

**BASIC DETAILS**

Consultation title: Broadcasting Code Review

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Representing (self or organisation/s): GMG Radio

Address (if not received by email):

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Name Jeff Stephenson

Signed (if hard copy)



## **Broadcast Code review response from GMG Radio**

### **Introduction:**

It is appreciated that this is a review of Sections One, Two, Nine and Ten of the Code, however our response is honed to specifically address those questions which we feel most qualified to answer and those that directly impacts upon our business and the commercial radio industry in general. As such our views will, in the main, be targeted towards the questions raised to the proposed new Section Ten.

GMG Radio believes the document submitted to Ofcom on the 22<sup>nd</sup> October last year by the RadioCentre was a significant starting point in relation to providing reflection and influence for changes within the Broadcast Code and we welcomed the subsequent direct discussions with Ofcom Executive and finally the publication of this consultation document and details of research conducted amongst consumers of commercial radio in the UK.

The overall positive response by Ofcom to RadioCentre's request for taking a firmer handle on what it believes is currently restricting commercial freedom for radio broadcasters and their declaration of some support with increased flexibility within four out of the five areas raised in the original document submitted was welcomed. However we are extremely disappointed that there has been no inclusion or appreciation of potential advantages to the industry by the relaxation of regulation to station and client linked online activity and would hope this could be re-assessed as a result of responses to the consultation.

In general we believe the increased flexibility afforded within the review and proposed new rules is a progressive move but at the same time regard it to be still overcautious. It does not go far enough in order to provide clearer guidance and comfort to the industry that relaxation offered within the new rules is adequate or even meaningful in the light of the current market and challenging economy.

GMG Radio has merged its' own views with that of the radio industry and worked in collaboration with the RadioCentre and therefore fully support the views portrayed in their own response to this consultation. In particular and most importantly we would urge that Ofcom take in to account our unconditional support to the industry-proposed principles of editorial integrity and transparency and the complete removal of all other principles proposed by Ofcom. Alongside this we are comfortable with including additional information within our own response in order to place emphasis on the business requirement for Ofcom to give further consideration to doing more. The main summary points which are expanded upon later in this response are:

- Further flexibility and relaxation in what Ofcom proposes within Section Ten in order to create less restrictive commercial and programming options and a minimised process leading to the overall objective of an easier understanding of regulatory requirements and deemed necessary because of the over complicated and ambiguous nature of the new proposals.
- Further clarity, empathy and guidance from Ofcom on statements and proposals submitted previously by the RadioCentre on behalf of commercial radio so as the industry can be comfortable in the knowledge that all of the key issues currently impacting negatively on commercial radio have been addressed properly prior to submission to the new regulatory process.
- Further transparency and relaxation on the proposed new rules on content-related promotions and a clear definition of what will be allowable to broadcast with specific guidance for on air live and pre-recorded delivery and the reasoning behind the proposed restrictions.
- Alongside content-related promotions, we feel there is overly restrictive wording that dovetails with proposed new rules on venue sponsored outside broadcasts and we would also seek reasoning as to the caveats placed upon live and pre-recorded presenter reads and separation issues.
- We would wish to have additional clarity on the issues or reasoning contained in the new rules as to why Ofcom feels the need to effectively and perhaps unfairly ban commercial organisations from being allowed to fund public information programming.
- A key area which Ofcom has not moved forward or includes is the requirement for flexibility on behalf of commercial radio for the on air promotion of commercial online activity contained within their own websites. We believe this deserves consideration to allowing some or even complete relaxation in order to assist radio in being more competitive in the marketplace.
- Greater appreciation from Ofcom as to what (if any) the tangible revenue related benefits might be to the commercial radio industry as afforded by the current proposals if adopted and realisation of the necessity to go much further in its process for change in order to make the desired impact of strengthening the proposition to advertisers in a tough and competitive media market place

**GMG Radio fully supports the RadioCentre submission for a newly framed Section 10 incorporating new and simpler principles and rules which demonstrate a sensible and wished for approach to further clarity, flexibility and additional relaxation where appropriate which at the same time will provide consumers with appropriate protection.**

This response is therefore compiled to incorporate examples which refer to the above points and at the same time address the questions raised within Section Ten of the consultation.

# Consultation questions

## Commercial References in Radio Programming Rules (Code Section Ten)

### Question 26

*a) Do you consider that the rules on commercial radio would benefit from being separated from those for television?*

Yes as the two are completely different media we feel commercial radio can benefit by having a more focused approach within the Code to specific regulatory requirements likely to impact upon our output and audiences.

