objectives and to apply the rules. Broadcasters must ensure that they comply with the rules as set out in the Code. The meanings help explain what Ofcom intends by some of the words and phrases used in the Code. The most relevant broadcasting legislation is noted under each section heading so readers can turn to the legislation if they wish.

When applying the Code to content, broadcasters should be aware that the context in which the material appears is key. In setting this Code, Ofcom has taken into account (as required by section 319(4) of the Act) the following:

- (a) the degree of harm and offence likely to be caused by the inclusion of any particular sort of material in programmes generally or in programmes of a particular description;
- (b) the likely size and composition of the potential audience for programmes included in television and radio services generally or in television and radio services of a particular description;
- (c) the likely expectation of the audience as to the nature of a programme’s content and the extent to which the nature of a programme’s content can be brought to the attention of potential members of the audience;
- (d) the likelihood of persons who are unaware of the nature of a programme’s content being unintentionally exposed, by their own actions, to that content;
- (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section;
- (f) the desirability of maintaining the independence of editorial control over programme content.

These criteria have informed Ofcom’s approach to setting the Code and therefore must be taken into account by broadcasters when interpreting the rules.

The Code does not seek to address each and every case that could arise. Broadcasters may face a number of individual situations which are not specifically referred to in this Code. Examples included in the Code are not exhaustive. However, the principles, as outlined in the following sections, should make clear what the Code is designed to achieve and help broadcasters make the necessary judgements.

To assist further those who work in broadcasting, as well as viewers and listeners who wish to understand broadcasting standards, guidance to accompany the Code will also be issued by Ofcom on the Ofcom website and will be reviewed regularly.

Broadcasters should be familiar with their audiences and ensure that programme content can always be justified by the context and the editorial needs of the programme. (In the Code, the word ‘programmes’ is taken to mean both television programmes and radio programming.)

Broadcasters may make programmes about any issue they choose, but it is expected that broadcasters will ensure at all times that their programmes comply with the general law, as well as the Code.

General guidance on the Code

It is the responsibility of the broadcaster to comply with the Code. Programme makers who require further advice on applying this Code should, in the first instance, talk to those editorially responsible for the programme and to the broadcaster’s compliance and legal officers.

Ofcom can offer general guidance on the interpretation of the Code. However, any such advice is given on the strict understanding that it will not affect Ofcom’s discretion to judge cases and complaints after transmission and will not affect the exercise of Ofcom’s regulatory responsibilities. Broadcasters should seek their own legal advice on any compliance issues arising. Ofcom will not be liable for any loss or damage arising from reliance on informal guidance.

Section One: Protecting the Under-Eighteens

(Relevant legislation includes, in particular, sections 3(4)(h) and 319(2)(a) and (f) of the Communications Act 2003, Article 27 of the Audiovisual Media Services Directive, and Article 10 of the European Convention on Human Rights.)

This section must be read in conjunction with Section Two: Harm and Offence.

Principle

To ensure that people under eighteen are protected.

Rules

Scheduling and content information

- 1.1 Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.
- 1.2 In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen. For television services, this is in addition to their obligations resulting from the Audiovisual Media Services Directive (in particular, Article 27, see Appendix 2).
- 1.3 Children must also be protected by appropriate scheduling from material that is unsuitable for them.

Meaning of “children”:

Children are people under the age of fifteen years.

Meaning of “appropriate scheduling”:

Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

1.4 Television broadcasters must observe the watershed.

Meaning of “the watershed”:

The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

On premium subscription film services which are not protected as set out in Rule 1.24, the watershed is at 2000. There is no watershed on premium subscription film services or pay per view services which are protected as set out in Rule 1.24 and 1.25 respectively.

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

Meaning of “when children are particularly likely to be listening”:

This phrase particularly refers to the school run and breakfast time, but might include other times.

- 1.6 The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule.
- 1.7 For television programmes broadcast before the watershed, or for radio programmes broadcast when children are particularly likely to be listening, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context).
(For the meaning of “context” see Section Two: Harm and Offence.)

The coverage of sexual and other offences in the UK involving under-eighteens

- 1.8 Where statutory or other legal restrictions apply preventing personal identification, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:
- by reporting limited information which may be pieced together with other information available elsewhere, for example in newspaper reports (the ‘jigsaw effect’);
 - inadvertently, for example by describing an offence as “incest”; or
 - in any other indirect way.

(Note: Broadcasters should be aware that there may be statutory reporting restrictions that apply even if a court has not specifically made an order to that effect.)

- 1.9 When covering any pre-trial investigation into an alleged criminal offence in the UK, broadcasters should pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. Particular justification is also required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved in the defence as a defendant or potential defendant.

Drugs, smoking, solvents and alcohol

- 1.10 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;

- must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification;
- must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.

Violence and dangerous behaviour

- 1.11 Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio) and must also be justified by the context.
- 1.12 Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful or dangerous:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.
- 1.13 Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:
- must not be featured in programmes made primarily for children unless there is strong editorial justification;
 - must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.

(Regarding Rules 1.11 to 1.13 see Rules 2.4 and 2.5 in Section Two: Harm and Offence.)

Offensive language

- 1.14 The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio).
- 1.15 Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances.
- 1.16 Offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

(Regarding Rules 1.14 to 1.16 see Rule 2.3 in Section Two: Harm and Offence.)

Sexual material

- 1.17 Material equivalent to the British Board of Film Classification (“BBFC”) R18-rating must not be broadcast at any time.
- 1.18 ‘Adult sex material’ - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access.

In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of “mandatory restricted access”:

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

- 1.19 Broadcasters must ensure that material broadcast after the watershed which contains images and/or language of a strong or explicit sexual nature, but is not ‘adult sex material’ as defined in Rule 1.18 above, is justified by the context.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of “context”).

- 1.20 Representations of sexual intercourse must not occur before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited.

Nudity

- 1.21 Nudity before the watershed must be justified by the context.

Films, premium subscription film services, pay per view services

- 1.22 No film refused classification by the British Board of Film Classification (BBFC) may be broadcast unless it has subsequently been classified or the BBFC has confirmed that it would not be rejected according to the standards currently operating. Also, no film cut as a condition of classification by the BBFC may be transmitted in a version which includes the cut material unless:
- the BBFC has confirmed that the material was cut to allow the film to pass at a lower category; or
 - the BBFC has confirmed that the film would not be subject to compulsory cuts according to the standards currently operating.
- 1.23 BBFC 18-rated films or their equivalent must not be broadcast before 2100 on any service (except for pay per view services), and even then they may be unsuitable for broadcast at that time.
- 1.24 Premium subscription film services may broadcast up to BBFC 15-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2000 and post-0530.

In addition, those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of “mandatory restricted access” under Rule 1.18 above.)

- 1.25 Pay per view services may broadcast up to BBFC 18-rated films or their equivalent, at any time of day provided that mandatory restricted access is in place pre-2100 and post-0530.

In addition:

- information must be provided about programme content that will assist adults to assess its suitability for children;
- there must be a detailed billing system for subscribers which clearly itemises all viewing including viewing times and dates; and
- those security systems which are in place to protect children must be clearly explained to all subscribers.

(See meaning of “mandatory restricted access” under Rule 1.18 above.)

- 1.26 BBFC R18-rated films must not be broadcast.

Exorcism, the occult and the paranormal

- 1.27 Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio). Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching, or are particularly likely to be listening. (This rule does not apply to drama, film or comedy.)

(See Rules 2.6 to 2.8 in Section Two: Harm and Offence and Rule 4.7 in Section Four: Religion.)

The involvement of people under eighteen in programmes

- 1.28 Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.
- 1.29 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.
- 1.30 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants.

(See Rule 2.16 in Section Two: Harm and Offence.)

Section Two: Harm and Offence

(Relevant legislation includes, in particular, sections 3(4)(g) and (l) and 319(2)(a), (f) and (l) of the Communications Act 2003, and Articles 10 and 14 of the European Convention on Human Rights.)

This section must be read in conjunction with Section One: Protecting the Under-Eighteens. The rules in this section are designed not only to provide adequate protection for adults but also to protect people under eighteen.

Principle

To ensure that generally accepted standards are applied to the content of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.

Rules

Generally Accepted Standards

- 2.1 Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.
- 2.2 Factual programmes or items or portrayals of factual matters must not materially mislead the audience.

(Note to Rule 2.2: News is regulated under Section Five of the Code.)
- 2.3 In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of “context” below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Meaning of “context”:

Context includes (but is not limited to):

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast;
- what other programmes are scheduled before and after the programme or programmes concerned;
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on viewers or listeners who may come across it unawares.

Violence, dangerous behaviour and suicide

- 2.4 Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour.

(See Rules 1.11 to 1.13 in Section One: Protecting the Under-Eighteens.)

- 2.5 Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context.

(See Rule 1.13 in Section One: Protecting the Under-Eighteens.)

Exorcism, the occult and the paranormal

- 2.6 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with due objectivity.

(See Rule 1.27 in Section One: Protecting the Under-Eighteens, concerning scheduling restrictions.)

- 2.7 If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.
- 2.8 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals.

(Religious programmes are exempt from this rule but must, in any event, comply with the provisions in Section Four: Religion. Films, dramas and fiction generally are not bound by this rule.)

Meaning of “life-changing”:

Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

Hypnotic and other techniques, simulated news and photosensitive epilepsy

- 2.9 When broadcasting material featuring demonstrations of hypnotic techniques, broadcasters must exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not broadcast his/her full verbal routine or be shown performing straight to camera.
- 2.10 Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.

- 2.11 Broadcasters must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred.
- 2.12 Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

Broadcast competitions and voting

- 2.13 Broadcast competitions and voting must be conducted fairly.
- 2.14 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.
- 2.15 Broadcasters must draw up rules for a broadcast competition or vote. These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time an invitation to participate is broadcast.
- 2.16 Broadcast competition prizes must be described accurately.

(See also Rule 1.30 in Section One: Protecting the Under Eighteens, which concerns the provision of appropriate prizes for children.)

Note:

For circumstances in which audience participation or interaction with programming (including broadcast competitions and voting) may involve a cost to the viewer, television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 and 10.10.

Meaning of “broadcast competition”:

A competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means for the opportunity to win a prize.

