



**Broadcasting Code Review:  
Commercial Communications  
in Radio Programming**  
Statement on revising the Broadcasting Code

Statement

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## Part 1

# Executive Summary

*Ofcom has introduced a new Broadcasting Code Section Ten (Radio)<sup>1</sup> on commercial communications<sup>2</sup> (i.e. paid-for references to products or services) in radio programming (“Section Ten (Radio)”). This Code Section is implemented with immediate effect.*

*Ofcom has revised the Broadcasting Code to ensure that it remains fit for purpose and provides consistency with wider public policy concerning product placement on television. The new Section Ten (Radio) also ensures appropriate consumer protection, through transparency of all broadcast commercial arrangements, and offers opportunities for the radio industry to generate new revenue.*

*The new rules permit the integration of commercial communications in programming, with the exception of spot advertisements which must be separated. The rules include prohibitions on commercial arrangements in relation to key areas of programming: news broadcasts, children’s programming and the selection and rotation of music for broadcast.*

*NOTE: On 28 February 2011 a new Code Section Nine on Commercial References in Television Programming will be implemented. Until then, Section Nine (Television) on Sponsorship, and Section Ten (Television) on Commercial References and Other Matters, will apply to television and will sit alongside Section Ten (Radio) in the Broadcasting Code. For further information please see Ofcom’s Statement on Commercial References in Television Programming<sup>3</sup>.*

## Introduction

- 1.1 This document is the final regulatory statement on changes to the Ofcom Broadcasting Code (“the Code”) rules on commercial communications in radio programming.
- 1.2 It follows two consultations on the rules in this area: the 2009 Broadcasting Code Review consultation (15 June to 4 September 2009)<sup>4</sup> and the 2010 Commercial Communications in Radio Programming consultation (28 June to 17 September 2010)<sup>5</sup>. This regulatory statement should be read in conjunction with these consultation documents.
- 1.3 The rules resulting from the consultations can be found in the new Section Ten (Radio) of the Code (and are summarised in paragraph 1.13 below). For ease of reference, the new Section Ten (Radio) is also set out in Annex 1 of this document.

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

<sup>2</sup> For a glossary of the meanings and terms used throughout this document, see Annex 3

<sup>3</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>

<sup>4</sup> 2009 Code Review consultation: <http://stakeholders.ofcom.org.uk/consultations/bcode09/>

<sup>5</sup> 2010 Code Review consultation: <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/>

## Background

- 1.4 As part of its duties and functions under the Communications Act 2003 (“the Act”), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in television and radio programmes. The Code first came into effect in July 2005.
- 1.5 Ofcom made a commitment in the 2008/9 Annual Plan to develop the Code, in order to ensure that it remains fit for purpose. As part of this process, the 2010 Broadcasting Code Review consultation was launched on 28 June 2010. It sought to ensure that the Code would take appropriate account of:
- changes and developments in the wider regulatory and public policy environment, and
  - the needs and wants of listeners, and the requirements of appropriate consumer protection.

## Consultation proposals

- 1.6 The 2010 consultation paper identified four options concerning the future regulation of commercial communications on radio on which stakeholders were invited to provide responses. A separate consultation explored commercial references in television programming<sup>6</sup>. The four options for radio were as follows:
- **Option A**  
*‘Do nothing’ option that maintains the principle of separation<sup>7</sup>*  
This is a ‘status quo’ option and would maintain the comprehensive rules which have required, to date, all commercial communications, other than sponsorship credits, to be separated from programming. The principles of transparency, separation and editorial independence underpin Option A.
  - **Option B**  
*Maintains principle of separation but provide defined set of exemptions*  
This option would also be framed as a comprehensive set of rules. It would maintain the requirement for commercial communications to be separated from programming, but would provide a defined set of exemptions. The principles of transparency, separation and editorial independence underpin Option B.
  - **Option C**  
*Allows the integration of commercial communications and programming (except in relation to spot ads)*  
This option would remove the principle of separation between commercial communications and programming except in relation to spot ads (which would need to remain distinguishable from programming). This would give radio stations wide discretion to integrate, for example, paid-for, promotional commercial references into programming provided these were transparent to

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/>

<sup>7</sup> Separation (on radio): to date, the integration of commercial communications into the editorial content of programming has not been permitted. Instead, they were required to be kept separate from programming. In particular, spot advertisements appeared (and will continue to appear) in commercial breaks and, sponsorship credits appeared at the beginning and/or end of the relevant programming.

listeners. This option would retain the value of spot ads as a distinct type of content and a distinct revenue source. It would be delivered as a slim set of rules designed to secure one principle: transparency of commercial arrangements. Such transparency would be central to ensuring consumer protection.

- **Option D**

*Allows the integration of commercial communications and programming (including in relation to spot ads)*

This option would remove the principle of separation between commercial communications (including spot ads) and programming. This would give radio stations complete discretion to integrate seamlessly commercial elements into programming and would no longer distinguish between traditional spot ads and other commercial communications. As for Option C above it would be delivered as a slim set of rules designed to secure a principle of transparency of commercial arrangements in order to ensure consumer protection.

## Stakeholder responses

- 1.7 Ofcom received 21 responses to its proposals concerning the regulation of commercial communications in radio programming.
- 1.8 The responses from those individuals and organisations who did not request confidentiality have been published on Ofcom's website<sup>8</sup>. They were from: the Advertising Association; Bauer Media; British Heart Foundation; Campaign for Press & Broadcasting Freedom; Carat Limited; Central Office of Information; Children's Food Campaign; Children's Radio UK Ltd; European Sponsorship Association; Global Radio; GMG Radio Holdings; The Institute of Practitioners in Advertising; RadioCentre and the Radio Advertising Clearance Centre; Shetland Islands Broadcasting Co Ltd; UKRD Group Ltd; UTV Media (GB); UK Music; and the Voice of the Listener and Viewer.
- 1.9 Responses have been summarised in relation to each of Options A to D, in Parts Three to Six below. Broadly, implementation of Option C received most support from stakeholders.

## Overview of Ofcom's decision

- 1.10 In light of the responses received and considerations discussed in Parts 3 to 6 of this statement, including in relation to impact and Ofcom's statutory duties, we have decided to implement Option C, subject to prohibitions in key areas (news broadcasts, children's programming and the selection and rotation of music for broadcast).
- 1.11 The rules in the new Code Section Ten (Radio) are set out in Annex 1 and discussed in Parts 5 and 7 of this document. The rules support the principle of transparency in order to secure consumer protection.
- 1.12 In our view, the new Code Section Ten (Radio):

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<sup>8</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

- updates the regulatory framework for radio, so that it is consistent with wider public policy on product placement on television, and reflects listener attitudes identified in Ofcom's 2009 consumer research on commercial radio<sup>9</sup>;
- maintains appropriate consumer protection by providing transparency of all commercial arrangements in relation to broadcast material; and
- at the same time, we are aware that it also offers opportunities for the radio industry to generate new revenue which, in turn, may finance relevant and entertaining programming for listeners.

1.13 The following is a summary of the requirements of the new Code Section Ten (Radio):

**Code Section Ten (Radio) on commercial communications in radio programming requires:**

- appropriate signalling of commercial arrangements affecting programming, so as to ensure that the commercial arrangement is transparent to listeners (Rule 10.1);
- clear separation of spot advertisements and programming (Rule 10.2);
- prohibitions of commercial arrangements in relation to:
  - commercial references in and around news broadcasts (Rule 10.3);
  - integrated commercial references within children's programming (Rule 10.4); and,
  - the selection and rotation of music (Rule 10.5);
- the application of the BCAP Code to commercial references in programming (Rules 10.6 to 10.8); and
- the retention of rules concerning:
  - premium rate services (Rules 10.9 and 10.10);
  - charity appeals (Rule 10.11);
  - appeals for funds for programming or services (Rule 10.12); and
  - financial promotions and investment recommendations (Rule 10.13)

1.14 Ofcom proposes to keep a watching brief on the implementation of the new rule set and, within two years, we will decide whether to consult on any further rule changes.

<sup>9</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

As discussed in Part 5 of this document, the criteria that would determine whether such a review of the rules was required could include the following:

- developments in public policy related to the issue of additional constraints or prohibitions in broadcasting and advertising;
  - developments in radio output (if any) that raise concerns over consumer protection (in particular, child audiences); and
  - complaints and/or issues raised by stakeholders.
- 1.15 Consideration may be given, as part of this process, to a possible move towards the removal of the separation requirement for spot advertisements (Option D, discussed in Part 6 of this statement). Consideration may also be given to the appropriateness and effectiveness of the rule set, in relation to potentially harmful products or services, news broadcasts, children's programming and the selection and rotation of music for broadcast.

### **New Section Ten (Radio) of the Broadcasting Code and Guidance**

- 1.16 The new Code Section Ten (Radio)<sup>10</sup> applies to all material broadcast on or after 20 December 2010 and is set out at Annex 1.
- 1.17 We have updated and revised associated guidance<sup>11</sup>, which can be found at Annex 2.

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<sup>10</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

<sup>11</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>



## Part 2

# Introduction and Background

## Introduction

- 2.1 This document is the final regulatory statement on changes to the Ofcom Broadcasting Code (“the Code”) rules on commercial communications (i.e. paid-for references to products or services) in radio programming. It follows the 2010 Broadcasting Code Review Commercial Communications in Radio Programming consultation (28 June to 17 September 2010) and, prior to that, the 2009 Broadcasting Code Review (15 June to 4 September 2009).
- 2.2 This statement should be read in conjunction with the 2010 consultation document<sup>12</sup> and the revised December 2010 Code<sup>13</sup>. The new Code Section Ten (Radio) on Commercial Communications in Radio Programming covers broadcasts on or after 20 December 2010 and is set out at Annex 1.

## Background

- 2.3 Under the Communications Act 2003 (“the Act”), Ofcom is required to draw up and, from time to time, revise a code for television and radio services, covering standards in programmes, sponsorship and fairness and privacy. This code is known as the Ofcom Broadcasting Code and came into effect on 25 July 2005<sup>14</sup>, following extensive public consultation and research during 2004.
- 2.4 Ofcom made a commitment in the 2008/9 Annual Plan<sup>15</sup> to review the Code and consider whether it still reflected the consumer, industry and regulatory environments.
- 2.5 In response to this commitment, Ofcom launched its 2009 consultation on the Broadcasting Code Review<sup>16</sup>. As part of this consultation, Ofcom proposed revised rules relating to sponsorship and commercial references in television and radio programming (Sections Nine and Ten of the Code to date).
- 2.6 Section Nine of the Code to date has applied to both radio and television broadcast sponsorship arrangements. It was underpinned by three key principles: it sought to ensure that sponsorship arrangements were **transparent**; **separate**<sup>17</sup> from programming and distinct from advertising; and that the broadcaster maintained

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<sup>12</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/>

<sup>13</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

<sup>14</sup> The Code has been revised subsequently in October 2008 and December 2009.

<sup>15</sup> [http://www.ofcom.org.uk/about/accoun/reports\\_plans/annual\\_plan0809/](http://www.ofcom.org.uk/about/accoun/reports_plans/annual_plan0809/)

<sup>16</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/summary/main.pdf>

<sup>17</sup> Separation (on radio): to date, the integration of commercial communications into the editorial content of programming has not been permitted. Instead, they were required to be kept separate from programming. In particular, spot advertisements appeared (and will continue to appear) in commercial breaks and, sponsorship credits appeared at the beginning and/or end of the relevant programming.

**editorial control** over sponsored content, so that programming was not distorted for commercial purposes.

- 2.7 Section Ten of the Code to date applied to other instances where references to a product or service may appear in the course of television or radio programming, whether as a result of a commercial arrangement or not. It was underpinned by two key principles: it sought to ensure that advertising was **separate** from programming and that the broadcaster maintained **editorial control** over programme content, so that programming was not distorted for commercial purposes.
- 2.8 When considering commercial communications on radio as a whole, the overriding principles, to date, can therefore be summarised as: **transparency**; **separation**; and **editorial independence**.
- 2.9 Ofcom's 2009 Code Review set out our intention to revise Sections Nine and Ten of the Code, replacing these with a **revised Section Nine concerning television** and a **revised Section Ten concerning radio**.
- 2.10 The review of Sections Nine and Ten of the Code was subsequently extended to 2010<sup>18</sup>. This was in order for Ofcom to take account of the Government's decision<sup>19</sup> to permit (subject to limitations) product placement on television i.e. to permit non-promotional broadcast references to products or services within television programming, in return for payment. Such references were not previously permitted.
- 2.11 Following this extension, the 2010 consultation on the Broadcasting Code Review was launched on 28 June 2010. It took into account the following:
- **wider regulatory and broadcast policy decisions** of significance for radio broadcasting (in order to provide consistency with decisions on product placement and commercial references on television, as discussed in Part 2 and Part 6 of the consultation document and referred to in paragraph 2.10 above);
  - **relevant areas of legislation**, including Ofcom's duty to remove unnecessary regulatory burdens, and to ensure consistency with the relevant provisions of the Consumer Protection From Unfair Trading Regulations 2008 (detailed in Part 3 of the consultation document);
  - **consumer research** on listener attitudes to commercial radio, commissioned for the 2009 Code Review and discussed below<sup>20</sup>;
  - **responses to the 2009 Code Review**<sup>21</sup>; and,
  - **pre-consultation discussions** with stakeholders.

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<sup>18</sup> In the interim a revised Code was published in December 2009 in which revisions were made to other sections of the Code. This can be found at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

<sup>19</sup> The full statement can be found at: [http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6624.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx)

<sup>20</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

<sup>21</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

2.12 The 2010 consultation document proposed four options, set out in paragraph 2.18 below, concerning the future regulation of commercial communications on radio and invited stakeholders' responses to these. A separate consultation explored commercial references in television programming<sup>22</sup>.

## Consumer research

2.13 As referred to above (and as discussed in the 2010 consultation document), as part of the 2009 Code Review, deliberative and qualitative research was commissioned by Ofcom, to explore consumer attitudes to commercial references on radio. This was published in June 2009<sup>23</sup>.

2.14 This research was specifically commissioned to understand listener tolerance of promotional activity within editorial content (i.e. the degree to which radio listeners were prepared to accept references that were subject to commercial arrangements being included *within* programming). The public's views were reflected in the specific liberalisations proposed by Ofcom in its 2009 Code review consultation.

2.15 The research pre-dated the policy and regulatory developments referred to above, in paragraph 2.10, and discussed elsewhere in this document. However, it contains useful findings in relation to listeners' attitudes. The research indicated that consumers would be receptive to liberalisation. This was based on the recognition and expectation that "commercial radio" was, by nature, commercial. Transparency was found to be key to listeners, who identified the following key concerns:

- ensuring that commercial activity could be clearly understood as such;
- the protection of listener trust (for example, in relation to the editorial integrity of presenters); and
- the quality of their listening experience.

2.16 In summary, research showed that, overall:

- listeners expected to be 'sold to' on commercial radio;
- traditional spot ads were associated with commercial radio, but tended to be regarded negatively. Listeners appreciated that the separation of commercial communications from programming, to date, prevented surreptitious advertising, but considered that, if the commercial arrangement was transparent, then the need for separation was reduced;
- sponsor credits (a form of commercial reference in programming) were often well-received on the grounds of brevity, a relatively low level of intrusiveness and a less overt sales agenda; and
- listeners had a clear appetite for some liberalisation of Ofcom's rules on commercial references in programming, but not at the expense of the three factors identified as listener concerns in paragraph 2.15, above.

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<sup>22</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/>

<sup>23</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

2.17 This research is referred to, where appropriate, in relation to the four options outlined immediately below.

## Consultation proposals

2.18 The 2010 consultation document identified four options for the new Section Ten of the Broadcasting Code (on commercial communications in radio programming), on which stakeholders were invited to provide responses:

- **Option A (discussed in Part 3 of this document)**  
*'Do nothing' option that maintains the principle of separation*  
This is a 'status quo' option and would maintain the comprehensive rules which have required, to date, all commercial communications, other than sponsorship credits, to be separated from programming. Under this option we would replicate the rules in Sections Nine and Ten of the Code, to date, in relation to radio, in a new Section Ten. Under Option A, the principles of transparency, separation and editorial independence, referred to above, would remain.
- **Option B (discussed in Part 4 of this document)**  
*Maintains principle of separation but provides defined set of exemptions*  
This option would also be framed as a comprehensive set of rules. It would maintain the requirement for commercial communications to be separated from programming, but would provide a defined set of exemptions. This is the approach we took in 2009, although this option could include a wider range of exemptions than those proposed in the 2009 Code Review consultation. Again, the principles of transparency, separation and editorial independence, referred to above, would underpin Option B.
- **Option C (discussed in Part 5 of this document)**  
*Allows the integration of commercial communications and programming (except in relation to spot ads)*  
This option would remove the principle of separation between commercial communications and programming except in relation to spot ads (which would need to remain distinguishable from programming). This would give radio stations wide discretion to integrate, for example, paid-for, promotional commercial references into programming provided these were transparent to listeners. This option would retain the value of spot ads as a distinct type of content and a distinct revenue source. It would be delivered as a slim set of rules designed to secure one principle: transparency of commercial arrangements. Such transparency would be central to ensuring consumer protection. Listeners would know when a commercial arrangement was in place in relation to programming. The principles of editorial independence and separation (except in relation to spot ads) would no longer apply under Option C.
- **Option D (discussed in Part 6 of this document)**  
*Allows the integration of commercial communications and programming (including in relation to spot ads).*  
This option would remove the principle of separation between commercial communications (including spot ads) and programming. This would give radio stations complete discretion to integrate seamlessly commercial elements into programming and would no longer distinguish between traditional spot ads and other commercial communications. It would be

delivered as a slim set of rules designed to secure a principle of transparency of commercial arrangements. As for Option C, above, such transparency would be central to ensuring consumer protection. The principles of editorial independence and separation would no longer apply under Option D.

- 2.19 Three rule sets (in relation to Options A to C) were included in the consultation. We also explained that, if Option D was to be adopted, we would re-consult, giving consideration to detailed regulatory options and accompanying rule set(s).
- 2.20 In addition, the consultation document invited stakeholders to offer any alternative approaches to the regulation of commercial communications in radio programming (discussed in Part 3 of this document).