*b) Do you agree with the introduction of the proposed new Section Ten on commercial references in radio programming?*

We agree that this is the correct approach although we have many questions on the proposed content.

*c) If you do not agree with the proposed new Section Ten, please explain why and suggest alternative wording where appropriate.*

We believe the introduction and summary to the response covers this question alongside the specific text to follow relating to individual rules within the newly proposed Section Ten.

### Question 27

*a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning content-related promotions? If so, please explain why.*

We agree that it is appropriate to introduce new rules designed to reduce ambiguity and offer further transparency so as the industry can better match the expectations of listeners and commercial partners.

*b) If not, please explain why.*

We do not believe that the proposed rules address the issues effectively and therefore we feel that a further review based on the anticipated feedback from this consultation to be extremely important if we realistically wish to move forward satisfactorily on this issue.

*c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*

At present the rule introduction offers the absolute minimum in terms of a solution as to what content-related promotions really means or how it should be interpreted by the station or its' commercial partners and unfortunately in its' current form appears to be of little benefit to listeners. There are a number of reasons why GMG Radio holds this viewpoint:

1. Within the proposed changes there appears to be no proper clarity with regards to the on air promotion of third party commercial offers online or proper guidance on the use of appropriate references within the Code to assist in the acceptable compilation of scripts/copy in order to be compliant. The web is now used within the industry as an acceptable extension of our brands and as most visitors to our sites will likely to be

listening to our stations anyway, we think it is completely relevant to have this in the main restriction free or more lightly regulated.

2. It is our view that radio stations should be cleared to promote a client sponsored competition on air within its overall online offering if the broad mantra is editorially justified and/or be of tangible or material benefit to listeners
3. An unwelcome conflict and divide will remain within the code unless we can clearly distinguish between the perceptions of what is meant by editorial independence as opposed to the preferred terms of editorial justification and/or editorial integrity.
4. The research Ofcom has undertaken demonstrates commercial radio listeners' tolerance and appetite for S&P and content related activity and suggests that provided it is of a high enough quality, listeners are not turned off by such commercial activity on air, online or by a clear association between the two.
5. Full clarification is required to assist programmers and commercial teams as to what constitutes good programming and acceptable commercial realism so as we are comfortable there is no room for misinterpreting the rules. We believe that content and commercial freedom can be achieved properly, transparently and with fewer restrictions by introducing further relaxation. This can be achieved by appropriate wording within the Code and Guidelines and is clearly a major requirement to be considered immediately in order to avoid a continuation of the current Code ambiguity. This is supported by Ofcom research and perceived to be a benefit to the listeners who have no problems with the concept of commercially linked programming content – related promotions. This would have the additional benefit of helping the client, the station and listeners in fully understanding the concepts of what we can and can't do.
6. We appreciate that the inclusion of content-related promotions is a welcome change but whereas we feel the new rules will allow some if minimum degree of relaxation, we would contend that this is still not going far enough in terms of flexibility to allow the station to work with the sponsors on appropriate content and believe we should work more towards the principle of editorial justification and transparency of relationship rather than the specifics of who, how and what may be portrayed in content provision

We would therefore seek further clarity on the newly proposed rule;

*"10.19 Content-related promotions may include only the offer of information or the offer for sale of a product or service, and may contain only the name of the item, its most basic description, its cost and/or availability. They may not contain any advertising messages other than a basic invitation to purchase or call to action. "*

We also feel greater clarification is required on the following as stated within the above Rule 10.19 in order to avoid future ambiguity:

1. What is the Codes clear interpretation of 'Content related promotions'?

2. What is interpreted as ‘advertising messages’ within this statement – we feel there is still far too much ambiguity as the wording contradicts itself by stating that the offer of a product or service for sale, its cost, availability and call to action are surely the basis of any advertising message?
3. If this is now deemed editorially justified then why does it have to be pre-recorded and not allowable to be done live in a presenter read provided it does not compromise editorial integrity?
4. As such surely there is little point of the latter part of 10.20 “ *Content-related promotions.....must be pre-recorded and brief. They must not be (or appear to be) read by a presenter of the programme*”?

Although the proposed changes offer some flexibility we conclude there is real avoidance within the new Code of dealing with the ongoing issues of product mentions, what and how much can be said, and continues to use within the document, grey area phrases and words such as “legitimate” or “incidental” which of course can have different meanings and therefore still leave too much available to subjective interpretation.

