

Ofcom's decision on the future regulation of broadcast advertising

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Section 1

Background

The Communications Act 2003 places a duty on Ofcom in reviewing its functions to have regard to the extent to which its duties are likely to be furthered or secured by effective self regulation. Against this background, Ofcom took an early view that a self-regulatory approach to broadcast advertising regulation may be better equipped to handle the growing issues of convergence raised by the growth of digital communications than the current statutory system. It also believed that a single point of contact for consumers for advertising issues across all media might serve the public better than the current fragmented approach to advertising regulation.

Therefore, during the course of 2003, prior to the formal commencement of its regulatory functions in December 2003, Ofcom investigated the possibility of contracting out its broadcast advertising regulatory functions to a self-regulator in a co-regulatory partnership, and encouraged a proposal from the advertising and broadcasting industries for a new self-regulatory approach for television and radio advertising regulation. Under this proposal, a new body would have responsibility for drawing up, reviewing and enforcing a television and radio advertising code. Operating under the banner of the Advertising Standards Authority (ASA), currently the industry self-regulator for non broadcast advertising, a code-setting body, the Broadcasting Committee of Advertising Practice (BCAP), and a code enforcement body, the Advertising Standards Authority (Broadcasting) (ASA(B)), would be established. Ofcom would retain back stop powers over the new system, and would monitor its effectiveness.

In October 2003, Ofcom concluded that it was minded to proceed with the contracting out proposal as suggested by the advertising and broadcasting industries, subject to public consultation on the issue. Accordingly Ofcom issued a public consultation on 27 October 2003 on the Future Regulation of Broadcast Advertising¹. The consultation set out Ofcom's proposal for a new co-regulatory approach, inviting comments from stakeholders and from the public. In January 2004 Ofcom held a meeting of stakeholders to collect direct views on the issue as part of the consultation process. The consultation closed on the 29th January with 78 responses having been received². The majority of respondents supported the proposals to a greater or lesser degree, with five, the Consumers Association (CA), the National Consumer Council (NCC), Sustain, Mediawatch (MW) and Debra Shipley MP (DS) expressing the view that the project should not go ahead in its current form, and three others National Heart Foundation (NHF), National Family and Parenting Institute (NFPI) and Sit-up Ltd., expressing serious reservations .

¹ The consultation paper can be found on the Ofcom web site at:
http://www.ofcom.org.uk/consultations/past/reg_broad_ad/

² All the responses, with the exception of one marked as confidential, can be found on the Ofcom web site at http://www.ofcom.org.uk/consultations/past/reg_broad_ad/responses/

Section 2

The decision

Ofcom has now had the opportunity to consider all the consultation responses in detail, and at its Board Meeting on the 27th April 2004 made the decision that the scheme should go ahead, subject to Parliamentary approval and to the resolution of some outstanding technical issues³.

Ofcom welcomes the generally positive nature of the responses to the consultation, but has also noted the very challenging and thoughtful issues raised by some respondents, especially those of the respondents named above. Taking these issues on board, and having recently held separate meetings with some of those respondents representing consumer interests, some changes have been made to the proposals. These are discussed below.

³ Various matters must still be resolved, including the agreement of legally binding contracts as necessary between Ofcom and other parties.

Section 3

Ofcom's response to issues raised

A summary of the consultation responses appears as the final section to this paper. All have been carefully considered by Ofcom in reaching its decision, and many of the comments made have helped Ofcom and the industry representatives in shaping the final form of the new co-regulatory system. The system will be described in full in a Memorandum of Understanding (MOU) between Ofcom and the new self-regulatory bodies which will be published in due course. A summary of the contents of the MOU is in section 5 below.

Given that Ofcom has made the positive decision to proceed with co-regulation it makes sense in this paper to concentrate on responding to the most critical comments about the proposed new system. Thus a number of the most challenging issues raised, in some cases by several respondents, have been singled out for special mention, especially where they have led to changes to the proposal as consulted upon. Many of the other comments from respondents, both positive and negative, have also contributed to adjustments to the system. We believe the final system shape, as described now in the summary at section 5 and soon in the much more detailed MOU, demonstrates the degree to which Ofcom has listened to respondents. We are very grateful to all who have provided input to the process.

The main objections to the original proposals can be summarised as follows:

- a. a risk that Ofcom would surrender so much control over advertising content that it was no longer able to fulfil its Standards remit under the Communications Act 2003 (NCC, CA, DS, SLA⁴)
- b. the new system, based on industry self-regulation, would not offer consumers and citizens sufficient protection (Sustain, SLA)
- c. the alleged lack of transparency and accountability in the present ASA self-regulation system would be perpetuated, with no proposal for lay involvement in code setting under the new system (NCC, CA, SLA, Sustain)
- d. the new system's lack of independence from the advertising industry would jeopardise its effectiveness, especially in relation to eg. public policy issues (MW, Sustain, DS, NCC, CA)
- e. the appropriateness of the ASA as model of self-regulation is open to question (CA, MW, Sustain)
- f. concern at the apparent speed with which the ASA's proposal is being adopted by Ofcom (CA, NCC)

⁴ Stephen Locke & Associates (SLA). The references to the five named responses do not imply that similar comments were not made in other responses, only that these were the most salient.

- g. concern over the split of responsibilities between Ofcom and the new body and over which functions should remain with Ofcom (NCC, CA, SLA, Sustain)
- h. concern that the new system will be less accessible to consumers than with Ofcom (MW, NCC, CA)

Ofcom considered carefully all these points and concluded that many of the criticisms had merit. We have therefore revisited a number of elements of the proposal with the industry Task Force, and have secured some significant changes, most notably:

- an agreement that BCAP will establish an Advertising Advisory Committee to provide lay and expert input to BCAP, the self-regulator's code-making body
- confirmation that Ofcom would, as a last resort, be able to insist on changes being made to the Codes, as well as having a right of veto on any proposed changes
- a delay in the launch of the system to November 2004
- clarity on which advertising regulation functions will be contracted out, and which will remain in Ofcom

We believe that the result of this process is a robust, effective and modern system of co-regulation which will result in

- clear benefits for consumers and citizens in terms of accessibility and clarity of purpose
- a system that will offer consumers and citizens no less protection or accessibility than the current statutory regulatory system
- a self-regulatory approach to the regulation of broadcast advertising, but one that will sit comfortably within the statutory framework that defines television and radio broadcasting in its move to the digital age
- the most effective means of handling issues of convergence between media which is so much a feature of today's advertising landscape

In the light of the above, and for the reasons set out in this document, Ofcom is satisfied that this proposal is entirely consistent with Ofcom's duties under section 3 of the Communications Act. These issues are covered in more detail below. The paper examines a number of the significant comments made by respondents to the consultation, and sets out Ofcom's response.

