



Broadcast Appeals for Donations to Make Programmes or Fund Services

Statement following consultation

Statement

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Section 1

Summary

Introduction

- 1.1 Earlier this year Ofcom consulted on the issue of whether the current ban on television channels broadcasting appeals for donations to make programmes or fund their services should be lifted. Such appeals are allowed on radio subject to certain conditions under Ofcom's Broadcasting Code ("the Code") but not on television.
- 1.2 At the time of the consultation Ofcom had not formed a view on whether the advantages of lifting the ban outweighed the disadvantages. The main advantages were felt to be:
 - It could provide a new source of income for television broadcasters, in particular specialist channels and those with non-profit status (e.g. religious, minority ethnic, local and community channels);
 - It would create a more level playing field between television and radio broadcasters, and also between television religious channels licensed by Ofcom and those broadcasting to the UK from abroad;
 - It would be a deregulatory move even though safeguards would be needed, in particular to protect donors and vulnerable viewers.
- 1.3 The main disadvantages of lifting the ban were felt to be:
 - The amount of money which would be raised appeared likely to be limited;
 - There was a risk of funds being misused, vulnerable viewers being exploited and broadcasters' editorial independence being (or being perceived as being) diminished;
 - While safeguards could be introduced, they might be difficult and expensive to enforce.
- 1.4 This Statement contains a summary of the responses to the consultation and Ofcom's decision now that it has considered these responses, including the changes which it is making to the Code and related Guidance.

Consultation responses

- 1.5 Twenty-one responses were received to the consultation. These indicated that there would be some interest in broadcasting appeals if the ban were to be lifted and supported the view put forward in the consultation document that appeals could help individual broadcasters, in particular specialist channels with a niche audience and those with non-profit status. However, respondents tended to agree with Ofcom that appeals would be unlikely to be an adequate sole source of funding for any channel and the overall economic benefit to the industry was likely to be limited.
- 1.6 Respondents agreed with Ofcom that lifting the ban would be unlikely to raise competition issues but rather would help competition by creating a more level playing

field between television and radio, and between television broadcasters licensed by Ofcom and those broadcasting to the UK from abroad.

1.7 There was general agreement among respondents on the need for safeguards if the ban were to be lifted. However, opinions varied on which particular safeguards should be put in place ranging from those who favoured self-regulation or simply applying the basic conditions relating to transparency and accountability which apply already to radio appeals, to those who called for the full range of safeguards which had been discussed in the consultation document including, in addition to the above:

- Making it clear that appeals in religious programmes (or indeed in any type of programme) must not improperly exploit any susceptibilities of the audience;
- Requiring that appeals must not create unrealistic expectations of what a donor's gift will actually accomplish;
- Restricting appeals to broadcasters which are registered charities or non-religious channels;
- Requiring broadcasters to provide Ofcom with a written annual report of donations, the total amount raised and how it has been spent;
- Prohibiting donations from political bodies and emphasising the need for broadcasters to maintain their editorial independence.

1.8 Most respondents were in favour of lifting the ban subject to safeguards of one form or another. Among the arguments put forward for lifting the ban were that:

- The ban is unfair to smaller broadcasters, unnecessary and excessive;
- A uniform approach should be applied to television and radio;
- Ofcom has a duty to look for ways of reducing the regulatory burden on licensees;
- Lifting the ban would help to fund high quality indigenous programmes and help the Christian broadcasting sector in the UK to grow.

1.9 However, four respondents opposed lifting the ban (one of these opposed allowing religious or non-religious belief systems to appeal for funds but was neutral on the question of allowing appeals by community and other public service channels). Among the arguments put forward by this group for retaining the ban were that:

- There is a serious risk of financial abuse and of vulnerable people being exploited;
- The difference in television's emotional impact compared with radio justifies different rules;
- Broadcasters have other means of raising funds and appeals will make little difference to those channels which are unviable;
- The safeguards which are needed will be difficult or impossible to enforce, costly to administer and inconsistent with Ofcom's light touch approach to regulation.