Therefore what constitutes acceptable inclusion of sponsors products or services to enhance output remains unclear and we would seek that this should be addressed in the final Code. Our concerns within the current open interpretation is that even more questions will need to be asked of Ofcom and further explanations will be necessary unless this can be drilled down to a clearer rule without ambiguous language. By way of example the rule does not make it clear whether it is incidental, justified or legitimate to have a sponsor representative featured within a sponsored programme as an informed guest provided he or she is there to talk about content related to the programme?

Here are a few more practical examples where confusion might occur within the legality of content and uncertainty under the new rules as to the opportunity to feature in programmes:

- A gambling sponsor company representative gives listeners advice on odds in the programme they sponsor and also contribute similarly to other station output.
- A local travel agent sponsor talking about holiday availability with the presenter of the show they sponsor and thereby providing justifiable editorial for listener benefit.
- A recruitment specialist from the sponsor addresses job availability and offering interview advice.
- The local newspaper editor from the sponsor is reviewing the press feature and so on.

*d) Do you consider that the proposed rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection?*

We believe Ofcom should allow the industry to apply editorial judgment as to what constitutes product that is content related and allow listeners the opportunity of interacting with the service via any appropriate platform available - this could be via the station but can also be justified in using the sponsors own action mechanism. Full relaxation and transparency clears up the process, helps the listener understand how to obtain the service and allows programmes and commercial teams’ further understanding and clarity on the procedures required for compliance. The proposed changes do not address or clarify these issues and certainly don’t go far enough in terms of rule relaxation

*e) If not, please explain why, suggesting drafting changes where appropriate.*

Ofcom may wish to consider changing its rules to allow content-related promotions that would let radio stations broadcast brief promotions for products or services associated with programme content. Our main concern within the current proposals is that these changes may be too limited and may only be interpreted as referral to allowing things like the offering of a music download of a song just after it has been played or being able to offer ticket information in the same format for a gig or event after a competition or playing of an artist's song. This does not offer enough flexibility or encouragement and will not make sufficient difference to the status quo or add much in the way of commercial revenue. The opportunity is available to do this properly but only with the help of further relaxation.

### **Question 28**

*a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning outside broadcasts sponsored by the venue? If so, please explain why.*

We agree that it is correct to have some rules but again feel the new proposals do not do enough to clarify the issues of what and what should be allowable.

*b) If not, please explain why.*

The new proposed rules on venue sponsored outside broadcasts are reasonably positive and our interpretation is that non-advertising messages from the venue are perfectly OK and that commercial references and advertising can now be included in the form of content-related promotions which must be pre-recorded and not presenter read and broadcast only within commercial inventory. Again as within the above references to content-related promotions, the proposed rule still appears too ambiguous in order to practically assist in clarifying what is to be interpreted as an overt advertising message within the sponsored outside broadcast and what in Ofcom's view will constitute something felt to be editorially justified. If by way of example a presenter is interviewing a sponsor at their own event, how much guidance is required on what information is allowed to be broadcast? The worst situation would be that the current degree of inflexibility and an over instructed delivery would sound too scripted and insincere, so the simplest solution is to allow a free flowing listener friendly broadcast from somewhere they may be interested in visiting or contacting without inappropriate restrictions placed on the venue and broadcaster

Alongside this we are unclear if under the new rule whether it may be editorially justified to interview one of the venue suppliers in relation to the event if it is clearly within the overall context of providing listeners with reasonable information which will be of benefit or interest.

*c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*

By way of general examples with regards to venue sponsored outside broadcasts we feel clearer guidance is required which will nullify any ambiguity on the part of the station, commercial partners and listeners. If the sponsored event venue is funding the coverage and the presenter talks about the products, prices and any specific promotions on offer to a sponsor representative, we believe the public would certainly understand this was being broadcast as a commercial message paid for by the sponsor. Under the new rules we would have to pre-record this with a different presenter which seems nonsensical and unnecessary and it would be much more feasible for this to be done as a live commercial, allow the programme presenter in the

interests of continuity to conduct the interview and then transmit it in to clearly separated commercial inventory. This would ensure there was clear separation and provide a consistent, unambiguous way of communicating the benefits to all parties involved and help provide new revenue streams to the industry.

*d) Do you consider that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?*

The allowance and relaxation of legitimate advertising messages within sponsored listener competitions/features ensures less rigidity, makes the process more transparent and helps commercial radio to meet and manage client's expectations of what they want from promotions on radio without compromising editorial integrity or diluting listener enhancement. Allowing the content of the competition to be directly linked to the sponsoring client is also a hugely positive development as this is requested time and time again from clients. However, again we would seek a great deal more guidance, further flexibility, and clear consistency on what Ofcom believes constitutes 'brief advertising messages' in the context of the potential content-related promotions and venue sponsored outside broadcast Code changes.