Meaning of “voting”:

Features in a programme in which viewers or listeners are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

Section Three: Crime, Disorder, Hatred and Abuse

(Relevant legislation includes, in particular, sections 3(4)(j), 319(2)(b) and 319(2)(f) of the Communications Act 2003, Article 6 of the Audiovisual Media Services Directive, and Article 10 of the European Convention on Human Rights.)

Foreward

This section of the Code covers material that is likely to incite crime or disorder, reflecting Ofcom's duty to prohibit the broadcast of this type of programming.

There are also rules in this section covering material containing hatred, abusive and derogatory treatment, and portrayals of crime and criminal proceedings. These are relevant to Ofcom's duty to provide adequate protection for members of the public from the inclusion in television and radio services of offensive and harmful material. (See also Section Two: Harm and Offence).

The rules in this section are intended to reflect broadcasters' right to freedom of expression and audiences' right to receive information and ideas. For example, broadcasters may wish to report on or interview people or organisations with extreme or challenging views in news and current affairs coverage, which is clearly in the public interest. There are various editorial approaches broadcasters can take to provide context when featuring extreme and/or offensive views in broadcast material, some of which are set out below.

As with other sections of the Code, no rule should be read in isolation but in the context of the whole Code and the supporting notes provided. Broadcasters should also refer to Ofcom's published guidance for more information on complying material under this Section.

Principle

To ensure that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television or radio services.

Rules

Incitement of crime and disorder

- 3.1 Material likely to encourage or to incite the commission of crime or to lead to disorder must not be included in television or radio services.

Note:

Under Rule 3.1, “material” may include but is not limited to:

- content which directly or indirectly amounts to a call to criminal action or disorder;
- material promoting or encouraging engagement in terrorism or other forms of criminal activity or disorder; and/or
- hate speech which is likely to encourage criminal activity or lead to disorder.

Meaning of “terrorism”:

See the definition in section 1 of the Terrorism Act 2000, which is also summarised in Ofcom’s guidance to this section of the Code.

Meaning of “hate speech”:

all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, gender, gender reassignment, nationality, race, religion, or sexual orientation.

Meaning of “crime”:

This may relate to any offence under law that is punishable by imprisonment or by a fine.

Meaning of “disorder”:

This includes but is not limited to the criminal offence of civil disorder.

Meaning of “likely to encourage or to incite the commission of crime or to lead to disorder”:

A portrayal of crime, or of incitement to crime, will not necessarily result in a breach of Rule 3.1. The likelihood of content inciting crime or leading to disorder will depend on the nature of the material as well as the context in which it is presented to the audience.

Significant contextual factors under Rule 3.1 may include (but are not limited to):

- the editorial purpose of the programme;
- the status or position of anyone featured in the material; and/or
- whether sufficient challenge is provided to the material.

For example, there may be greater potential for material to encourage or incite the commission of crime if a programme sets out to influence the audience on a subject or theme, or provides an uncritical platform for an authoritative figure to advocate criminal activity or disorder.

There may be less potential for a breach of Rule 3.1 if opposing viewpoints and sufficient challenge are provided to people or organisations who advocate criminal activity or disorder, or where a programme seeks to provide an examination of or commentary on criminal activity or disorder in the public interest.

Other examples of contextual factors are provided in Ofcom's guidance to this Section of the Code.

Hatred and Abuse

Note:

Rules 3.2 and 3.3 reflect the standards objective on the provision of adequate protection for members of the public from the inclusion of offensive and harmful material (section 319(2)(f) of the Communications Act 2003).

- 3.2 Material which contains hate speech must not be included in television and radio programmes except where it is justified by the context.

Broadcasters' attention is drawn to sections 22 and 29F of the Public Order Act 1986, which sets out criminal offences arising from the broadcast of material stirring up hatred relating to race, religion, or sexual orientation.

- 3.3 Material which contains abusive or derogatory treatment of individuals, groups, religions or communities, must not be included in television and radio services except where it is justified by the context. (See also Rule 4.2).

Meaning of “context” under Rule 3.2 and Rule 3.3:

Key contextual factors may include, but are not limited to:

- the genre and editorial content of the programme, programmes or series and the likely audience expectations. For example, there are certain genres such as drama, comedy or satire where there is likely to be editorial justification for including challenging or extreme views in keeping with audience expectations, provided there is sufficient context. The greater the risk for the material to cause harm or offence, the greater the need for more contextual justification;
- the extent to which sufficient challenge is provided;
- the status or position of anyone featured in the material;
- the service on which the material is broadcast; and
- the likely size and composition of the potential audience and likely expectation of the audience.

Portrayals of crime and criminal proceedings

- 3.4 Descriptions or demonstrations of criminal techniques which contain essential details which could enable the commission of crime must not be broadcast unless editorially justified.
- 3.5 No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether directly or indirectly for a programme contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.
- 3.6 While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor should any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

- 3.7 Where criminal proceedings are likely and foreseeable, payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it will be appropriate to disclose the payment to both defence and prosecution if the person becomes a witness in any subsequent trial.
- 3.8 Broadcasters must use their best endeavours so as not to broadcast material that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

Section Four: Religion

(Relevant legislation includes, in particular, sections 319(2)(e) and 319(6) of the Communications Act 2003, and Articles 9, 10 and 14 of the European Convention on Human Rights.)

The rules in this section apply to religious programmes.

Principles

To ensure that broadcasters exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.

To ensure that religious programmes do not involve any improper exploitation of any susceptibilities of the audience for such a programme.

To ensure that religious programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

Rules

- 4.1 Broadcasters must exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.

Meaning of a “religious programme”:

A religious programme is a programme which deals with matters of religion as the central subject, or as a significant part, of the programme.

- 4.2 The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.
- 4.3 Where a religion or religious denomination is the subject, or one of the subjects, of a religious programme, then the identity of the religion and/or denomination must be clear to the audience.
- 4.4 Religious programmes must not seek to promote religious views or beliefs by stealth.

- 4.5 Religious programmes on television services must not seek recruits. This does not apply to specialist religious television services. Religious programmes on radio services may seek recruits.

Meaning of “seek recruits”:

Seek recruits means directly appealing to audience members to join a religion or religious denomination.

- 4.6 Religious programmes must not improperly exploit any susceptibilities of the audience.
- (Regarding charity appeals in programming and appeals for funds by broadcasters, television broadcasters should refer to Rules 9.33 and 9.34, and 9.36 to 9.39. Radio broadcasters should refer to Rules 10.11 and 10.12).
- 4.7 Religious programmes that contain claims that a living person (or group) has special powers or abilities must treat such claims with due objectivity and must not broadcast such claims when significant numbers of children may be expected to be watching (in the case of television), or when children are particularly likely to be listening (in the case of radio).

Section Five:

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

(Relevant legislation includes, in particular, sections 319(2)(c) and (d), 319(8) and section 320 of the Communications Act 2003, and Article 10 of the European Convention on Human Rights.)

This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust.

Principles

To ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality.

To ensure that the special impartiality requirements of the Act are complied with.

Rules

Meaning of “due impartiality”:

“Due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.

Due impartiality and due accuracy in news

- 5.1 News, in whatever form, must be reported with due accuracy and presented with due impartiality.
- 5.2 Significant mistakes in news should normally be acknowledged and corrected on air quickly. Corrections should be appropriately scheduled.

- 5.3 No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.

Special impartiality requirements: news and other programmes

Matters of political or industrial controversy and matters relating to current public policy

Meaning of “matters of political or industrial controversy and matters relating to current public policy”:

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions, etc.

The exclusion of views or opinions

(Rule 5.4 applies to television and radio services except restricted services.)

- 5.4 Programmes in the services (listed above) must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

The preservation of due impartiality

(Rules 5.5 to 5.12 apply to television programme services, teletext services, national radio and national digital sound programme services.)

- 5.5 Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person

providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

Meaning of “series of programmes taken as a whole”:

This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a ‘cluster’ or ‘season’ of programmes on the same subject.

- 5.6 The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air.
- 5.7 Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.
- 5.8 Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.
- 5.9 Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of “personal view” or “authored” programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views.
- 5.10 A personal view or authored programme or item must be clearly signalled to the audience at the outset. This is a minimum requirement and may not be sufficient in all circumstances. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear.)

Meaning of “personal view” and “authored”:

“Personal view” programmes are programmes presenting a particular view or perspective. Personal view programmes can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered “authored” opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream.

Matters of major political or industrial controversy and major matters relating to current public policy

- 5.11 In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.

Meaning of “matters of major political or industrial controversy and major matters relating to current public policy”:

These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area.

- 5.12 In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

The prevention of undue prominence of views and opinions on matters of political or industrial controversy and matters relating to current public policy

(Rule 5.13 applies to local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services.)

- 5.13 Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service (listed above) taken as a whole.

Meaning of “undue prominence of views and opinions”:

Undue prominence is a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.

Meaning of “programmes included in any service...Taken as a whole”:

Programmes included in any service taken as a whole means all programming on a service dealing with the same or related issues within an appropriate period.

Section Six: Elections and Referendums

(Relevant legislation includes, in particular, sections 319(2)(c) and 320 of the Communications Act 2003, and Article 10 of the European Convention on Human Rights. Broadcasters should also have regard to relevant sections of the Representation of the People Act 1983 (as amended) (“RPA”) – see in particular sections 66A, 92 and 93 (which is amended by section 144 of the Political Parties, Elections and Referendums Act 2000).)

This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust.

Rules made under section 333 of the Communications Act 2003 (regarding party election broadcasts, party political broadcasts and referendum campaign broadcasts) and paragraph 18 of Schedule 12 are contained in *Ofcom Rules on Party Political and Referendum Broadcasts* on the Ofcom website. However, such broadcasts are also required to comply with the relevant provisions of this Code, for example the provisions regarding harm and offence – notwithstanding that the content is normally the responsibility of the relevant political parties.

Principle

To ensure that the special impartiality requirements in the Communications Act 2003 and other legislation relating to broadcasting on elections and referendums, are applied at the time of elections and referendums.

Rules

Programmes at the time of elections and referendums

- 6.1 The rules in Section Five, in particular the rules relating to matters of major political or industrial controversy and major matters relating to current public policy, apply to the coverage of elections and referendums.

Programmes at the time of elections and referendums in the UK

The remainder of this section only applies during the actual election or referendum period which is defined below.

Meaning of “election”:

For the purpose of this section elections include a parliamentary general election, parliamentary by-election, local government election, mayoral election, Police and Crime Commissioner election, Scottish Parliament election, Welsh, Northern Ireland and London Assembly elections, and European parliamentary election.