## Issues arising from the proposed options

- 2.21 The consultation identified a number of issues that may arise, in different ways, from some or all of the above four options. These related to:
- music selection and rotation;
  - programming primarily aimed at children;
  - safeguards and prohibitions in relation to news and political and controversial matters;
  - references to potentially harmful products or services on radio;
  - consumer affairs programming;
  - religious programming; and
  - whether funding of commercial arrangements by non-commercial not-for-profit organisations require particular consideration.
- 2.22 These issues are addressed, where appropriate, in Parts 3 to 6 of this document.

## Stakeholder responses

- 2.23 Ofcom received 21 responses to its proposals concerning the regulation of commercial communications in radio programming. Three respondents (two individuals and one organisation) requested confidentiality and are not therefore identified in the summary of responses in Parts 3 to 6 of this document.
- 2.24 The responses from those individuals and organisations who did not request confidentiality have been published on Ofcom's website<sup>24</sup>. These were from: the Advertising Association; Bauer Media; British Heart Foundation ("BHF"); Campaign for Press & Broadcasting Freedom; Carat Limited; Central Office of Information ("COI"); Children's Food Campaign; Children's Radio UK Limited; European Sponsorship Association ("ESA"); Global Radio; GMG Radio Holdings; The Institute of Practitioners in Advertising ("IPA"); RadioCentre and the Radio Advertising

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<sup>24</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

Clearance Centre (“RACC”); Shetland Islands Broadcasting Company Ltd; UKRD Group Ltd; UTV Media (GB); UK Music; and the Voice of the Listener and Viewer (“VLV”).

- 2.25 Please see Annex 3 for a Glossary, including a brief explanation of the organisations listed above.
- 2.26 Responses have been summarised in relation to each of Options A to D in Parts 3 to 6 below.

## Approach to impact assessment

- 2.27 The consultation document did not contain a separate impact assessment document. Instead, the consultation document as a whole assessed the impact of the proposed changes on stakeholders. This statement should be read in conjunction with the assessments of impact, for each option, detailed in the consultation document.
- 2.28 Similarly, this statement as a whole addresses issues in relation to impact raised by stakeholders (including citizens and consumers, television broadcasters, advertisers and the music industry). Where stakeholders challenged Ofcom’s assessment of impact, we have reflected on our approach to the options and set out our responses.
- 2.29 In addition to general impact issues, Ofcom is required by statute to have due regard to any potential impacts its proposals may have on race, disability and gender equality, as well as other groups protected by legislation in Northern Ireland<sup>25</sup>. To fulfil this obligation, we completed an Equality Impact Assessment (“EIA”) screening form, which takes the form of an initial analysis of whether the proposals we are making raise equality issues and, if so, what their potential impacts might be.
- 2.30 The EIA was published as part of the consultation document and concluded that our proposals would be unlikely to involve any adverse effect with regard to the above equality groups. However, it did consider that the integration of commercial communications and programming might benefit some diversity groups, by allowing the many radio stations (some community and some commercial) that serve members of diversity groups, to develop fresh revenue streams and thereby strengthen their radio operations and financial viability. This could offer the possibility of enriching these stations, and their offering to varied groups within the community, at a time of difficult trading conditions.
- 2.31 We stated in the consultation that, following its completion and consideration of stakeholder responses, we would review whether, on the basis of stakeholder responses received, there are, in fact, equality impacts and/or considerations that we had not, to date, accounted for. Should we find evidence to support this, we stated that we would proceed to a full Equality Impact Assessment.
- 2.32 The consultation responses have confirmed our view that our proposals would be unlikely to involve any adverse effect with regard to race, disability and gender equality, as well as other groups protected by legislation in Northern Ireland. No stakeholder has raised any issue which would necessitate proceeding to a full Equality Impact Assessment and we do not therefore propose to proceed to such an assessment. As set out in the consultation document, however, we propose to

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<sup>25</sup> In addition to race, disability and gender, equality legislation in Northern Ireland also covers age, sexual orientation, carers, marital status, religious belief and political opinion.

include particular safeguards in relation to children's programming and to keep the implementation of the new rule set under a watching brief (please see Part 5).

## **New Broadcasting Code Section Ten (Radio) and Guidance**

- 2.33 In light of the responses received and considerations discussed in Parts 3 to 6 of this statement, including in relation to impact and Ofcom's duties, we have decided to implement Option C, subject to prohibitions in key areas (the selection and rotation of music, children's programming and news programming) outlined in Part 5.
- 2.34 The new Code Section Ten (Radio) on Commercial Communications in Radio Programming<sup>26</sup> is set out at Annex 1 of this document. The rules cover radio programming broadcast on or after 20 December 2010. Guidance<sup>27</sup> to the rules can be found at Annex 2.
- 2.35 NOTE: On 28 February 2011 a new Code Section Nine on Commercial References in Television Programming will be implemented. Until then, Section Nine (Television) on Sponsorship, and Section Ten (Television) on Commercial References and Other Matters, will apply to television and will sit alongside Section Ten (Radio) in the Broadcasting Code. For further information please see Ofcom's Statement on Commercial References in Television Programming<sup>28</sup>.

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<sup>26</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

<sup>27</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>

<sup>28</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrtv2010/statement/>

## Part 3

# Option A: proposed revisions to the Broadcasting Code in relation to commercial communications in radio programming

## Consultation proposal

- 3.1 In the 2010 consultation document, Ofcom invited stakeholders to comment on the following option:
- **Option A: 'Do nothing' option that maintains the principle of separation**  
This is a 'status quo' option and would maintain the comprehensive rules which, to date, have required all commercial communications (i.e. paid-for references to products or services), other than sponsorship credits, to be separated from programming. As discussed in Part 2 of this document, under Option A the principles of transparency, separation and editorial independence would remain.
- 3.2 This part of the statement should be read in conjunction with Part 4 of Ofcom's Broadcasting Code Review consultation document on *Commercial communications in radio programming*<sup>29</sup> (June 2010), which sets out the full proposals under Option A and our consideration of the impact of the proposals in relation to consumer and industry stakeholders, as well as regulatory and equality impact considerations.
- 3.3 In Part 4 of the consultation document, Ofcom included the rule set for Option A. This replicates the rules in relation to radio under Sections Nine and Ten of the Code to date (which would be amalgamated in a new Section Ten under Option A).
- 3.4 In addition, Part 4 of the consultation document confirmed the safeguards and/or prohibitions that would remain in place under Option A. These were in relation to:
- news and political and controversial matters;
  - potentially harmful products or services on radio; and
  - funding of commercial arrangements by non-commercial not-for-profit organisations.

## Stakeholder responses to Option A

### Overview of stakeholder responses

- 3.5 Part 2 of this document details the individuals and organisations who responded to

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<sup>29</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/>



this consultation (see paragraph 2.24, above). Unless confidentiality was requested, the full responses have been published on Ofcom's website<sup>30</sup>.

- 3.6 Responses in relation to Option A are summarised below. All the organisations referred to are explained in the Glossary, at Annex 1. Individuals and organisations requesting confidentiality have not been named.
- 3.7 Stakeholders did not comment on the rule set provided for Option A but, instead, responded to the broad approach under this option.

### **Stakeholders who supported Option A without reservations**

- 3.8 Shetland Islands Broadcasting Company Ltd favoured Option A. It considered permitting sponsorship to have been a mistake and said that the introduction of further commercial communications in programming would damage the credibility of commercial radio.
- 3.9 VLV acknowledged that most of its members were not commercial radio listeners, but said it believed that any increase in the amount of commercial communications was likely to irritate the majority of listeners and therefore prove self-defeating in economic terms. The Campaign for Press and Broadcasting Freedom also welcomed Option A, as it opposed the integration of commercial communications and programming.

### **Stakeholders who supported Option A with reservations**

- 3.10 The Children's Food Campaign said that, of the four options, it preferred Option A. However, it considered that regulations were inadequate and proposed the approach set out at paragraph 3.18, below.
- 3.11 An individual said that Option A was preferable only if alternative approaches (see paragraph 3.19, below) could not be considered.

### **Stakeholders who disagreed with Option A**

- 3.12 UKRD disagreed with Option A, as it considered that, being the 'status quo', this option would not progress opportunities and conditions for commercial radio that were available elsewhere in the consultation. UTV Media said that the approach of Option A missed an obvious opportunity to introduce what it saw as the benefits of Option C (see paragraph 5.9). GMG Radio did not support Option A, which it said would not remove what it considered to be unnecessary regulatory burdens placed on the commercial radio industry.
- 3.13 RadioCentre strongly opposed Option A. It said it believed that the status quo no longer met industry, advertiser or listeners needs. Bauer Media, Global Radio and Children's Radio UK Ltd said they supported RadioCentre's position.
- 3.14 The IPA did not believe that Option A should be adopted, as it said it would not be acceptable to maintain the level of restrictions on radio, that have existed to date, at a time when the rules for television were being liberalised. The ESA did not support Option A. It argued that Ofcom's (2009) research on listener attitudes, discussed in Part 2 of this document, revealed that constraints in force to date were out of line with listeners' expectations. The Advertising Association did not believe that continuing

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<sup>30</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

with the present system was compatible with increasing commercial freedoms and providing new revenue streams for broadcasters.

- 3.15 The COI considered that the status quo was no longer feasible and welcomed any increased opportunity to broaden the means by which it could promote social well-being (see Part 4 of this document).
- 3.16 An individual disagreed with Option A, as this individual considered it would be a backward step from the commercial operation of most businesses.
- 3.17 An organisation said Option A would be a retrograde step. It disagreed with Ofcom's consultation assessment in relation to revenue forecasts<sup>31</sup> and argued that radio advertising revenue was constantly under attack, from competitive services and also from other advertising media (e.g. the internet).

### **Stakeholders who proposed an alternative approach**

- 3.18 The Children's Food Campaign said it believed that children should be protected from unhealthy food marketing, whatever marketing technique was used. It argued that commercial references on radio to HFSS products should be prohibited at all times and advocated a 2100 watershed for both spot advertising for, and sponsorship by, these products on television and radio. The British Heart Foundation proposed that sponsorship of programmes by HFSS products, and placement of these products, should only be permitted after 2100.
- 3.19 An individual proposed that broadcasters provide listeners with information about the cost of advertisements and the proportion of time allocated to their broadcast, so that listeners could identify stations with either less advertising or advertisements with higher production quality. This individual stated that this proposal would be likely to reduce advertising spend and argued that while advertisers would welcome "editorial presence and influence" this did not make it "the right or just thing to do".

## **Ofcom's decision**

### **Background**

- 3.20 In responding to the 2010 consultation and preparing this statement, Ofcom has taken into account its duties and the legislative context set out in Part 3 of the consultation paper and summarised in paragraph 2.11 above.
- 3.21 In relation to an assessment of impact, paragraph 2.27 above explains that this statement does not contain a separate impact assessment. Rather, the statement as a whole addresses issues relating to impact on stakeholders.

### **Response to stakeholder comments**

- 3.22 Ofcom notes that VLV favoured Option A, and considered that liberalisation would be

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<sup>31</sup> Ofcom's consultation document argued (paragraph 4.19) that "as there would be no change from the current regulatory position under Option A, it is arguable that industry would be no worse off financially". This is supported by advertising revenue forecasts. In relation to radio, non-branded (advertising) revenue is forecast to increase by 4.9% in 2010 and 5.8% in 2011; branded (sponsorship) revenue is forecast to rise by 5.7% in 2010 and 7.0% in 2011 (source: Advertising Association).

likely to irritate listeners and therefore prove self-defeating economically. However it is also useful to consider audience research, commissioned by Ofcom in 2009 to understand listener tolerance of promotional activity within editorial content<sup>32</sup>. As discussed in paragraphs 2.13 to 2.16 of this document, this research indicated that consumers would be receptive to the liberalisation of regulation with regard to commercial communications on radio. In summary, the research indicated that ensuring *transparency* was key to listeners, although they identified significant concerns in relation to the protection of listener trust (for example in relation to the editorial integrity of presenters) and the quality of their listening experience. These issues are considered further in Part 5 of this statement.

- 3.23 The Campaign for Press and Broadcasting Freedom opposed the integration of commercial communications in radio programming, as did Shetlands Broadcasting Company Ltd. The other broadcasting, advertising and other organisations, as well as an individual, opposed Option A.
- 3.24 Ofcom notes the Children's Food Campaign's recommendation that commercial references on radio to HFSS products should be prohibited at all times and that there should be a 2100 watershed<sup>33</sup> for both spot advertising for, and sponsorship by, these products on television and radio. Ofcom considers the introduction of a watershed on radio would be inappropriate, given general radio audience profiles and the nature of radio output and listening. Nevertheless, we recognise concerns in relation to children's programming (also raised by the British Heart Foundation), which are covered in paragraphs 5.62 to 5.94.
- 3.25 In relation to information about the cost of advertisements and the proportion of time allocated to their broadcast, Ofcom considers the amount of radio advertising broadcast by individual stations to be appropriately transparent.
- 3.26 Overall, Ofcom considers that implementing Option A:
- does not update the regulatory framework for radio so that it is consistent with wider public policy concerning product placement on television;
  - does not provide an approach to consumer protection that is consistent with listener attitudes identified in the Ofcom 2009 consumer research on commercial radio; and
  - at the same time we are aware that it does not offer opportunities for the radio industry to generate new revenue, which in turn may finance relevant and entertaining programming for listeners.

## Conclusion

- 3.27 For the reasons discussed above, Ofcom has not implemented Option A. (See Part 5 in relation to the implementation of Option C).

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<sup>32</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

<sup>33</sup> The Broadcasting Code states that television broadcasters must observe the watershed. This means that material unsuitable for children should not, in general, be shown before 2100 or after 0530. The Code also states radio broadcasters must have particular regard to times when children are particularly likely to be listening, including the school run and breakfast time.

## Part 4

# Option B: proposed revisions to the Broadcasting Code in relation to commercial communications in radio programming

## Consultation proposal

4.1 In the consultation document, Ofcom invited stakeholders to comment on the following option:

- **Option B:** *Maintains the principle of separation but provides a defined set of exemptions*

This option would maintain the requirement, to date, for commercial communications (i.e. paid-for references to products or services) to be separated from programming (as discussed in Part 2 of this document), but would provide a defined set of exemptions. This was the approach Ofcom took in the 2009 Code Review<sup>34</sup>, where the proposed defined set of exemptions was as follows:

- content-related promotions – proposals to allow a brief offer of further information, or offer for sale, of a product or service that is directly associated with specific content and funded by a third party;
- sponsored outside broadcasts – proposals to allow the sponsorship of an outside broadcast by the venue or venue owner;
- sponsored listener competition features – proposals to allow sponsor references to form part of listener competition features; and
- in addition, the potential introduction of a set of new rules in Section Ten in relation to Public Information Programming. This was defined as a new category of programming funded by non-commercial not-for-profit entities that seek to educate or inform the audience on matters in the public interest.

4.2 The consultation document made clear that Option B could include a wider range of exemptions than those proposed in the 2009 consultation. Again, the principles of transparency, separation and editorial independence, discussed in Part 2 of this document, would underpin Option B.

4.3 This part of the statement should be read in conjunction with Part 5 of Ofcom's Broadcasting Code Review consultation document on *Commercial communications in radio programming*<sup>35</sup> (June 2010), which sets out the full proposals under Option B

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<sup>34</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/summary/main.pdf>

<sup>35</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/>

and our consideration of the impact of the proposals in relation to consumer and industry stakeholders, as well as regulatory and equality impact considerations.

- 4.4 In Part 5 of the consultation document, we also included the rule set on which we previously consulted in the 2009 Code Review consultation. Responses to that consultation were based on the prohibition of product placement (defined and discussed at paragraph 2.10) in place at that time. We invited stakeholders to reconsider this option based on the change in public policy in this area (which, although in relation to television, sets the wider context for radio). We invited stakeholders to respond to Option B and to consider any additional exemptions to the requirement for separation.
- 4.5 In addition, Part 5 of the consultation document discussed safeguards and/or prohibitions proposed under Option B in relation to:
- potentially harmful products or services on radio;
  - news and political and controversial matters; and
  - funding of commercial arrangements by non-commercial not-for-profit organisations.

## Stakeholder responses to Option B

### Overview of stakeholder responses

- 4.6 Part 2 of this document details the individuals and organisations who responded to this consultation (please see paragraph 2.24, above). Unless confidentiality was requested, the full responses have been published on Ofcom's website<sup>36</sup>.
- 4.7 Responses in relation to Option B are summarised below, all the organisations referred to are explained in the Glossary, at Annex 3. Individuals and organisations requesting confidentiality have not been named.
- 4.8 Stakeholders did not comment on the rule set provided for Option B but, instead, responded to the broad approach under this option.

### Stakeholders who supported Option B

- 4.9 The COI supported Options B, C and D in so far as each would permit the broadcast of public information campaigns; its submission is outlined at paragraph 5.21, below. No other stakeholders expressed support for Option B.

### Stakeholders who disagreed with Option B

- 4.10 UKRD disagreed with Option B, as it considered Option C allowed for greater and necessary commercial freedom. UTV referred Ofcom to its 2009 response<sup>37</sup>. It said that Option B would deliver none of the benefits identified in relation to Option C. GMG Radio said Option B would not achieve fully the desired overall objective of rule

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<sup>36</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

<sup>37</sup> <http://stakeholders.ofcom.org.uk/consultations/bcode09/?showResponses=true>

relaxation in order to alleviate some of the unnecessary regulatory burdens placed on the commercial radio industry.

- 4.11 RadioCentre said the industry strongly opposed Option B, which it considered unfit for purpose. Bauer Media, Global Radio and Children's Radio UK Ltd said they supported RadioCentre's position.
- 4.12 Conversely, Shetland Islands Broadcasting Company Ltd disagreed with Option B because it considered permitting sponsorship to have been a mistake and said that the introduction of further commercial communications in programming would damage the credibility of commercial radio.
- 4.13 The Advertising Association did not agree with Option B. It observed that this option compared unfavourably with the liberalisation of commercial communication rules for television.
- 4.14 The IPA and ESA said they considered the principle of separation under Option B both unnecessarily restrictive and unfairly constraining on commercial radio's ability to generate revenues through innovative and creative sales, and promotional activity. VLV argued that Option B envisaged significant increases in the amount of commercial communications. It said it believed any such move could alienate many listeners and prove counter-productive.
- 4.15 An individual disagreed with Option B, as it would place greater limiting factors on commercial radio than exist in other advertising media.
- 4.16 An organisation did not support Option B, as it said that, even within the broader framework of Ofcom's proposed rules for this option, there were still a number of fundamental limitations being placed on how radio services would be able to monetise their stations. It argued that maintaining the principle of separation of editorial and advertising would stifle creativity. It said that, by enforcing rigid rules, new revenue streams, with alternative funding methods, could not easily be developed.