#### **Question 29**

*a) Do you consider that it is appropriate for Ofcom to introduce the proposed rules concerning sponsored listener competition features? If so, please explain why.*

We agree that rules should be in place but would suggest further relaxation and clarity.

*b) If not, please explain why.*

Although Ofcom volunteers throughout the document to offer additional guidance on certain terms and rules we feel that it would be better and a lot more helpful if we could assist in making the rules absolutely clear at the beginning. In particular the area of undue prominence is still very much open to subjective interpretation and we feel it is right that this term should be replaced with wording which is specific and unambiguous. As such we fully support the RadioCentre argument within their submission for the removal of the ambiguous undue prominence rule.

It is gratifying that this degree of ambiguity has been recognised by Ofcom within the Code and we believe this to be a unique and extremely important opportunity for radio to seek complete removal of all of the wording within the current Code which may be open to subjective interpretation. We agree with the RadioCentre that the words 'editorial justification and integrity' should replace completely the term 'editorial independence' in the core principals. This will allow operators appropriate flexibility in self regulation and to safely take their own informed judgments on any issues whilst recognising that it remains a primary desire and benefit to protect station relationships with listeners and at the same time offer and deliver clear value, unique opportunities and comfort to customers.

We understand the industry generally believes that this additional flexibility will not lead to reputational risk nor would listener tolerance be compromised. We believe commercial radio retains the expertise and appetite to maintain the levels of trust enjoyed so far without compromising values, integrity and relationships with all concerned.

The opportunity is now and it's proper to remove ambiguity and provide the added degree of flexibility and relaxation within the Code in order to ensure this is maintained for the medium

and long-term survival of commercial radio and to help make the differences required in order to provide revenue opportunities which do not compromise editorial integrity and judgement.

*c) Do you agree with our assessment of the impact of the proposed rules on listeners, the radio industry and any other parties? Please provide any evidence or data you have to support your answer.*

Relaxation enables the industry to secure more freedom in the way it can work with sponsors and promoters, and the way in which it can create new forms of programming as well as instigate new ideas and engaging listener friendly commercial activity to compete with other media including the unregulated internet. This particular platform has succeeded in motivating previous and potential radio customers to perhaps question value and flexibility and subsequently to reduce investment or abstain from including commercial radio on advertising and promotional schedules.

Advertisers and sponsors continue to demand more engaging ways in which to access audiences and across all media this is a key growth area, but our conviction is that revenues are now being driven away from commercial radio, audiences levels are fluctuating as station branding and marketing is reduced owing to revenue decline and thereby allows the BBC to capitalise. We would urge Ofcom to grasp this opportunity to recognise a requirement for even further change and relaxation in the new Broadcast Code.

There is certainly some anecdotal evidence to suggest that commercial radio is being excluded from advertising schedules, together with promotional and sponsorship activity on the basis of inflexibility through what is often termed as over zealous intrusive regulation. Although it is extremely difficult to calculate a real value in terms of lost revenue attributed to this aspect of compliance, it is highly likely that many media and creative agencies are negative towards the limitations of opportunities afforded by the industry on this basis. Therefore there may well be long-held pre-conceived negative views towards radio which will need to be addressed positively by the code changes if we are to survive and prosper in the future. The opportunity to newly engage with lapsed or reluctant advertisers to commercial radio afforded by clearer interpretation, increased flexibility and relaxed creative opportunities can only be of benefit to all parties involved.

It is also difficult to assess the actual potential of additional revenue opportunities created by new principles, guidelines and rule relaxation but our view is that implementation of the industry-proposed Section Ten will afford much more opportunity to create ideas which will allow advertisers to become closer to content. We therefore believe additional revenue generation opportunities will become less restrictive and thereby welcomed by programmes, commercial and ultimately be of benefit to listeners when done within the self-regulatory restraints of acceptable editorial justification and integrity.

*d) Do you agree that the proposed rules would provide adequate consumer protection, subject to the maintenance of full transparency concerning sponsorship arrangements?  
e) If not, please explain why suggesting drafting changes where appropriate.*

We concur with the RadioCentre submission and support the overall plan to positively review the principles, simplify the rules and wording in the revised Section Ten of the Broadcast Code. The objectives and changes proposed do not compromise editorial or commercial goals and our view is that appropriate relaxation will enhance listener enjoyment with the additional transparency of content as well as clearly defining the regulatory requirement for adequate consumer protection in all instances.