Meaning of “referendum”:

For the purpose of this section a referendum (to which the Political Parties, Elections and Referendums Act 2000 applies) includes a UK-wide, national or regional referendum but does not extend to a local referendum.

- 6.2 Due weight must be given to the coverage of larger parties during the election period. Broadcasters must also consider giving appropriate coverage to other parties and independent candidates with significant views and perspectives.

Meaning of “larger party”:

At present larger parties for each nation in the United Kingdom are defined in the Ofcom list of larger parties (see <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/larger-parties.pdf>)

Meaning of “election period”:

For a parliamentary general election, this period begins with the dissolution of Parliament. For a parliamentary by-election, this period begins with the issuing of a writ or on such earlier date as is notified in the London Gazette. For the Scottish Parliament elections and National Assembly for Wales elections, the period begins with the dissolution of the Scottish Parliament or the National Assembly for Wales as appropriate or, in the case of a by-election, with the date of the occurrence of a vacancy. For the Northern Ireland Assembly, the London Assembly and for local government elections, it is the last date for publication of notices of the election. For European parliamentary elections, it is the last date for publication of the notice of election, which is 25 days before the election. In all cases the period ends with the close of the poll.

Meaning of “candidate”:

Candidate has the meaning given to it in section 93 of the Representation of the People Act 1983 (as amended) and means a candidate standing nominated at the election or included in a list of candidates submitted in connection with it.

- 6.3 Due weight must be given to designated organisations in coverage during the referendum period. Broadcasters must also consider giving appropriate coverage to other permitted participants with significant views and perspectives.

Meaning of “designated organisation” and “permitted participants”:

Designated organisations and permitted participants are those that are designated by the Electoral Commission.

Meaning of “referendum period”:

For referendums different periods may apply. A referendum held under the Northern Ireland Act 1998 (as amended) begins when the draft of an Order is laid before Parliament for approval by each House. In the case of a referendum held under other Acts, the time at which a referendum period commences is given in the individual Acts. In the case of an Order before Parliament, the time will be given in that Order. In all cases the period ends with the close of the poll.

- 6.4 Discussion and analysis of election and referendum issues must finish when the poll opens. (This refers to the opening of actual polling stations. This rule does not apply to any poll conducted entirely by post.)
- 6.5 Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes. (For European Parliamentary elections, this applies until all polls throughout the European Union have closed.)

- 6.6 Candidates in UK elections, and representatives of permitted participants in UK referendums, must not act as news presenters, interviewers or presenters of any type of programme during the election period.
- 6.7 Appearances by candidates (in UK elections) or representatives (of permitted participants in UK referendums) in non-political programmes that were planned or scheduled before the election or referendum period may continue, but no new appearances should be arranged and broadcast during the period.

Constituency coverage and electoral area coverage in elections

(Rules 6.8 to 6.13 will only apply to S4C if S4C has adopted them under the RPA as its Code of Practice.)

- 6.8 Due impartiality must be strictly maintained in a constituency report or discussion and in an electoral area report or discussion.

Meaning of “electoral area”:

Electoral area (for example electoral division, borough ward or other area) is the local government equivalent to the parliamentary term “constituency”.

- 6.9 If a candidate takes part in an item about his/her particular constituency, or electoral area, then candidates of each of the larger parties must be offered the opportunity to take part. (However, if they refuse or are unable to participate, the item may nevertheless go ahead.)
- 6.10 In addition to Rule 6.9, broadcasters must offer the opportunity to take part in constituency or electoral area reports and discussions, to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. (However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.)
- 6.11 Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names,

surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision. Where a constituency report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

- 6.12 Where a candidate is taking part in a programme on any matter, after the election has been called, s/he must not be given the opportunity to make constituency points, or electoral area points about the constituency or electoral area in which s/he is standing, when no other candidates will be given a similar opportunity.
- 6.13 If coverage is given to wider election regions, for example in elections to the Scottish Parliament, Welsh Assembly, Northern Ireland Assembly, London Assembly or European Parliament, then Rules 6.8 to 6.12 apply in offering participation to candidates. In these instances, all parties who have a candidate in the appropriate region should be listed in sound and/or vision, but it is not necessary to list candidates individually. However, any independent candidate who is not standing on a party list must be named. Where a report on a radio service is repeated on several occasions in the same day, the full list need only be broadcast on one occasion. If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or other information source listing all candidates and giving the information set out above.

Section Seven: Fairness

(Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003 and sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), Article 28 of the Audiovisual Media Services Directive and Article 10 of the European Convention on Human Rights.)

Foreword

This section and the following section on privacy are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes as broadcast. Following these practices will not necessarily avoid a breach of this section of the Code (Rule 7.1). *However, failure to follow these practises will only constitute a breach where it results in unfairness to an individual or organisation in the programme.* Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid unfair treatment.

The following provisions in the next section on privacy are also relevant to this section:

- the explanation of public interest that appears in the meaning of “warranted” under Rule 8.1 in Section Eight: Privacy;
- the meaning of surreptitious filming or recording that appears under “practices to be followed” 8.13 in Section Eight: Privacy.

Principle

To ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes.

Rule

- 7.1 Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes.

Practices to be followed (7.2 to 7.14 below)

Dealing fairly with contributors and obtaining informed consent

- 7.2 Broadcasters and programme makers should normally be fair in their dealings with potential contributors to programmes unless, exceptionally, it is justified to do otherwise.
- 7.3 Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:
- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
 - be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc.;
 - be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
 - be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
 - be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
 - be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

Taking these measures is likely to result in the consent that is given being ‘informed consent’ (referred to in this section and the rest of the Code as “consent”).

It may be fair to withhold all or some of this information where it is justified in the public interest or under other provisions of this section of the Code.

- 7.4 If a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or other person of eighteen or over in loco parentis. In particular, persons under sixteen should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.
- 7.5 In the case of persons over sixteen who are not in a position to give consent, a person of eighteen or over with primary responsibility for their care should normally give it on their behalf. In particular, persons not in a position to give consent should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.
- 7.6 When a programme is edited, contributions should be represented fairly.
- 7.7 Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.
- 7.8 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create unfairness. This applies both to material obtained from others and the broadcaster's own material.

Opportunity to contribute and proper consideration of facts

- 7.9 Before broadcasting a factual programme, including programmes examining past events, broadcasters should take reasonable care to satisfy themselves that:
- material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation; and
 - anyone whose omission could be unfair to an individual or organisation has been offered an opportunity to contribute.
- 7.10 Programmes – such as dramas and factually-based dramas – should not portray facts, events, individuals or organisations in a way which is unfair to an individual or organisation.

- 7.11 If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.
- 7.12 Where a person approached to contribute to a programme chooses to make no comment or refuses to appear in a broadcast, the broadcast should make clear that the individual concerned has chosen not to appear and should give their explanation if it would be unfair not to do so.
- 7.13 Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

Deception, set-ups and ‘wind-up’ calls

- 7.14 Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However:
- it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means;
 - where there is no adequate public interest justification, for example some unsolicited wind-up calls or entertainment set-ups, consent should be obtained from the individual and/or organisation concerned before the material is broadcast;
 - if the individual and/or organisation is/are not identifiable in the programme then consent for broadcast will not be required;
 - material involving celebrities and those in the public eye can be used without consent for broadcast, but it should not be used without a public interest justification if it is likely to result in unjustified public ridicule or personal distress. (Normally, therefore such contributions should be pre-recorded.)

(See “practices to be followed” 8.11 to 8.15 in Section Eight: Privacy.)

Section Eight: Privacy

(Relevant legislation includes, in particular, sections 3(2)(f) and 326 of the Communications Act 2003, sections 107(1) and 130 of the Broadcasting Act 1996 (as amended), and Articles 8 and 10 of the European Convention on Human Rights.)

Foreword

This section and the preceding section on fairness are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating or otherwise directly affected by programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of this section of the Code (Rule 8.1). *However, failure to follow these practises will only constitute a breach where it results in an unwarranted infringement of privacy.* Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid an unwarranted infringement of privacy.

The Broadcasting Act 1996 (as amended) requires Ofcom to consider complaints about unwarranted infringement of privacy in a programme or in connection with the obtaining of material included in a programme. This may call for some difficult on-the-spot judgments about whether privacy is unwarrantably infringed by filming or recording, especially when reporting on emergency situations (“practices to be followed” 8.5 to 8.8 and 8.16 to 8.19). We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand 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.

Where consent is referred to in Section Eight it refers to informed consent.

Please see “practice to be followed” 7.3 in Section Seven: Fairness.

Principle

To ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

Rule

- 8.1 Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Meaning of “warranted”:

In this section “warranted” has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Practices to be followed (8.2 to 8.22)

Private lives, public places and legitimate expectation of privacy

Meaning of “legitimate expectation of privacy”:

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

- 8.2 Information which discloses the location of a person's home or family should not be revealed without permission, unless it is warranted.
- 8.3 When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.
- 8.4 Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

Consent

- 8.5 Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.
- 8.6 If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution.)
- 8.7 If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.
- 8.8 When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

- However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

Gathering information, sound or images and the re-use of material

- 8.9 The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.
- 8.10 Broadcasters should ensure that the re-use of material, i.e. use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.
- 8.11 Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places.

(See “practice to be followed” 8.15.)

Meaning of “doorstepping”:

Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

- 8.12 Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so.
(See “practices to be followed” 7.14 and 8.13 to 8.15.)
- 8.13 Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:
- there is *prima facie* evidence of a story in the public interest; and
 - there are reasonable grounds to suspect that further material evidence could be obtained; and
 - it is necessary to the credibility and authenticity of the programme.
- (See “practices to be followed” 7.14, 8.12, 8.14 and 8.15.)

Meaning of “surreptitious filming or recording”:

Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and 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.

- 8.14 Material gained by surreptitious filming and recording should only be broadcast when it is warranted.
(See also “practices to be followed” 7.14 and 8.12 to 8.13 and 8.15.)

- 8.15 Surreptitious filming or recording, doorstepping or recorded ‘wind-up’ calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be broadcast without the consent of those involved. However if the individual and/or organisation is not identifiable in the programme then consent for broadcast will not be required.

(See “practices to be followed” 7.14 and 8.11 to 8.14.)