Ofcom's decision

- 1.10 Ofcom has given careful consideration to the responses to the consultation. It acknowledges that the overall economic benefit of appeals to the television industry is likely to be limited and that the current ban is simple to enforce and provides strong protection to viewers who may be at risk of exploitation. On the other hand, allowing appeals would benefit certain television broadcasters. Ofcom also notes that television services which broadcast to the UK from abroad already broadcast appeals, as do radio services in the UK.
- 1.11 As regards possible safeguards, Ofcom believes that these should be designed to ensure transparency and accountability; provide protection from exploitation for vulnerable people; and maintain broadcasters' editorial independence. Ofcom does not believe that these objectives would be achieved through self-regulation alone. However, there is a risk that if restrictions are placed on who can broadcast appeals or too many other conditions are imposed, the benefit of lifting the ban will be seriously diminished and the weight of regulation on broadcasters will remain burdensome.
- 1.12 For these reasons Ofcom does not believe that it would be appropriate to restrict appeals to only certain categories of broadcasters such as those which are registered charities or non-religious channels; or to require broadcasters to submit an annual report to Ofcom. However, the Code and related Guidance will make it clear, for example, that broadcasters must behave responsibly and that accurate records should be kept which Ofcom may ask to see. The specific changes which Ofcom intends to make to the Code and Guidance are set out in Section 4 of this Statement. While the change to the Code affects only television broadcasters, the new Guidance applies to both television and radio broadcasters.
- 1.13 Ofcom is satisfied that it has sufficient resources and sanctions available to it to ensure that the safeguards which will apply will be effective. While it is true that application of the safeguards may involve a cost in terms of administration, Ofcom does not feel that this is a sufficient reason for retaining the current ban.
- 1.14 Ofcom has therefore decided that controlled deregulation (i.e. lifting the ban subject to the safeguards set out in Section 4) would be the appropriate course to adopt.

Section 2

Introduction

- 2.1 This Statement contains a summary of the responses to Ofcom's consultation on the issue of whether the current ban on television appeals for donations to make programmes or fund services should be lifted.
- 2.2 The Statement also contains Ofcom's decision on this issue and the changes which it intends to make to its Broadcasting Code ("the Code") and related Guidance.

Background to the consultation

- 2.3 Section 10.15 of the Code currently prohibits television broadcasters from broadcasting appeals for donations to make programmes or fund their services.
- 2.4 However, the Code permits such appeals on radio subject to the following conditions:
- that the audience must be told the purpose of the donation and how much has been raised as a result of the appeal; and
 - that all donations must be separately accounted for and used for the purpose for which they were donated.
- 2.5 "Appeals" here and throughout this Statement refers solely to appeals by broadcasters for donations to make programmes or fund their services. It does not refer to charity appeals which are covered by separate rules in the Code.
- 2.6 The current approach taken in the Code is in line with that taken by previous regulators, the Independent Television Commission and Radio Authority. The Broadcasting Act 1990 required these bodies to draw up rules on appeals for donations. This requirement was repealed in the Communications Act 2003 ("the Act"). However, the Act still contains:
- general provisions relating to protecting viewers from harm or offence (s319(2)(f) and s319(4)(a)); and
 - specific provisions relating to religious programmes – exercising the proper degree of responsibility (s319(2)(e)) and avoiding any improper exploitation of any susceptibilities of the audience (s319(6)(a)).
- 2.7 See Annex 1 for the full text of these statutory provisions.
- 2.8 It is under these provisions in Section 319 of the Act that the ban on television appeals was retained by Ofcom.
- 2.9 Ofcom consulted on the possibility of removing the ban when it was drawing up the Code in 2004. However, differing views were expressed and it was decided, therefore, to leave the ban in place and look at the matter again in the context of the project examining the future funding of television production. (The other strands in this project are product placement and channel sponsorship.)

The consultation

- 2.10 At the end of last year, after taking soundings with various stakeholders, Ofcom decided to consult again on the issue of appeals. This was launched on 6 April 2006 with a closing date of 15 June¹.
- 2.11 The consultation document:
- Suggested that lifting the Code ban could help television broadcasters, for example local/community and religious/minority ethnic channels, to raise additional funds, although it also noted that the current level of interest in actually broadcasting appeals among television broadcasters licensed by Ofcom seemed limited;
 - Provided a range of estimates for the potential value of appeals, suggesting that the most likely outcome was towards the bottom end of these i.e. around £50,000 p.a. for a local/community channel, £150,000 p.a. for a religious/minority ethnic channel and £1.9 million p.a. for Channel 4;
 - Indicated that Ofcom did not believe that lifting the ban would raise competition issues. On the contrary, it would remove elements of distortion in competition arising from the current ban;
 - Recognised the need to protect viewers from the risk of fraud and exploitation if the ban were to be lifted, and suggested amending the Code in order to provide various **safeguards** including:
 - applying to television appeals the Code rules which currently apply to radio, namely that the audience must be told the purpose of the appeal and how much has been raised, and donations must be separately accounted for and used for the stated purpose;
 - making it clear that the current requirement that religious programmes must not improperly exploit any susceptibilities of the audience extends to appeals in such programmes;
 - requiring that appeals must not create unrealistic donor expectations of what a donation will accomplish (e.g. in terms of miracle cures or financial success); and
 - prohibiting donations from political bodies and emphasising the need for broadcasters to maintain editorial independence.
 - Made it clear that in the interests of consistency, any new rules would apply to both television and radio.
- 2.12 The consultation document also made it clear that Ofcom had not yet formed a view on whether the potential advantages of lifting the ban outweighed the potential disadvantages. The main **advantages** of lifting the ban were felt to be:

¹ <http://www.ofcom.org.uk/consult/condocs/tvappeals>

- It would create a more level playing field between television and radio broadcasters, and between television religious channels licensed by Ofcom and those broadcasting to the UK from abroad and licensed in those countries;
- It could provide a new source of income for television broadcasters (e.g. religious, minority ethnic, local and community broadcasters); and
- It would be a deregulatory move even though safeguards would be needed. Ofcom has a general duty under Section 6 of the Act to keep the regulatory burden on licensees under review (see Annex 1).

2.13 The main **disadvantages** were felt to be:

- There was a risk of funds being misused, vulnerable viewers being exploited and broadcasters losing (or being perceived as losing) their editorial independence;
- While safeguards could be introduced, they might be difficult and expensive to enforce; and
- The amount of money which would be raised appeared likely to be limited.

2.14 Views were invited on the matters discussed in the consultation document and on the general question of whether the current ban should be lifted. The full list of questions is at Annex 2.

Section 3

Consultation responses

3.1 Twenty-one responses were received to the consultation, broken down as follows:

Television licensees	5
Organisations	9
Individuals	7

3.2 Two confidential responses were received. A list of non-confidential respondents is at Annex 3.

General overview

3.3 The key points arising from the responses² were as follows:

- Some interest was expressed in broadcasting television appeals if the ban were to be lifted, especially among religious broadcasters.
- There was general support for Ofcom's analysis of the likely value of appeals which suggested that they could help individual broadcasters, in particular specialist channels with a niche audience and those with non-profit status. However they would be unlikely to be an adequate sole source of funding for any channel and the overall economic benefit to the industry was likely to be limited.
- Respondents agreed with Ofcom that lifting the ban would be unlikely to raise competition issues (since none of the major broadcasters seem to be interested in appeals) but rather would help competition by creating a more level playing field between television and radio, and between television broadcasters licensed by Ofcom and those broadcasting to the UK from abroad.
- There was general agreement on the need for safeguards if the ban were to be lifted. However, opinions varied on which particular safeguards should be put in place ranging from those who favoured self-regulation or simply applying the basic conditions relating to transparency and accountability which apply already to radio appeals, to those who called for the full range of safeguards which had been discussed in the consultation document including, in addition to the above:
 - Making it clear that appeals in religious programmes (or indeed in any type of programme) must not improperly exploit any susceptibilities of the audience;
 - Requiring that appeals must not create unrealistic expectations of what a donor's gift will actually accomplish;
 - Restricting appeals to broadcasters which are registered charities;
 - Requiring broadcasters to provide Ofcom with a written annual report of donations, the total amount raised and how it has been spent;

² <http://www.ofcom.org.uk/consult/condocs/tvappeals/responses/>

- Prohibiting donations from political bodies and emphasising the need for broadcasters to maintain their editorial independence.
- Most respondents were in favour of lifting the ban with some form of safeguards to protect viewers. Among the arguments put forward were that:
 - The ban is unfair to smaller television broadcasters, unnecessary and excessive;
 - A uniform approach should be applied to television and radio;
 - Ofcom has a duty to promote deregulation; and
 - Lifting the ban would help to fund high quality indigenous programmes and help the Christian broadcasting sector in the UK grow.
- Four respondents (three faith organisations and an individual) opposed lifting the ban (one of these opposed allowing religious and non-religious faith systems to appeal for funds but was neutral on the question of allowing appeals by community and other public service channels). Among the arguments put forward were that:
 - There is a serious risk of financial abuse and of vulnerable people being exploited;
 - The difference in television's emotional impact compared with radio justifies different rules;
 - Broadcasters have other means of raising funds and appeals will make little difference to those channels which are unviable; and
 - The safeguards which will be needed will be difficult or impossible to enforce, costly to administer and inconsistent with Ofcom's light touch approach to regulation.