### **Question 30**

*a) Would you consider that it is appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so, please explain why. If not, please explain why not.*

The planned Public Information Programming section should be clearer about what is meant by 'influencing the content' and also we believe there to be a need for further clear guidance on what in Ofcom's view constitutes a 'not for profit' organisation and which categories they feel will sit within the context of public interest.

*b) If Ofcom were to introduce rules in relation to Public Information Programming:*

*i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details.*

It is our considered view based on experience within the sector that the proposed rule excluding commercial organisations from sponsoring/funding campaigns with public service objectives is unhelpful and unreasonable in today's economic environment. We wish to see further relaxation in order to add value to the public service objectives and benefit listeners by making it easier to understand the differences between public services information and commercially related services. Relaxation will increase potential revenue opportunities within a clearly defined commercial broadcast strategy for this sector.

*ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on listeners, the radio industry and any other parties? Please provide any evidence or data to support your answer.*

We believe that the term 'public information programming' is confusing as although it is obviously broadcast as in the listener interest, there is a conflict and irony to this when for example the commercial radio industry has to somehow advise the 'not for profit' organisation funding the information output that they cannot influence the content.

*iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why.*

Public information material is quite obviously broadcast in the public interest and is generally going to be provided by a third party organisation and therefore someone other than the radio station, so it is therefore virtually impossible for them not to influence content. However we do not believe there to be justified reasoning as to why public information campaigns compiled with or without third party input should not be sponsored/funded by commercial organisations within the newly proposed rule.

*iv. Do you consider that additional or alternative safeguards to those included in the draft proposed rules are necessary? If so, please provide details.*

This is an area where we believe that in the public interest and in order to fund further activity then the preference would be for complete editorial freedom without regulatory intrusion.

*v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions?*

We believe this decision should be made on discretionary grounds by the operator alone and not be subject to regulatory intrusion.

*vi. Do you consider that it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.*

We don't believe this would be necessary if the mandate for increased flexibility and rule relaxation is approved. It would probably be useful to know for clarity on what grounds Ofcom may wish to seek a review after two years if the new rule is completely transparent and workable for all parties involved.

### **Question 31**

*a) Do you consider that the proposed new Section Ten would benefit from the introduction of new meanings?*

We would agree that the finalised Section Ten would benefit from an introduction of new meanings

*b) Do you agree with our proposed new meanings for Section Ten?*

New meanings in our opinion would only become appropriate once they achieve the overall concept of providing complete clarification, avoidance of ambiguity and removal of all subjective interpretation. At present this may not be relevant as the consultation review process may change Ofcom philosophy towards the new meanings.

*c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

It is appreciated that the rules are placed to ensure the broad principles of editorial integrity; distinction between advertising and programming; transparency of commercial arrangements; and the appropriate protection of consumers are maintained – we firmly agree with the overall concept but feel that there is still more which can be done to ensure further transparency and understanding in order to avoid future compliance breach.

### **Question 32**

*a) Do you consider that the introduction of new Principles in relation to Section Ten is appropriate?*

We feel the new industry-proposed principles submitted by RadioCentre are clearer, more manageable and wholly appropriate.

*b) Do you agree with the proposed new Principles for Section Ten?*

No

*c) If you do not agree with our proposed new Principles, please explain why and suggest alternative wording where appropriate.*

We would concur with the RadioCentre response to this question. However whereas we believe the new Ofcom proposed principles to be worthy in terms of audience, in effect they do little to add any practicality to the main issues which impact on commercial radio's delivery restrictions which though audience protective in principle, may still be far too inflexible, restrictive to creativity and puts policy enforcement to compliance towards the Code above commercial realism and actual audience requirements as depicted in Ofcom's own research.

In general we feel the current principles instruct but fail to communicate specific insight in to proper application. Therefore there could be a case for removal and instead look towards conveying more user friendly messages of clarity towards overall expectations and even separate guidance to a proposed sanction system in the event of non-compliance.

However if the industry recommendations are not fully accepted we would prefer the term editorial independence to be omitted completely and replaced with editorial justification. The industry has a good track record of self policing in terms of audience protection and being able to self-regulate and make its own decisions on what is right for listener trust as we have continued to build and sustain audience levels with trust being the leading principle.