Section 4

Comment on significant issues

Many of the points covered in this section are expanded upon on in section 5, and in further detail in the soon to be published Memorandum of Understanding.

a) Ofcom might lose control of advertising content

Ofcom acknowledges the importance of this point. Under the new co-regulatory system which would see BCAP and ASA(B) in charge of all day to day code setting and enforcement, Ofcom would still retain the ultimate responsibility in law for broadcast standards, as set out in s.319-325 of the Communications Act 2003 (the Act).

We would comment at the outset that under the proposed co-regulatory system, it is essential that the advertising and broadcasting industries are permitted to exercise full control of advertising content within the overall standards framework of the Act. Ofcom should not normally interfere with this process if the self-regulatory approach is to function properly. However, a number of checks and balances have been built into the system, both in terms of process and system design, and in terms of the legal framework, which will ensure that Ofcom will still be able to fulfil its statutory duty.

Process & system design

Code setting: Initially, the new system will inherit Ofcom's existing television and radio Advertising Codes. These Codes are tried and trusted to deliver a standard of advertising content that complies with the terms of the Act. Of course, Codes such as these are 'organic', and in due course, the self-regulator will wish to make changes which BCAP must consult publicly upon. The Codes will be reviewed and maintained by BCAP as a key part of the self-regulatory system. However, the Code, and all rule changes must first be approved by Ofcom. **Therefore, although Ofcom will play no active part in the code-making process, it will retain a power of veto in the unlikely event that it believes that standards may be put at risk.**

One of the major changes to the proposals as a result of the consultation is the commitment to the establishment of an Advertising Advisory Committee (AAC). It will be part of BCAP. This will be an essentially lay and expert body, under an independent Chairman, whose remit will be to advise BCAP on code and policy issues. BCAP will be obliged to take into account the AAC's advice during the code-making process and report back on its response to that advice. Importantly, **Ofcom will have a permanent observer seat on the AAC, which will enable it to contribute to debates about rule reviews and policy issues.**

Code enforcement: All complaints about broadcast advertising will be handled by ASA(B), which will publish its adjudications and ensure that advertisers and broadcasters comply with the Codes. Ofcom will not handle any complaints about advertising content, and has undertaken not to interfere at all in ASA(B)'s processes. Nonetheless, the new system is designed to provide a complaints handling and resolution service that is no less timely and effective than the current statutory system. **Ofcom will therefore monitor the system closely to verify the effectiveness of the system.** ASA(B) will have to report regularly to Ofcom on its performance, and a number of Key Performance Indicators (KPIs), such as complaint handling turnaround times and customer satisfaction with complaints handling, will be in place, and will be reported on publicly.

General: So that it can satisfy itself on an ongoing basis that the self-regulatory system's code setting and complaints functions are performing effectively, **Ofcom will appoint a full-time Executive whose role will be to oversee and to liaise with the new system,** to ensure consistency of approach between programming and advertising regulation, to run a monitoring operation, and to report as necessary to Ofcom's management. In the highly unlikely event that Ofcom has reason to consider that the co-regulatory system is failing. The system design contains an agreement that it can take a range of remedial measures, culminating in the last resort in taking the regulation of broadcast advertising back into statutory control. The existence of this option demonstrates Ofcom's awareness of its ultimate responsibility under the Act to exercise control over the standards of broadcast content.

Legal framework

Ofcom intends to contract out its functions in relation to the regulation of advertising content to BCAP and ASA(B) by means of the Deregulation and Contracting Out Act 1994 (DCOA), which is a legislative instrument aimed specifically at public bodies. It allows for such bodies to "contract out" some of their statutory functions to other bodies, subject to various conditions and restrictions. Under the terms of DCOA, the contracting out body does not surrender its right to carry out any of the functions or duties granted to it by the original legislation. **Thus, whilst Ofcom has stated that it has no intention of interfering in the code making process, all the parties involved in the new system accept that Ofcom would as a last resort be able to require BCAP to make rule changes.**

One of the important legal checks in the Act is that it allows for circumstances in which the Secretary of State may direct Ofcom in terms of matters relating to the control of advertising. The force of these provisions will not be lost under the new system, and it is agreed that **any direction to Ofcom by the Secretary of State will be applied to BCAP or ASA(B) by Ofcom as appropriate.**

Summary

Taking all these points together, we consider that Ofcom will be well able to ensure that it can meet its statutory obligations with regard to advertising standards, whilst allowing BCAP and ASA(B) the freedom to run an effective self-regulatory system alongside the ASA's existing operation in relation to non-broadcast advertising.

b) Adequate protection for consumer and citizens

We acknowledge the concern expressed in the consultation responses that an industry self-regulator may be unwilling to embrace the greater restrictions on freedom of expression traditionally imposed by broadcast advertising rules as a direct result of the power of the broadcast advertising medium. Implementation of tough public policy requirements are cited as an example of the possible tensions that may arise. The system of statutory advertising regulation of broadcast content that has been in place for many years has explicitly placed consumer protection at the forefront of its thinking, and the current Codes are built on a foundation of addressing the concerns of audiences coupled with the appropriate implementation of public policy.

We are confident that the new system will be no less effective in protecting the consumer than the current system, because:

1. The ASA, upon whose structure the new system will be based, has regulated non-broadcast advertising for 40 years, and has long experience in affording consumers protection from misleading and offensive advertising, via a Code (the CAP⁵ Code) which bears many similarities to the current Ofcom radio and television Advertising Codes. The ASA acknowledges the different, and more prescriptive approach to broadcast advertising, and is making appropriate adjustments to its internal processes accordingly. As an example, the ASA acknowledges that its Council-led approach to adjudications does not favour a swift decision-making process. However, there are occasions, particularly in relation to potentially harmful or seriously offensive television advertising, where the regulator may need to have an advertisement withdrawn from air at short notice during the course of a campaign. **Consequently, the Director-General of ASA(B) will be empowered to have an advertisement withdrawn on his authority, and prior to a final decision being made by the ASA(B) Council.** Details of the ASA(B) processes and how they will meet the challenge of consumer protection will be found in the MOU.
2. Advertisers or complainants seeking a review of an adjudication by the ASA(B) Council will be able to appeal to an Independent Reviewer. This is a new departure for broadcast advertising, and will serve to reinforce the level of protection for consumers.