### **Stakeholders who responded to this option only in relation to specific issues**

- 4.17 The Children's Food Campaign said that, without a prohibition on messages for HFSS products, there would be increased opportunities for marketers to target listeners, including children, with marketing for HFSS products. Its own proposal is summarised in paragraph 3.18, above, and 5.79 below.
- 4.18 The British Heart Foundation did not support any particular option within the consultation but commented on programmes specifically aimed at children under each of Options B to D. As discussed in paragraphs 3.18 above and 5.80 below, it proposed that sponsorship of programmes by HFSS products, and placement of these products, should only be permitted after 2100.

## **Ofcom's decision**

### **Background**

- 4.19 In responding to the 2010 consultation and preparing this statement, Ofcom has taken into account its duties and the legislative context set out in Part 3 of the consultation paper and summarised in paragraph 2.11 above.

- 4.20 In relation to an assessment of impact, paragraph 2.27 above explains this statement does not contain a separate impact assessment. Rather, the statement as a whole addresses issues relating to impact on stakeholders.

### Response to stakeholder comments

- 4.21 Ofcom notes that VLV argued that Option B would result in significant increases in the amount of commercial communications, which could alienate many listeners and prove counter-productive. However, as discussed in paragraphs 2.13. to 2.16, above, audience research commissioned by Ofcom in 2009, to understand listener tolerance of promotional activity within editorial content<sup>38</sup> indicated that consumers would be receptive to the liberalisation of commercial communications regulation then in place for radio.
- 4.22 In summary, as identified in Part 3, the research indicated that ensuring *transparency* was key to listeners, although they identified significant concerns in relation to the protection of listener trust (for example in relation to the editorial integrity of presenters) and the quality of their listening experience. Overall, the research, which invited listeners to consider examples of (limited) integrated commercial communications, suggests that listeners would be comfortable with the type of liberalisation envisaged under Option B.
- 4.23 Ofcom notes that, while the COI did not reject Option B outright, no respondents supported it as their preferred option. Further, we note that broadcasting, advertising and other organisations opposed the implementation of Option B.
- 4.24 In Ofcom's view Option B could deliver a range of new programming opportunities while safeguarding consumer protection. However, we acknowledge that this option is predicated on the prohibition of product placement and does not recognise the significant changes to the wider regulatory and broadcast policy landscape in relation to the Government's position on product placement (see paragraph 2.10, above).
- 4.25 Overall, Ofcom considers that implementing Option B would be more consistent, than Option A, with the expectations and preferences of commercial radio listeners (indicated in the research referred to at paragraph 4.21, above). However, Option B:
- does not update the regulatory framework for radio so that it is consistent with wider public policy concerning product placement on television; and
  - at the same time we are aware that it does not offer opportunities for the radio industry to generate new revenue, which, in turn, may finance relevant and entertaining programming for listeners.

### Conclusion

- 4.26 For the reasons discussed above, Ofcom has not implemented Option B. (See Part 5 in relation to the implementation of Option C.)

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<sup>38</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

## Part 5

# Option C: proposed revisions to the Broadcasting Code in relation to commercial communications in radio programming

## Consultation proposal

5.1 In the consultation document Ofcom invited stakeholders to comment on the following option:

- **Option C:** *Allows the integration of commercial communications and programming (except in relation to spot advertisements).*

This option would remove the principle of separation between commercial communications and programming (discussed in Part 2 of this document) except in relation to spot advertisements which would need to remain distinguishable from programming. This would give radio stations wide discretion to integrate, for example, paid-for, promotional commercial references into programming, provided these were transparent to listeners. This option would retain the value of spot advertisements as a distinct type of content and a distinct revenue source.

It would be delivered as a slim set of rules designed to secure one principle: transparency of commercial arrangements. Such transparency would be central to ensuring consumer protection. Listeners would know when a commercial arrangement was in place in relation to programming. The principles of editorial independence and separation (except in relation to spot advertisements) would not longer apply under Option C.

5.2 This part of the statement should be read in conjunction with Part 6 of Ofcom's Broadcasting Code Review consultation document on *Commercial communications in radio programming*<sup>39</sup> (June 2010), which sets out the full proposals under Option C and our consideration of the impact of the proposals in relation to consumer and industry stakeholders as well as regulatory and equality impact considerations.

5.3 In Part 6 of the consultation document, we identified a number of issues that may arise from the integration of commercial communications and programming that is permitted under Option C:

- whether potential commercial arrangements around music selection or rotation required particular consideration;
- programming primarily aimed at children;
- safeguards and prohibitions in relation to news and political and controversial matters;

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<sup>39</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/>



- commercial arrangements with, and/or references to, potentially harmful products or services;
- consumer affairs programming;
- religious programming; and,
- funding of commercial arrangements by non-commercial not-for-profit organisations.

5.4 These issues are set out, stakeholder responses summarised and Ofcom's decisions provided, at paragraphs 5.36 to 5.144.

5.5 In addition, in Part 6 of the consultation document, we included the proposed rule set for Option C, on which we invited stakeholders' comments.

## Stakeholder responses to Option C

### Overview of stakeholder responses

5.6 Part 2 of this document details the individuals and organisations who responded to this consultation (see paragraph 2.24, above). Unless confidentiality was requested, the full responses have been published on Ofcom's website<sup>40</sup>.

5.7 Responses in relation to Option C are summarised below, all the organisations referred to are explained in the Glossary, at Annex 3. Individuals and organisations requesting confidentiality have not been named.

5.8 Stakeholder responses to each of the proposed rules, and amendments made as a result, are set out in Part 7, below. The new Code Section Ten (Radio) rule set can be found at Annex 1.

### Stakeholders who supported Option C without reservations

5.9 UKRD welcomed Option C. It considered the proposed rule set to be fair and thorough and said that the proposed guidance represented a "leap forward" for commercial broadcast regulation in this country. UTV Media (GB) said it considered that the approach of Option C would align regulation with the requirements of legislation, improve editorial content, deliver appropriate consumer protection, make the rules simpler to both understand and implement, and increase the appeal of commercial radio to advertisers.

5.10 The IPA said it believed Option C would provide considerable creative opportunities for broadcasters and advertisers. The ESA also supported Option C. It said that, by removing the principle of separation between commercial communications and programming (that has existed to date), Ofcom had the opportunity not only of freeing commercial radio from what the ESA considered an unnecessary and inhibiting regulatory burden, but also of opening up a significant new revenue stream attracted by the creative opportunities this would afford, to the benefit of all parties. The Advertising Association believed that the BCAP Code, as well as consumers' awareness of the funding model of commercial radio, provided sufficient protection for consumers, while also allowing broadcasters to exploit a new revenue stream.

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<sup>40</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>

## **Stakeholders who supported Option C with reservations**

- 5.11 GMG Radio said Option C was its preferred overall option. It proposed some amendments to the draft rule set, which are set out in Part 7, below. It said it hoped these suggestions would assist in overall interpretation and further enhance the objective and benefits of complete transparency for radio operators, commercial partners and listeners.
- 5.12 RadioCentre said it supported the immediate implementation of Option C. It believed this would provide the industry and advertisers with optimal creative and commercial flexibility, whilst securing appropriate consumer protection and contributing to better choice and quality for listeners. It said it recognised that Ofcom's proposals represented significant de-regulation, and it outlined how industry would adopt a highly responsible attitude to the use of commercial references in radio programming. Bauer Media, Global Radio and Children's Radio UK Ltd supported RadioCentre's position.
- 5.13 RadioCentre disagreed on two matters: the sponsorship of news bulletins (see paragraph 5.101 to 5.105, below) and the use of integrated commercial references within children's radio programming (see paragraph 5.73, below).
- 5.14 RACC, as part of RadioCentre's submission, said it had discussed its plans for new clearance procedures with radio representatives and would issue detailed guidance when the new Code came into operation.
- 5.15 Carat Sponsorship welcomed Option C, with comments on children's programming (in paragraph 5.71, below) and charity promotions (see paragraph 7.78, below).
- 5.16 An individual welcomed Option C, saying it struck a balance between the ability to generate income, and the need to make commercial references clear. However, this individual believed it was unnecessary to make an overt reference to any portion of a programme being subject to a commercial arrangement, as this would be obvious.
- 5.17 An organisation said that, although it supported Option D, it would recommend that Option C was adopted prior to any further consultation required by Option D (rather than keeping the status quo in the interim).

## **Stakeholders who disagreed with Option C**

- 5.18 Shetland Islands Broadcasting Company Ltd disagreed with Option C. As discussed in relation to its views on Option B, it considered permitting sponsorship to have been a mistake and said that the introduction of further commercial communications in programming would damage the credibility of commercial radio.
- 5.19 As discussed in paragraph 3.9, above, VLV acknowledged that most of its members were not commercial radio listeners, but argued against Option C on the same basis that it disagreed with Option B. It envisaged significant increases in the amount of commercial communications under both options and said it believed any such move could alienate many listeners and prove counter-productive.
- 5.20 An individual disagreed with Option C, commenting that it would let advertisers overly pressurise and influence programmes.

## Stakeholders who responded to this option only in relation to specific issues

- 5.21 As noted in Part 4, the COI supported Options B, C and D, in so far as each would permit broadcast of public information campaigns. It referred Ofcom to its submission to the 2009 consultation<sup>41</sup>. It said public information campaigns might (under the new proposals) be funded, or partially funded, directly or indirectly from profit-making organisations. However, it said that this did not undermine their social value and importance or impact on the campaigns meeting their objectives, nor diminish their social worth. It added that it supported the proposals for transparency, since it believed it important to recognise that audiences are comfortable with commercial references, in appropriate environments, so long as they are properly transparent. Its responses in relation to specific issues are dealt with below: children's programming (paragraph 5.77); consumer programming (paragraph 5.129); and public information campaigns (paragraph 5.139).
- 5.22 The Children's Food Campaign disagreed with Option C, for the reasons set out in paragraph 5.79, below, in relation to children's programming.
- 5.23 The British Heart Foundation did not support any particular option within the consultation, but commented on programmes specifically aimed at children under each of Options B to D (see paragraph 5.80, below).
- 5.24 UK Music did not support any particular option within the consultation but opposed any commercial arrangements in relation to the selection or rotation<sup>42</sup> of music for broadcast, under each of Options C and D (see paragraph 5.50 to 5.51, below).

## Ofcom's decision

### Background

- 5.25 In responding to the 2010 consultation and preparing this statement, Ofcom has taken into account its duties and the legislative context set out in Part 3 of the consultation paper and summarised in paragraph 2.11 above.
- 5.26 In relation to an assessment of impact, paragraph 2.27 above explains that this statement does not contain a separate impact assessment. Rather, the statement as a whole addresses issues relating to impact on stakeholders.

### Overview response to stakeholder comments

- 5.27 Ofcom notes that VLV's argument that Option C (and Options B and D) would result in significant increases in the amount of commercial communications, which could alienate many listeners and prove counter-productive. As discussed in paragraph 3.22, above, audience research commissioned by Ofcom in 2009<sup>43</sup> provides useful findings on the attitudes of commercial radio listeners towards commercial references within editorial content. As set out in paragraphs 2.13 to 2.16 of this document, the research indicated that consumers would be receptive to the liberalisation of regulation, with regard to commercial communications on radio that had been in force to date.

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<sup>41</sup> <http://stakeholders.ofcom.org.uk/consultations/bcode09/?showResponses=true>

<sup>42</sup> Rotation involves the recurrence of music tracks broadcast within a specified period.

<sup>43</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/bcode09/annexes/radioresearch.pdf>

- 5.28 The 2009 research was conducted within the context of proposals that maintained the principle of separating commercial communications and programming (in-keeping with the prohibition of product placement in place at that time). It considered listener responses to potential carve-outs to this principle. Option C takes into account wider public policy in relation to product placement being permitted on television, as discussed in Part 6 of the consultation document, and permits the general integration of commercial communications (except spot advertisements) in programming. However, while the context (specifically the Government's decision on product placement) has developed since the research was conducted, its findings provide very useful indications of listener attitudes, since it invited listeners to consider examples of (limited) integrated commercial communications.
- 5.29 In summary, as discussed in Part 3 of this document, the research indicated that ensuring *transparency* was key to listeners, although participants identified significant concerns in relation to the protection of listener trust (for example in relation to the editorial integrity of presenters) and the quality of their listening experience.
- 5.30 In relation to the concerns identified immediately above, and as discussed previously, *transparency* is the key principle underpinning Option C and ensuring consumer protection. Listeners can expect to understand when a commercial arrangement is in place. In relation to the quality of the listening experience under this option, it is for broadcasters to decide how they retain their audiences' trust, loyalty and interest (subject to the requirements of the Code and, in particular, in relation to consumer protection, which is secured by the principle of transparency of commercial arrangements, as set out in paragraph 5.1 above). As discussed in Part 6 of the consultation document, based on Ofcom's listener research, we expect listeners may be comfortable with Option C, subject to the views and concerns discussed here.
- 5.31 Ofcom notes the comments from the COI, Children's Food Campaign, British Heart Foundation and UK Music in relation to specific issues and responds to these below under 'Issues arising' (introduced at paragraph 5.36).
- 5.32 Ofcom further notes that, broadly, the majority of broadcasters and other organisations, and an individual, supported the implementation of Option C. We respond below to their comments on particular issues arising from this option (paragraphs 5.36 onwards).
- 5.33 Overall, Ofcom considers that implementing Option C:
- updates the regulatory framework for radio, so that it is consistent with wider public policy on product placement on television and reflects listener attitudes identified in Ofcom 2009 consumer research on commercial radio;
  - maintains appropriate consumer protection, by providing the listener with transparency of all commercial arrangements in relation to broadcast material, supported by the requirements of the BCAP Code; and
  - at the same time we are aware that it also offers opportunities for the radio industry to generate new revenue which, in turn, may finance relevant and entertaining programming for listeners.

## Conclusion

- 5.34 For the reasons discussed above, Ofcom has implemented Option C. However, this implementation is subject to key prohibitions in relation to music, news and children's

programming (and other issues arising from the integration of commercial communications and programming under Option C), considered in the section of this document immediately below.

- 5.35 Please also see 'Next Steps', at paragraphs 5.145 to 5.148, which summarises the implementation process for Option C, taking into account the issues arising from it.

## Issues arising from Option C

- 5.36 As discussed above, the consultation document set out issues arising from the integration of commercial communications under Option C. These are summarised below, together with stakeholders' consultation responses and Ofcom's response to each.

### Potential commercial arrangements around music selection or rotation

#### *Consultation proposal*

- 5.37 The consultation document recognised that, by permitting the integration of commercial references within programming, Option C raised the possibility that commercial arrangements might be introduced in relation to the selection or rotation<sup>44</sup> of music for broadcast.
- 5.38 It explained that such arrangements had not been permitted, due to the prohibition of product placement. In addition, there had been public policy concerns, for example in relation to the diversity of music played. The consultation document also explained that the wider regulatory and broadcast landscape had undergone considerable development, in relation to both product placement on television and wider radio regulation<sup>45</sup>.
- 5.39 As a consequence of proposed liberalisations for speech-based commercial references, we set out the following approaches to commercial arrangements around three areas of broadcast music:
- music tracks – the consultation proposed that these could be promoted, or sold as products, within programming (which would need to be transparent to listeners as commercial references);
  - broadcast commercial references associated with music programming – the consultation proposed that, where a third party associates itself with the broadcast of a specific music track or string of tracks (for example, by sponsoring a 'Hit of the Hour' or 'The Golden Hour', as had been permitted to date) this would need to be transparent to listeners as commercial references (generally sponsorship credits);
  - selection or rotation of music – the consultation set out the view that, as part of general music output, the tracks themselves would not be considered commercial references; rather, they would be considered part of a pool of editorial content that already exists (i.e. 'raw material'), from which they were selected for a playlist and/or specific broadcast. The consultation document

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<sup>44</sup> Rotation involves the recurrence of music tracks broadcast within a specified period.

<sup>45</sup> For example limited deregulation under the Digital Economy Act 2010 and other developments set out in paragraph 2.23 of the consultation document.

raised the question of whether the selection or rotation of this music could, in principle, be subject to a commercial arrangement under Option C.

- 5.40 The consultation document said that, in relation to each of these approaches, all commercial arrangements around music would be subject to proposed new Rule 10.1, which requires that programming subject to, or associated with, a commercial arrangement must be signalled at the outset and at appropriate intervals. It linked this requirement to a proposal that should commercial arrangements be introduced in relation to the selection or rotation of music, these would be set out on the broadcaster's website, via its Public File,<sup>46</sup> and announced as such on air.
- 5.41 The proposed Code Notes to the rules therefore made a distinction (under "Commercial arrangement") between commercial references and the selection or rotation of music for broadcast.
- 5.42 As discussed above, the consultation document acknowledged public policy concerns in this area.
- 5.43 One concern is that the diversity of music played could be compromised by payment for the selection or rotation of music for broadcast. It is already the case that playlists<sup>47</sup> are, by their very nature, limited. However, the underlying concern here is that the decision to include a music track on a playlist, and the further decision on how often and when to play it, should be based on the track's merits and the broadcaster's editorial judgement, and not on the basis of commercial arrangements in relation to the selection or rotation of music.
- 5.44 An additional concern is in relation to transparency. There have been longstanding concerns in the US regarding the issue of 'payola'. In the American music industry, 'payola' is the illegal practice of payment (or other inducement) by record companies for the broadcast of recordings on music radio, in which the song is presented as being part of normal broadcasting. Under US law, a radio station can play a specific song in exchange for money, but this must be disclosed on the air as being sponsored airtime. The term has come to refer to any *secret* payment made to cast a product in a positive light (such as obtaining positive reviews). The proposals under Option C rely on the requirement for *transparency* and are therefore distinct from 'payola'.

### *Stakeholder responses*

- 5.45 Broadcasting and advertising stakeholders (Advertising Association, Carat Sponsorship, Children's Radio UK Ltd, European Sponsorship Association, GMG Radio Holdings Ltd, the Institute of Practitioners in Advertising, RadioCentre, UKRD Group Ltd and UTV Media (GB)) broadly agreed that commercial arrangements influencing the selection or rotation of music for broadcast should be permitted.
- 5.46 RadioCentre and Children's Radio UK Ltd considered that such arrangements should also be permitted in relation to children's programming.