### **Question 33**

*a) Do you consider that the proposed Rules 10.1 to 10.5 are broadly the same, in terms of both scope and intent, as current Rules 10.1, 10.2, 10.3, 10.4, and 10.12?*

Our view is that the new Section Ten should be clear in terms of principles, guidelines and rules and as such should Ofcom consider adopting the industry's proposed condensed version as recommended in the RadioCentre submission then this would remove the need for Rules 10.1 – 10.5, 10.7 – 10.8 and 10.13 – 10.16.

*b) If you do not consider the proposed rules are broadly the same as the current rules in this area, please explain why and suggest alternative wording where appropriate.*

The rules may be broadly the same but our view is that taken in isolation they do conflict to some degree with other sections of the new Code with regards to content-related promotions, venue sponsored outside broadcasts and public service information features. We welcome the decision to add additional clarity to the wording and to assist, we trust that the following on air examples\* of where clarification of potential conflict would be welcome, might be useful to Ofcom:

\*If an Outside Broadcast is sponsored by a tourist authority for example Hong Kong – it would be acceptable for programmes to include editorial about the location even though it is sponsored. Interpretation indicates that though editorially justified and interesting to audiences, the content is not completely independently controlled and therefore not compliant. We believe that this calls for consideration to either complete freedom or additional leeway towards editorial justification for such an event. Either would be extremely welcome as we feel the proposed new regulation is still very much over restrictive and out dated.

\*Sponsors and Agencies generally wish to include key messages in sponsored competitions because they look for good value and results from an investment. Commercial Radio is trusted to limit the amount of spot advertising in each hour but is not able to utilise similar judgment in terms of commercial reference content in competitions and sponsored programming. Under the new rules our interpretation is that the Code allows content related questions to the sponsors product or services. In a sponsor reference there appears to be no such relaxation and we would maintain that if it is editorially justified to add key messages to the reference, which even though commercial, it still remains transparent and in line with audience expectations. Commercial Radio needs to be trusted not to make this too annoying or irrelevant but deserves the flexibility and relaxation in order to reach and/or maintain commercial viability and compete with other media on a level playing field.

\*Content-related promotions other than “in or around the content with which it is directly associated.” is not particularly helpful to anyone and doesn’t go far enough in our opinion. We are not sure that the new permission for content-related promotions allows commercial radio to do anything new that we could initiate in order to explore additional revenue opportunities. The rule does afford an opportunity to clarify the rules on concert co-promotions if it falls under the umbrella of content-related promotion as this is a constant and relatively secure revenue generator for commercial radio which may risk compliance issues if continued in its current package. Music based station formats we believe would generally hope to be able to do more than simply give a brief description and a price as indicated in the new rule. We respectfully suggest there should be consideration given to affording commercial radio with a specific new rule on concerts and theatrical events to take in to account output and listener expectations.

If the new code Ofcom does not allow content-related promotions to be for products or services of the sponsor. E.g. 10.18 says “and must not give undue prominence to products, services or any third party” it is unfortunate as we would predict and expect that the only kind of content related promotions the industry would wish to be involved with and create demand for would be exactly those! We would therefore pose the question to Ofcom as to exactly what new revenues they anticipate the industry might be able to achieve through these new rules when in effect they still do not allow the parity and flexibility enjoyed by local newspapers. Our final observation on this is that Ofcom will unhelpfully prohibit presenters from reading as live any of this output and we disagree as stated previously.

*c) Do you agree with the introduction of the proposed new Rule 10.6?*

Rule 10.6, concerning listener competitions, should be retained but should be placed in a more appropriate single section concerned purely with listener participation.

*d) If you do not agree with the proposed new Rule 10.6, please explain why and suggest alternative wording where appropriate.*

We would agree with the rule but not where it is placed within the new Code as we already conform to our own written policy on this and have committed to comply with the RadioCentre Principles of Editorial Trust with regards to treatment of listener communication.

#### **Question 34**

*a) Do you consider it appropriate to introduce the proposed new meaning of product placement, to reflect the definition required for television?*

We would argue that whilst appropriate for television, this is unwelcome and unwarranted for inclusion within a set of principles and rules which are specific to the radio Code Section. It is also unnecessary and confusing when read alongside other rules on commercial references in radio. We agree with RadioCentre in their proposal that Ofcom adopts distinct regulatory approaches to the two media.