⁵ Committee of Advertising Practice, the code making body of the existing non-broadcast advertising self-regulator

3. The section above on Control of Content underlines the degree to which Ofcom has built in many checks and balances in the new system which will enable it not only to detect if the degree of consumer protection afforded by the self-regulatory system falls below expectations, but also to demand remedies should this become necessary. More details will be found in the MOU.

4. Ofcom agrees with respondents to the consultation about the importance of public policy initiatives. It considers however that these same checks and balances will help it ensure that public policy requirements are adequately reflected in, and enforced through, the BCAP Codes. As a further measure, **Ofcom has reserved the right to instigate, in consultation with BCAP, its own research.** This will help Ofcom monitor the changing face of society, and to, as appropriate, discuss with BCAP whether certain rules may need reviewing.

c) Transparency and accountability

Following on from the issues of consumer protection, strong concern was expressed in a number of responses that BCAP, being made up entirely of advertising and broadcasting industry representatives, would inadequately reflect the voice of the consumer in its code-making, and that the way it set the rules would be less transparent than the process under the current system of statutory regulation. Furthermore, it is suggested, the whole system, including the process for adjudicating on complaints, would lack an appropriate degree of independence for a body carrying out public functions. These same concerns have been expressed in the past about the ASA's approach to non-broadcast advertising regulation.

Ofcom acknowledges the strength of feeling on this issue and has some sympathy with the arguments put. It has held discussions with both consumer interest representatives and with the industry Task Force which is setting up the new system with a view to securing a greater degree of accountability and transparency. Whilst the industry insists that BCAP itself should remain an industry body setting an industry code, agreement has been reached to set up an Advertising Advisory Committee (see Code Setting section above) to provide independent lay and expert input to the code-making process.

The membership of the AAC will include an independent Chairman, the Chairman of BCAP, and 4-6 independent expert or lay individuals who can represent the interests of citizens and consumers. It will be established as part of BCAP. Ofcom will have permanent observer status. The Chairman of the AAC will be appointed by a proper process after due consultation to ensure his or her independence from Ofcom, industry or Government. The expert/lay members of the AAC will be appointed by a process involving public advertisement and selection by the Chairman of the AAC, the Chairman of BCAP and the Chairman of ASA(B), and an independent assessor from Ofcom. The AAC Chairman will report each year in the ASA's Annual Report

on the Committee's work of the past year, covering points of both agreement and disagreement with BCAP.

Ofcom considers this a significant step towards an accountable regulatory process, whilst enabling Code ownership to remain properly with the industry. We are confident that the public and external nature of the AAC, plus the fact that BCAP will have to follow the same statutory process for reviewing the Code as required of Ofcom under the Communications Act, will provide a suitable degree of transparency to BCAP's rule-making.

As far as the ASA/ASA(B) Council is concerned, Ofcom considers that the fact that the majority lay members are appointed by public advertisement provides sufficient assurance of the independence of the decision-making process from industry influence (the MOU will contain more details).

d) Lack of independence from the advertising industry

See the points on above for some comments on independence.

As a self-regulator it cannot be expected that BCAP/ASA(B) should be totally independent from the industry it regulates. However, whilst acknowledging the concerns of some of the respondents to the consultation, Ofcom does not consider that lack of independence necessarily implies lack of effectiveness, providing appropriate measures are in place to deliver that effectiveness. The industry has a strong interest in reputational matters, with both broadcasters and advertisers wishing to protect the value of their brands in order to generate brand loyalty and maintain consumer confidence. This can only be successfully achieved if the regulation of advertising is seen to be effective.

We believe that the preceding sections of this paper illustrate the measures that have been built into the new system (further details of which will be available in the MOU to ensure that it is no less effective than the one it replaces. **Ofcom will report each year in its Annual Report on the degree to which the self-regulatory system has met its performance targets.**

e) Inappropriateness of the ASA model

Three consumer-focused organisations, the NCC, the Consumers Association and Sustain, suggested that the ASA is not a suitable model for broadcast advertising regulation, because of its poor track record in relation to: access by consumers, complaint enforcement and transparency, and its slowness in reaching decisions.

Ofcom notes these points. Whilst not attempting to rebut the criticisms, in general Ofcom considers that the ASA is a well-respected body that has widespread support. Specifically, the ASA receives some 14,000 complaints about advertising per annum, and in an area that has many regulatory bodies, the awareness of the ASA is high, with spontaneous awareness at 17% and prompted awareness at 60%, and with 58% of complainants being satisfied with their response to their complaint. This does not suggest to us that there is public disquiet about the ASA's performance. We also note that other

regulatory bodies, including previous regulators of broadcast advertising, have not been immune from criticism. In any event, the criticisms of the ASA do not provide in themselves sufficient reason for avoiding a model of an advertising regulation system, suitably adapted, that has been established for forty years. Rather, these points of concern serve to emphasise the importance of adequate monitoring systems, and the need to ensure that remedial measures are in place to rectify any problems that may occur. We believe that such systems and measures are indeed in place, as set out in the preceding sections.

As regards the length of time taken to make adjudications, Ofcom has, beyond ensuring that ASA(B) will have the power to withdraw commercials at short notice, introduced **complaint turnaround time targets which broadly reflect the best practice turnaround performance achieved by the ITC during its last year of operation**. Persistent failure to meet these targets would result in remedial action being taken.

f) Proposals being rushed through

Ofcom understands why some respondents might think that it is being too hasty in its implementation of such a significant and ambitious contracting-out scheme.

However, the possibility of contracting out advertising regulation has been under consideration since late in 2002, with the public consultation in October 2003 being the culmination, not the start, of a long process of consideration. We accept nonetheless that some bodies have felt that there was insufficient stakeholder consultation in the early design stages, before the draft system was presented publicly in October. With this in mind, and given the complexity of the contracting out process, **the start date for the new system has been moved back from Summer 2004 to Autumn 2004 which allowed further time for consultation and discussion whilst the proposals were being finalised**.

We believe the right balance has now been struck between the legitimate expectations of the broadcasting and advertising communities that a system proposed 18 months ago should now be implemented, and the need to discuss the proposals adequately with stakeholders. We would also point out that both Houses of Parliament will scrutinise the proposals, which should provide an added layer of comfort for those concerned about undue haste.

g) Split of responsibilities between Ofcom and the new system

A number of queries have been raised about which advertising functions should remain with Ofcom and which should be contracted out. The need for consistency of regulatory approach and for transparency to Ofcom licensees, advertisers and consumers was underlined. We agree this is important.