Suffering and distress

- 8.16 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.
- 8.17 People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.
- 8.18 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.
- 8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.
- In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

People under sixteen and vulnerable people

- 8.20 Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.
- 8.21 Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:
- a parent, guardian or other person of eighteen or over *in loco parentis*; and
 - wherever possible, the individual concerned;
 - unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.
- 8.22 Persons under sixteen and vulnerable people should not be questioned about private matters without the consent of a parent, guardian or other person of eighteen or over *in loco parentis* (in the case of persons under sixteen), or a person with primary responsibility for their care (in the case of a vulnerable person), unless it is warranted to proceed without consent.

Meaning of “vulnerable people”:

This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.

Section Nine: Commercial References in Television Programming

(Relevant legislation includes, in particular, sections 319(2)(fa), (i) and (j) and 319(4) (a), (c), (e) and (f), section 321(1) and (4) and section 324(3) of the Communications Act 2003; section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2), Articles 9, 10, 11, and Chapter VII (Articles 19 to 26) of the Audiovisual Media Services Directive; regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008; section 21(1) of the Financial Services and Markets Act 2000; paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005; and Article 10 of the European Convention on Human Rights).

This section of the Code covers all commercial references that feature **within television programming**. Section Ten of the Code concerns radio only.

Commercial references on the two media are subject to varying legislative requirements. Therefore where similar terminology is used in Sections Nine and Ten of the Code, it does not necessarily have the same meaning. Broadcasters should refer to the specific meanings provided in each section.

Note:

This section of the Code contains **a set of principles and general, overarching rules** that apply to all commercial references in television programming. It also contains **specific rules** for different types of commercial references (e.g. product placement, programme-related material, sponsorship).

The rules ensure that the principles of editorial independence; distinction between advertising and editorial content; transparency of commercial arrangements; and consumer protection are maintained.

This section does not apply to BBC services funded by the licence fee, with the exception of the relevant product placement rules (see the additional note on the BBC that accompanies the product placement rules).

Meaning of “programming”:

All broadcast content except spot advertising and teleshopping. Programmes, trailers, cross-promotions and sponsorship credits are all forms of programming.

Meaning of “commercial reference”:

Any visual or audio reference within programming to a product, service or trade mark (whether related to a commercial or non-commercial organisation).

Meaning of “trade mark”:

In relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.

Principles

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).

Rules**General rules****Note:**

Rules 9.1 to 9.5 apply to all commercial references included within television programming. They reflect the fact that the inclusion of commercial references in television programming creates a particular risk that the key principles may be, or appear to be, undermined.

- 9.1 Broadcasters must maintain independent editorial control over programming.
- 9.2 Broadcasters must ensure that editorial content is distinct from advertising.

Note:

For the definition of “advertising”, see Ofcom’s Code on the scheduling of television advertising (“COSTA”).

- 9.3 Surreptitious advertising is prohibited.

Meaning of “surreptitious advertising”:

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 to the broadcaster or producer.

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

Note:

For specific exemptions to this rule, see rules on premium rate services (Rules 9.26 to 9.30) and rules on programme-related material (Rules 9.31 and 9.32).

- 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.

Product placement (and prop placement)

Broadcasters should note that the meanings set out below are statutory definitions included in UK legislation (unless indicated otherwise, the Communications Act 2003, as amended).

Meaning of “product placement”:

The inclusion in a programme of, or of a reference to, a product, service or trade mark 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 relevant provider or any person connected with a relevant provider, and is not prop placement.

Meaning of “prop placement”:

The inclusion in a programme of, or of a reference to, a product, service or trade mark where the provision of the product, service or trade mark has no significant value, and no relevant provider, 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 product, service or trade mark, or a reference to it, in the programme.

Prop placement involving the supply of products or services that are of “significant value” will be treated as product placement and must comply with Rules 9.6 to 9.14.

Meaning of “significant value”:

A residual value that is more than trivial.

Meaning of “residual value”:

Any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trade mark, or a reference to it, in a programme.

Meaning of “relevant provider”:

The provider of the television programme service in which the programme is included or the producer of the programme.

Meaning of “connected person”:

Connected person has the same meaning as it has in section 202 of the Broadcasting Act 1990 (paragraph 3 in Part 1 of Schedule 2). The full definition is reproduced in Appendix 1 of the Code (Relevant UK legislation). 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.

Control and associate have the meanings set out in paragraph 1, Part 1, Schedule 2 of the 1990 Act. The full definition is reproduced in Appendix 1 of the Code (Relevant legislation).

Notes:

- 1) The BBC is prohibited from accepting most types of commercial revenue in relation to services funded by the licence fee. However, the Act’s product placement requirements apply to programmes the BBC acquires or those produced/commissioned by its commercial services or any connected entities. The Code rules required by the Act apply to the BBC in those respects.
- 2) The following rules also apply to paid-for references to products, services or trade marks that are included in a programme for a non-commercial purpose.
- 3) The rules do not permit the inclusion in programmes of paid-for references to other interests of third party funders (e.g. their aims, objectives or beliefs). Broadcasters should also refer to Rule 9.1 and Section Five of the Code.

Rules 9.6 to 9.11 apply to all programmes

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.

Meaning of “films”:

Includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services.

“Series made for television (or other audiovisual media services)” includes serials.

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.

Meaning of a “children’s programme”:

In this context a children’s programme 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”.

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

Note:

There must always be sufficient editorial justification for the inclusion of product placement in programmes. In particular, editorial content must not be created or distorted so that it becomes a vehicle for the purpose of featuring placed products, services or trade marks.

- 9.9 References to placed products, services and trade marks must not be promotional.
- 9.10 References to placed products, services and trade marks must not be unduly prominent.

Note:

Broadcasters should refer to the guidance accompanying Section Nine of the Code for further information on how to apply Rules 9.9 and 9.10.

- 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.

In addition to Rules 9.6 to 9.11, Rules 9.12 to 9.13 also apply to product placement included in all programmes produced under UK jurisdiction:

Meaning of “programmes produced under UK jurisdiction”:

“programmes produced under UK jurisdiction” means 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 AVMS Directive).

9.12 Product placement is not permitted in the following:

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

Meaning of “current affairs programme”:

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.

9.13 The product placement of the following is prohibited:

- a) alcoholic drinks;
- b) foods or drinks high in fat, salt or sugar (“HFSS”);
- c) gambling;
- d) infant formula (baby milk), including follow-on formula;

- e) all medicinal products
- f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or
- g) any product, service or trade mark that is not allowed to be advertised on television.

Note:

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://food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

In addition to Rules 9.6 to 9.13, Rule 9.14 also applies to programmes (including films made for cinema) produced or commissioned by the provider of the television programme service or any person connected with that provider:

- 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.

Note:

The universal neutral logo is defined by the criteria set out in Annex 1 to the guidance accompanying Section Nine of the Code.

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 any other relevant Code rules.

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.

Sponsorship**Meaning of “sponsored programming”:**

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 advertiser-funded programmes.

Meaning of “sponsor”:

Any public or private undertaking or individual (other than a broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trade marks and/or its activities.

Meaning of “sponsor reference”:

Any reference to the sponsor’s products, services or trade marks.

Meaning of “costs”:

Any part of the costs connected to the production or broadcast of the programming.

Note:

- 1) The rules seek to ensure editorial independence is preserved and a distinction

is maintained between editorial and advertising. They also aim to protect against unsuitable sponsorship, and to ensure that sponsorship arrangements adhere to the principle of transparency.

- 2) With the exception of the sponsorship credits, any reference to a sponsor that appears in a sponsored programme as a result of a commercial arrangement with the broadcaster, the programme maker or a connected person will be treated as product placement and must comply with Rules 9.6 to 9.14.

Content that may not be sponsored

- 9.15 News and current affairs programmes must not be sponsored.

Meaning of “current affairs programme”:

See meaning under Rule 9.12.

Prohibited and restricted sponsors

- 9.16 Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television.
- 9.17 Sponsorship must comply with both the content and scheduling rules that apply to television advertising.

Content of sponsored output

- 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.

Note:

This rule should be read in conjunction with Rules 9.1 to 9.5.

Sponsorship arrangements should not lead to the creation or distortion of editorial content so that it becomes a vehicle for the purpose of promoting the sponsor or its interests.

There are limited circumstances in which a sponsor (or its products, services or trade marks) 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 (see Rules 9.6 to 9.14) or when the sponsorship arrangement is identified (see Rules 9.19 to 9.25).

Where 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) appears in a sponsored programme, it must comply with Rules 9.1 to 9.5.

Sponsorship credits

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

Note:

Credits may also be broadcast entering and/or leaving a commercial break during the sponsored programme.

For other sponsored content (e.g. channels) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audiences understand that the content is sponsored.

- 9.21 Sponsorship credits must be distinct from editorial content.
- 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.
 - 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.
- 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.
- 9.24 Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.
- 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.

Use of Controlled Premium Rate Services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

- 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 controlled premium rate telephone services or other telephony services for which the revenue generated is shared between relevant parties.
- 9.27 Controlled 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.

Note:

Each of the above exceptions is subject to the undue prominence rule.

- 9.28 Where a controlled 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 service must be clearly subsidiary to that primary purpose.
- 9.29 Any use of controlled premium rate telephone numbers must comply with the Code of Practice issued by PhonepayPlus.

Non-geographic call costs

- 9.30 The cost to viewers for using non-geographic telephony services must be made clear to them and broadcast as appropriate.

Note:

Non-geographic telephony services are those telephone numbers that are not linked to a specific location. Licensees should refer to the guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

Programme-related material (PRM)**Meaning of “programme-related material”:**

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.

Notes:

- 1) 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.
- 2) Programme-related material may be sponsored (see Rule 9.25).

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.

Note:

Broadcasters should refer to the statutory definition of product placement (see meanings and rules preceding Rule 9.6). Where the inclusion of references during programmes to PRM 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.

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).

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

Cross-promotions

Note:

The cross-promotion of programmes, channels and other broadcasting-related services is covered by specific rules contained in the Cross-promotion Code. This is included as an Appendix to the Broadcasting Code.

Broadcasters should note that cross-promotions should also comply with all relevant requirements of the Broadcasting Code and, in particular, Rules 9.1 to 9.5.

Charity appeals

Note:

Charity appeals are allowed in programming only if they are broadcast free of charge.