*b) If not please explain why, suggesting drafting changes where appropriate.*

Ofcom includes the AVMS’ definition of product placement in its proposed Section 10. This states that “product placement is the inclusion of, or reference to, a product or a service so that it is featured within programming, in return for payment or for similar consideration”<sup>1</sup>. Ofcom

states that “*although the AVMS Directive does not apply to radio, Ofcom considers it appropriate to use consistent definitions of product placement for both radio and television*”<sup>2</sup>. Our view is that to retain such a meaning in combination with commercial radio would cause anxiety and confusion as it appears to preclude all commercial references in radio programming (including the Ofcom proposed content-related promotions etc.), and we therefore suggest that it is inappropriate and unnecessary to include it.

### **Question 35**

*a) Do you consider it appropriate to introduce the proposed new Rule 10.10?*

*b) If not please explain why, suggesting drafting changes where appropriate.*

We would seek additional clarity with regards to interpretation of the new rule and also a specific and exact definition within the Code of what are classed as ‘Premium Rate Services’. We would also welcome some relevant and clear guidance from Ofcom on how often broadcasters should tell listeners the costs of their texts and calls to studio numbers. The term currently used is “broadcast as appropriate” which is not particularly helpful or specific enough in our view.

### **Question 36**

*a) Do you consider that the introduction of a new competition and voting section is appropriate?*

The section is welcome and brings the Code in line with media and technology developments.

*b) Do you agree with the proposed new competition and voting section for Section Ten?*

We agree with the section but would again take to task the exact wording with Rules 10.11 and 10.12. Our view is that the guidance is not specific and leaves much to interpretation.

For example

**10.11** *Broadcast competitions and voting must be fairly promoted and conducted and broadcasters must not materially mislead listeners so as to cause financial harm.*

How shall we interpret the words ‘fairly’ ‘materially mislead’ and what is defined exactly as ‘financial harm?’

**10.12** *Terms and conditions of entry or participation must be drawn up by the broadcaster and be appropriately brought to the attention of listeners. In particular, significant conditions that may affect a listener’s decision to participate must be made clear at the time an invitation to participate is broadcast.*

We feel it is extremely difficult to be absolutely sure of interpreting correctly what is ‘appropriate’ and the phrase ‘significant conditions’, as such we would welcome clarification on what this means in the context of communicating with listeners and ensuring they are aware of all conditions before a decision is taken to engage with the station.

*c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate.*

We would prefer further clarity on the specific objectives of this section in order to make suggestions on alternative wording.

*d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee?*

Yes we would agree that all radio broadcasters should be subject to the same conditions

### Question 37

*a) Do you consider that the rules in relation to programming-related material would benefit from clarification?*

We would welcome a specific clarification on what exactly constitutes programme-related material on commercial radio in order to make further judgment on the rules applying to it.

*b) Do you agree with the introduction of the proposed programming-related material section for Section Ten?*

We agree that the issues should be addressed as part of the revised Code and would prefer not only further relaxation and flexibility in what is allowable on the grounds of transparency to listeners but also some leeway in terms of station editorial judgment and the allowance of reasonable and clear association with third parties in order to benefit all stakeholders.

*c) If you do not agree with the proposed programming-related material section, please explain why and suggest alternative wording where appropriate.*

The current wording is precise but difficult to interpret, we would therefore wish to see some examples of exactly what will be allowable on air in order to be compliant. i.e.

**10.13** What sort of programming-related material examples may be promoted in programming only? We are confused as to distinguishing the practicality of differentiating between editorial and commercial in this section as a reference to programming-related material albeit brief and confined to the name of the item, a basic description, its cost and/or availability sounds fairly commercial and therefore could either be or could not be editorially justified depending on the individual interpretation.

**10.14** The promotion of programming-related material must be presenter-read (live or pre-recorded). We would like to know what would be the circumstances or scenario which would involve this happening – for example\*:

\*Could an operator broadcast safely a presenter read last minute holiday deals feature brought to the listener by a travel agent who pays for the privilege?

\*Could the station have a restaurant sponsoring The Top Ten feature and make all tracks played within that Top 10 food related? Could the presenter mention that restaurant at all during that feature?

**10.15** What is meant by the terms ‘appropriateness’?

In summary we believe the section therefore in its current form is a disappointment as the rules seem to prohibit any commercial arrangement with a third party. This has been an area where commercial broadcasters have not been able to previously explore and with ongoing and new and emerging media and the growing interest in online, it would have created, with further relaxation, an exciting opportunity to explore and develop as a new revenue stream for commercial radio.

We would wish to see an overall merger between the rules on newly created content-related promotions and programme related material. As separate entities within the Code it may cause even further confusion when a simpler solution may be to merge this within one section of rules.