Ofcom has taken as the underlying principle that issues linked to programming, to the economics of advertising, and to European broadcasting

legislation⁶ should remain within Ofcom's remit. Hence Ofcom will retain responsibility for:

- **Sponsorship**
- **The amount of advertising that is permitted**
- **Rules on the insertion of advertising breaks** (including the insertion of teleshopping windows)

Ofcom will also retain responsibility for the rules relating to the prevention of **political advertising**, which are laid down in the Act, and which stem directly from the wishes of Parliament.

All other elements of advertising content regulation will transfer to the new co-regulatory system.

h) Accessibility of the system to consumers

Several respondents raised concerns about the limited accessibility to consumers of the existing non-broadcast regulatory system. Ofcom's goal is that the new system should be at least as accessible to consumers as is the current statutory approach. Accordingly it has been agreed that ASA(B) will from the start of the new system's operation accept complaints by telephone, post, e-mail, and fax. It is also agreed that **ASA(B) will publicise its complaints handling process, and will draw the public's attention, via appropriate advertising, to the ASA(B) contact details, and to the means of making complaints.**

⁶ All the provisions of the Television Without Frontiers Directive will remain Ofcom's responsibility, except for the rules on the scheduling of individual advertisements, which will pass to the new system.

Section 5

Description of the new co-regulatory system

This summary description of the new system is taken from the more detailed Memorandum of Understanding, to be signed by all parties to the agreement, which will be published shortly by Ofcom.

A new structure

Ofcom will contract out the regulation of broadcast advertising content on TV and radio to the co-reg bodies identified below. The ASA will in future operate a “one stop shop” for the self-regulation of advertising content across all media, providing a single letterbox for all complaints, in a co-regulatory partnership with Ofcom.

Within the one stop shop of the new ASA, three new bodies will deal with broadcast advertising as follows:

- ASA(B) (Advertising Standards Authority Broadcast Ltd) – the complaints adjudications body
- BCAP (Broadcast Committee of Advertising Practice Ltd) - the code body
- Basbof (Broadcast Advertising Standards Board of Finance Ltd) – the funding body.

These new bodies will be committed to the protection of consumers by ensuring high advertising standards. They aim to ensure that the handling of complaints about broadcast advertising is no less prompt than it was when managed by Ofcom, and previously the Independent Television Commission and the Radio Authority.

The new broadcast self-regulatory system will be subject to a probationary period of two years, starting when the new system begins in the autumn. Following a successful completion of this probationary period, the system will operate for a further eight years, before being subject to renewal by Ofcom.

Legal foundation

The legal foundation for the co-regulatory scheme in respect of broadcast advertising is the Deregulation and Contracting Out Act 1994 (DCOA). As the enabling legislation (the Deregulation & Contracting Out Act 1994) has not been extended to the Channel Islands and the Isle of Man, Ofcom does not propose to extend co-regulation to those islands. Ofcom expects to consult the governments of those islands about the continued regulation by Ofcom of standards in the islands under a code modelled on that applying to the UK, amended as appropriate. Where a Minister or other public authority (such as

Ofcom) has been given specific functions or duties by legislation, DCOA allows those functions to be delegated or 'contracted out' to another person or organisation. Any proposal to use DCOA to contract out the statutory functions of a public authority must first be approved by both Houses of Parliament. Ofcom is currently working with DCMS to achieve this. Ofcom will officially authorise the bodies named above to carry out the contracted out functions when the necessary Order has been passed.

Even after the functions have been contracted out, Ofcom will be ultimately accountable under DCOA for anything done, or not done, by ASA(B) or BCAP in respect of the contracted out functions.

Contracted out responsibilities

Under the new system, BCAP – a Committee of representatives from across the broadcasting and advertising industry – would become responsible for standards in broadcast advertising content. BCAP would take over Ofcom's existing Codes on advertising content and would be responsible for setting, reviewing and revising them as necessary. However, Code changes proposed by BCAP must be agreed by Ofcom and, as Ofcom retains all its legal powers under DCOA, it is ultimately able to insist on Code changes, although it would not normally seek to do so.

BCAP will also conduct research and co-ordinate the action required to ensure compliance with the advertising codes, for example, by monitoring broadcast advertisements and teleshopping services.

Copy Clearance for specific advertisements remains the responsibility of the Broadcast Advertising Clearance Centre (BACC), the Radio Advertising Clearance Centre (RACC), or the British Television Shopping Association (BTSA). However, BCAP will give advice, information, training and support on matters relating to broadcast advertising self-regulation to broadcast licensees and the advertising industry. This is another new departure intended to be an improvement on the current and past regulatory systems.

BCAP and CAP will have a single Chairman and partly overlapping members to provide an adequate level of liaison between the two code-owning bodies.

Receiving and resolving complaints about broadcast advertising will be the responsibility of ASA(B). Viewers and listeners will send their complaints to ASA(B), and any received by Ofcom will also be passed directly to ASA(B), even if the viewer/listener concerned asks Ofcom to deal with it.

In addition to the regulation of standards in broadcast advertising spots, ASA(B)/BCAP will take over responsibility for:

- Teleshopping and other non-spot advertising content, including long form advertising such as teleshopping, either within other programme-based output or dedicated teleshopping channels,
- any broadcast output involving a transactional element (ie. where viewers in some way provide payment for goods or

- services) that Ofcom has determined is subject to Advertising Code provisions,
- Advertising content on broadcast interactive services which fall within the scope of Ofcom's Guidance to Broadcasters on the Regulation of Interactive Television Services (GBRITS).

Ofcom will retain responsibility for the amount of advertising and other provisions of the Rules on the Amount and Scheduling of Advertising (RASA). However, ASA(B) and BCAP would be responsible for handling complaints and policy concerning scheduling restrictions to advertising content (Section 4 of RASA will be transferred to the BCAP Code).

Ofcom will also retain responsibility for the ITC Code of Programme Sponsorship and for the Sponsorship elements of the Radio Advertising and Sponsorship Code. Sponsorship will therefore not, at least initially, be contracted out to ASA(B) under the new arrangements.