The following rules recognise that while charities differ from purely commercial entities, there is still a potential risk that the audience may suffer financial harm as a result of such appeals (consumer protection). Further, many charities operate in competition with one another and the rules therefore aim to ensure that charity appeals benefit a range of charities. Where appropriate, broadcasters must also pay particular attention to Section Five of the Code (Due Impartiality).

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

Financial promotions and investment recommendations

Meaning of “financial promotion”:

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

Meaning of an “investment recommendation”:

An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.

Note:

The rules applying to such promotions and recommendations reflect the particular risk that such references could result in financial harm to the audience (consumer protection), and the resulting need for editorial independence and transparency to be maintained and protected.

- 9.35 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

Appeals for funds for programming or services

Note:

During programming, broadcasters may broadcast appeals for donations to make editorial content or fund their service.

Rules 9.36 to 9.39 reflect the potential for financial harm when broadcasters appeal for funds from viewers (consumer protection) and ensure editorial independence, transparency, and distinction between advertising and editorial content are maintained.

- 9.36 Viewers must be told the purpose of the appeal and how much it raises.
- 9.37 All donations must be separately accounted for and used for the purpose for which they were donated.
- 9.38 Broadcasters must not offer any additional benefits or other incentives to donors.
- 9.39 Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service.

Section Ten: Commercial Communications in Radio Programming

(Relevant legislation includes, in particular, sections 319(2)(f), (i) and (j), 319(4)(e) and (f) and 321 of the Communications Act 2003, regulation 3(4)(d) of the Consumer Protection From Unfair Trading Regulations 2008, section 21(1) of the Financial Services and Markets Act 2000, paragraph 3 of the Investment Recommendation (Media) Regulations Act 2005, and Article 10 of the European Convention on Human Rights).

This section of the Code does not apply to BBC services funded by the licence fee, which are regulated on these matters by the BBC Trust.

This section of the Code applies to radio only. Code Section Nine (Commercial References in Television Programming) applies to television only.

Radio and television are subject to different legislative requirements and terminology is therefore specific to radio in this Code section.

Principles

To ensure the transparency of commercial communications as a means to secure consumer protection.

Rules

General Rules

- 10.1 Programming that is subject to, or associated with, a commercial arrangement must be appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners.
- 10.2 Spot advertisements must be clearly separated from programming.
- 10.3 No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

This rule does not apply to:

- reference to a news supplier for the purpose of identifying that supplier as a news source;

- specialist factual strands that are not news bulletins or news desk presentations, but may be featured in or around such programming;
- the use of premium rate services (e.g. for station/broadcaster surveys); 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).

- 10.4 No commercial reference, or material that implies a commercial arrangement, is permitted on radio services primarily aimed at children or in children's programming included in any service.

This rule does not apply to:

- credits for third party association with either programming or broadcast competition prize donation;
- 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).

- 10.5 No commercial arrangement that involves payment, or the provision of some other valuable consideration, to the broadcaster may influence the selection or rotation of music for broadcast.
- 10.6 No programming may be subject to a commercial arrangement with a third party that is prohibited from advertising on radio.
- 10.7 Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.
- 10.8 Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements.

Programming

Programming comprises all broadcast material other than spot advertisements.

Spot advertisements

Spot advertisements comprise advertising broadcast in commercial breaks.

Commercial arrangement

A commercial arrangement 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, competition prize donation and premium rate 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).

Commercial reference

For the purposes of this section of the Code, a commercial reference is a reference in programming to a brand, trademark, product and/or service that:

- is subject to a commercial arrangement; or
- promotes the station/broadcaster's own products or services.

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.

Transparency of a commercial arrangement should be achieved through the appropriate signalling of a brand, trademark, product and/or service of a third party (or third parties) that has paid for broadcast exposure – by, for example: including a sponsorship credit; reference to the donor of a prize; the promotion of a premium rate number for listener interaction in programming.

Signalling

Broadcasters are required to give, at appropriate times, clear information within programming, to inform listeners of any commercial arrangement affecting that programming.

Appropriate signalling is therefore essential in complying with Rule 10.1. There are four aspects to consider when assessing what signalling is appropriate, to ensure compliance:

- Wording – this must be clear, to ensure immediate transparency of the commercial arrangement;
- Positioning – transparency of the commercial arrangement generally requires signalling at the outset of each instance of broadcast material subject to it;
- Frequency – longer output that is subject to a commercial arrangement may require signalling at appropriate intervals;
- Identity (of the third party) – transparency of the commercial arrangement requires the third party's relevant title to be stated on air.

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.

Specialist factual strands

Specialist factual strands in or around news bulletins or news desk presentations might include, for example, travel, sport, finance and weather.

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

Broadcasters should note that all programming must comply with Section Five of the Code. Commercial references broadcast under such an arrangement are also subject to Section 7 of The Broadcasting Committee of Advertising Practice UK Code of Broadcast Advertising. In addition, broadcasters are reminded that Rule 2.2 applies to **all** factual programming (i.e. factual items must not materially mislead the audience).

Commercial references that require confirmation or substantiation

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.

Controlled Premium Rate and similar services

Note:

Controlled Premium Rate Services are a subset of Premium Rate Services which are regulated by PhonepayPlus. Licensees should refer to the guidance for further details about the terms used in this section.

- 10.9 Any use of controlled premium rate telephony services in programming must comply with the Code of Practice and any additional broadcast-related requirements issued by PhonepayPlus.
- 10.10 The cost to listeners for using controlled premium rate telephony services, or other communications services for which the revenue generated is shared between relevant parties, must be made clear to them and broadcast as appropriate.

Note:

Licensees should refer to guidance for further details on the application of this rule, as well as guidance to relevant associated rules (see in particular, the guidance to Rules 2.13 to 2.16).

Charity appeals

- 10.11 Fund-raising activity broadcast on behalf of a charity (or emergency appeal) is only permitted if:
- it is broadcast free of charge;
 - it does not contain any commercial reference that is subject to a commercial arrangement with the relevant charity (or emergency appeal); and
 - the broadcaster has taken reasonable steps to satisfy itself that:
 - 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
 - the organisation concerned is not prohibited from advertising on radio.

Appeals for funds for programming or services

- 10.12 Broadcasters may broadcast appeals for donations to make programming or fund their service. Listeners must be told the purpose of the appeal and how much it raises. All donations must be separately accounted for and used for the purpose for which they were donated.

Financial promotions and investment recommendations

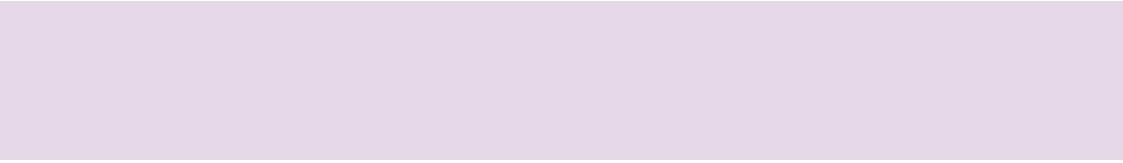
- 10.13 When broadcasting financial promotions and investment recommendations broadcasters must comply with the relevant provisions in Appendix 4 to this Code.

Financial promotion

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

Investment recommendation

An investment recommendation occurs when someone directly recommends a particular investment decision, for example, buying or selling a particular share or underwriting a particular share offer.



Appendix 1

Extracts from Relevant UK Legislation

Communications Act 2003 (as amended)

Section 3: General duties of OFCOM

- (1) It shall be the principal duty of OFCOM, in carrying out their functions -
 - (a) to further the interests of citizens in relation to communications matters; and
 - (b) to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- (2) The things which, by virtue of subsection (1), OFCOM are required to secure in the carrying out of their functions include, in particular, each of the following:
 - (e) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services;
 - (f) the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both:
 - (i) unfair treatment in programmes included in such services; and
 - (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services.
- (4) OFCOM must also have regard, in performing those duties, to such of the following as appear to them to be relevant in the circumstances:
 - (b) the desirability of promoting competition in relevant markets;
 - (g) the need to secure that the application in the case of television and radio services of standards falling within subsection (2)(e) and (f) is in the manner that best guarantees an appropriate level of freedom of expression;
 - (h) the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection;

- (j) the desirability of preventing crime and disorder;
- (k) the opinions of consumers in relevant markets and of members of the public generally;
- (l) the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.

Section 319: OFCOM's standards code

- (1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.
- (2) The standards objectives are:
 - (a) that persons under the age of eighteen are protected;
 - (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
 - (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
 - (d) that news included in television and radio services is reported with due accuracy;
 - (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
 - (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;

- (fa) that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);
 - (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;
 - (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
 - (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
 - (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
 - (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
 - (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.
- (3) The standards set by OFCOM under this section must be contained in one or more codes.
- (4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters:
- (a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;
 - (b) the likely size and composition of the potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;

- (c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of a programme's content can be brought to the attention of potential members of the audience;
 - (d) the likelihood of persons who are unaware of the nature of a programme's content being unintentionally exposed, by their own actions, to that content;
 - (e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section; and
 - (f) the desirability of maintaining the independence of editorial control over programme content.
- (5) OFCOM must ensure that the standards from time to time in force under this section include:
- (a) minimum standards applicable to all programmes included in television and radio services; and
 - (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them appropriate for securing the standards objectives.
- (6) Standards set to secure the standards objective specified in subsection (2) (e) shall, in particular, contain provision designed to secure that religious programmes do not involve:
- (a) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.
- (7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

- (8) In this section “news” means news in whatever form it is included in a service.
- (9) Subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.