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<sup>46</sup> Under existing licence conditions, broadcasters are required to make available on their website, and keep up-to-date, a Public File containing information about the provision of their service in accordance with Ofcom guidelines.

<sup>47</sup> A playlist is a list or lists of current songs chosen for broadcast. These lists are used to create an ordered rotation of tracks played during a given time period (which can be adjusted based on the time of day).

- 5.47 UKRD Group Ltd considered that on-air transparency would be the means by which listeners would ultimately judge any station's honesty, while GMG Radio Holdings Ltd considered that commercial arrangements concerning music selection and rotation would require relevant details to be placed on a station's website or Public File to ensure overall transparency and maintain listener trust.
- 5.48 UTV Media (GB) considered that any issues around music selection would require an evolving view as the market developed. It opposed any proposal to introduce Public Files for independent national radio stations (which are not currently required to maintain them), suggesting that they would be able to declare relevant commercial arrangements online.
- 5.49 An individual disagreed with Ofcom's proposals, on the basis that the proposed transparency requirements should not be required, as listeners would ultimately decide whether music output, to whatever extent it was influenced by commercial arrangements, appealed to them.
- 5.50 UK Music<sup>48</sup>, responding to the consultation on behalf of the music industry, noted that its sector was characterised by a variety of very small innovative enterprises<sup>49</sup>, and said it was sympathetic to the plight of the commercial radio sector and to Ofcom's efforts to explore regulatory options that could ease its financial difficulties. However, it said the introduction of commercial arrangements in relation to the selection and rotation of music would have a direct and detrimental effect on the UK's commercial music industry, the diversity of commercial radio programming and on music fans, artists, composers and audiences alike. It therefore said this did not have the support of any part of the UK's commercial music industry.
- 5.51 Specifically, UK Music argued the following:
- Market entry and diversity: UK Music noted that, to date, the cost of music has not been a factor in its selection or rotation for broadcast. It argued that the introduction of such commercial arrangements would erect a financial barrier to market entry (in relation to commercial radio) for both artists and companies, where no such barrier currently existed. It said this would detrimentally impact on the legitimate economic interests of music businesses, investors and individual artists. UK Music also argued that such commercial arrangements would result in a reduction in the range of music played on commercial radio stations, adversely impacting upon diversity for the listener. It said that, currently, a merit-based system operated, with individual records being chosen (for broadcast) on their ability to attract an audience, reflecting each station's needs and formats. UK Music argued that a market impact assessment would be required in relation to diversity.

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<sup>48</sup> UK Music is the umbrella organisation representing the collective interests of the UK's commercial music industry. It consists of Association of Independent Music; British Academy of Songwriters, Composers and Authors; BPI; Music Managers Forum; Music Producers Guild; Music Publishers Association; Musicians Union; and copyright collection bodies PPL and PRS for Music.

<sup>49</sup> UK Music said that small and medium enterprises accounted for 90% of all music businesses (Department for Culture Media and Sport, "SME Music Businesses: Business Growth and Access to Finance", February 2006).

- Licensing and related economic impact: UK Music noted that commercial radio is currently licensed to broadcast music by PRS for Music<sup>50</sup> and PPL<sup>51</sup>, acting under a direct mandate from songwriters, artists and rights holders. It said these collecting bodies do not have the authority to carry out negotiations which might create an association between artists and any brands or entities. It said songwriters and artists retain the (moral and economic) right to approve such associations (under the Copyright Designs and Patents Act 1988). It argued that every instance where the selection of music formed any part of a commercial arrangement would require the prior written consent of every artist who contributed to the work, and that Ofcom's proposals exposed broadcasters and others to the vulnerability of legal challenge by individual artists, composers and songwriters. UK Music also argued that the introduction of commercial arrangements around the selection and rotation of music would: weaken the licensing position of PRS for Music and PPL members; run contrary to the legal framework of collective rights administration; weaken artists' ability to conduct their own negotiations over brand associations; and, in particular, undermine the ability of artists to use exclusivity as part of their bargaining power.

#### *Ofcom's decision*

- 5.52 To date, commercial arrangements influencing the selection or rotation of music have been prohibited under the former Section Ten of the Code on commercial references. The rules in this Code Section required that broadcasters maintain the independence of editorial control over all programming (former Rule 10.1), prohibited the promotion of products and services in programmes (former Rule 10.3), prohibited undue prominence being given to a product of service in any programme (former Rule 10.4) and prohibited product placement (former Rule 10.5).
- 5.53 As discussed above, the consultation document recognised that, by permitting the integration of commercial references within programming (and removing the rules referred to immediately above), Option C raised the possibility that commercial arrangements might be introduced in relation to the selection or rotation of music for broadcast.
- 5.54 Ofcom notes that the radio industry supported the consultation document's proposals in relation to commercial arrangements around the broadcast of music, while the music industry strongly opposed them.
- 5.55 Having considered all the submissions from stakeholders on this issue, Ofcom has concluded that there is a risk that permitting such commercial arrangements could adversely impact on the range and diversity of music played on commercial radio stations. There is also a risk that such commercial arrangements could impact negatively on the economic interests of music businesses and individual artists by erecting a financial barrier to them accessing commercial radio.
- 5.56 In addition, Ofcom recognises the considerable range of wider liberalisations that have been introduced under the new Code Section Ten (Radio) rules, and the need

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<sup>50</sup> Formerly the Performing Rights Society, PRS for Music collects fees on behalf of the song writer, composer and publisher (it has around 70,000 members).

<sup>51</sup> Formerly Phonographic Performance Ltd, PPL licenses UK radio and television stations, other broadcasters and internet radio stations to legally broadcast sound recordings and music videos and collects fees on behalf of the record company and performers (it has around 45,000 performer members and around 5,000 record companies).



for these to bed down successfully, for the benefit of both consumer and commercial stakeholders.

- 5.57 In light of the considerations set out in paragraphs 5.55 and 5.56 above, and given the removal of the rules that previously prohibited such arrangements (set out in paragraph 5.52), Ofcom has concluded that it should maintain the prohibition of commercial arrangements in relation to the selection and rotation of music that has existed to date. Ofcom has therefore introduced a rule to this effect (published Rule 10.5, as set out in Annex 1 below).
- 5.58 Returning to the three areas set out at paragraph 5.39, above:
- music tracks – as we proposed in the consultation document, under the new Code Section Ten (Radio), set out in Annex 1, music tracks may be promoted or sold as products within programming. Broadcasters must ensure that these are transparent to listeners as commercial references. In addition broadcasters must receive no payment (or other valuable consideration) to influence the selection or rotation of music for broadcast.
  - broadcast commercial references associated with the tracks – sponsorship of programming that includes the broadcast of music would be permitted (as has been permitted to date) where this is made transparent, and where the broadcaster received no payment (or other valuable consideration) to influence the selection or rotation of music for broadcast.
  - selection or rotation of music for broadcast – as discussed above, these must not be subject to a commercial arrangement.
- 5.59 Going forward, it is Ofcom’s view that, any liberalisation in this area would require an assessment (in accordance with our statutory duties) of the risks identified in paragraph 5.55 above, and of the views of the impact on both the radio industry and the music industry (as indicated in the submissions to this consultation process) and other stakeholders. However before any such assessment could be undertaken, we would need first to understand the framework within which commercial agreements might be arrived at.
- 5.60 In Ofcom’s view, given the opposition by the music industry (expressed in UK Music’s consultation submission) to commercial arrangements around the selection and rotation of music, the commercial radio and music industries would need to explore this issue in more detail, and reach an understanding on the framework issue, before any such assessment could meaningfully take place.
- 5.61 In conclusion, as discussed above, Rule 10.5, prohibiting commercial arrangements around the selection and rotation of music, is set out in Annex 1 of this statement and Ofcom has issued associated guidance to the rule.

## **Programming primarily aimed at children**

### *Consultation proposal*

- 5.62 The consultation document recognised that the *integration* of commercial communications within radio programming does not afford child listeners the protection provided by the *separation* between editorial and commercial messages that has been required to date.

- 5.63 Ofcom took into account the particular vulnerabilities of children, as recognised in the requirement under the Act for Ofcom to have regard to the vulnerability of children and to ensure “that persons under the age of eighteen are protected”.
- 5.64 In relation to the integration of commercial communications within radio programming, a particular area of concern arises over the difficulty children may have in recognising commercial messages and differentiating them from other broadcast material.
- 5.65 Ofcom also acknowledged wider broadcasting public policy in this area. In relation to product placement on television, the Government, in its Ministerial Statement on product placement of 9 February 2010<sup>52</sup>, acknowledged that the AVMS Directive “contains a ban on product placement in ‘children’s programmes’<sup>53</sup>” and confirmed that UK legislation “will enact that”. It also expressed additional concerns about child audiences and took into particular account the issue of the potential effects on children’s health and welfare, when it prohibited the placement of the particular categories of products and services (i.e. alcoholic drinks; HFSS foods and drinks; gambling; smoking accessories; over-the-counter medicines; infant formula and follow-on formula). It described this decision as “an important aspect of the cautious approach that we need to take”.
- 5.66 In addition, the consultation document recognised the protection in relation to children afforded under the BCAP Code, which includes a range of prohibitions and restrictions that would apply to *all* output where a commercial arrangement was in place (e.g. in relation to smoking and alcohol), thereby providing significant protection to children listening to all commercial communications on any service. This includes Rule 13.2 (of the BCAP Code), which requires that “advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially in children.”
- 5.67 In light of the above considerations, Ofcom proposed to prohibit commercial references, or material that implies a commercial arrangement, *integrated within* programming primarily aimed at children.
- 5.68 The consultation document proposed providing guidance to this rule, which would explain that ‘programming primarily aimed at children’ was any programming that:
- was primarily listened to by persons under the age of sixteen; or
  - actively solicited the participation of persons under the age of sixteen.
- 5.69 Ofcom invited stakeholders’ views on this proposed guidance. We also observed that the only paid-for commercial communications that have been permitted to date, in the course of radio programming, are sponsorship credits. We clarified that, in relation to children’s programming, commercial references (e.g. sponsorship credits), would continue to be permitted *around*, or *in the course of*, the relevant programming.

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<sup>52</sup> The full statement can be found at:

[http://www.culture.gov.uk/reference\\_library/minister\\_speeches/6624.aspx](http://www.culture.gov.uk/reference_library/minister_speeches/6624.aspx)

<sup>53</sup> These are programmes made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen (Schedule 11A, paragraph 3(2), of the Act).

### *Stakeholder responses*

- 5.70 Three respondents (UKRD Group Ltd, UTV Media (GB), GMG Radio Holdings Ltd) supported the proposed prohibition. UKRD Group Ltd was mindful of child audiences more generally and UTV Media (GB) believed that potential opposition could delay implementation of a revised Code Section Ten, also suggesting that “children’s programming” should be defined simply, as “programming primarily listened to by persons under the age of sixteen”, to avoid drawing the scope of the proposed restriction too widely. GMG observed that in its view there could be areas of subjectivity involved within the process of deciding how strands of programming could be specifically classified.
- 5.71 Two respondents (Carat Sponsorship and the European Sponsorship Association) agreed with Ofcom’s proposed prohibitions concerning children’s programming, where such programming was explicitly targeting children.
- 5.72 The Institute of Practitioners in Advertising was sympathetic towards Ofcom’s position but believed it was over prescriptive, having the potential to end the sponsorship of programming aimed at children.
- 5.73 Three respondents (Advertising Association, RadioCentre, Children’s Radio UK Ltd) held a similar position, noting the protections afforded by the BCAP Code – in particular, Rule 13.2 (see paragraph 5.66, above). They also noted that, in 2007, when the advertising of HFSS foods and drinks around children’s TV programming was prohibited, it was considered unnecessary to extend the same restriction to children’s radio programming, given radio’s audience profile and the nature of radio output and listening. They argued that the same factors behind this decision remained, noting that Ofcom stated in the consultation document that the immediate nature of the signalling of commercial communications on radio provided additional protections for listeners.
- 5.74 The Advertising Association believed that those who chose to broadcast radio programming primarily aimed at children would adopt a highly responsible attitude towards the use of commercial communications in their programming, citing the radio station, Fun Kids, as a current example.
- 5.75 Children’s Radio UK Ltd, which owns Fun Kids, emphasised its commitment to responsible broadcasting and was concerned, as the broadcaster most affected by Ofcom’s proposal, that the prohibition of commercial references within the fabric of programming primarily aimed at children would unfairly impact just one commercial operator over all others. It believed the prohibition prevented a potential £250,000 revenue for Fun Kids over three years, ruling out sponsored broadcast competitions (when the competition mechanic is linked to the sponsor), outside broadcasts and public information broadcasting, such as road safety, healthy eating and anti-bullying campaigns, where the Central Office of Information has an influence over content. (See also paragraph 5.77, below)
- 5.76 Nevertheless, Children’s Radio UK Ltd and RadioCentre recognised concerns in relation to the commercialisation of children and acknowledged Ofcom’s suggestion that children may find it more difficult to distinguish commercial content in programming than adults. They therefore proposed that commercial references should be permitted within programming aimed at children, subject to more stringent transparency requirements than those required in other commercial radio programming and suggested prohibiting the broadcast of commercial references concerning certain products. The following were specifically proposed:

- the prohibition on commercial messages concerning HFSS goods, alcohol, gambling, and the promotion of an unhealthy lifestyle (a position the respondents said was currently taken by Fun Kids);
- commercial references within programming should only appear within a sponsored feature, “and never randomly in general programming”;
- there should always be a station ident and a commercial message at the start and end of each sponsored feature, to separate it from general programming and to identify that it is commercial in nature;
- editorial and production control would always remain with the licensee; and,
- the licensee’s Public File would detail its policy concerning commercial references and summarise relevant commercial arrangements.

5.77 The COI considered there should be opportunities for appropriate public information content in programming aimed at children, with not-for-profit entities being able to utilise children’s programming to promote health, safety and welfare campaigns (e.g. child safety on the internet, anti-smoking, bullying etc).

5.78 An individual disagreed with Ofcom’s proposed prohibition, arguing that it should only extend to certain products (smoking, alcohol, HFSS products etc), and that this would provide enough limitation to harmful influence. This individual considered that the criteria of children’s programming should not be whether a programme or service has a high number of children under the age of 16 in its audience, as it might not be targeted at that younger age group.

5.79 The Children’s Food Campaign was concerned about the potential promotion of HFSS products afforded by Ofcom’s proposals more generally. It considered the proposed prohibition of commercial references in programming primarily aimed at children to be inadequate. The Children’s Food Campaign referred Ofcom to the Written Ministerial Statement on Television Product Placement made on 9 February 2010<sup>54</sup> which prohibited the product placement of HFSS food and drinks on television (referred to in paragraph 5.65, above, and quoted in the consultation document at page 12). It advised Ofcom to take the same approach to commercial references in radio, should it proceed with this option. It also proposed a 2100 watershed for both spot advertising for, and sponsorship by, these products on television and radio

5.80 The British Heart Foundation noted that there would be radio programming that was not primarily aimed at children but would still have significant child audiences, and referred Ofcom to deaths from heart and circulatory disease<sup>55</sup>, and the impact of

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<sup>54</sup> “...children’s viewing is not confined to children’s programmes. An alternative to a ban on placement of HFSS foods and alcohol might have been restrictions of some kind on their placement in shows which have a large child audience, or which are shown before the watershed. But this would be complex to administer and would not provide the certainty which the Government seeks. In the circumstances we intend to legislate for a complete bar on placing these products. This is an important aspect of the cautious approach that we need to take.” [Extract from Ministerial Statement on Television Product Placement 9 February 2010].

<sup>55</sup> The BHF referred Ofcom to [www.heartstats.org](http://www.heartstats.org)

obesity<sup>56</sup>. It therefore proposed that sponsorship of programmes by HFSS products, and placement of these products, should only be permitted after 2100.

### *Ofcom's decision*

5.81 Ofcom notes that stakeholders recognised the particular vulnerabilities of child audiences that our approach sought to address. However stakeholders raised a number of proposals to modify, and further target, the proposed rule:

#### *a) Definition of children's programming*

5.82 Ofcom notes that some stakeholders consider the proposed rule and guidance draw the definition of children's programming too widely and that the definition proposed in the consultation document could capture wider family programming within its scope.

5.83 Ofcom is satisfied that a range of prohibitions and restrictions (as set out in paragraph 5.66 and further discussed at paragraph 5.92 below) safeguard children listening to *all* radio output, including 'family programming'. The purpose of the additional rule is to provide further safeguards in relation to programming that is primarily aimed at children. Ofcom has therefore modified its proposed definition of children's programming in order to address the vulnerabilities in relation to children, recognised in the consultation document (see paragraph 5.63, above), and by stakeholders, in their responses.

5.84 The rule (a new Rule 10.4, as set out in Annex 1 below) prohibits integrated commercial references in "radio services primarily aimed at children" or in "children's programming included in any service" and guidance has been provided in relation to both.

5.85 Ofcom considers that *services* aimed at children provide a particular listening environment for children, recognised as a 'safe' environment by parents, which is different from family-targeted output and therefore requires particular protections. By explicitly referring to this in the rule, Ofcom is applying the protections it seeks to provide to any station that provides children's programming throughout daytime output, regardless of the proportion of children listening. Ofcom recognises that, currently, the only station meeting this criterion is Fun Kids.

5.86 In addition to such services, the rule prohibits integrated commercial references in 'children's programming' on any service. Guidance explains that 'children's programming' is 'programming primarily listened to by persons under the age of sixteen'. Currently, this element of children's programming would be highly unlikely to capture any material broadcast in the UK, irrespective of the broadcaster's target audience. (Listener figures in relation to child audiences indicate that children do not generally comprise more than a third of the total audience). However, in our view, this element of the definition provides an important safety net and thereby offers additional consumer protection, should children comprise the majority of the audience for some programming.

#### *b) Alternative stakeholder proposal*

5.87 We recognise that RadioCentre and Fun Kids have set out an alternative proposal, including a range of safeguards, for integrated references to be permitted within

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<sup>56</sup> The BHF referred Ofcom to Government Office for Science (2007), Foresight, Tackling Obesities: Future Choices - Project Report

children's programming, if part of discrete sponsored programming and subject to specific transparency requirements.