Detailed responses

Q1 [Addressed to television broadcasters] Would you be interested in broadcasting appeals either now or at some stage in the future if the current ban were to be lifted? [Addressed to radio broadcasters] Do you broadcast appeals now or are you likely to in the future?

- 3.4 Of the individual television broadcasters which responded to the consultation the Community Channel and a religious channel said that they would be interested in broadcasting appeals. Flextech said that it did not currently envisage using appeals to fund either services or programming while Channel 4 was more emphatic stating that it was not, and was unlikely ever to be, interested in seeking donations. No individual radio broadcasters responded to the consultation.
- 3.5 The Christian Broadcasting Council which represents various UK television and radio broadcasters said that discussions with its members indicated that existing Christian television stations would value the freedom to broadcast appeals. It also pointed out that two Christian terrestrial radio stations (Premier and Cross Rhythms) had already appealed for funds on-air and a number of newly licensed Christian community FM

radio stations and a local DAB programme licensee had indicated that they would be making on-air appeals once they had commenced broadcasting.

- 3.6 The Centre for Justice and Liberty said that it was in close contact with Christian/religious television and radio broadcasters who would appreciate the freedom to make on-air appeals.
- 3.7 A television producer, Sola Trust Productions, also said that it would be interested in broadcasting appeals.

Ofcom response

- 3.8 The number of broadcasters who responded positively to this question was small. We also note that the responses from the Christian Broadcasting Council and Centre for Justice and Liberty do not name specific television broadcasters and “valuing the freedom to broadcast appeals” may not be the same as “actually broadcasting appeals”.
- 3.9 Nonetheless, the responses suggest that there is some interest among UK television broadcasters, especially religious channels, in broadcasting appeals if the current ban is lifted.

Q2 Do you agree with Ofcom’s assessment of the role of television appeals in terms of a source of funding? If not, it would be helpful to have your own assessment with as much supporting information as possible.

- 3.10 Most of the respondents in favour of lifting the ban tended to support Ofcom’s assessment of the types of channels likely to benefit most from appeals and the amounts of money likely to be raised. The Community Channel, for example, felt that the channels which would benefit most would be those with tightly identified niche audiences and charitable/non-profit status.
- 3.11 The Christian Institute, Christian Broadcasting Network and Christian Broadcasting Council emphasised the contribution which appeals could make to strengthening UK religious production and reducing the reliance of broadcasters on US material.
- 3.12 Several respondents emphasised the willingness of Christians to donate money in order to obtain programmes not otherwise available and to support a good cause. The Lawyers Christian Fellowship felt that Ofcom may have under-estimated the levels of funding and that appeals could very significantly increase Christian broadcasters’ income, but did not provide any supporting information.
- 3.13 Those in favour of retaining the ban took a different view. The British Humanist Association felt that the consultation document seemed to be written to make the most of a bad case and that there was no evidence of demand from broadcasters. They argued that Ofcom’s extrapolations from PBS in America were naive pointing, for example, to the entirely different tradition of philanthropic giving in the USA and the much more favourable tax regime for charitable giving there.
- 3.14 The Catholic Bishops’ Conference of England and Wales felt that the value of appeals was likely to be limited and doubted that changing the rules would generate enough additional income to solve the problems of broadcasters who are not able to attract sufficient audiences and revenue to be viable.

- 3.15 The Church of England said that the financial benefits of lifting the ban had yet to be proved and there were other ways of raising funds.

Ofcom response

- 3.16 The general tenor of the responses was to support Ofcom's assessment of the likely value of appeals. We note the views of those who disagreed with Ofcom's assessment, but also the absence of supporting information. In the light of this, we have not changed our assessment.

Q3 Do you agree with Ofcom's assessment of competition issues?

- 3.17 Those in favour of lifting the ban agreed with Ofcom's assessment that this would not raise significant competition issues and would create a more level playing field between television and radio, and between television broadcasters based in the UK and those broadcasting to the UK from abroad.
- 3.18 The British Humanist Association did not disagree with Ofcom's assessment but argued that the disparity in regulation between countries was not sufficient reason for lifting the ban.
- 3.19 The Catholic Bishops' Conference and Church of England were concerned about the harmful effect on public service broadcasting if it became dependent on appeals.