Section 320: Special impartiality requirements

- (1) The requirements of this section are:
 - (a) the exclusion, in the case of television and radio services (other than a restricted service within the meaning of section 245), from programmes included in any of those services of all expressions of the views or opinions of the person providing the service on any of the matters mentioned in subsection (2);
 - (b) the preservation, in the case of every television programme service, teletext service, national radio service and national digital sound programme service, of due impartiality, on the part of the person providing the service, as respects all of those matters;
 - (c) the prevention, in the case of every local radio service, local digital sound programme service or radio licensable content service, of the giving of undue prominence in the programmes included in the service to the views and opinions of particular persons or bodies on any of those matters.
- (2) Those matters are:
 - (a) matters of political or industrial controversy; and
 - (b) matters relating to current public policy.
- (3) Subsection (1)(a) does not require:
 - (a) the exclusion from television programmes of views or opinions relating to the provision of programme services; or
 - (b) the exclusion from radio programmes of views or opinions relating to the provision of programme services.
- (4) For the purposes of this section:

- (a) the requirement specified in subsection (1)(b) is one that (subject to any rules under subsection (5)) may be satisfied by being satisfied in relation to a series of programmes taken as a whole;
 - (b) the requirement specified in subsection (1)(c) is one that needs to be satisfied only in relation to all the programmes included in the service in question, taken as a whole.
- (5) OFCOM's standards code shall contain provision setting out the rules to be observed in connection with the following matters:
 - (a) the application of the requirement specified in subsection (1)(b);
 - (b) the determination of what, in relation to that requirement, constitutes a series of programmes for the purposes of subsection (4)(a);
 - (c) the application of the requirement in subsection (1)(c).
- (6) Any provision made for the purposes of subsection (5)(a) must, in particular, take account of the need to ensure the preservation of impartiality in relation to the following matters (taking each matter separately):
 - (a) matters of major political or industrial controversy, and
 - (b) major matters relating to current public policy, as well as of the need to ensure that the requirement specified in subsection (1)(b) is satisfied generally in relation to a series of programmes taken as a whole.
- (7) In this section "national radio service" and "local radio service" mean, respectively, a sound broadcasting service which is a national service within the meaning of section 245 and a sound broadcasting service which is a local service within the meaning of that section.

Section 321: Objectives for advertisements, sponsorship and product placement (subsections (1), (3A) and (4) only are reproduced here)

- (1) Standards set by OFCOM to secure the objectives mentioned in section 319(2) (a) and (fa) to (j):
 - (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes and, in relation to television programme services, general provision governing standards and practice in product placement;
 - (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances); and
 - (c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances).
- (3A) For the purposes of section 319(2)(fa) the product placement requirements are the requirements set out in Schedule 11A.
- (4) Ofcom –
 - (a) shall -
 - (i) in relation to programme services, have a general responsibility with respect to advertisements and methods of advertising and sponsorship; and
 - (ii) in relation to television programme services, have a general responsibility with respect to methods of product placement; and
 - (b) in the discharge of that responsibility may include conditions in any licence which is granted by them for any such service that enable Ofcom to impose requirements with respect to any of those matters that go beyond the provision of Ofcom's standards code.

Section 325: Observance of standards code (subsection (1) only is reproduced here)

- (1) The regulatory regime for every programme service licensed by a Broadcasting Act licence includes conditions for securing:
 - (a) that standards set under section 319 are observed in the provision of that service; and
 - (b) that procedures for the handling and resolution of complaints about the observance of those standards are established and maintained.

Section 326: Duty to observe fairness code

The regulatory regime for every programme service licensed by a Broadcasting Act licence includes the conditions that OFCOM consider appropriate for securing observance:

- (a) in connection with the provision of that service, and
- (b) in relation to the programmes included in that service; of the code for the time being in force under section 107 of the 1996 Act (the fairness code).

SCHEDULE 11A: Restrictions on product placement

Introductory

1. (1) In this Part “product placement”, in relation to a programme included in a television programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—
 - (a) is for a commercial purpose;
 - (b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider; and
 - (c) is not prop placement.

(2) “Prop placement”, in relation to such a programme, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—

- (a) the provision of the product, service or trade mark has no significant value; and
- (b) no relevant provider, 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 product, service or trademark, or a reference to it, in the programme.

2. The product placement requirements are—

- (a) that the product placement does not fall within any of paragraphs 3 to 6;
- (b) that all of the conditions in paragraph 7 are met; and
- (c) that, where paragraph 8 applies, the condition in that paragraph is also met.

Prohibitions of product placement

3. (1) Product placement falls within this paragraph if it is in a children’s programme.

(2) In sub-paragraph (1) “children’s programme” means a programme made—

- (a) for a television programme service or for an on-demand programme service, and
- (b) for viewing primarily by persons under the age of sixteen.

4. Product placement falls within this paragraph if it is—

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

5. Product placement of alcoholic drinks falls within this paragraph if—
 - (a) it is aimed specifically at persons under the age of eighteen; or
 - (b) it encourages immoderate consumption of such drinks.
6. (1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and—
 - (a) the programme is a religious, consumer affairs or current affairs programme;
 - (b) the product placement is of anything within sub-paragraph (2); or
 - (c) the product placement is otherwise unsuitable.
 - (2) The following are within this sub-paragraph—
 - (a) electronic or smokeless cigarettes, cigarette lighters, cigarette papers or pipes intended for smoking;
 - (b) medicinal products;
 - (c) alcoholic drinks;
 - (d) infant formulae or follow-on formulae;
 - (e) a food or drink high in fat, salt or sugar;
 - (f) gambling services.
 - (3) This paragraph applies to—
 - (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider, and that is not a film made for cinema; and
 - (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service which is provided by a person under the jurisdiction

of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

Conditions applying to product placement

7. (1) These are the conditions referred to in paragraph 2(b).
 - (2) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—
 - (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.
 - (3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.
 - (4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.
 - (5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.
 - (6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.
 - (7) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—
 - (a) prejudice respect for human dignity;

- (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

8. (1) This paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the television programme service in which it is included or by a person connected with that provider.

(2) The condition referred to in paragraph 2(c) is that the television programme service in which the programme is included signals appropriately the fact that product placement is contained in a programme no less frequently than—

- (a) at the start and end of such a programme; and
- (b) in the case of a television programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

Minor definitions

9. In this Schedule—

“connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

“film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;

“follow-on formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“infant formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“medicinal product” has the meaning given in section 130 of the Medicines Act 1968;

“prescription-only medicine” means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

“producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

“programme” does not include an advertisement;

“relevant provider”, in relation to a programme, means—

(a) the provider of the television programme service in which the programme is included; and

(b) the producer of the programme;

“residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“significant value” means a residual value that is more than trivial;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002;

“trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.”

Schedule 2 (Part 1), Broadcasting Act 1990 (as amended)(provisions related to definition of ‘connected person’)

1

(1) In this Schedule—

“the 1996 Act” means the Broadcasting Act 1996;

“advertising agency” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

(a) is a director or officer of any body corporate which carries on such a business, or

(b) is employed by any person who carries on such a business;

“associate”—

(a) in relation to a body corporate, shall be construed in accordance with paragraph (1A), and

(b) in relation to an individual, shall be construed in accordance with subparagraph (2);

“Broadcasting Act licence” means a licence under Part 1 or 3 of this Act or Part 1 or 2 of the Broadcasting Act 1996;

“control”—

(a) in relation to a body corporate, shall be construed in accordance with subparagraph (3), and

(b) in relation to any body other than a body corporate, means the power of a person to secure, by whatever means and whether directly or indirectly, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

“equity share capital” has the same meaning as in the Companies Acts (see section 548 of the Companies Act 2006);

“local authority”—

(a) in relation to England ... , means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;

(aa) in relation to Wales, means a county council or county borough council;

(b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; and

(c) in relation to Northern Ireland, means a district council;

“participant”, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body;

(1A) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule—

(a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and

(b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.

(2) For the purpose of determining the persons who are an individual’s associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—

(a) any individual and that individual’s husband or wife or civil partner and any relative, or husband or wife or civil partner of a relative, of that individual or of that individual’s husband or wife or civil partner;

(b) any individual and any body corporate of which that individual is a director;

- (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
 - (d) persons carrying on business in partnership and the husband or wife or civil partner and relatives of any of them;
 - (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets; and in this sub-paragraph “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person’s child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband and references to a civil partner shall include a former civil partner and a reputed civil partner.
- (3) For the purposes of this Schedule a person controls a body corporate if—
- (a) he holds, or is beneficially entitled to, more than 50 per cent of the equity share capital in the body, or possesses more than 50 per cent of the voting power in it; or
 - (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes; or
 - (c) he holds, or is beneficially entitled to, 50 per cent of the equity share capital in that body, or possesses 50 per cent of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

- (3A) For the purposes of sub-paragraph (3)(c)—
- (a) “arrangement” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
 - (b) a person shall be treated—
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
 - (ii) as possessing any voting power possessed by such a body corporate.
- (4) ...
- (5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.
- (6) In this Schedule any reference to a participant with more than a 5 per cent interest in a body corporate is a reference to a person who—
- (a) holds or is beneficially entitled to more than 5 per cent of the shares in that body, or
 - (b) possesses more than 5 per cent of the voting power in that body.
- (7) Sub-paragraph (6) shall have effect subject to the necessary modifications in relation to other references in this Schedule—
- (a) to an interest of more than a specified percentage in a body corporate, or
 - (b) to an interest of a specified percentage or more in a body corporate.

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- (1) Subject to sub-paragraph (1A) any reference in paragraph 1 above to a person—
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
 - (b) possessing voting power, or any amount of the voting power, in a body corporate,
 - (c) is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.
- (1A) For the purposes of this Schedule, a person's holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that—
- (a) he holds the shares concerned—
 - (i) as a nominee,
 - (ii) as a custodian (whether under a trust or by a contract), or
 - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, . . . , in respect of the shares concerned, and
 - (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.
- (1AA) In sub-paragraph (1A)(a)(iii), “depositary receipt” means a certificate or other record (whether or not in the form of a document)—
- (a) which is issued by or on behalf of a person who holds shares or who holds evidence of the right to receive shares, or has an interest in shares, in a particular body corporate; and
 - (b) which evidences or acknowledges that another person is entitled to rights in relation to those shares or shares of the same kind, which shall include the right to receive such shares (or evidence of the right to receive such shares) from the person mentioned in paragraph (a).

(1B) For the purposes of sub-paragraph (1A)(b)—

- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
- (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.

3

For the purposes of this Schedule the following persons shall be treated as connected with a particular person—

- (a) a person who controls that person,
- (b) an associate of that person or of a person falling within paragraph (a), and
- (c) a body which is controlled by that person or by an associate of that person.

Broadcasting Act 1996 (as amended)

Chapter 55

Unjust or unfair treatment or unwarranted infringement of privacy

Section 107

- (1) It shall be the duty of Ofcom to draw up, and from time to time review, a code giving guidance as to principles to be observed and practices to be followed in connection with the avoidance of:
 - (a) unjust or unfair treatment in programmes to which this section applies; or
 - (b) unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes.