- 5.88 In Ofcom's view, given its duties under the Act in relation to under eighteens and mindful of wider public policy in relation to children (discussed above), any such exemptions to the proposed prohibitions would require a further stakeholder consultation on this issue (please see below, under 'Next Steps').
- 5.89 Ofcom recognises that Fun Kids would currently be the only stakeholder affected by the rule prohibiting integrated commercial references within children's programming. However, it is important to note that the prohibition does not impose any *additional* restrictions on its current commercial activities. Rather, it retains the position to date, under which such integrated commercial references are already prohibited.
- 5.90 In addition, new Rule 10.4<sup>57</sup> sets out that the prohibition on integrated commercial references within children's programming does not apply to "credits for third party association with either programming or broadcast competition prize donation" (e.g. sponsor credits). Associated guidance explains that appropriate signalling (required by Rule 10.1 of the Code, as set out in paragraph 7.20 of this statement) ensures that any such permitted credit is distinct from those commercial references prohibited under Rule 10.4. Guidance also explains that references to the sponsor in sponsored broadcast competition features would therefore be permitted, again, subject to appropriate signalling requirements.

*c) HFSS products*

- 5.91 In Part 6 of the consultation document, Ofcom set out its proposal to keep a watching brief on the issue of whether any additional prohibitions or restrictions might be required in the future, and to consider whether to review this issue by reference to a range of criteria. This approach was welcomed by both industry and consumer stakeholders.
- 5.92 Ofcom has adopted this approach and HFSS products could be considered as part of such a review, if appropriate, within the new context of integrated commercial messages. In addition, a range of prohibitions and restrictions set out in the BCAP Code apply to all commercial communications on radio (as discussed in paragraph 5.66). For example, Rule 13.2 of the BCAP Code requires that "advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially in children".
- 5.93 Further, Ofcom will keep a watching brief on the issue of children's programming more generally (if appropriate, supported by research on child audiences) and on any future changes in wider public policy. Please see below, under 'Next Steps'.

*d) Conclusion*

- 5.94 As discussed above Rule 10.4 prohibiting the integration of commercial communications within children's programming is set out in Annex 1 and Ofcom has issued associated guidance to the rule set out in Annex 2.

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<sup>57</sup> Please see paragraph 7.30 in Part 7 of this document.

## **Safeguards and prohibitions in relation to news and political and controversial matters**

### *Consultation proposal*

- 5.95 The consultation document explained that Section 319 of the Act sets standards objectives in relation to news, which require news included in both television and radio services to be presented with due impartiality and due accuracy. It also includes an objective under which Ofcom must have regard for the desirability of maintaining the independence of editorial control over programme content. In turn, the Code safeguards the impartiality and accuracy of news (within Code Section Five) and, to date, has underpinned this with requirements over the integrity of news in Section Nine, which stated that news bulletins and news desk presentations on radio may not be sponsored.
- 5.96 The consultation document explained that these safeguards and prohibitions in relation to news and political and controversial matters on commercial radio would be maintained (and therefore the sponsorship of news would continue to be prohibited).
- 5.97 Ofcom explained that, in maintaining these safeguards and prohibitions, it had taken into account both its duties under the Act and our 2010 pre-consultation discussions with both industry and consumer stakeholders, neither of which showed an appetite for considering potential commercial references in or around news broadcasting.
- 5.98 In line with all these considerations, the proposed rule set for Option C included a rule prohibiting any commercial references in or around news bulletins or news desk presentations, except to the extent that they are already permitted (i.e. the sponsorship of integrated specialist factual strands, such as sports news and weather etc).
- 5.99 In addition, the consultation document explained that the following safeguards and rules in relation to political and controversial matters would remain in place under Option C:
- Advertising scheduling and content rules, including Section Seven of the BCAP Code on political and controversial matters, which requires, among other things, that no advertisement may:
    - be inserted by or on behalf of a body whose objectives are wholly or mainly of a political nature; or
    - be directed towards a political end.
  - The provisions of other sections of the Broadcasting Code:
    - Section Five: Due impartiality rules on matters of political or industrial controversy and matters relating to current public policy; and
    - Section Two: Factual programmes or items must not materially mislead the audience (Rule 2.2)

### *Stakeholder responses*

- 5.100 UKRD Group Ltd, Carat Sponsorship, European Sponsorship Association and the Institute of Practitioners in Advertising agreed with Ofcom's proposed rule.
- 5.101 The Advertising Association, RadioCentre and GMG Radio Holdings Ltd considered that sponsorship of news broadcasts should be permitted, but confined to branding around news (i.e. commercial references within news broadcasts should remain prohibited). UTV Media (GB) was sympathetic to this position but was primarily concerned that consideration of the matter should not delay implementation of a revised Code.
- 5.102 RadioCentre argued that sponsorship of news would be consistent with current statutory requirements, with Section Five (on Due Impartiality and Due Accuracy) of the Code reflecting such requirements concerning impartiality and accuracy of news. It said that this was what safeguarded news, which could be provided by an agency with acknowledged political affiliations (e.g. a national newspaper).
- 5.103 RadioCentre provided details of research it had commissioned, which it said showed listeners would tolerate the sponsorship of news bulletins as long as the sponsor of the news bulletin had had no influence over its content. GMG Radio Holdings Ltd suggested an additional Code rule, which would require that "Broadcasters must maintain the independence of editorial control over news and news desk originated content".
- 5.104 RadioCentre added that the BCAP Code provided additional protection (Rule 32.1), by requiring that "Broadcasters must exercise responsible judgement on the scheduling of advertisements and operate internal systems capable of identifying and avoiding unsuitable juxtapositions between advertising material and programmes, especially those that could distress or offend viewers or listeners".
- 5.105 RadioCentre said that consultation with its members had suggested the sponsorship of news broadcasts could attract £10m annually (within the context of one industry estimate forecasting the delivery of (other) incremental annual benefits to the commercial radio industry to be around £25m<sup>58</sup> if the integration of commercial communications and programming was permitted).

### *Ofcom's decision*

- 5.106 Before the consultation opened, as discussed above, pre-consultation discussions with both industry and consumer stakeholders had shown no appetite for changing the safeguards and prohibitions in relation to news programming and the consultation document did not raise any alternatives to these for stakeholder comments. However, Ofcom recognises that, with regard to news sponsorship, some industry stakeholder responses proposed that the sponsorship of news should be permitted and noted RadioCentre's consumer research on this issue, provided as part of its submission.
- 5.107 While Ofcom notes the views of those stakeholders arguing that the sponsorship of news should, subject to proposed protections, be permitted, Ofcom also recognises the importance of its duties in relation to both safeguarding impartiality and accuracy of news, as discussed in paragraphs 5.95 to 5.99, and the prevention of unsuitable

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<sup>58</sup> Rough estimate based on the sector knowledge of UTV Media (GB) – paragraph 6.30 of consultation document



sponsorship of programmes. Any potential consideration of changes to the current prohibition on news sponsorship would require consideration of our duties in these regards and, if such consideration was found to be consistent with these duties, a public consultation on this issue would be required.

- 5.108 However, Ofcom is also mindful of the need for the wider liberalisations in relation to commercial communications on radio to 'bed down'. In our view any immediate consideration of this issue, during a time of already considerable change and significant liberalisation for commercial radio, could give rise to uncertainty and confusion among both listeners and broadcasters.
- 5.109 Therefore, in light of the responses from stakeholders who consider the sponsorship of news should be permitted, Ofcom will consider whether it would be appropriate to explore the issue further subject to the criteria set out below at paragraph 5.115. Please also see below under 'Next Steps'.
- 5.110 In conclusion, as discussed above, Rule 10.3, retaining the prohibition on news sponsorship, is set out in Annex 1 and Ofcom has issued associated guidance to the rule, set out in Annex 2.

### **Commercial arrangements with, and/or references to, potentially harmful products or services**

#### *Consultation proposal*

- 5.111 The consultation document recognised that the BCAP Code prohibits the promotion of tobacco products, prescription medicines, infant formula and smoking accessories. With regard to alcoholic drinks, gambling, other medicines and follow-on formula, the BCAP Code has rules (e.g. on scheduling) to ensure that their promotion is appropriately limited and/or presented, to avoid consumer harm.
- 5.112 It also recognised that, while HFSS food and drinks were not prohibited in relation to radio output, the BCAP Code includes a rule (Rule 13.2) that makes clear that radio advertisements must avoid anything likely to condone or encourage poor nutritional habits or an unhealthy lifestyle, especially in children. (In addition, as set out in paragraph 5.94, above, integrated commercial references within children's programming continue to be prohibited).
- 5.113 However, the consultation document recognised public policy concerns in this area and the potential for integrated commercial references within radio programming to raise concerns that have not surfaced in the regulatory environment where, to date, commercial references and programming are separated.
- 5.114 The consultation document set out the possibility of a review of the appropriateness and effectiveness of the new rules, in relation to potential additional restrictions or prohibitions for potentially harmful products or services, after a period of up to two years. In the interim, Ofcom proposed to keep a watching brief, including a targeted monitoring exercise to assess levels of compliance, and any developments that may be relevant.
- 5.115 The criteria Ofcom said may determine whether such a review was required could include the following:
- developments in public policy related to the issue of additional constraints or prohibitions in broadcasting and advertising;

- developments in radio output (if any) that raise concerns over consumer protection (in particular, child audiences); and
- complaints and/or issues raised by stakeholders.

### *Stakeholder responses*

- 5.116 UKRD said it agreed with the approach that there was currently no need to add to the prohibitions and restrictions already in place for broadcasters. It considered that this had, for the most part, worked well, and currently works well, in practice. It argued that a stability of approach, as the Code becomes updated, would benefit radio station management, and its clients, many of whom, it said, were used to knowing where the line was on these matters.
- 5.117 UTV Media (GB) agreed with Ofcom's approach to the issue of additional prohibitions and restrictions. In relation to Ofcom's proposed future review of any revised rules, it said it did not wish to comment on the review criteria at this stage, but said it would welcome an opportunity to do so nearer the time. It proposed that the timing of this review should be determined, in part, by whether there are any outstanding issues following the implementation of Option C. If issues of contention remained, or if any issues were subsequently uncovered, it said the review should be brought forward to allow them to be considered. It argued that such issues could include the sponsorship of news bulletins.
- 5.118 GMG said it fully understood the issues referred to in relation to additional prohibitions or restrictions and believed it proper that they should remain in place in order to retain existing continuity and clarity. In relation to future review criteria, it said it welcomed the flexibility of a Code review following a reasonable period of implementation, perhaps after two full years. GMG also said it was understandable that radio stakeholders would learn and adapt, as progress was made.
- 5.119 RadioCentre welcomed Ofcom's view in the consultation document that it did not consider it currently necessary to include additional consumer protections with regard to specific products and/or services in commercial references to radio<sup>59</sup>. It said it believed that this was the appropriate approach, as sufficient prohibitions and restrictions existed in the BCAP Code. It agreed with Ofcom's proposal to keep a watching brief on the matter.
- 5.120 The IPA and ESA agreed with Ofcom's view that the restrictions and prohibitions provided in the BCAP Code, together with the different nature of radio audiences, programming and consumption, meant that it was not necessary to include additional consumer protections in commercial references on radio. They also supported the approach to a proposed review period, which they considered to be prudent, given the nature of the proposed relaxation.
- 5.121 The Advertising Association also agreed with Ofcom's view that the restrictions and prohibitions provided in the BCAP Code, together with the different nature of radio audiences, programming and consumption, meant that it was unnecessary to include additional consumer protections in commercial references on radio. It believed that additional restrictions would not necessarily provide extra protection for the public, but would hinder broadcasters and advertisers in exploiting a new revenue stream. It argued that Ofcom would need to balance complaints from pressure groups with feedback from the general public, before embarking on any review.

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<sup>59</sup> Broadcasting Code Review: Commercial Communications in Radio Programming, p. 66.

- 5.122 An organisation said it believed Ofcom's approach was sensible. It said a review period of two years would be a reasonable period after which to review commercial references, as stations would be more comfortable operating under the revised rules and any increase in complaints concerning claims made in commercial references, should be acceptable for an initial period to allow the new system to settle down.
- 5.123 The Children's Food Campaign disagreed with Ofcom's approach to the issue of additional prohibitions with regard to HFSS products. It argued that, should Ofcom proceed with this option, without a prohibition for HFSS products, this would lack consistency with the prohibition of product placement of HFSS products on television, and would have the potential to expose child and adult listeners to additional marketing for HFSS products. However, it said that, should this option be adopted, it agreed that Ofcom should keep a watching brief, but recommended that two years was a considerable length of time before a review. It argued that a one year period was more appropriate, given the substantial changes proposed. It agreed that such a review should consider potential additional prohibitions, particularly for HFSS products, and the impact of the changes on child audiences.

#### *Ofcom's decision*

- 5.124 Ofcom welcomes the support for its position by most stakeholders, which confirms its view that, it is unnecessary to include additional consumer protections with regard to specific products and/or services in commercial references on radio.
- 5.125 However as also set out in the consultation document, Ofcom will consider the new rule set over the next two years and, based on the criteria set out at paragraph 5.115, above, decide whether to consult on any further changes to the rules (please also see below, under 'Next Steps').

### **Consumer affairs programming**

#### *Consultation proposal*

- 5.126 The consultation document explained that Ofcom did not consider it necessary to place additional safeguards in relation to consumer affairs programming. However, it made clear that broadcasters should ensure any broadcast material appearing to provide an independent assessment of products or services was genuinely independent and not subject to a commercial arrangement.
- 5.127 Therefore, the consultation document made clear that signalling commercial references in, for example, consumer advice/affairs programming required particular care, as it was essential that the broadcast of paid-for promotions of goods and services was not presumed to be independent observation/comment.

#### *Stakeholder responses*

- 5.128 RadioCentre, Carat Sponsorship, the IPA, the ESA and the Advertising Association agreed with Ofcom's approach to consumer affairs programming,
- 5.129 The COI observed there should be opportunities for appropriate public information content in consumer affairs programming, as it said consumer education was an area of concern to public sector bodies.

### *Ofcom's decision*

- 5.130 Ofcom welcomes stakeholder support for its consultation proposal and has followed the approach set out in the consultation document. A Note to broadcasters setting out the safeguards of paragraph 5.127 is included in the new Code Section Ten (Radio) set out in Annex 1 of this statement.

## **Religious programming**

### *Consultation proposal*

- 5.131 Ofcom explained that, given the protections provided in Section Four of the Broadcasting Code (Religion) and Section Fifteen of the BCAP Code (Faith, Religion and Equivalent Systems of Belief), no further safeguards were required.

### *Stakeholder responses*

- 5.132 RadioCentre and the IPA expressed agreement with Ofcom's approach to religious programming, other stakeholders did not respond on this issue.

### *Ofcom's decision*

- 5.133 Ofcom has followed the approach set out in the consultation document.

## **Funding of commercial arrangements by non-commercial not-for-profit organisations**

### *Consultation proposal*

- 5.134 The consultation document explained that, if the integration of commercial communications and programming was introduced, no distinction would be made between different funders (i.e. whether the funder was a commercial or non-commercial entity). The proposed new rules would simply apply to programming when a commercial arrangement was in place, regardless of whether the third party paying for the commercial arrangement was a 'for-profit' or 'not-for-profit' organisation.

### *Stakeholder responses*

- 5.135 UKRD agreed with Ofcom's approach. It considered that the principle of transparency would ensure that all broadcasters were aware of their responsibilities. It considered it possible that there would continue to be growth in advertising in the not-for-profit funders' sector, which should be subject to the same rules as other funders.
- 5.136 UTV Media (GB) said it agreed with Ofcom's proposed approach and believed that it would ensure adequate safeguards.
- 5.137 GMG Radio said that commercial radio in the UK was recognised as being a primary communication source for not-for-profit organisations and charities to convey messages designed to raise profile and awareness or seek funding for various projects. It said that many radio stations would continue to provide platforms in programming that were designed to raise awareness or aid appeals and it believed listeners welcomed and enjoyed interacting with this particular strand of output. It added that whilst programming output may be sponsored by a non-related third party it was only possible under current regulation for not-for-profit funders to buy spot

advertising or sponsor non-related output. Therefore safeguard conditions proposed in Option C were welcomed and thought to provide proper clarity and guidance and in particular with regards to the restrictions imposed on Charity Appeals (Please also see Part 7 in relation to Charity Appeals).

- 5.138 RadioCentre suggested that programming funded by a non-commercial entity should be subject to a lesser degree of transparency.
- 5.139 The COI supported any approach that would permit the same funding of commercial arrangements by non-commercial not-for-profit organisations as by others.
- 5.140 Carat Sponsorship and the ESA agreed with Ofcom's approach.
- 5.141 The IPA said it believed the approach to be sound and the safeguards adequate. It suggested that a two year review period would provide an opportunity to address any areas of concern.
- 5.142 The Advertising Association agreed with Ofcom's approach and said it believed the built-in safeguards were adequate.

#### *Ofcom's decision*

- 5.143 Ofcom notes stakeholders' broad support for its consultation proposal and has followed the approach set out in the consultation document.
- 5.144 In view of stakeholders' responses, guidance clarifies what Ofcom considers appropriate transparency of such commercial arrangements. It acknowledges that there may be circumstances when transparency may be best-achieved by identifying the 'organisation' on whose behalf a commercial arrangement has been made (for example, identifying a particular government campaign title, rather than the government department with which the commercial arrangement has been made).

### **Next Steps**

- 5.145 For the reasons discussed above, and summarised at paragraph 5.33, above, Ofcom has implemented Option C, and thereby allows the integration of commercial communications and programming (except in relation to spot advertisements). However Ofcom has retained the prohibitions, that have existed to date, on commercial arrangements in relation to the selection or rotation of music for broadcast, children's programming and news programming.
- 5.146 The new Broadcasting Code rules on commercial communications in radio programming are set out in Annex 1 of this statement. As discussed above, we propose to keep a watching brief on the implementation of the new rule set and, within two years, based on the criteria set out at paragraph 5.115, we will decide whether to consult on any further changes to the rules.
- 5.147 Consideration may be given, as part of this process, to a possible move towards the removal of the separation requirement for spot advertisements, thereby permitting the seamless integration of commercial communications in radio programming (as discussed in Part 6 of this statement). Consideration may also be given to the appropriateness and effectiveness of the new rules, in relation to potential additional restrictions or prohibitions for potentially harmful products or services, discussed above.

5.148 In addition, as discussed above, Ofcom may also consider any issues raised concerning the prohibition of commercial arrangements in relation to the selection and rotation of music, children's programming and news programming (subject to the criteria set out in paragraph 5.115 above).