Ofcom response

- 3.20 In the light of the responses we have not changed our assessment of the competition issues. We note the concern about the possible harmful effect on public service broadcasting. However, there is no indication that ITV1, Channel 4 or Five intend to broadcast appeals and, as noted in the consultation document, lifting the ban on appeals in the Ofcom Code would not affect the BBC.

Q4 What are your views on the possible safeguards to protect viewers and maintain editorial independence? Do you think that some or all of the safeguards suggested by Ofcom should be applied if the ban is lifted? Are there other safeguards which you would like to see?

- 3.21 Most respondents, including those in favour of lifting the ban, agreed with the need for safeguards. However, there was a difference in emphasis reflecting respondents' particular interests and concerns. There were also differences within groups of respondents (e.g. within television licensees) with some taking a more relaxed attitude than others.
- 3.22 The Community Channel, for example, was concerned about the risk of abuse and felt that Ofcom should apply strict rules. Transparency was described as a key requirement that would help to prevent abuse. The Channel also believed that broadcasters should join the self-regulatory body, the Institute of Fundraising, and adhere to its code, and that clarity in requiring that religious programmes did not improperly exploit viewers, via Ofcom's Code, was a good idea. They agreed that political parties should not be allowed to donate funds but felt that this should not apply to campaigning charities such as the World Wildlife Fund.
- 3.23 Flextech said that they did not consider self-regulation in this area as either appropriate or adequate and endorsed Ofcom's conclusions, while Channel 4 said

that it was vital that viewers were not misled and supported all the safeguards proposed by Ofcom.

- 3.24 A religious channel, on the other hand, said that charitable status registration together with Ofcom's regulatory activities should be enough, arguing that the British experience was different from the American experience in many ways, so "over the top" appeals could not work in the UK.
- 3.25 Those respondents which were in favour of retaining the ban took the toughest line on safeguards. The Catholic Bishops Conference and Church of England, for example, supported the idea of appeals being limited to organisations which are registered charities (although, as noted below, they would prefer the ban to remain in place for all television broadcasters). The Catholic Bishops' Conference also felt that a rule against exploitation of vulnerable people should cover donations on any channel and that each broadcaster should supply Ofcom with an annual report giving details of the amounts raised and how they have been spent. In general they felt that, if the ban were to be lifted, self-regulation should be reinforced by regulation.
- 3.26 The Church of England stressed the need for both audience susceptibility and editorial independence to be protected if the ban is lifted and questioned whether Ofcom could introduce cost-effective and sufficiently strong safeguards consistent with its light touch role. They also felt that safeguards should limit harm before transmission rather than merely be reactive and that strong measures would also be expensive to run. They agreed that appeals should be restricted to broadcasters which are registered charities.
- 3.27 The British Humanist Association was concerned that the safeguards proposed by Ofcom, although they looked good, may amount to very little in practice. They said that the proposal seemed to involve the scrapping of an easily policed rule in favour of generalities that were essentially impossible to police or enforce. However, as noted below, the Association's concern related particularly to the possibility of appeals by religious broadcasters; it was neutral on the question of whether non-religious broadcasters should be able to broadcast appeals.
- 3.28 Other respondents which supported lifting the ban were concerned that any requirements should not be too burdensome. The Christian Institute, for example, accepted the need to prevent "psychological manipulation" through ensuring that unrealistic expectations were not created and felt that this should apply to all broadcast appeals, religious and secular. The Institute also supported a requirement to ensure accountability. However, they suggested that broadcasters which are UK charities should be treated differently to those which are not, on the grounds that it would be unfair to burden the former with a new type of financial reporting.
- 3.29 Various individuals who responded favoured simply applying the safeguards which currently apply to radio and felt that these should apply across the board, not only to religious channels. Sola Trust Productions agreed that viewers must not be improperly exploited but felt it was significant that Ofcom had not received any complaints about radio appeals. The Christian Broadcasting Council endorsed establishing self-regulatory mechanisms although it too felt that some regulation by Ofcom was necessary to guard against exploitation and protect editorial independence. The Christian Broadcasting Network felt that broadcasters must be held accountable and that this should be done ideally by self-regulation.