Appendix 2

Extracts from the EU Audiovisual Media Services Directive (Directive 2010/13/EU)

Article 1

For the purposes of this Directive, the following definitions shall apply:

- (a) ‘audiovisual media service’ means:
 - (i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;
 - (ii) audiovisual commercial communication;
- (b) ‘programme’ means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children’s programmes and original drama;
- (c) ‘editorial responsibility’ means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;

- (d) 'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;
- (e) 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;
- (f) 'broadcaster' means a media service provider of television broadcasts;
- (g) 'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;
- (h) 'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;
- (i) 'television advertising' means 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;
- (j) 'surreptitious audio visual commercial communication' means 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;

- (k) ‘sponsorship’ means any contribution made by public or private undertakings or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;
- (l) ‘teleshopping’ means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;
- (m) ‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration...

Provisions applicable to all audiovisual media services

Article 6

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.

Article 9

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:
 - (a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;

- (b) audiovisual commercial communications shall not use subliminal techniques;
 - (c) audiovisual commercial communications shall not:
 - (i) prejudice respect for human dignity;
 - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (iii) encourage behaviour prejudicial to health or safety;
 - (iv) encourage behaviour grossly prejudicial to the protection of the environment;
 - (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;
 - (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
 - (f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;
 - (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.
2. Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or

physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

Article 10

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:
 - (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
 - (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
 - (c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or at the end of the programmes.
2. Audiovisual media services or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.
3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.
4. News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

Article 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.
2. Product placement shall be prohibited.
3. By way of derogation from paragraph 2, product placement shall be admissible in the following cases unless a Member State decides otherwise:
 - (a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes;
 - (b) where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

The derogation provided for in point (a) shall not apply to children's programmes.

Programmes that contain product placement shall meet at least all of the following requirements:

- (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- (c) they shall not give undue prominence to the product in question;
- (d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

By way of exception, Member States may choose to waive the requirements set out in point (d) provided that the programme in question has neither been produced nor

commissioned by the media service provider itself or a company affiliated to the media service provider.

4. In any event programmes shall not contain product placement of:
 - (a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or
 - (b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.

Television advertising and teleshopping

Article 19

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.
2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.

Article 20

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.
2. The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by television advertising and/or teleshopping

once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

Article 23

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.
2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.

Article 25

The Directive shall apply *mutatis mutandis* to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion.

However, Chapter VI as well as Articles 20 and 23 shall not apply to these channels.

Protection of minors in television broadcasting

Article 27

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.
3. In addition, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

Right of reply in television broadcasting

Article 28

1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.
2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.
3. Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right of reply or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.

4. An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil-law proceedings or would transgress standards of public decency.
5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.

Appendix 3

European Convention on Human Rights: Articles 8, 9, 10 and 14

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14

1. The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Appendix 4

Financial Promotions and Investment Recommendations

(Television broadcasters should refer to Code Section Nine Rule 9.35, above. Radio broadcasters should refer to Code Section Ten Rule 10.13, above).

Financial Promotions

1. Section 21 of the Financial Services and Markets Act 2000 prohibits anyone, in the course of business, from communicating an invitation or inducement to engage in investment activity. This is commonly referred to as “the financial promotion restriction”. There are a number of exemptions to the financial promotion restriction and these are set out in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005.³ Two of these exemptions are of particular relevance to broadcasters: Article 20 of that Order contains an exemption in respect of communications by journalists, and Article 20A of that Order contains an exemption in respect of promotions broadcast by a company director or employee of a company. This note sets out binding guidance on how broadcasters can take advantage of the exemptions to the financial promotion restriction.

Meaning of “financial promotion”:

A financial promotion is an invitation or inducement to engage in investment activity (in accordance with section 21(1) of the Financial Services and Markets Act 2000 (Restrictions on financial promotion)).

3. S.I. 2005/1529

Exemption in respect of communications by journalists (Article 20 exemption)

2. The exemption for communications by journalists applies to any non-real time financial promotion they prepare while acting as journalists. For the exemption to apply to broadcast journalists the financial promotion must be in either:
 - a regularly updated news or information service (such as a website or teletext service); or
 - a television or radio broadcast or transmission, and the main purpose of the broadcast must not be to advise on, or lead or enable people to buy or sell, securities or contractually-based investments.
3. Where the subject matter of the financial promotion is shares and the financial promotion identifies directly a person who issues or provides the shares, journalists must also fulfil a disclosure requirement to benefit from the exemption.

Meaning of “share”:

Share means any share in a company and includes a derivative on such a share (including traded options).

Disclosure requirement:

A financial interest would be subject to disclosure where the journalist (or a close family member) would be likely to get a financial benefit or avoid a financial loss if people acted in line with the financial promotion. Where that is the case, the journalist or editor responsible for the financial promotion must declare the nature of any financial interest they (or their close family member) hold.

Note: The disclosure requirement is subject to certain exceptions, set out in paragraphs 4 to 6 below.

Meaning of “close family member”:

Close family member means a spouse and children under eighteen years of age.

4. The exceptions to the disclosure requirement are where the financial promotion is in either:
 - a service or broadcast which has proper systems and procedures which prevent the publication of communications without disclosure of financial interests; or
 - a service or broadcast which falls within the remit of:
 - the Code of Practice issued by the Press Complaints Commission;
 - the Ofcom Broadcasting Code; or
 - the Producer’s Guidelines issued by the BBC.
5. If a broadcaster wishes to take advantage of the Article 20 exemption for journalists, it has a choice. The broadcaster can either:
 - comply with the disclosure requirement; or
 - put in place proper systems and procedures which prevent the broadcast of financial promotions without disclosure of financial interests.
6. The Financial Services Authority (the “FSA”) suggests that the second option in paragraph 5 above could be achieved by, for example, the broadcaster requiring people working on financial programmes to declare and register their share ownership. This register would be available to the most senior editorial staff who can ensure that self-interested promotions are not broadcast by the person concerned. The FSA would also expect relevant staff to be required to be made aware of the existence of this register and of their obligations to disclose financial interests, and to confirm their acceptance of these obligations in writing.

Promotion broadcast by company director etc (Article 20A exemption)

7. The main purpose of the exemption for promotions broadcast by company directors is to guard against the possibility that, during the course of a broadcast interview or a live website presentation, a financial promotion is made inadvertently by a director or employee of a company or other business undertaking when that person is not acting as a journalist.
8. Provided that the financial promotion made is not made as part of an organised marketing campaign, the exemption applies where the financial promotion:
 - comprises words which are spoken by the director or employee and not broadcast, transmitted or displayed in writing; or
 - is displayed in writing only because it is part of an interactive dialogue to which the director or employee is a party and in the course of which that person is expected to respond immediately to questions put by a recipient of the communication.

The exemption also requires that the director or employee is identified as such in the financial promotion before it is communicated.

Investment recommendations

9. The Investment Recommendation (Media) Regulations came into force on 1 July 2005. They impose standards on those who are, through the media, producing investment recommendations or disseminating investment recommendations produced by a third party. The standards require that the information is fairly presented, and there is disclosure of significant interests in an investment someone is recommending or of any conflicts of interest. If someone is regulated by the FSA because of their activity in producing investment recommendations or disseminating investment recommendations produced by a third party, they will be subject instead to rules of the FSA.

Meaning of “investment recommendation”:

An investment recommendation occurs when someone directly recommends a particular investment decision, for example buying or selling a particular share or underwriting a particular share offer.

10. There are exemptions from the Regulations for those producing or disseminating regulations in the media where self-regulation is in place, including where the Ofcom Broadcasting Code applies.
11. The Regulations are interpreted by Ofcom to apply to its licensees and S4C as follows. Where people working on programmes make an investment recommendation themselves, the broadcaster must ensure that:
 - the identity of the person making the recommendation is clear;
 - the investment recommendation is presented fairly; and
 - any financial interest that may reasonably be expected to impair the objectivity of that recommendation is disclosed.

Meaning of “presented fairly”:

This means that reasonable care should be taken that:

- facts are distinguished from non-factual information (for example opinions and estimates);
- where there is doubt whether a source is reliable this is indicated; and
- all projections, forecasts and price targets are described as such.

12. Where people working on programmes disseminate an investment recommendation made by a third party the broadcaster must ensure:
 - the identity of the company making the programme is clear; and
 - where a summary of a recommendation is produced, it is clear and not misleading and a reference is made to the producer of the recommendation.

13. In addition, where people working on programmes either recommend an investment recommendation or disseminate a recommendation made by a third party, the broadcaster must ensure that a clear reference is made during the programme to the fact that it is regulated by the Ofcom Broadcasting Code. This requirement would be fulfilled, for example, by including such a reference in the credits at the end of the programme.

Meaning of “people working on programmes”:

This means people employed by the broadcaster or working for or as an independent producer who makes a programme for the broadcaster.

Note: Where a television or radio programme features someone regulated by the FSA who makes an investment recommendation, that person’s compliance with the FSA rules is the responsibility of that person and not the broadcaster. If a person working on a programme interviews someone who is not regulated by the FSA who makes an investment recommendation, responsibility again lies with the interviewee not the broadcaster to ensure his/her compliance with the Regulations.

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Cross-promotion Code

Effective from 10 July 2006

Publication date: 10 July 2006

Contents

1: Introduction

2: Legislative background to the Code

3: Principles

4: Rules

5: Guidance

6: General guidance on the Cross-promotion Code

Introduction

- 1.1 Subject to this Cross-promotion Code (“the Code”), television broadcasters are able to promote programmes, channels and other broadcasting-related services without such promotions being considered advertising and included in the calculation of advertising minutage.
- 1.2 The amount of advertising that may be broadcast on a television channel is restricted by the Code on the scheduling of television advertising (“COSTA”). COSTA imposes a maximum on the amount of advertising that can be shown in a given hour and over any one day. For the purposes of COSTA, the term ‘advertising’ is used to refer to any form of promotional announcement broadcast in return for payment or similar consideration.
- 1.3 The Code replaces the rules regulating the promotion of programmes, channels and related services on commercial television issued by the ITC in January 2002 and takes effect from 10 July 2006.

- 1.4 The Code applies to television services regulated by Ofcom. However, it does not apply to BBC services funded by the licence fee or grant in aid.
All references to ‘licensees’ should be interpreted accordingly.
- 1.5 The Code applies to promotions outside programmes only.
- 1.6 Within programmes, references to all products and services, including broadcasting-related services, are subject to the rules in Broadcasting Code Section Nine on Commercial References in Television Programming.
- 1.7 The Ofcom Broadcasting Code applies in the usual way to the content of promotions outside programmes, unless otherwise stated in the guidance on Section Nine of the Broadcasting Code.