As such there does not appear to be any specific reason for the new rules 10.18, 10.19, and 10.20 because it appears unclear as to what Ofcom are trying to protect listeners from. Ofcom’s comments about sponsorship state *“The following rules enable the inclusion of restricted promotional references in **some** sponsored radio programming but limit the extent of these references to ensure sponsorship remains distinct from advertising.”* We therefore must question as to why this needs to be in place as air and other platforms of delivery will have to

ensure the listener understands there's been a payment for any commercial arrangement even though this declaration appears obvious, is broadly acceptable and also recognised by listeners as stated within Ofcom's own research

### **Question 38**

*a) Do you consider that the meanings in relation to sponsorship of radio would benefit from revision?*

We believe revision is necessary in order to avoid ambiguity and that the meanings should be drilled down to minimised text in order to condense the section in to clear and exact meanings and terms of what constitutes sponsorship on radio.

*b) Do you agree that it is appropriate for Ofcom to introduce the proposed meanings in relation to radio sponsorship?*

We feel there should be far clearer definitions of what is generically labeled as sponsorship of radio.

*c) If not please explain why, suggesting drafting changes where appropriate.*

We feel the newly proposed section is too fragmented and difficult to distinguish what the differences really are between how a client can be involved in content-related promotion, venue sponsored, full programme sponsorship, feature and competition sponsorship, advertorials and station website commercial and editorial online activity.

We would also wish to see some further clarity on what is allowable in live reads, credit references and promotional trails as well as how Ofcom specifically differentiates in terms of wording between the three.

Public Information Programming may also benefit from a change in name or a pre-fix so as listeners are aware that this is funded and as such an advertorial. Again we see little reason as to why this should be limited to not for profit organisations as the commercial sector are also prominent in promoting and sponsoring worthy causes designed to be in the public interest. These include environmental issues, health and safety announcements, government announcements and many more opportunities to open up the airwaves to lots of specific causes within the proposed guidelines.

On a separate issue we feel Ofcom may wish to give further consideration to this based on discriminatory and moral grounds as to why this area of commercial radio should clearly have a bricked up seclusion zone which prevents entry to worthy commercial companies who have track records in promoting not for profit and extremely worthwhile public interest events.

### **Question 39**

*a) Do you consider that the rules in relation to the content of sponsored output would benefit from clarification?*

We have broached this in the previous question so the answer is yes.

*b) Do you agree with the introduction of the proposed new rules on the content of sponsored output in Section Ten?*

As above.

*c) If you do not agree with the proposed new rules on the content of sponsored output, please explain why and suggest alternative wording where appropriate.*

We would ask that Clause 10.37 should define the word “brief” as opposed to stating exactly how long a sponsor reference or credit should last. Our understanding is that there is no specified duration but only what is permissible roughly in content. However we do feel that the summing up of this section in the consultation process is unhelpful and disappointing if it becomes active: *“Products and services must not be promoted in programming, unless permitted by specific rules in this section of the Code (e.g. programming-related material)”*). This may unfortunately again prolong confusion within overall interpretation when it is coupled with statement *10.37 Credits must be short branding statements. They may contain brief, legitimate advertising messages (including claims that require objective substantiation) but must remain distinguishable from full advertisements.*

### **Final Summary**

In the main we believe the initial approach by Ofcom to be very positive and the consultation certainly presents the industry with some (though not enough) new opportunities and a degree of further clarity on existing activity. Ofcom states they will offer additional guidance on certain terms and rules and this is helpful but not the solution to the continuing challenges that the proposed new rules offer in terms of interpretation of clarity and ambiguity. It is perhaps only a starting point towards providing crystal clarity and easy to interpret, non-ambiguous language within the final Code publication. In particular, the rule concerning undue prominence is still open to interpretation and should either be discarded or Ofcom should seek to offer complete clarity on the scope and definition when taken in the context of other proposed limitations of relaxation

Overall we feel that many of the rules are still unclear and would suggest too open to interpretation. Editorial justification and editorial independence are examples of this and remains overly subjective within the current and new rules. As such Ofcom may sanction a service based on a decision made by them on subjective interpretation, whereas the station view may be the opposite. We believe it will remain difficult for the industry to make sensible and creative objective decisions based on compliance to the Broadcast Code when whilst it remains open to subjective rulings, interpretation and ambiguity.

We therefore urge Ofcom to recognise that their new proposals within Section Ten are unclear, overly complicated and broadly unworkable for the commercial radio industry. As such we emphasise our support for the industry-proposed principles of editorial trust and transparency together with the introduction of a far simpler regulatory approach which conforms to that proposed by the RadioCentre and supported by the industry.

**Ends**