Ofcom response

- 3.30 The responses to these questions provide a general endorsement of the need for safeguards, if the ban is lifted, to protect viewers from exploitation and to ensure transparency and editorial independence. The main differences of opinion relate to whether the full range of safeguards are needed or only some of them; and how effective and costly they are likely to be.
- 3.31 Ofcom has considered carefully the comments made by respondents. It agrees that it would be helpful if licensees were to establish self-regulatory mechanisms, for example by joining the Institute of Fundraising and adopting its Code of Conduct and Donors' Charter. However, it does not feel that this would be sufficient in itself. On the other hand, Ofcom does not agree with those who argued that appeals should be limited to broadcasters which are registered charities or non-religious broadcasters. Some broadcasters might not be eligible for registration as charities and it is religious broadcasters which are most interested in broadcasting appeals; limited deregulation of this kind would mean that much of the economic benefit would be lost. There is also a risk that lifting the ban for some television broadcasters but not others would be open to legal challenge.
- 3.32 Ofcom is also concerned that if the full range of safeguards is imposed, as proposed by some respondents, the weight of regulation on broadcasters will remain burdensome and disproportionate. Ofcom has a statutory duty to keep the burden of regulation under review and lifting the ban is intended to be a deregulatory measure.
- 3.33 Ofcom has therefore decided that, if the ban is to be lifted, it should be lifted for all television broadcasters but with certain safeguards designed to:
- Ensure transparency and accountability;
 - Provide protection to vulnerable viewers; and
 - Maintain editorial independence.
- 3.34 The specific amendments which we propose to make to the Code and Guidance are set out in Section 4.

Q5 Taking the impact assessment into account, are you in favour of the ban on appeals being lifted with certain safeguards or would you prefer that it remained in place?

- 3.35 The overwhelming majority of respondents were in favour of lifting the ban. The Christian Institute, for example, argued that the ban discriminated disproportionately against religious and ethnic broadcasters and that a uniform approach to regulating this form of funding should be applied equally over radio and television. They also felt that the ban was unnecessary and excessive, and contributed towards stifling UK religious broadcasting.
- 3.36 The Christian Broadcasting Network said that the freedom to make financial appeals should never have been banned in the first place and that without the ability to appeal for support, the UK Christian broadcasters faced little prospect of having the funding to produce high quality indigenous programmes and to expand their employment of talented staff.

- 3.37 The Christian Broadcasting Council similarly strongly supported lifting the ban because this would enable the Christian broadcasting sector in the UK to flourish and grow. The Lawyers' Christian Fellowship said that they fully supported the ban being lifted with safeguards in place.
- 3.38 Flextech and Channel 4, although not planning to broadcast appeals themselves, supported other broadcasters being given the opportunity to do so with safeguards.
- 3.39 Four respondents opposed lifting the ban:
- The Catholic Bishops Conference said that they had serious concerns about the potential for financial abuse and that fundraising by channels could lead to vulnerable adults being exposed to appeals which could be detrimental to their well being. They referred to the fact that the ownership rules on which bodies can hold broadcasting licences had been relaxed which strengthened their concern; and to the Ofcom audience research which showed that viewers disliked the idea of appeals. They continued to believe that the differences between television and radio in emotional impact were sufficient to warrant different rules; also that broadcasters had other options for raising funds and that on air appeals would bring in only small extra amounts. On balance, therefore, they considered that the existing ban acted in the wider public interest and should be retained.
 - The Church of England expressed "some discomfort" over any relaxation of the rules. The reasons given included the clear potential for exploiting viewers' sensitivities, particularly in the case of religious programming; the greater emotional impact which images on television had compared with radio; the absence of proven financial benefits; and the extra regulation which would be needed.
 - The British Humanist Association, while neutral on the question of allowing appeals by community and other public service channels, were very strongly opposed to allowing religious (or non-religious belief systems) to appeal for funds for themselves on television. If Ofcom was unwilling to make different rules for religious broadcasters, then they would oppose any change to the present regime. They believed the ban must absolutely remain in place. The main reason for this was the disreputable record of religious organisations making television appeals, especially in the USA, and fear that such organisations would exploit the situation in the UK.
 - An individual (John Luxford) also asked Ofcom not to allow televangelists to be given access to vulnerable pensioners and emotionally weak people.

Ofcom response

- 3.40 The disagreement between those respondents which were in favour of lifting the ban and those against was based essentially on a difference of opinion about the harm which might result and the effectiveness of any safeguards which Ofcom chooses to put in place. There is no doubt that the current ban is simple to enforce and provides strong protection to vulnerable people. On the other hand services broadcasting to the UK from abroad already broadcast appeals, as do radio services in the UK.
- 3.41 As regards the effectiveness of safeguards, Ofcom believes that it has sufficient resources and sanctions available to it to ensure that the safeguards which will apply will be effective.