### **New Broadcasting Code Section Ten (Radio)**

5.149 Ofcom's revised Broadcasting Code<sup>60</sup> includes a new Section Ten (Radio) on Commercial Communications in Radio Programming, which applies to all material broadcast on or after 20 December 2010 and is set out in Annex 1 of this document.

### **New Broadcasting Code Guidance to Section Ten (Radio)**

5.150 We have updated and revised Code guidance<sup>61</sup> in relation to the new Section Ten (Radio) of the Code. This guidance can be found in Annex 2.

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<sup>60</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

<sup>61</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/>

## Part 6

# Option D: proposed revisions to the Broadcasting Code in relation to commercial communications in radio programming

## Consultation proposal

6.1 In the consultation document Ofcom invited stakeholders to comment on the following option:

- **Option D:** *Allows the integration of commercial communications and programming (including in relation to spot advertisements).*

This option would remove the principle of separation between commercial communications (including spot advertisements) and programming. This would give radio stations complete discretion to integrate seamlessly commercial elements into programming and would no longer distinguish between traditional spot advertisements and other commercial communications. It would be delivered as a slim set of rules designed to secure a principle of transparency of commercial arrangements. Such transparency would be central to ensuring consumer protection. The principles of editorial independence and separation would not apply under Option D.

6.2 We invited stakeholders to indicate their responses to this approach. However, we made clear that, if Option D were to be adopted, we would re-consult, giving consideration to the regulatory approach and accompanying rule set(s).

6.3 This part of the statement should be read in conjunction with Part 7 of Ofcom's Broadcasting Code Review consultation document on *Commercial communications in radio programming*<sup>62</sup> (June 2010). This sets out the proposals under Option D, and our consideration of the impact of the proposals in relation to consumer, radio industry and advertising stakeholders as well as regulatory and equality impact considerations.

6.4 In Part 7 of the consultation document Ofcom explained that no rule set was included for Option D (as this would be subject to a separate consultation). Broadly, however, the requirements of the BCAP Code would be applicable<sup>63</sup>.

6.5 In addition, Part 7 of the consultation document referred stakeholders to the issues that could arise from Option C (please see Part 5 of this statement), as these could also arise under Option D. These issues related to:

- whether potential commercial arrangements around music selection or rotation required particular consideration;

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<sup>62</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/>

<sup>63</sup> <http://www.cap.org.uk/The-Codes/BCAP-Code/.aspx>

- programming primarily aimed at children;
- safeguards and prohibitions in relation to news and political and controversial matters
- commercial arrangements with, and/or references to, potentially harmful products or services on radio;
- consumer affairs programming;
- religious programming; and
- funding of commercial arrangements by non-commercial not-for-profit organisations.

## Stakeholder responses to Option D

### Overview of stakeholder responses

- 6.6 Part 2 of this document details the individuals and organisations that responded to this consultation (please see paragraph 2.24, above) and explains that, unless confidentiality was requested, the full responses have been published on Ofcom's website<sup>64</sup>.
- 6.7 Responses in relation to Option D are summarised below. All the organisations referred to are described briefly in the Glossary, at Annex 3. Individuals and organisations who requested confidentiality have not been named.

### Stakeholders who supported Option D and sought an immediate consultation on this option

- 6.8 One organisation (that requested confidentiality) favoured Option D, but did not suppose that the ultimate flexibility provided under it would be used across all stations at all times. It observed that, much of the time, stations would be operating under what was effectively Option C.

### Stakeholders who supported the broad approach of Option D and wished it to be given future consideration

- 6.9 UTV Media (GB) said that it considered the approach of Option D to have an intellectual logic, but said its implementation would raise practical and logistical issues. It suggested that Ofcom reconsider the desirability and feasibility of this option as part of its proposed review of any revised rule set. Bauer Media believed the possibility of moving towards Option D should be explored after a suitable period of time had elapsed, following the introduction of Option C.
- 6.10 Radio Centre said Option D would represent a logical extension of the industry's favoured approach to the regulation of commercial communications in radio programming. However, it recognised that the decision to implement Option D would require further consultation, and would therefore delay the implementation of a

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<sup>64</sup> <http://stakeholders.ofcom.org.uk/consultations/bcrradio2010/?showResponses=true>



revised Code Section Ten. Global Radio and Children's Radio UK Ltd said they supported RadioCentre's position.

- 6.11 The IPA said it was most content with Option C at present, arguing that the complete integration of all commercial communications, including spots advertisements with programming, could, at this stage, be overly ambitious. The ESA believed Option D might be a suitable long term solution, but did not consider it appropriate now. It said the immediate introduction of Option D was probably too ambitious and would require further consultation, thus delaying the new commercial opportunities afforded by other options, to the disadvantage of the radio industry (compared with television). The Advertising Association supported the implementation of Option C at the present time, but believed the eventual implementation of Option D would provide the most favourable environment for broadcasters, advertisers and, through additional investment in programming, listeners.
- 6.12 An individual argued that commercial associations and sponsorships existed outside radio, and Option D delivered that reality to radio.

### **Stakeholders who disagreed with the broad approach of Option D and did not wish it to be given further consideration**

- 6.13 UKRD felt that some broadcasters might find it difficult to maintain transparency with listeners, which could result in trust and integrity being compromised for the stations concerned and, perhaps, the industry as a whole.
- 6.14 Shetland Islands Broadcasting Company Ltd disagreed with Option D for the same reason that it rejected Option C (see paragraph 5.18).
- 6.15 VLV disagreed with Option D on the same basis that it disagreed with Option C (please see paragraph 5.19). The Children's Food Campaign disagreed with Option D for the reasons set out at paragraph 5.79, and offered it own proposal (set out at paragraph 3.9)
- 6.16 An individual disagreed with Option D, as it would give advertisers too much influence.

### **Stakeholders who responded to this option only in relation to specific issues**

- 6.17 The COI responded in relation to public information campaigns. It broadly supported Options B to D and referred Ofcom to its submission to the 2009 consultation<sup>65</sup>. Its response in relation to consumer programming, public information campaigns and children's programming is summarised at paragraph 5.21.
- 6.18 The Children's Food Campaign did not support Options B to D (and only supported Option A with reservations). Its position on the further protections it sought in relation to HFSS products is set out at paragraph 5.79.
- 6.19 The British Heart Foundation did not support any particular option within the consultation but commented on programmes specifically aimed at children under each of Options B to D, specifically in relation to HFSS products (please see paragraph 5.80).

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<sup>65</sup> <http://stakeholders.ofcom.org.uk/consultations/bcode09/?showResponses=true>

- 6.20 UK Music commented on the effect of permitting third party commercial influence on the purposeful selection or rotation of music for broadcast, under each of Options C and D (please see paragraphs 5.50 to 5.51).

## Ofcom's decision

### Background

- 6.21 In responding to the 2010 consultation and preparing this statement, Ofcom has taken into account its duties and the legislative context set out in Part 3 of the consultation paper and summarised in paragraph 2.11 above.
- 6.22 In relation to an assessment of impact, paragraph 2.27 above explains that this statement does not contain a separate impact assessment. Rather, the statement as a whole addresses issues relating to impact on stakeholders.

### Response to stakeholder comments

- 6.23 Ofcom notes the responses from VLV and other stakeholders who did not support Option D. Our response is set out in Part 5, together with our responses in relation to specific issues raised by respondents. This is because the issues raised by these stakeholders also relate to Option C.
- 6.24 Ofcom notes that stakeholders' broad support for Option C (see Part 5 of this statement) was widely supplemented by a preference to consider that option as a transition stage towards the possible implementation of Option D, as reflected in their responses above. However, stakeholders recognised that Option D would require a separate consultation and did not support any delay (in the implementation of Option C) at this stage.
- 6.25 Ofcom also notes that only one organisation supported the immediate introduction of Option D, and that even this organisation considered that the ultimate flexibility provided under this option would be unlikely to be widely adopted at all times.
- 6.26 As set out in the consultation document, any move towards Option D would require a further consultation in relation to the regulatory approach and accompanying rule set(s).
- 6.27 The consultation document set out Ofcom's concerns that any immediate moves towards such a consultation could give rise to uncertainty, including the potential for listener concern about consumer protection, and broadcaster concern about regulatory certainty. It suggested that the integration of commercial communications within radio programming would need to 'bed down' (under the new rule set) within a familiar regulatory framework, before consideration could be given to any further consultation. Stakeholders' views appear largely to support this position.

### Conclusion

- 6.28 Ofcom does not therefore intend to implement Option D at this time. However, a possible move towards this option, thereby removing the requirement for spot advertisements to be separated from programming, and permitting the seamless integration of commercial communications in radio programming, could be considered in the future. Any such consideration would be subject to public consultation, and the decision on whether to move to such a consultation would be based on the criteria and timescale set out at the close of Part 5 of this statement.

## Part 7

# Revisions to Broadcasting Code Section Ten on commercial communications in radio programming

## Introduction

- 7.1 Part 5 of this statement explains that, following its consideration of stakeholder responses to the consultation document, Ofcom has decided to implement the integration of commercial communications within programming (except in relation to spot advertisements).
- 7.2 In the consultation document, Ofcom explained that Code Section Ten, in relation to commercial communications in radio programming, would be based on the principle of transparency (of all commercial communications) in order to ensure consumer protection.
- 7.3 This part of the statement sets out the draft Principle, Rules and Notes that were proposed in the consultation on the new Code Section Ten (Radio). For each of these, in turn, we have summarised stakeholder views, responded to these and set out the published version, including revisions where these have been made.
- 7.4 In summary, the rules in the new Code Section Ten (Radio) support the principle of transparency, in order to secure consumer protection, by requiring:
- appropriate signalling of commercial arrangements affecting programming, so as to ensure that the commercial arrangement is transparent to listeners (Rule 10.1);
  - clear separation of spot advertisements and programming (Rule 10.2);
  - prohibitions of commercial arrangements in relation to:
    - commercial references in and around news broadcasts (Rule 10.3);
    - integrated commercial references within children's programming (Rule 10.4); and,
    - the selection and rotation of music (Rule 10.5);
  - the application of the BCAP Code to commercial references in programming (Rules 10.6 to 10.8); and
  - the retention of rules concerning:
    - premium rate services (Rules 10.9 and 10.10);
    - charity appeals (Rule 10.11);
    - appeals for funds for programming or services (Rule 10.12); and

- financial promotions and investment recommendations (Rule 10.13).

7.5 As discussed in Part 2 of this document, the new Section Ten of the Broadcasting Code on Commercial Communications in Radio Programming applies to all material broadcast on or after 20 December. It can be found in Annex 1.

7.6 In addition, associated guidance to the new Section Ten of the Code (Radio) can be found in Annex 2.

## **Rule set proposed in the consultation, stakeholder responses and the new Broadcasting Code Section Ten (Radio) rules**

### **Principle**

#### *Consultation proposal*

7.7 Ofcom proposed the following Principle:

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

#### *Stakeholder responses*

7.8 RadioCentre said it supported the proposed regulatory principle and said it agreed with Ofcom that it was important that listeners should know when material is broadcast in return for payment or other valuable consideration. It believed this addressed the legislative requirement contained within the Consumer Protection From Unfair Trading Regulations 2008.

#### *Ofcom’s decision*

7.9 Ofcom welcomes RadioCentre’s comments in this regard.

7.10 In conclusion the principle has been adopted, as follows:

#### **Principle**

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

### **Rules**

#### **General Rules**

#### **Consultation Proposal: Rule 10.1**

#### *Consultation proposal*

7.11 Ofcom proposed the following Rule 10.1:

“Programming that is subject to, or associated with, a commercial arrangement between the broadcaster (or any agent or employee of the broadcaster), and a third party (or third parties), must be clearly signalled at the outset and at appropriate intervals.”

### *Stakeholder responses*

7.12 RadioCentre said it largely agreed with Ofcom’s proposed approach to securing transparency, and welcomed Ofcom’s statement in the consultation document that appropriate signalling would be likely to be established over time, as the scope and nature of commercial references becomes apparent<sup>66</sup>. However, it considered that the requirement to place transparency signalling ‘*at the outset*’ of programming (i.e. ‘at or near the start of’) might be unduly restrictive. It said that, under the current Code Section Ten, sponsorship credits ‘*must be broadcast at the beginning and/or end of the programming*’, and at appropriate intervals for longer sponsored output. It argued that, while in many instances it might be appropriate to include transparency signalling at the outset of programming that is subject to, or associated with, a commercial arrangement, it believed there were instances in which it may not be appropriate. For example:

- a sponsored breakfast show may not have its first credit until the first ad break, which may be fifteen minutes or so into the show; and
- most weather bulletins carry their sponsor strap at the end rather than the beginning, as to have it at the beginning of the bulletin (and after the news) would interrupt the flow of information to listeners.

7.13 RadioCentre therefore suggested that Ofcom should consider revising its transparency requirements to ensure that they would not be unnecessarily restrictive, and would be as flexible as the existing arrangements for sponsorship credits.

7.14 An individual considered that the word “*clearly*” was not required and argued that “*signalled*” was sufficient on its own. He argued that, otherwise, the commercial reference would not be integrated, but overt and stand out more than spot advertising.

### *Ofcom’s decision*

7.15 In light of stakeholder comments Ofcom has considered the appropriate signalling requirements for commercial arrangements. In Ofcom’s view there are four aspects of appropriate signalling:

- Wording – the content of a commercial reference;
- Positioning – when a commercial reference should be broadcast;
- Identity – the most appropriate title of/for the relevant third party involved in the commercial arrangement; and
- Frequency – how often a commercial reference should be broadcast.

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<sup>66</sup> Broadcasting Code Review: Commercial Communications in Radio Programming, p. 61.

- 7.16 In order to secure consumer protection, and to accommodate the full range of programming, Ofcom has decided that Rule 10.1 should require commercial arrangements to be “appropriately signalled, so as to ensure that the commercial arrangement is transparent to listeners”. The reference to transparency for listeners provides a direct link between Rule 10.1 and the Principle that it supports, as set out in paragraph 7.10, above.
- 7.17 Generally Rule 10.1 requires signalling at the outset of each instance of broadcast material that is subject to a commercial arrangement. However, we recognise that this will not always be the case and the revised wording, which removes the words “at the outset” (proposed in the consultation paper), is flexible enough to accommodate particular broadcasts where this may not be appropriate (e.g. weather bulletins in or after a news report).
- 7.18 Additional Notes in Code Section Ten (Radio) make clear Ofcom’s expectations concerning the four aspects of signalling (i.e. wording, positioning, identity and frequency), referred to at paragraph 7.15, above. These Notes are supported by detailed guidance, set out in Annex 2.
- 7.19 Further, given the clarity of the revised note concerning a ‘commercial arrangement’ (see paragraph 7.71, below), Ofcom has removed the description of such an arrangement from Rules 10.1 and 10.3, below.
- 7.20 In conclusion, Ofcom has implemented the following revised Rule 10.1:

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.

- 7.21 Ofcom has also included the following (amended) Note to the general rules (Rules 10.1 to 10.8) in Section Ten (Radio), with regard to signalling:

### **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.

## Consultation Proposal: Rule 10.2

### *Consultation proposal*

7.22 Ofcom proposed the following Rule 10.2:

“Spot advertisements must be clearly separated from programming.”

### *Stakeholder responses*

7.23 Stakeholders did not respond concerning the proposed rule.

### *Ofcom’s decision*

7.24 In conclusion, Ofcom has implemented the following Rule 10.2:

10.2 Spot advertisements must be clearly separated from programming.
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## Consultation Proposal: Rule 10.3

### *Consultation proposal*

7.25 Ofcom proposed the following Rule 10.3:

“No commercial reference, or material that implies a commercial arrangement between the broadcaster (or any agent or employee of the broadcaster) and a third party (or third parties), is permitted:

- in or around news bulletins or news desk presentations. This requirement does not apply to:
  - news suppliers as a news source;
  - specialist factual strands that are not news bulletins or news desk presentations, but may be featured in such programming;
  - the use of premium rate services (e.g. for station/broadcaster surveys); and
  - the promotion of the station/broadcaster’s own products and services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event); or
- in programming primarily aimed at children. This requirement does not apply to:
  - the use of premium rate services (e.g. for broadcast competition entry); and
  - the promotion of the station/broadcaster’s own products and services (e.g. the programme/station/broadcaster’s website or a station/broadcaster’s event).”

7.26 In addition, the proposed Notes in Section Ten of the Code included, within an explanation of “commercial arrangements”, a reference to “payment and/or the provision of some other valuable consideration ... to influence the purposeful selection or rotation of music for broadcast.”

### *Stakeholder responses*

- 7.27 Part 5 of this statement sets out stakeholders' views on Ofcom's proposals concerning news programming, children's programming, and the selection and rotation of music for broadcast.

### *Ofcom's decision*

- 7.28 Part 5 of this statement sets out the rationale behind the revisions Ofcom has made in relation to news programming, children's programming and the inclusion of a new rule in relation to the selection and rotation of music (Rule 10.5).
- 7.29 In addition, Ofcom has decided to separate draft Rule 10.3 into two rules – one concerning news (new Rule 10.3) and one concerning children's programming (new Rule 10.4).
- 7.30 In conclusion, Ofcom has implemented the following Rules 10.3, 10.4 and 10.5 (it has also revised the related Notes on "commercial arrangements" and "specialist factual strands", as set out in paragraph 7.71 below):

- 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.

### **Consultation Proposal: Rule 10.4**

#### *Consultation proposal*

7.31 Ofcom proposed the following Rule 10.4:

“No programming may be subject to a commercial arrangement with a third party that is prohibited from advertising on radio.”

#### *Stakeholder responses*

7.32 UTV Media (GB) said its interpretation of Ofcom’s intentions in proposing Rule 10.4 was to extend the prohibitions for certain advertisers set out in Section 10 (‘Prohibited Categories’) and elsewhere of the BCAP Code.

#### *Ofcom’s decision*

7.33 UTV Media (GB)’s interpretation of Rule 10.4 is correct.

7.34 In conclusion, Ofcom has implemented the following rule, renumbered as Rule 10.6, to accommodate other rule changes.

10.6 No programming may be subject to a commercial arrangement with a third party that is prohibited from advertising on radio.

### **Consultation Proposal: Rule 10.5**

#### *Consultation proposal*

7.35 Ofcom proposed the following Rule 10.5:

“Programming subject to a commercial arrangement with a third party (or third parties) must comply with the advertising scheduling rules that apply to radio broadcasting.”