ASA(B) Chairman and Council

ASA(B)'s Chairman will also be the Chairman of the ASA (currently Lord Borrie, QC). When Lord Borrie eventually steps down, the new joint Chairman of the ASA(B) and the ASA will be appointed jointly by Basbof (the Broadcast Advertising Standards Board of Finance) that will collect the funding for the new self-regulatory system for broadcast advertising, and its equivalent for non-broadcast advertising, Asbof. Ofcom will be consulted about the Chairman's appointment.

Adjudications on complaints will be made by the ASA(B) Council who will be appointed by ASA(B) from an appropriately enlarged ASA Council. The way in which the ASA(B) and ASA Council operate will ensure that they meet separately as different bodies, and give separate and proper consideration to broadcast and non-broadcast advertising complaints. The decisions made by the ASA(B) Council will be published on the ASA website.

Advertisers or complainants seeking a review of an adjudication by the ASA(B) Council will be able to appeal to an Independent Reviewer. This is a new departure for broadcast advertising, and it is intended that this should be an improvement on the internal appeals process which previously existed.

Enforcement of Decisions and Compliance

Broadcasters will continue to be required by the terms of their licences to pre-clear the advertisements they broadcast. It will also be a licence requirement to comply with directions made by ASA(B) which can:

- Require the advertisement to be changed prior to further broadcast
- Instruct the broadcaster to restrict transmission as directed
- Instruct the broadcaster to cease broadcasting the advertisement altogether.

ASA(B) will notify the relevant clearance house or broadcaster(s) of decisions which take effect as soon as they are notified. The implementation of decisions would not normally be suspended following a request for a review. Decisions will be published within 14 days via the ASA(B)'s weekly adjudications bulletin and on its website.

Broadcasters would be required forthwith to cease transmission of, or to re-schedule any advertisement on the direction of ASA(B) following a decision to that effect, or, in certain circumstances, for example where there is prima facie public detriment, pending the outcome of an investigation.

ASA(B) and BCAP may take the following measures to ensure compliance with the broadcast codes:

- Calling the broadcasters, clearing houses, advertisers or agencies in for a meeting
- Seeking assurances as to future compliance
- Ruling out eligibility for industry award competitions
- A system of Ad Alerts to broadcasters alerting those who do not use the Clearance Centres of problems with an advertiser.

Any broadcaster who does not co-operate with ASA(B), or who breaks the Code in such a serious way that ASA(B) considers its enforcement powers are insufficient, could be referred to Ofcom who would consider further action. Ofcom's sanctions include a formal reprimand, a fine, a warning about possible revocation of licence, or, ultimately, the termination of the licence.

BCAP's Advertising Advisory Committee

As discussed previously, BCAP will set up an expert Advertising Advisory Committee (AAC) to act as an independent 'sounding board'.

The membership of the AAC will include an independent Chairman, the Chairman of BCAP and independent expert or lay individuals who can represent the interests of citizens and consumers. Section 4(c) above summarises how the Members of the AAC are recruited.

Funding

The new broadcast advertising self-regulatory system will be funded via a voluntary levy on broadcast advertising that will be raised by advertising agencies through invoices and by broadcasters on direct bookings. The levy (0.1% of advertising media spend) will be collected via a newly incorporated company, the Broadcast Advertising Standards Board of Finance (Basbof). This levy mirrors the current levy on non-broadcast advertising that has successfully funded the Advertising Standards Authority for nearly four decades. Basbof must ensure that the funding is sufficient for the new self-regulatory bodies to carry out their contracted out functions effectively.

Accountability and reporting

Ofcom will monitor the system's effectiveness through a system of agreed Key Performance Indicators (KPIs).

It is intended that complaints handling will be no less prompt than under the Ofcom/ITC/RAU regimes, though a different system may be quicker at some things and slower at others (for example, a feature of the new system will be the additional stage of the ASA(B) Council).

Benchmarks for average turnaround times to be achieved by ASA(B) will be set initially at 80% of the average achieved by the ITC in its last six months of operation. During the probationary period (2 years), subject to no other unforeseen factors emerging, ASA(B) will be expected to deal with 80% of complaints within these turnaround times.

ASA(B) will provide trend data on complaints received and handled, on upheld complaints and sanctions, and on the level of requests for review to the Independent Reviewer.

ASA(B) and BCAP will have regular liaison meetings with an appointed senior executive at Ofcom, and in addition will report quarterly to Ofcom on:

- policy initiatives (including in socially important areas or sensitive sectors)
- compliance in particularly contentious areas
- research undertaken (including public attitude surveys to determine public satisfaction with the system)
- code changes and rule reviews
- assessment of internal performance
- significant public affairs concerns or external criticisms

The ASA Annual Report, published annually in April, will contain reports on the work processes and performance of the broadcast part of the self-regulatory system, the results of rolling Customer Satisfaction Surveys and the annual Attitude and Awareness Survey, and a report from the Chairman of the AAC. ASA(B) will publish an annual statement of objectives and targets for the forthcoming year.

The Chairman of ASA(B) and, where appropriate, the Chairman of BCAP will attend the Ofcom Board by invitation, or to discuss the ASA(B) Annual Report.

Recovery programme

A recovery programme would be put in place. If the new system consistently fails to meet the agreed standards, and in the very last resort, after the expiry of the two year probation period, Ofcom may suspend the co-regulatory system and take broadcast advertising regulation back under its direct control.

Section 6

Summary of responses to the consultation

Please note that:

- *Five of the consultation responses, from the Consumers Association, the NCC, Sustain, Stephen Locke and Associates and Mediawatch, in which a number of particularly challenging issues were raised, have been summarised separately at the start of this section*
- *Three others, National Heart Foundation, National Family and Parenting Institute and Sit-up Ltd., expressed serious reservations*
- *All the other seventy responses supported the proposals to a greater or lesser degree*
- *Other responses cited here have been grouped according to the topics covered by the 16 questions posed in the consultation document.*
- *This includes those responses that did not directly answer the questions, but where we have allocated the comments under the 16 headings.*
- *Only the most significant comments are noted in this analysis. The full set of responses can be found on the Consultation section of the Ofcom web site at http://www.ofcom.org.uk/consultations/past/reg_broad_ad/responses/*
- *One respondent requested confidentiality. That body's views have been taken into account, but are not covered below.*

Response from: Stephen Locke, Locke & Associates

The greater clarity for consumers in the change should significantly outweigh the corresponding drawback that the new system will reduce the regulator's ability to maintain a common integrated approach across programmes and broadcast advertising.