Legislative background to the Code

- 2.1 Under Ofcom’s powers to issue broadcasting licences under the Broadcasting Acts 1990 and 1996, broadcasting licences may contain such conditions as Ofcom considers appropriate having regard to the duties imposed on Ofcom under the Broadcasting Acts and Communications Act 2003. Under the Communications Act 2003 Ofcom also has the power to approve codes for the purposes of a provision contained in a licence.
- 2.2 Under section 316 of the Communications Act 2003 Ofcom has the power to include conditions which Ofcom considers appropriate for ensuring fair and effective competition. All television broadcasting licences currently contain a fair and effective competition licence condition. This condition requires licensees to comply with any code or guidance approved by Ofcom for the purpose of ensuring fair and effective competition.
- 2.3 Section 319 of the Communications Act 2003 imposes a duty on Ofcom to set standards to secure, amongst other things, that the international obligations of the United Kingdom with respect to advertising in television services are complied with. These international obligations include those contained in the Audiovisual Media Services Directive (Directive 2010/13/EU).

- 2.4 Broadcasters should bear in mind the legislative background that has informed the rules, the principles that apply to each section, the meanings given by Ofcom and the guidance issued by Ofcom, in this Code and in the Broadcasting Code, all of which may be relevant in interpreting and applying the Code.

Principles

- 3.1 There are two key principles which the Rules contained in Section 4 of the Code are designed to reflect:
- i) ensuring that cross-promotions on television are distinct from advertising and inform viewers of services that are likely to be of interest to them as viewers; and
 - ii) ensuring that promotions on television outside programmes do not prejudice fair and effective competition (and, in particular, ensuring that, as television broadcasting in the United Kingdom switches from analogue to digital transmission, consumers are made aware of the various platforms and digital retail TV services through which they can receive broadcasting services and that this is done in such a way that will avoid the distortion of fair and effective competition).

Rules

Meanings

‘Broadcasting-related Services’:

include all broadcasting activities licensable by Ofcom, for example television and radio services. They also include other services with a ‘broadcasting feel’, that is, services which deliver content similar to that delivered on a television or radio service. In addition, a website that provides content clearly and directly related to a Broadcasting-related Service may itself be a Broadcasting-related Service.

‘Cross-promotions’:

are promotions, on a channel, of programmes and Broadcasting-related Services, that are not Self-promotions.

‘Licensees’:

are the companies and legal entities which hold a broadcasting licence granted by Ofcom pursuant to the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003).

‘Promotions’:

are Self-promotions and Cross-promotions.

‘Self-promotions’:

are promotions on a channel for that same channel and/or for programmes broadcast on that channel.

Broadcasting-related Services

- 4.1 All licensees and S4C shall ensure that Cross-promotions are limited to Broadcasting-related Services.

Platform and retail TV service neutrality

- 4.1 The following rule shall apply to the analogue services of Channel 3, Channel 4 and Channel 5 licensees (“the Main Commercial Terrestrial Broadcasters”).

The Main Commercial Terrestrial Broadcasters shall ensure that Promotions to analogue households for Broadcasting-related Services that mention a digital retail television service and/or digital television broadcasting platform treat all major digital retail television services and/or digital platforms in an equal and impartial manner. In particular:

- (a) promotions that refer to a digital retail television service, such as Freeview or Sky, must also name all other digital retail television services on which the Broadcasting-related Service is available;
- (b) promotions that refer to a particular digital platform, such as digital terrestrial television (“DTT”) or cable, must refer to all other digital platforms on which the Broadcasting-related Service is available. Generic promotions for digital television are permitted if they do not specifically mention any particular platform; and

- (c) promotions must treat digital retail television services and/or digital platforms equally in respect of all aspects mentioned, such as pricing, brand names, availability and packages.

Guidance

- 5.1 This guidance is non-binding and will be reviewed from time to time to reflect Ofcom's experiences with individual cases. It is provided to assist licensees in interpreting and applying the Code. Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

Broadcasting-related Services

- 5.2 Ofcom does not wish to be prescriptive in defining the term 'Broadcasting-related Services'. Depending on the individual facts, it may include a service whereby audiovisual content is delivered over a mobile or broadband platform, and video-on-demand. It is distinct from 'programme-related material', which is defined in Section Nine of the Broadcasting Code.

Cross-promotion relationships

- 5.3 Certain relationships between broadcasters (which are based on shareholdings or voting power) create a rebuttable presumption that there are sufficient incentives for the promoting channel to provide another channel or broadcasting-related service with free airtime without the need for additional consideration. In these specific circumstances Ofcom would not, in the absence of evidence to the contrary, consider these Cross-promotions to be advertising. However, if Ofcom believes that payment or some other consideration has passed or is passing between the parties, these types of arrangements could be investigated under the advertising minutage rules and may be counted as advertising minutage.
- 5.4 The relevant relationships that create this presumption of sufficient incentives are as follows:

- (i) the Licence Holder for the promoting channel has a shareholding of 30% or more (or voting power of 30% or more) in the Licence Holder for the promoted channel;
- (ii) the Licence Holder for the promoted channel has a shareholding of 30% or more (or voting power of 30% or more) in the Licence Holder for the promoting channel; or²
- (iii) the Actual Licence Holder for the promoted channel and promoting channel are the same.

5.5 For the purposes the relevant relationships outlined in paragraph 5.4³:

‘Actual Licence Holder’ means: the legal entity or company which holds the broadcasting licence granted by Ofcom pursuant to the Broadcasting Act 1990 (as amended by the Broadcasting Act 1996 and the Communications Act 2003); and

‘Licence holder’ means: the Actual Licence Holder or any legal entity or company which has a 30% or more shareholding (or 30% or more voting power) in the Actual Licence Holder.

5.6 If there is less than a 30% shareholding (or less than 30% voting power), there may be insufficient incentives for a broadcaster to provide another channel or service with free airtime and broadcasters will need to demonstrate that no consideration has passed between the parties and that Cross-promotion is justified on the basis of other incentives.

5.7 In the case of Cross-promotions between Channel 3 licence holders, there will be a rebuttable presumption that no consideration has passed.

² Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding the word “or”. This amendment has been made to make clear that in order to create the rebuttable presumption explained in paragraph 5.3, a broadcaster only needs to satisfy one of the three relationships which are outlined in paragraph 5.4.

³ Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding the text “For the purposes the relevant relationships outlined in paragraph 5.4”. This amendment has been made to make clear that the definitions only apply to the relationships outlined in paragraph 5.4.

- 5.8 These presumptions do not apply to public service announcements, charity appeals broadcast free of charge, announcements required by Ofcom and information to viewers broadcast in accordance with an Ofcom requirement, which are already excluded from paid for advertising by COSTA. In particular, information to viewers broadcast in accordance with requirements to inform viewers about digital switchover is excluded.

Platform and retail TV service neutrality

- 5.9 This guidance relates to the platform and retail TV service neutrality requirements that are imposed on Channel 3 licensees, Channel 4 and Five ('the Main Commercial Terrestrial Broadcasters').
- 5.10 For reasons of practicality and also relevance to viewers, Ofcom considers that it is reasonable to limit the number of platform and retail TV services that need to be mentioned by the Main Commercial Terrestrial Broadcasters. Ofcom considers that a 500,000 customer base ('the materiality threshold') represents an appropriate threshold for these purposes as this captures the major platforms and retail TV services which have wide ranging availability throughout the UK.
- 5.11 At the time of drafting, Ofcom considers that the retail TV services which are likely to satisfy the materiality threshold are as follows:
- the digital satellite retail TV services operated by Sky
 - the digital cable retail TV services operated by NTL/Telewest
 - the digital terrestrial retail TV services provided by Freeview
- 5.12 The Main Commercial Terrestrial Broadcasters will need to review which platform and retail TV services meet the materiality threshold from time to time. Ofcom considers that data provided in Ofcom's 'Digital Television Update' publications would be one appropriate source of information on customer numbers for these purposes.
- 5.13 Whilst the materiality threshold does not appear to be met for any particular retail TV services available via the broadband platform, Ofcom still considers

that it will be appropriate for the Main Commercial Terrestrial Broadcasters to refer to broadband TV⁴.

- 5.14 For the avoidance of doubt, the Main Commercial Terrestrial Broadcasters must still comply with the neutrality requirement if, instead of making a generic reference to smaller digital platforms, they refer to the availability of their channels on a specific digital platform or retail TV service which does not satisfy the materiality threshold (e.g. by mentioning a particular brand name). Therefore, the materiality threshold operates in a way which gives the Main Commercial Terrestrial Broadcasters a choice of either referring specifically to all the smaller digital platforms and retail TV services where their channels are available within the relevant reception area or making a generic reference such as “available on other digital platforms”.
- 5.15 Ofcom would recommend that the Main Commercial Terrestrial Broadcasters use the following two phrases when referring to appropriate platforms or retail TV services:
 - If the broadcaster only wishes to mention platforms: “available on satellite, cable, digital TV through your aerial, or broadband TV⁵”
 - If the broadcaster wishes to mention retail TV service brands: “available on Sky, NTL/Telewest, Freeview or other digital platforms”⁶

General guidance on the Cross-promotion Code

- 6.1 It is the responsibility of the broadcaster to comply with the Cross-promotion Code.
- 6.2 Ofcom can offer general guidance on the interpretation of the Cross-promotion Code. However, any such advice is given on the strict understanding that it will not affect Ofcom’s discretion to judge cases and complaints after transmission and will not affect the exercise of Ofcom’s regulatory responsibilities. Broadcasters should seek their own legal advice on any compliance issues arising. Ofcom will not be liable for any loss or damage arising from reliance on informal guidance.

4 Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by adding ‘TV’ after the word ‘broadband’ in the last sentence. The amendment has been made to give further clarity.

5 Please note that, since publication of the cross-promotion statement on 9 May 2006, this part of the guidance has been revised by replacing the text “available on satellite, cable, digital TV through your aerial or over broadband” with “available on satellite, cable, digital TV through your aerial, or broadband TV”. This amendment has been made to give further clarity.

6 This phrase is intended to reflect the current branding of the retail TV services which satisfy the materiality threshold. The main commercial terrestrial broadcasters who are subject to the platform neutrality requirement will need to amend such a phrase to reflect any branding changes made to the retail TV services.

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