#### *Stakeholder responses*

7.36 UTV Media (GB) said its interpretation of Rule 10.5 was that it applied the scheduling restrictions set out in Section 32 (‘Scheduling’) of the BCAP Code to material that involved a commercial arrangement. It proposed the deletion of draft Rule 10.5, which it considered to be unnecessary, in light of the presence of draft Rule 10.6. It said that each rule set out requirements in relation to the scheduling of commercial references or of material which was subject to a commercial arrangement. It argued that draft Rule 10.1 would ensure that commercial references were broadcast in or around material that involved a commercial arrangement, making such material subject to the scheduling requirements applicable to commercial references.

Therefore, it argued, a single rule could be used, based on the wording of draft Rule 10.6.

*Ofcom's decision*

7.37 As set out in the consultation document Ofcom intended to highlight the various levels of consumer protection afforded by the BCAP Code under Option C, and to reflect them in proposed Rules 10.4 to 10.7, with regard to:

- excluding *prohibited advertisers* from *commercial arrangements* (proposed Rule 10.4);
- *scheduling rules* applying to relevant *programming* (proposed Rule 10.5);
- *content and scheduling rules* applying to *commercial references* (proposed Rule 10.6); and
- *pre-broadcast clearance requirements* applying to claims in *special categories* of commercial reference (proposed Rule 10.7).

7.38 However, Ofcom accepts that, given the requirement that all commercial arrangements are transparent (Rule 10.1), coupled with the requirement for commercial references to comply with BCAP Code content and scheduling requirements (third bullet point above), the rule set does not require a separate rule in relation to scheduling requirements for programming. Proposed Rule 10.5 is therefore redundant and has been removed. Instead, the following rules have been implemented, which provide the same level of consumer protection intended in the consultation paper:

- new Rule 10.6, set out above, excluding *prohibited advertisers* from *commercial arrangements*;
- new Rule 10.7, set out below, applying *content and scheduling rules* to *commercial references*; and
- new Rule 10.8, set out below, applying *pre-broadcast clearance requirements* to claims in *special categories* of commercial reference.

7.39 Nevertheless, guidance explains that the transparency requirement of Rule 10.1 complements the BCAP compliance rules, in order to provide a clear picture of the consumer protection afforded under Code Section Ten.

7.40 In conclusion, Ofcom has removed proposed Rule 10.5.

**Consultation Proposal: Rule 10.6**

*Consultation proposal*

7.41 Ofcom proposed the following Rule 10.6:

“Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.”

### *Stakeholder responses*

- 7.42 The RadioCentre and RACC supported the proposed rule 10.6, and the application of the BCAP Code rules to commercial communications in radio programming, as the best means to ensure that listeners were afforded the highest possible levels of consumer protection.
- 7.43 UTV Media (GB) said its interpretation of Rule 10.6 was that it applied Section 32 of the BCAP Code (on 'Scheduling') to material that included commercial references, and also made such material subject to all rules relating to advertising content found throughout the BCAP Code. It considered that there was ambiguity over what Ofcom's drafting of Rule 10.6 meant by the term 'advertising *content* ... rules'. It said that, while it presumed 'advertising ... *scheduling* rules' referred to Section 32 of the BCAP Code, the term '*content* rules' did not appear in the BCAP Code. As such, it found unclear which BCAP Code rules were applied by Rule 10.6, and in what circumstances. It suggested that Ofcom should define the term 'advertising content rules'.

### *Ofcom's decision*

- 7.44 Ofcom welcomes industry support for this rule.
- 7.45 In associated guidance to the rule, Ofcom explains that the BCAP Code comprises advertising prohibitions, scheduling restrictions, content requirements and clearance (pre-broadcast approval) requirements. Rules in the BCAP Code that do not concern advertising prohibitions, scheduling restrictions or clearance requirements are therefore referred to as advertising content rules, for the purpose of Section Ten of the Code.
- 7.46 In conclusion, Ofcom has implemented the following rule, renumbered as Rule 10.7, to accommodate other rule changes:

10.7 Commercial references in programming must comply with the advertising content and scheduling rules that apply to radio broadcasting.
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## **Consultation Proposal: Rule 10.7**

### *Consultation proposal*

- 7.47 Ofcom proposed the following Rule 10.7:

“Commercial references that require confirmation or substantiation prior to broadcast (for example, special offer prices or comparative claims) must be cleared for broadcast in the same way as advertisements.”

### *Stakeholder responses*

- 7.48 RadioCentre and RACC supported the proposed rule and said that, where commercial communications in programming related to the 'special categories' listed in the BCAP Code and contained advertising claims that required confirmation or substantiation, RACC would assume responsibility, on behalf of stations, for advance central clearance of those references (as it currently does for spot advertisements).

- 7.49 RadioCentre and RACC said stations would therefore be expected to submit such claims to RACC for pre-broadcast clearance. (Commercial references in programming that did not fall into the special category list would be cleared for broadcast by relevant station staff). However, for clarity to Code users, RACC suggested that Ofcom defined more precisely the rule's reference to "commercial references that require confirmation or substantiation prior to broadcast". RACC therefore recommended the following wording for Rule 10.7:

*"Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements. These references include, but are not limited to, the following: 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; claims which may be of particular interest to children (under 16s)."*

- 7.50 UTV Media (GB) said its interpretation of Rule 10.7 was that it required central clearance for integrated commercial references, if the material in question required substantiation or confirmation. However, central clearance was not required in any other circumstances. It suggested that, in relation to this rule, guidance should make clear that the central clearance requirements for integrated commercial references were not the same as for spot advertising – for example, commercial references to gambling or alcohol products, services or brands would only be subject to central clearance requirements if they required substantiation or confirmation (i.e. it assumed BCAP's requirements for special categories would not apply more generally).

*Ofcom's decision*

- 7.51 We welcome industry support for this rule and RACC's advice on providing additional clarity concerning commercial references that require confirmation or substantiation prior to broadcast.
- 7.52 UTV Media (GB)'s interpretation of the rule is generally correct. However, it should be noted that BCAP's requirement for central (RACC) clearance for specified categories of advertisement does apply to commercial references, but only if they require confirmation or substantiation prior to broadcast. Ofcom has provided associated guidance that explains this difference between central (RACC) clearance requirements for advertisements and those for commercial references.
- 7.53 In conclusion, Ofcom has implemented the following rule, renumbered as Rule 10.8, to accommodate other rule changes:

<p>10.8 Commercial references that require confirmation or substantiation prior to broadcast must be cleared for broadcast in the same way as advertisements.</p>
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- 7.54 Ofcom has also included the following (additional) Note to the general rules (Rules 10.1 to 10.8) in Section Ten (Radio):

**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.

**Consultation Proposal: Notes to the general rules**

*Consultation proposal*

7.55 In addition to the rules, Ofcom proposed to include in Code Section Ten the following Notes to the general rules:

**Programming**

Programming comprises all broadcast material other than spot advertisements.

**Spot advertisements**

Spot advertisements comprise advertising broadcast as 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). It will generally include payment and/or the provision of some other valuable consideration:

- in return for a commercial reference (whether promotional or not) – examples of a commercial arrangement include: programming sponsorship; competition prize donation; premium rate service provision; or
- to influence the purposeful selection or rotation of music for broadcast.

Where a payment and/or the provision of some other valuable consideration is made to influence the purposeful selection or rotation of music for broadcast, advice on appropriate transparency is detailed in associated guidance to Rule 10.1.

Where it is made in return for a commercial reference, the following notes apply (in addition to associated guidance):

**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 either subject to a commercial arrangement between the broadcaster (or any agent or employee of the broadcaster), and a third party (or third parties) or promotes the station/broadcaster’s own products or services.

**Specialist factual strands**

Specialist factual strands in news bulletins or news desk presentations include, but are not limited to, travel, sport, finance and weather.

### **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 – for example: by including a sponsorship credit; by reference to the donor of a prize; by the promotion of a premium rate number for listener interaction in programming.

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

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.

### **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 essential in complying with Rule 10.1 and broadcasters are directed to associated guidance to this rule.

### **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).

### *Stakeholder responses*

- 7.56 For responses concerning the reference to the selection and rotation of music for broadcast, within the Note on 'Commercial arrangement', please see paragraph 7.27, above.
- 7.57 GMG Radio sought some further clarity on the term "commercial references", as its interpretation was that any suitable paid-for material apart from separated spot advertising could be integrated within the station's output. It thought the consultation document indicated that integrated commercial references would be associated with material intended to entertain and/or provide added value to the listening experience. It said it would therefore welcome, within the guidelines, further clarification on how material could be integrated seamlessly within programming and what specific regulatory framework would be offered to ensure that the material remained compliant. It added that its intention for seeking this clarification was to ensure programming output retained appropriate creativity and was not interrupted as a

result of unnecessary regulatory burdens prohibiting what should be the natural presentation of properly signalled information about a paying sponsor or product.

7.58 GMG added that the consultation document noted that Ofcom's 2009 consumer research indicated listeners' dislike of promotional references that served no editorial purpose, but that, when integrating commercial references in programming, it would be for broadcasters to decide how they retained listener trust, loyalty and interest in programming as a whole. GMG Radio said it was extremely comfortable with this as a clear statement of Ofcom's future intent towards regulatory intervention but wished to ensure there were no misunderstandings or contradictions in how this was interpreted within the new Code.

7.59 RadioCentre noted that Ofcom's definitions of "commercial arrangement" and "commercial reference" refer to each other and believed this cyclical definition was potentially confusing. It proposed that the definition of "commercial arrangement" should be limited to:

*'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). It will generally include payment and/or the provision of some other valuable consideration.'*

7.60 RadioCentre also noted that the proposed definition of a commercial reference for the new Section 10 included references that *'promote the station/ broadcaster's own products or services'*. It said it believed that it was important to draw a distinction between:

- a) a commercial reference which a third party pays a station to broadcast, in order to promote a brand, trademark, product and/or service belonging to that third party; and
- b) the promotion of a station's own products or services.

7.61 It argued that, in the instance of a station's own products or services, a third party would not pay for their promotion but would instead be involved in the acquisition and/or production of that product or service. It therefore believed that a clear distinction should be drawn between the two proposed types of commercial reference.

#### *Ofcom's decision*

7.62 For Ofcom's response in relation to the selection or rotation of music for broadcast please see paragraph 7.28, above.

7.63 In relation to other stakeholder comments on the Notes to accompany the rule set, Ofcom appreciates that its definition of a 'commercial reference' is broad. This is deliberate, as it reflects the nature of commercial communications under the new Code Section Ten, while maintaining appropriate consumer protection. However, guidance provides further detail concerning what constitutes a commercial reference.

7.64 Ofcom notes industry's concern that the proposed definitions of "commercial arrangement" and "commercial reference" refer to each other.

7.65 Ofcom also notes industry's concern that a third party may not have paid for the promotion of a station's own product or service but may have had involvement in the

acquisition/production of that product or service. However, where no commercial arrangement was in place concerning *broadcast* material, Rule 10.1 would not apply.

- 7.66 Nevertheless, to provide appropriate consumer protection, Ofcom considers that the promotion of a broadcaster's own product or service (whether part-financed by a third party or not), should be subject to the same protections of the BCAP Code as a paid-for commercial reference. Ofcom therefore intends to retain the definition of a commercial reference as being (in part) "a reference in programming ... that ... promotes the station/broadcaster's own products or services". However, Ofcom clarifies in guidance that this may not necessarily be connected with a commercial arrangement between the broadcaster and a third party for the broadcast of a (paid-for) commercial reference, and itemises these two forms of commercial reference separately in the Notes to the general rules.
- 7.67 In relation to broadcasters retaining the trust, loyalty and interest of their listeners, Ofcom's position is set out at paragraph 5.30, above.
- 7.68 In conclusion, Ofcom has issued revised Notes concerning "commercial arrangement" and "commercial reference" (in addition to the Note on signalling set out at paragraph 7.21 above, and the Note concerning revised Rule 10.8 set out at paragraph 7.54, above).
- 7.69 In revising these Notes, Ofcom has removed the reference to the selection and rotation of music (see paragraph 7.30, above). Ofcom has also revised the Note concerning specialist factual strands, to make clear that it refers to material "around" as well as "in" news bulletins or news desk presentations, as also noted in paragraph 7.30, above.
- 7.70 In addition Ofcom has revised the order of the remaining Notes to accommodate these revisions, and published accompanying guidance (set out in Annex 2).
- 7.71 The revised Notes (also set out in Annex 1) are as follows:

**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, for example, include 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.

## Specific Category Rules

### Premium rate services

#### Consultation Proposal: Rules 10.8 and 10.9

##### *Consultation proposal*

7.72 Ofcom proposed the following Rules 10.8 and 10.9:

(10.8) “Any use of premium rate services in programming must comply with the Code of practice and any additional broadcast-related requirements issued by PhonepayPlus.”

(10.9) “The cost to listeners for using premium rate services must be made clear to them and broadcast as appropriate.”

##### *Stakeholder responses*

7.73 UTV Media (GB) said Ofcom’s consultation document (paragraph 6.107) recognised that Ofcom must not develop its own prescriptive approach in relation to promotions for premium rate phone numbers, since these are covered in PhonepayPlus’s separate Code of Practice. It therefore commented that in guidance to these rules Ofcom should avoid setting out specific recommendations in relation to the frequency and format of cost information, but should allow broadcasters to find an approach which was most appropriate to their audiences, based on guidance supplied by PhonepayPlus.

##### *Ofcom’s decision*

7.74 Ofcom is not setting out specific recommendations in relation to the frequency and format of cost information in associated guidance. However, the guidance clarifies that, under no circumstances would the absence of any aired pricing information comply with Rule 10.9. In line with amended rules concerning premium rate numbers (which came into force as Rules 10.9 to 10.12 of the Code, published on 1 September 2010), Ofcom has also revised proposed Rule 10.9, to include not only premium rate telephony services but also other services based on similar revenue-sharing arrangements (e.g. some mobile apps).

7.75 In conclusion, Ofcom has implemented the following rules, renumbered as Rules 10.9 and 10.10, to accommodate other rule changes:

- 10.9 Any use of 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 premium rate telephony services, or other services based on similar revenue-sharing arrangements, must be made clear to them and broadcast as appropriate.

## Charity appeals

### Consultation Proposal: Rule 10.10

#### *Consultation proposal*

7.76 Ofcom proposed the following Rule 10.10:

“Charity appeals are allowed in programming if:

- they are broadcast free of charge;
- they do not contain commercial references (other than premium rate services); 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.”

#### *Stakeholder responses*

- 7.77 RadioCentre said that in its view, as currently drafted, charity appeals regulated by this rule would not be allowed to contain commercial communications. It said Ofcom should not prohibit any and all third party involvement in charity appeals, and the wording of the proposed rule should therefore be revised.
- 7.78 Carat Sponsorship and the ESA said the issue of charity promotions prohibiting commercial references would be an unnecessary regulatory burden, as the current status quo did not cause any problems.
- 7.79 An individual argued that many charitable organisations act as commercial organisations and, as such, should not be prevented from engaging commercially in the same way as any other entity.

#### *Ofcom's decision*

- 7.80 While proposed Rule 10.10 reflects current Code requirements, its purpose is to prevent any broadcaster openly or covertly charging a charity for conducting in programming an appeal on its behalf. However, Ofcom recognises that the proposed

rule, as set out in the consultation document, could prevent other third party involvement in broadcast charity appeals (for example, on-air charity auctions of donated products and services). We have therefore revised the rule, as set out in paragraph 7.82, below. We also recognise that a charity appeal could be broadcast as a paid-for spot advertisement or a commercial reference.

7.81 Associated guidance to this rule explains that broadcasters need to ensure that any charity appeal broadcast as a (paid-for) commercial reference is appropriately signalled as such and does not therefore appear at any time to be fund-raising activity broadcast (free of charge) on behalf of the charity.

7.82 In conclusion, Ofcom has implemented the following revised Rule 10.10, renumbered as Rule 10.11, to accommodate other rule changes:

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

### Consultation Proposal: Rule 10.11

#### *Consultation proposal*

7.83 Ofcom proposed the following Rule 10.11:

“Broadcasters may broadcast appeals for donations to make programming or fund their service. The audience must be told of the purpose of the donation and how much has been raised as a result of the appeal. All donations must be separately accounted for and used for the stated purpose.”

#### *Stakeholder responses*

7.84 Stakeholders did not respond concerning the proposed rule.

#### *Ofcom's decision*

7.85 In conclusion, Ofcom has made minor changes to the proposed rule (for clarity) and implemented the following rule, renumbered as Rule 10.12, to accommodate other rule changes:

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

### Consultation Proposal: Rule 10.12

#### *Consultation proposal*

7.86 Ofcom proposed the following Rule 10.12:

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

#### *Stakeholder responses*

7.87 Stakeholders did not respond concerning the proposed rule.

#### *Ofcom’s decision*

7.88 In conclusion, Ofcom has implemented the following rule, renumbered as Rule 10.13, to accommodate other rule changes:

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

## New Section Ten (Radio) of the Broadcasting Code

7.89 As discussed in paragraph 7.5, above, the new Section Ten of the Broadcasting Code (Radio)<sup>67</sup> applies to material broadcast on or after 20 December 2010. For ease of reference, this is set out in Annex 1 below.

<sup>67</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

## Annex 1

# New Code Section Ten (Radio): Commercial Communications in Radio Programming<sup>68</sup>

### Section Ten (Radio): 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 (Television) on Sponsorship and Code Section Ten (Television) on Commercial References and Other Matters apply to television only.

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

#### Principle

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

<sup>68</sup> The complete Broadcasting Code can be found at <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>.

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, for example, include 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.

**Premium rate and similar services**

- 10.9 Any use of 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 premium rate telephony services, or other services based on similar revenue-sharing arrangements, must be made clear to them and broadcast as appropriate.

**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.

## Annex 2

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

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

Television and radio are subject to different legislative requirements, and terminology is therefore specific to radio in this guidance.

Guidance to Section Nine (Television) and Section Ten (Television) concerns sponsorship and commercial references on television.