Ofcom needs to do more to satisfy itself and stakeholders that the detailed proposals meet the consumer-citizen test in the Communications Act, s 3(1). Developing co and self regulation is not an end in itself, but a means to better regulation. There needs to be some clear gain overall, whether in terms of greater efficiency or improved effectiveness, in serving consumer and citizen interest. Ofcom is in danger of distancing itself too far from the new arrangements, and the proposal veers too far towards industry self regulation. Specifically:

Ofcom should retain a power to request changes to the advertising code, not just on grounds of public policy, but across the board wherever necessary to

further Ofcom's objectives. Many of these changes may fall outside what is normally construed as public policy but will have significant implications for the public interest.

Codes should not be decided solely by BCAP consisting entirely of industry members without any lay representation.

Ofcom should retain within its senior management structure a clear and active designated responsibility for advertising regulation and should back this up with research of its own, formal review arrangements and commitment to a set of performance standards for cases referred to the statutory regulator by the new body.

It is 'odd' for monitoring responsibility to be placed with BCAP - it is the consideration of individual cases that generates hypotheses of what needs to be monitored.

ASA (Broadcast) will need power to suspend advertising pending investigation where there is a "risk of significant public detriment".

Response from: National Consumer Council (NCC)

The NCC's major concerns are:

- The need for greater clarity of the relationships, responsibilities and accountabilities between Ofcom and the self-regulatory bodies.
- The need for greater independence from industry.
- The need to strengthen and extend the arrangements for consumer representation and involvement.
- The need to ensure an effective system in practice.

With these concerns, the NCC does not feel able to endorse the proposal as it currently stands. To address these concerns Ofcom should:

- clarify aspects of the relationship, responsibilities and accountabilities between itself and the self-regulatory bodies within the co-regulatory system including setting standards and procedures for monitoring and evaluating the performance of the relevant bodies;
- clarify responsibilities for dealing with matters of public policy;
- reconsider the division between advertising 'scheduling' (Ofcom) and 'content' (co-regulator) and clarify how this will work in practice;
- retain sufficient expertise and resources, maintain clear lines of internal responsibility and commit to performance standards of its own to fulfill its regulatory role;
- require greater independence from industry for key responsibilities within the co-regulatory system including code review and monitoring, setting of performance standards and aspects of

complaint handling; BCAP needs to be reconstituted to include non industry members and processes for which it has responsibility must be more independent, open and transparent. There should be greater external input into the code.

- strengthen and extend the arrangements for consumer and other independent representation and involvement in the co-regulatory system including code development and review. This should include the setting up of a new Advertising Advisory Panel
- all those determining complaints should be independent of industry. There must be a commitment to involve consumers in depth, a diversity of different types of lay interest and experiences including consumer specialist members, all of whom should act in the public interest. ASA (Broadcast) Council membership should include specialist consumer representation; and there should be a new advertising advisory committee in the new structure.
- provide the co-regulatory system with recourse to effective legal back-stop powers. Ofcom should have the power to require BCAP to review code provisions in the light of public policy concerns; to produce proposals for review; and to approve and veto code amendments.
- ensure the co-regulatory system has sufficient funding for monitoring and research including consumer surveys;
- require high priority be given to communication including well publicized awareness-raising and information and education campaigns with the public, the relevant industries, stakeholders and other agencies;
- require the co-regulator to extend the means by which complaints can be received to include telephone, e-mail, interactive TV and text messaging and to increase accessibility to consumers with special needs including those speaking minority languages and those with disabilities.

Finally, the NCC also considers that further work is required to develop the proposal with stakeholders, including consumer and public interest representation and consultation, and that the timescale for the process of decision-making should be governed by the need to reach agreement on the detail of how the system will work in practice before the general principle to contract out is accepted.

Response from the Consumers' Association (CA)

The CA does not support the proposals. The creation of a one-stop shop is potentially of some benefit to consumers, but it is questionable whether the current proposal will actually deliver, especially since a number of other bodies will continue to have responsibility for advertising regulation, including ICSTIS and the OFT and Ofcom.

A one-stop shop may create consumer confusion about the different codes that apply to individual media. This may lead to pressure to develop a single code across all media, which might not reflect differing concerns and types of advertising regulation required in differing contexts.

Potential “confusion of responsibility” for broadcasters, with scheduling remaining with Ofcom and code compliance with the new body. Given the difficulty of drawing distinctions between editorial content and advertising in teleshopping, it is unclear how the transfer of non-editorial elements would work.

Ofcom's primary responsibilities relate to the protection of consumers and citizens, coming above its obligation to promote alternative regulatory mechanisms. So the case for change should be founded on the delivery of additional benefits to consumers. The delivery of benefits to industry should not be given equal weight to the benefits and disbenefits to consumers.

The proposal does not provide any guarantee that the proposed body is even going to perform as well as the current system. Effective regulation for consumers, rather than industry cost savings, should be the primary consideration. Funding arrangements should protect the system from pressure from industry to reduce costs.

The evidence does not prove that the ASA is more widely trusted than the current system. There is low consumer awareness and some confusion about where to complain. The delivery of improved awareness and degree of trust should be designed into the system and included in performance criteria.

There is a need to avoid the risk of double jeopardy, but it makes little sense for Ofcom to be responsible for the integrity and effectiveness of the entire system if it can never intervene in individual cases. Such intervention might be necessary eg. where there are strong public policy reasons that are not covered by the advertising codes. Ofcom should have the ability to consider appeals.

The proposals do not guarantee the independence of the regulatory structure from industry. By contracting out regulation to a body that has no consumer representation structures, there is a danger that consumer and citizen representation is weakened. There should be effective consumer representation within the new body. An enlarged ASA Council would not fulfil this requirement.

The proposals relating to code ownership and enforcement give too great a role to the co regulator in determining and revising the codes. Ofcom should have a greater role in this regard, and should retain some control over the codes to ensure they can be adapted rapidly and in line with public policy concerns and evidence.

The co regulator's decisions and enforcement measures must be equivalent to those under the current system. Ofcom must be willing to apply penalties

under the terms of broadcasters' licence conditions where necessary if the co regulator is unable to apply its decisions.

The proposed system would be less transparent and accountable than the existing statutory regulator. Since the proposal would remove advertising from the scope of Ofcom's own obligations to transparency and accountability this would be a step backwards. The objective should be to improve on the transparency and accountability of both the existing Ofcom and ASA systems.

Clear performance criteria are needed to secure effective co regulatory performance and to sanction co regulatory failure where necessary. It is unclear who will monitor against the key performance indicators. Ofcom should set the performance indicators and performance standards.