- 3.42 While it is true that the application of safeguards may involve a cost in terms of administration, Ofcom does not feel that this is a sufficient reason for retaining the current ban.
- 3.43 After careful consideration Ofcom has therefore concluded that controlled deregulation (i.e. lifting the ban with safeguards) is the appropriate course to adopt.

Section 4

Amendments to Code and Guidance

- 4.1 As noted above, after considering carefully the responses to its consultation, Ofcom has decided that the ban on appeals should be lifted for all television licensees. This is subject to certain safeguards to ensure transparency and accountability, to protect vulnerable people from exploitation and to maintain editorial independence. The freedom to broadcast appeals and safeguards will be introduced by amending the Code and Guidance as follows:

Code

Delete Rule 10.15 (ban on television appeals). Rule 10.16 (appeals on radio) will then apply to all broadcasters, television and radio³. This states that:

“Broadcasters may broadcast appeals for donations to make programmes or fund their service. The audience must be told 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 purpose for which they were donated.”

Guidance

Delete the current Guidance relating to Rule 10.16 and insert the following:

“Rule 10.16 Appeals for funds for programmes or services

Broadcasters will be expected to keep accurate records of donations and how they are spent. Ofcom strongly recommends that an audit is conducted. If Ofcom asks to see the audit or records, these should be supplied promptly.

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 and 4.6.

Broadcasters who wish to air acknowledgments for donations made in response to broadcast appeals for funding the service or making programmes should note the guidance concerning Rule 10.4 (No undue prominence of products or services).

Broadcasters should take care to ensure that the acceptance of donations does not prevent them from meeting the requirements relating to due impartiality, no undue prominence of views and opinions, and editorial independence. See Rules 5.1, 5.5, 5.13 and 10.1. Donations should also not be used as a way of circumventing the prohibition on political advertising and sponsorship or the restrictions in Schedule 2 of the Broadcasting Act 1990 on bodies whose objects are wholly or mainly of a political nature influencing “by the giving of financial assistance or otherwise” persons who hold broadcasting licences.

Broadcasters 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/>”

³ Excludes BBC services funded by the licence fee or grant in aid

While the change to the Code will affect only television broadcasters, the new Guidance will apply to both television and radio broadcasters.

- 4.2 The current Guidance relating to Rule 10.4 (No undue prominence) explains the acknowledgements of donations which may be broadcast. This will be amended in order to tie in with Rule 10.16, which is new for television, as follows:

“Rule 10.4 No undue prominence

Acknowledgement of Donations (including Philanthropic Funding/Assistance):

Any broadcaster that wishes to acknowledge on air donations given in response to a broadcast appeal for funds (see Rule 10.16), or any Community Radio station that wishes to air simple acknowledgements concerning philanthropic funding/assistance, may do so with reference to any individual or body that could otherwise advertise or sponsor on the relevant medium.

An individual donor or number of donors may be acknowledged in any single announcement. However, such announcements are subject to Broadcasting Code rules. Care should always be taken where the donor (whether a company, firm, individual or other legal entity) provides a product or service, as acknowledgements of their donations could fall foul of Rule 10.4. Whilst a single daily reference to such a donor, over a relevant period, may be unlikely to constitute undue prominence, this is a matter for judgement in each case depending on all the circumstances. Acknowledgments should err on the side of brevity and should be clearly distinguishable from commercial sponsorship.

Community Radio broadcasters should also note that Ofcom would not consider funding/assistance to be philanthropic if it was dependent on the broadcaster acknowledging it on air (for example, under contractual funding arrangements).

Indeed, all broadcasters should note that any donation or assistance dependent upon an aired acknowledgement would be likely to fall foul of Rule 10.5 (No product placement).

Broadcasters should also note that significant editorial justification would be required for any other reference to an acknowledged donor:

- in any part of the output (if the donor had donated towards the provision of the service); or*
- within a particular programme (if the donor had donated towards the provision of the programme itself).”*

- 4.3 The above changes to the Code and Guidance will take immediate effect.

Annex 1

Legislation

Communications Act 2003, Chapter 21, Section 6

6 Duties to review regulatory burdens

(1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve-

- (a) the imposition of burdens which are unnecessary; or
- (b) the maintenance of burdens which have become unnecessary.