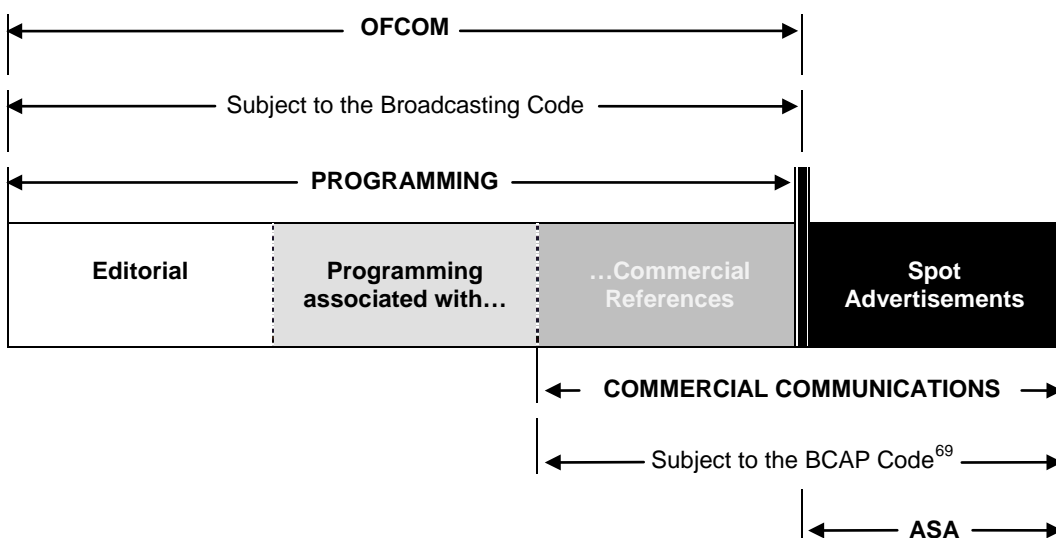
Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

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

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text.”

## Introduction: General guidance

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



<sup>69</sup> The UK Code of Broadcast Advertising, issued by the Broadcasting Committee of Advertising Practice (BCAP)

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

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

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

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

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

Commercial references therefore include, for example:

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

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

Advertiser-funded programming is sponsored programming.

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

## Principle of transparency

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

### Consumer protection

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

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

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

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

## Rule 10.1 Signalling of commercial arrangements

### Programming “subject to” or “associated with” a commercial arrangement

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

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

### Appropriate signalling

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

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

- Wording

For example, it may be appropriate to signal:

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

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

- Positioning

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

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

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

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

- Frequency

To ensure appropriate transparency of a commercial arrangement affecting longer output, it would be reasonable to expect, for example, sponsorship credits to appear

in programming about every 20 minutes. However, circumstances may demand otherwise (e.g. live concert coverage).

- **Identity** (of third parties)

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

## **Consumer affairs programming**

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

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

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

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

Commercial references that are subject to a commercial arrangement with a legitimate 'political advertiser' – i.e. one that is not prohibited under Rule 10.6 (e.g. a government department, a local authority or a trade union) are subject to Section 7 of The Broadcasting Committee of Advertising Practice UK Code of Broadcast Advertising<sup>70</sup> ("the BCAP Code"), which requires, among other things, that no advertisement may:

- be inserted by or on behalf of a body whose objectives are wholly or mainly of a political nature;
- be directed towards a political end;
- relate to an industrial dispute, unless it is a public service advertisement by a Government department; or
- show partiality in matters of political or industrial controversy or public policy.

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<sup>70</sup> Code available at: <http://bcap.org.uk/The-Codes/BCAP-Code.aspx>

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

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

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

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

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

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

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

### **Sponsorship**

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

### **Community Radio**

#### Commercial references as revenue streams

Community Radio broadcasters are reminded that, while sponsorship credits and references in programming to the sponsor and/or its brand(s), logo(s), product(s) and/or service(s) are permitted, licence conditions either prohibit programming/station sponsorship and paid-for advertisements or restrict the amount of programming/station sponsorship and paid-for



advertisements that can be taken (under The Community Radio Order 2004). The following is therefore of particular relevance to Community Radio broadcasters, which may wish adopt additional revenue streams:

- For the purposes of Community Radio funding assessment, commercial references made separately from those that form part of a sponsorship arrangement, are paid-for advertising (where ‘advertising’ is “any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment”<sup>71</sup>)
- Community Radio programming funded by a non-commercial, not-for-profit entity that seeks solely to educate or inform the audience on matters in the public interest *is not* sponsored programming or a commercial reference and income from such funding is not considered to fall within the legislative limits on Community Radio stations’ income from remunerated on-air advertising or sponsorship. (Note: Such programming could be broadcast as part of a service level agreement, when it could also be promotional – see additional guidance, which follows – ‘Services Level Agreements (SLAs)’)

### Service Level Agreements (SLAs)

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

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

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

## **Rule 10.2 Separation**

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

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

- Providing a significant barrier (e.g. a pause, a jingle, an ident, an obvious change in

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<sup>71</sup> This is the definition of ‘television advertising’ in the Audiovisual Media Services Directive. While not produced with radio in mind, Ofcom regards this definition as most appropriate to best-reflect the intention of The Community Radio Order 2004.

presentation style etc.). The most appropriate choice of barrier depends on the circumstances of the particular case (i.e. the nature of the programming in or between which an advertisement is placed); and

- Ensuring that an advertisement does not sound like programming. This is generally achieved by using a different presentation style, whether pre-recorded or presenter-read. If the advertisement is presenter-read, not deviating from the advertisement script and/or placing the advertisement centre-break may assist clear separation.

In the event of a complaint, if there is any confusion over the nature of a commercial communication, Ofcom and the ASA will determine whether it is a commercial reference or a spot advertisement and apply the appropriate regulatory code. Generally, if a commercial communication sounds like an advertisement it will be considered to be a spot advertisement (not a commercial reference), which may or may not raise a programming/advertisement separation issue.

### **Advertising featured in programming**

Broadcasters must ensure that advertising featured in programming (e.g. to examine on air the way a particular product type has been advertised) does not appear to be spot advertisements (which must be kept separate from programming). Advertising featured in programming should always therefore be fully contextualised for the listener.

### **Rule 10.3 News**

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

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

### **Current affairs and features within News**

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

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

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

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

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

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

### Acceptable arrangements

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

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

### Phrases

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

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

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

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

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

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

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

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

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

## Protection issues

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

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

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

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

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

- credits for third party association with either programming or broadcast competition prize donation (please see immediately below);
- the use of premium rate services (e.g. for broadcast competition entry); and
- rereferences that promote the station/broadcaster's own products and/or services (e.g. the programme/station/broadcaster's website or a station/broadcaster's event).

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

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

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

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

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

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

### **Rule 10.5 Music**

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

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

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

For the purposes of compliance with Section Ten advertising rules, the BCAP Code contains rules with regard to advertising prohibitions, scheduling restrictions, content requirements and clearance requirements. While the BCAP Code does not refer specifically to “content rules”, these are simply rules that do not concern advertising prohibitions, scheduling restrictions or clearance requirements.

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

- Advertisers prohibited under the BCAP Code may not make any form of commercial communication on radio;
- BCAP content and scheduling rules apply to all commercial references (Note: When applied together with the transparency requirement – Rule 1 – this also ensures BCAP scheduling rules apply to programming that is subject to commercial arrangements with third parties); and
- BCAP clearance requirements apply only to commercial references that require confirmation or substantiation prior to broadcast. (Examples include, but are not limited to: complex factual claims – including those that are capable of objective substantiation; market leadership claims; special offer prices; comparisons with competitors; superlative claims; claims and offers involving significant limitations and exclusions; “free” claims; testimonials; endorsements; and claims that may be of particular interest to children.) See also, ‘Clearance’, below.

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

For the avoidance of doubt, any material that sounds like a commercial reference but does not form part of a commercial arrangement with a third party (e.g. references to the third party but not subject to the commercial arrangement, or a presenter’s personal views, concerning any product or service, that stray into making overt advertising claims about that product or service), remains subject to the rules of the Broadcasting Code. The Broadcasting Code has rules to ensure appropriate consumer protection – e.g. Rules 2.1 (harm) and 2.2 (misleadingness). However, broadcasters should note that, in the event of investigating

complaints concerning such material, Ofcom is likely to refer to advertising requirements for appropriate guidance. (See also guidance with regard to 'clearance', below, concerning – among other things – 'natural' references to brands etc., and guidance to Rule 10.3, above, concerning, specifically, material that appears to be a commercial reference within news).

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

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

- breath-testing devices;
- betting systems/products intended to facilitate winning games of chance;
- all tobacco products, rolling papers and filters;
- guns (including replica guns), gun clubs and offensive weapons;
- prostitution and sexual massage services;
- obscene material;
- products for the treatment of alcohol and illegal-substance dependence;
- pyramid promotional schemes;
- the acquisition or disposal of units in collective investment schemes not authorised or recognised by the FSA, without the prior approval of BCAP.

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

### **Advertising scheduling rules**

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

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

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

## Clearance

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

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

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

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

## Brand-associated characters

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

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

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

## Donation acknowledgement

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

## Rules 10.9 and 10.10 Premium rate and similar services

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

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

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

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

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

## **Pricing**

Listeners should be aware of the cost of interactivity that is promoted on air and uses either PRS or other services based on similar revenue-sharing arrangements. For PRS, this may require the broadcast of pricing information beyond that required by PhonepayPlus (which issues rules concerning the promotion of PRS across all media, not only radio).

Under no circumstances would the absence of any aired pricing information comply with Rule 10.9.

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

## **Rule 10.11 Charity appeals**

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

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

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

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

## **Rule 10.12 Appeals for funds for programming or services**

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

If Ofcom investigates the compliance of a broadcaster’s appeal for funds with the Code rules, it is likely to request the provision of copies of the relevant records, accounts and/or



audits. Broadcasters should be able to supply this information to Ofcom promptly and in a clear and accessible manner.

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

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

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

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

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

### **Acknowledgement of Donations (including Philanthropic Funding/Assistance received by Community Radio broadcasters)**

A donation of funds may be acknowledged on air.

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

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

## **Station sponsorship**

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

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

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

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

## News

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

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

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

- The amount of sponsorable content on the station

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

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

- Positioning of station / Audience expectations

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

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

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

## Programming subject to scheduling restrictions

Programming subject to any commercial arrangement must comply with BCAP advertising scheduling rules (note: this actually results from the application of Rules 10.1 and 10.7). This means that certain programming cannot be, for example, sponsored by certain types of sponsor (e.g. an alcohol brand cannot sponsor children’s programming etc.). If a broadcaster

is considering a station sponsorship arrangement that involves a sponsor that is subject to scheduling restrictions, they are advised to apply similar criteria to that stated above (e.g. a station that broadcasts a significant amount of children's programming should not be sponsored by an alcohol brand).

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

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

## Identifying station sponsorship arrangements

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

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

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

## Placing of credits

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

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

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

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

## Annex 3

# Glossary

The following is a glossary of organisations and broadcasting terms referred to in this document<sup>72</sup>:

<b>Advertising Association</b>	The organisation that represents the advertising and promotion industry in the UK, including advertisers, agencies and the media.
<b>ASA</b>	Advertising Standards Authority – the UK's independent regulator of advertising across all media, including radio and television. Its role is to ensure that advertising is legal, decent, honest and truthful (by applying advertising codes).
<b>AVMS Directive</b>	Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services [including television].
<b>Bauer Media</b>	A multi-platform UK-based media group consisting of two main divisions – Magazines and Radio. The latter markets its own <b>brands</b> , such as Kerrang, Kiss and Magic.
<b>BCAP</b>	Broadcast Committee of Advertising Practice – responsible for writing and reviewing the <b>BCAP Code</b> , which is applied by the <b>ASA</b> .
<b>BCAP Code</b>	The UK Code of Broadcast Advertising (issued by <b>BCAP</b> ).
<b>Brand</b>	A marketing identity (by name or sound) associated with an idea, event, product or service, or a range and/or mix of these.
<b>British Heart Foundation</b>	A charity that pioneers research and prevention activity, and seeks to ensure quality care and support for people living with heart disease, aiming to end the premature deaths it causes.
<b>Campaign for Press &amp; Broadcasting Freedom</b>	A campaign for media reform with stated goals to promote policies for diverse and democratic media.
<b>Carat Sponsorship</b>	Part of Carat UK, a media agency owned by Aegis plc.
<b>Central Office of Information</b>	Also known as the COI, it provides publicity services to UK Government departments about such issues as health,

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<sup>72</sup> Note: some of the meanings are specific to radio only

	education, benefits, rights and welfare.
<b>Children’s Food Campaign</b>	Run by the National Heart Alliance and the Irish Heart Foundation, it campaigns to restrict the marketing of unhealthy foods to children.
<b>Commercial arrangement</b>	A contract or other formal understanding between a broadcaster and a third party that generally includes payment in return for a <b>commercial reference</b> .
<b>Commercial communication</b>	A broadcast reference (generally paid-for) to a product or service. Such communications comprise <b>spot advertisements</b> and <b>commercial references</b> (e.g. <b>sponsor credits</b> ).
<b>Commercial reference</b>	A reference in <b>programming</b> , to a product/service that is subject to a <b>commercial arrangement</b> or promotes a station/broadcaster’s own product/service.
<b>Editorial</b>	See <b>programming</b> .
<b>Editorial independence</b>	A regulatory <b>principle</b> . It was intended to ensure that <b>programming</b> was not distorted for commercial or other purposes. To this end, the broadcaster had to maintain editorial control over <i>all programming</i> (including <b>sponsored programming</b> ).
<b>European Sponsorship Association</b>	A membership association that seeks to promote best practice and raise industry standards.
<b>Global Radio</b>	The UK’s largest radio group, which markets its own <b>brands</b> , such as <b>Heart, Galaxy, 95.8 Capital FM, LBC, Classic FM, Gold and Xfm</b> .
<b>GMG Radio Holdings</b>	A UK radio group, which markets its own <b>brands</b> , such as <b>Smooth, Real Radio and Rock Radio</b> .
<b>Ident</b>	See <b>station ident</b>
<b>INR</b>	Independent National Radio – three Ofcom analogue national commercial radio licensees, currently comprising: talkSPORT, Absolute Radio and Classic FM.
<b>Institute of Practitioners in Advertising</b>	The trade association and professional institute for UK advertising agencies.
<b>Outside broadcast</b>	Generally abbreviated to ‘OB’, an outside broadcast is <b>programming</b> broadcast from a remote location. It is usually live and is characterised by the lead presenter(s) hosting it from a venue other than the studio.
<b>Principles</b>	Ofcom’s regulatory principles (applied through Code rules) – e.g. <b>transparency, separation and editorial independence</b> .

<b>Product placement</b>	The inclusion in <b>programming</b> of a paid-for reference to a product, service or trade mark (generally including <b>brands</b> ).
<b>Programming</b>	Sometimes referred to as editorial, programming comprises programmes (e.g. a Breakfast Show), music, and features (e.g. weather) and includes <b>commercial references</b> and programme trails etc. – it is therefore all radio output apart from spot advertisements.
<b>RACC</b>	Radio Advertising Clearance Centre – UK commercial radio’s advertising clearance body (and part of <b>RadioCentre</b> ). It approves advertising and <b>sponsor credits</b> prior to broadcast, as the <b>BCAP Code</b> requires advance central clearance of "special categories" of advertisement and <b>sponsorship</b> .
<b>Radio</b>	Broadcast radio services licenced by Ofcom.
<b>RadioCentre</b>	The trade body representing the majority of UK commercial radio broadcasters and incorporating Radio Advertising Bureau (RAB), Joint Industry Commercial Radio I.T. (JICRIT), Aerials Foundation and <b>RACC</b> .
<b>Rotation</b>	Rotation involves the recurrence of music tracks broadcast within a specified period.
<b>Separation</b>	This was a regulatory <b>principle</b> . It was intended to ensure that <i>all</i> advertising was kept separate and distinct from <b>programming</b> .
<b>Shetland Islands Broadcasting Co Ltd</b>	A UK radio company running SIBC 96.2 FM, the independent radio station of the Shetland Islands.
<b>Signalling</b>	The means by which <b>transparency</b> is achieved (e.g. in the case of broadcast <b>sponsorship</b> , the inclusion of <b>sponsor credits</b> provides appropriate signalling).
<b>Sponsor</b>	Any body that gives payment (or equivalent) to the broadcaster to be associated with specific <b>programming</b> , with a view to promoting itself through that association.
<b>Sponsor credit</b>	Sometimes referred to as a <b>sponsorship</b> credit, this lets the listener know a <b>sponsor</b> has a commercial association with specific <b>programming</b> (i.e. a specific show or a specific feature). A <b>sponsor credit</b> generally includes a phrase such as “brought to you by.....” or “in association with...” to identify the <b>sponsorship</b> arrangement.
<b>Sponsored competition</b>	Sometimes referred to as a radio promotion (by the radio industry), this is an example of <b>sponsored programming</b> . Generally, the <b>sponsor</b> not only pays to be associated with the competition but also donates the prize(s) on offer.

<b>Sponsored programming</b>	A programme (or set of programmes) or a feature (or set of features) that has received funding for its production from a <b>sponsor</b> .
<b>Sponsorship</b>	A <b>commercial arrangement</b> under which an individual or organisation funds specific <b>programming</b> (or a radio station) with a view to promoting itself through association with it.
<b>Spot advertisement</b>	Sometimes referred to as a 'commercial' or 'spot ad', this is an advertisement found in a commercial break.
<b>Station ident</b>	A radio station's identification jingle, which identifies the radio station/ <b>brand</b> /network on air.
<b>Transparency</b>	(A regulatory <b>principle</b> ) Any commercial association with <b>programming</b> (e.g. broadcast <b>sponsorship</b> ) should be made clear to listeners. Transparency is achieved through the broadcast of appropriate <b>signalling</b> .
<b>UK Music</b>	The organisation that represents the collective interests of the commercial music industry in the UK. It comprises: Association of Independent Music, British Academy of Songwriters, Composers and Authors, BPI, Music Managers Forum, Music Producers Guild, Music Publishers Association, Musicians Union, PRS for Music and PPL.
<b>UKRD Group Ltd</b>	A UK multi media company that runs 15 local commercial radio stations – <b>brands</b> include Yorkshire Coast Radio, Star Radio, 96.4 Eagle Radio, Pirate FM and Minster FM.
<b>UTV Media (GB)</b>	A multi media company operating in the UK and Ireland. Its UK radio group, markets its own <b>brands</b> , such as talkSPORT, Signal, Swansea Sound, The Pulse and Juice FM.
<b>Voice of the Listener and Viewer</b>	An independent organisation, seeking to represent citizen and consumer interests in broadcasting, and to speak for listeners and viewers on broadcasting issues.