Ofcom should set out a timescale for the formal review of the system. It is unclear how it would be determined that the system is failing, given the lack of clarity over the specific performance standards that will be applied by Ofcom against key indicators.

Response from Sustain

Not confident the proposals will deliver a robust and protective regulatory system or are an appropriate means to ensure high levels of public protection. Better to maintain and strengthen the current statutory system administered by Ofcom. Delegation of responsibility to an industry orientated and funded body would reduce regulatory independence.

Without representation of independently appointed and experienced consumer interests, public protection is likely to be lost amongst the industry voices appointed by the council chairman.

The proposal to transfer code ownership to BCAP raises concerns about the independence of the proposed system, given the "vigorous self-protectionist stance" of the advertising industry, particularly in relation to the regulation of food advertising. That the industry should be responsible for altering codes by which it would then regulate is illogical as the outcomes of such revisions would be partial to industry. Given the funding of the new system based on advertising spend, the separation of the funding arm from the ASA does little to increase confidence that decisions would be independent.

Ofcom should be entitled to intervene in individual cases. Relying on annual audit and performance indicators without regard to an evaluation of the appropriateness of individual adjudications would not provide a satisfactory level of reassurance and the size of the benefit resulting from the increased public clarity from a single regulatory body is "far from evident".

The current self-regulatory model for non broadcast advertising is less than effective and should not be used as a model for ensuring consumer protection. The proposals will reduce protection to the low levels currently

found in the non broadcast arena. For example, ASA adjudications can take several years, during which time offending adverts continue to be published; and there are examples of the ASA focussing solely on aspects of adverts complained about, whilst overlooking other obviously misleading aspects.

The ASA system should have a greater degree of transparency, including access to information about the process by which expert advisers appointed. The lack of transparency about the adjudication process provides a barrier to public scrutiny and criticism.

It is unreasonable that Ofcom should refrain from reverting to full statutory regulation for a period of two years. Consumer protection necessarily requires that no such time dependent agreement is made. Ofcom would fail in its statutory duties if it did not retain its prerogative to revert to full statutory regulation at any time from the outset of a co-regulatory agreement.

It is difficult to imagine how non lay members of the ASA Council would act independently of the advertising business and mention is not made of the need for representation on the ASA Council of a range of public interest experts.

Response from Mediawatch-uk

The proposals do not demonstrate that the public interest would be served better than by existing arrangements. To contract out regulation of important parts of converged media “militates against the purpose of a single regulator”. There are clearly advantages for the industry to deal only with one regulator; however, this would be to the disadvantage of the citizen, consumer and viewer and listener who would have to grapple with the ASA, which is not independent of industry, for broadcast advertising and with Ofcom for complaints about all other broadcasting aspects.

Ofcom should publish complaints and retain regulatory powers and functions. That way, it will be seen to be acting safeguard the public interest rather than the self-regulator.

Section 7

Summary of remaining responses

Seventy of the 78 responses to the consultation supported the proposals to a greater or lesser degree. In general, the advertising industry and broadcasters agreed with the proposal that Ofcom should contract out broadcast advertising regulation, and they supported the suggested self-regulatory model, based on the tried and tested Advertising Standards Authority (ASA) system, with Ofcom acting as a genuine backstop regulator, standing back from day-to-day decisions, but with the power to intervene if required and impose sanctions upon referral. Most thought the concept of bringing all advertising regulation under one roof was a good idea, as a single point of contact for complaints about all advertising would be beneficial for consumers, viewers and listeners who would find it easier to understand and access the regulatory mechanism. It was also argued that the new system would be better positioned to address the challenges of convergence.

Advertisers and agencies who responded to the consultation were generally supportive of the proposed self-regulatory approach. They argued that the one stop shop concept would lead to greater consistency in the development and enforcement of advertising standards codes across broadcast and non-broadcast media, making it easier to plan and execute multi-media advertising campaigns in an increasingly complex and converging environment. The advertising agencies had a similar perspective. The advertiser responses demonstrate that the general support for the self-regulatory model based on the ASA system and funded by a levy, was strong.

Many broadcast licensees also expressed support (though some had reservations). They believed that the one stop shop concept would be a simple and effective proposition for viewers and listeners. The fact that their representation on the code-owning body would be strong, and broadly representative of the different parts of the broadcasting sector, was important, they argued, to ensure that any code changes did not risk breaches of licence. It was particularly important for the broadcasters to avoid double regulatory jeopardy in terms of sanctions, and to maintain a coherent and integrated approach to programme and advertising policy.

Finally, the response to the consultation by the Advertising Standards Authority (ASA) demonstrated that they would be willing to take on the responsibility for the new system, subject to the ASA Council agreeing the detailed arrangements.

Question 1:

Please give your views on the benefits and disbenefits of a move to co-regulation with respect to:

- Viewers and listeners
- Broadcasters
- Advertisers

The Advertising Standards Authority (ASA):

Public benefits – A system better adapted to converging media and multi-platform campaigns will better serve the interests of the public: they will gain from closer engagement of advertisers in broadcast and non broadcast regulation; the “one-stop shop” concept will address real consumer confusion about how and where to complain; speed and flexibility; availability of further resources available for consumer research conducted more efficiently and informatively across media.

Broadcasters - Significant advantages in an Ofcom free to think and operate strategically, rather than trying to combine high policy with the day-to-day detail of complaints handling.

Advertisers - If consumers' confidence is maintained, so too will advertisers' confidence and the competitive edge of broadcast media will be maintained, in the longer term, securing more money for programme making; advertisers are already familiar with the ASA's system; greater consistency of decision making between media; co-sited staff able to discuss common approaches to campaigns face-to-face; and a more cost-effective approach to regulation across media.

The Advertising Association (AA):

Supports self-regulation in that it can provide fast/effective recourse for consumers/industry and is more easily adaptable to market changes than statutory regulators with legally defined limits. A “one-stop shop” would bring real benefits to industry and public, providing “joined-up thinking” and a convergent management approach to advertising across all media. Benefits of the proposal outweigh any disbenefits.

The Institute of Practitioners in Advertising (IPA):

The main benefit for viewers and listeners is simplicity – they will have a single, easily accessible point for complaint. There should be greater consistency in decision making and codes, having both forms of advertising under same roof. Any difficulty encountered by broadcasters in having two regulators would be outweighed by the benefits of having the complaints procedure under one roof. There are no additional burdens on broadcasters and their legal liability would remain the same. More consistent decision making between broadcast and non-broadcast complaints will enable advertisers to plan and execute cross media campaigns more easily and will avoid duplication and lower costs. The participation of advertisers in the code owning part of the system will enable them to have input and take responsibility.