(2) In reviewing their functions under this section it shall be the duty of OFCOM-

- (a) to have regard to the extent to which the matters which they are required under section 3 to further or to secure are already furthered or secured, or are likely to be furthered or secured, by effective self-regulation; and
- (b) in the light of that, to consider to what extent it would be appropriate to remove or reduce regulatory burdens imposed by OFCOM.

(3) In determining for the purposes of this section whether procedures for self-regulation are effective OFCOM must consider, in particular-

- (a) whether those procedures are administered by a person who is sufficiently independent of the persons who may be subjected to the procedures; and
- (b) whether adequate arrangements are in force for funding the activities of that person in relation to those procedures.

(4) OFCOM must, from time to time, publish a statement setting out how they propose, during the period for which the statement is made, to secure that regulation by OFCOM does not involve the imposition or maintenance of unnecessary burdens.

(5) The first statement to be published under this section-

- (a) must be published as soon as practicable after the commencement of this section; and
- (b) shall be a statement for the period of twelve months beginning with the day of its publication.

(6) A subsequent statement-

- (a) must be published during the period to which the previous statement related; and
- (b) must be a statement for the period of twelve months beginning with the

end of the previous period.

(7) It shall be the duty of OFCOM, in carrying out their functions at times during a period for which a statement is in force under this section, to have regard to that statement.

(8) OFCOM may, if they think fit, revise a statement under this section at any time before or during the period for which it is made.

(9) Where OFCOM revise a statement, they must publish the revision as soon as practicable.

(10) The publication under this section of a statement, or of a revision of a statement, must be in such manner as OFCOM consider appropriate for bringing it to the attention of the persons who, in their opinion, are likely to be affected by the matters to which it relates.

Communications Act 2003, Chapter 21, Sections 319

319 OFCOM's standards code

(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.

(2) The standards objectives are-

- (a) that persons under the age of eighteen are protected;
- (b) that material likely to encourage or to incite the commission of crime or to lead to disorder is not included in television and radio services;
- (c) that news included in television and radio services is presented with due impartiality and that the impartiality requirements of section 320 are complied with;
- (d) that news included in television and radio services is reported with due accuracy;
- (e) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;
- (f) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material;
- (g) that advertising that contravenes the prohibition on political advertising set out in section 321(2) is not included in television or radio services;

- (h) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;
- (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
- (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented;
- (k) that there is no undue discrimination between advertisers who seek to have advertisements included in television and radio services; and
- (l) that there is no use of techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.

(3) The standards set by OFCOM under this section must be contained in one or more codes.

(4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters-

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

(5) OFCOM must ensure that the standards from time to time in force under this section include-

- (a) minimum standards applicable to all programmes included in television and radio services; and
- (b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appear to them

appropriate for securing the standards objectives.

(6) Standards set to secure the standards objective specified in subsection (2)(e) shall, in particular, contain provision designed to secure that religious programmes do not involve-

(a) any improper exploitation of any susceptibilities of the audience for such a programme; or

(b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

(7) In setting standards under this section, OFCOM must take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section.

(8) In this section "news" means news in whatever form it is included in a service.

Annex 2

List of questions

Q1. If you are a television broadcaster, would you be interested in broadcasting appeals either now or at some stage in the future if the current ban were to be lifted? If you are a radio broadcaster, do you broadcast appeals now or are you likely to in the future?

Q2. Do you agree with Ofcom's assessment of the role of television appeals in terms of a source of funding? If not, it would be helpful to have your own assessment with as much supporting information as possible.

Q3. Do you agree with Ofcom's assessment of competition issues?

Q4. What are your views on the possible safeguards to protect viewers and maintain editorial independence outlined in the consultation document? Do you think that some or all of these should be applied if the ban is lifted? Are there other safeguards which you would like to see?

Q5. Taking the above into account, are you in favour of the ban on appeals being lifted with certain safeguards or would you prefer that it remained in place?

Annex 3

List of respondents

Television licensees

Flextech TV
Community Channel
Channel 4

Organisations

Catholic Bishops' Conference of England & Wales
The Christian Institute
Church of England
Christian Broadcasting Council
Christian Broadcasting Network (UK)
Lawyers' Christian Fellowship
British Humanist Association
Centre for Justice and Liberty
Sola Trust Productions

Individuals

Rev Dr Paul Dale
Miss Victoria Crowley
Mr Paddy MacBain
Dr Mark Jackson
Mr Nick Duke
Miss Hannah Freeman
Mr John Luxford

Two confidential responses were received.