M & C Saatchi:

The proposed system would offer the significant change of an independent appeal procedure, something badly lacking under the current regime and, as advertiser, they would welcome being able to contribute to code development.

British Gas:

A move to co-regulation should lead to greater consistency in codes and their application across broadcast and non-broadcast media, to the benefit of consumers, advertisers and broadcasters. The arguments against co-regulation do not outweigh the benefits.

Broadcast Advertising Clearance Centre (BACC):

Broadcasters will benefit from “a more direct representation” in code writing and enforcement. Advertisers will benefit from more consistent decisions on advertising issues across all media.

Commercial Radio Companies Association (CRCA):

Strong support for proposals, especially the fact that advertisers and broadcasters will be able to take ownership of their own code.

Radio Advertising Clearance Centre (RACC):

Radio stations and advertisers will be closer to their listeners and potential customers via their own implementation of standards. There are no major disbenefits for listeners. In contrast, broadcasters will need to liaise with two new bodies, BCAP and ASA (Broadcast). But it is hoped clear channels of communications and responsibility will be quickly established to prevent confusion.

ITV:

Broadcasters must have confidence that the new system will not compromise their responsibility for all output. Broadcaster representation on the code owning body will be strong and mechanisms will be put in place to ensure that any changes to the code did not risk breaches of licence. The possibility of maintaining an integrated approach to programme and advertising policy should be resolved by the establishment of mechanisms ensuring coordination and frequent dialogue between Ofcom and the new system.

Teletext:

Co-regulation will give viewers and listeners a more responsive and flexibly regulated advertising medium; broadcasters will have opportunity to join other parts of advertising industry to take over responsibility for broadcast advertising codes; for advertisers there is prospect of harmonisation of rules and regulatory enforcement across media.

MTV Networks Europe (MTVNE):

In order to minimise risk of the new system being seen by consumers and industry alike as just as fragmented as the current system ownership of regulation of each area – programmes, sponsorship, advertising etc should fall wholly within the remit of one of the regulatory bodies.

National Family and Parenting Institute (NFPI):

Felt strongly that the proposed system does not offer enough safeguards and protection to consumers, nor does it offer any representation to consumer groups.

Question 2:

Are you confident that these proposals can deliver a regulatory system which is at least as effective, timely and respected as the current statutory system? What aspects give you cause for confidence or concern? In what way might the proposals be an improvement on current arrangements?

ASA:

There will be no loss of effectiveness. The new arrangements will be more effective in that they will address those aspects of the current regime that are less effective than they should be i.e. lack of co-ordination across media, double jeopardy, consumer confusion and 'orphan' complaints. The levy will provide a secure and adequate source of funding. There is no reason why the new system should be less timely. Research shows strong ASA awareness; it is regarded as authoritative, making considered decisions, independent and respected. Continuous customer satisfaction surveys demonstrate strong levels of ASA satisfaction by both complainants and advertisers.

AA:

Effective self-regulation more easily delivers regulation of advertising in all media in a simple and effective way that at the same time has public credibility. The ASA model is proven and successful, and the proposed system offers greater transparency of operation and better procedures e.g., independent reviewer; separation of staff monitoring and consideration of complaints; compliance training; and research budget focussed on advertising issues. The effectiveness of the proposed system might be enhanced by the fact that advertisers and agencies will, for first time, share direct responsibility, through participation in the co-regulatory system, for broadcast advertisements.

IPA:

The ASA is widely respected by government, industry, the media and consumers. Complaints are handled quickly and efficiently.

Presswise:

Unclear what happens where conflicts arise between the interests of citizens and consumers and advertisers, particularly in problematic areas of sponsorship and promotion of programmes. The proposed system should be clarified to enable viewers and listeners to know where the priorities lie in the event of a complaint, and that they can be assured that their voices have "equal weight" with advertisers; that mechanisms exist to prevent vested interests exploiting their position.

CRCA:

Stressed the importance of establishing clear lines of communication between the clearance houses (RACC in particular) and the new self-regulator, to avoid any confusion for licensees between the two regulators: Ofcom and ASA(B)/BCAP.

Debra Shipley MP:

The proposed division between regulation of scheduling and content would make it much more difficult to introduce public policy reforms in areas that straddle both elements.

The National Heart Forum:

Not confident that the proposed system can deliver a more effective, timely and respected system than present system. There is a need for greater independence from the advertising industry. The most effective approach would be to maintain and strengthen current statutory system which should be directly administered by Ofcom with much greater consumer involvement.

Question 3:

Can you suggest any changes to the proposals which would either improve on current standards of regulation or remedy any detriments you perceive compared to the current system?

British Gas:

Suggests looking more closely at the proposed interactions of the two ASA councils. Against the likely volumes of business: would it be practical for the chairman to preside over both councils; whether an overlap of five members serving both councils is the best way to ensure consistent decision making; and how meetings of the councils would be timetabled to avoid delay.

MTVNE:

Monitoring is a policing/enforcing function, responsibility for which should lie with ASA (Broadcast).

Peter Mitchell:

The idea of two councils with some overlapping members is a bad approach. It would create two types of council member, which could be divisive or confusing and counter to the concept of one common group of people considering all complaints, eventually leading to conflicting decisions coming from different parts of same body.

National Heart Forum:

New regulator should have power to suspend adverts whilst complaints are considered and that there should be greater consumer representation on bodies involved in considering complaints.

NFPI:

Codes drawn up solely by advertising industry, with little or no involvement by consumer groups, will fail to address some of more difficult decisions about the public interest. Ofcom should retain a power to require BCAP to review codes in light of changing public policy and to produce proposals for Ofcom approval.

Alcohol Concern:

Concerned ownership of codes would be transferred to BCAP and that the industry itself would be responsible for making changes to the code and monitoring of public views on this issue. Ofcom itself should maintain reviewing function to ensure codes stay robust with opportunity for input from interested parties.

Question 4:

In order to safeguard the co-regulator's effectiveness and to avoid possible double jeopardy, it is proposed that Ofcom would not be entitled to intervene in individual cases, though it would remain responsible for the overall effectiveness of the system. Does this seem a sensible approach?

ASA:

Ofcom's backstop role is essential. The proposed hands off approach to day-to-day ASA (Broadcast) decisions about individual broadcast cases is also essential.

AA:

Agrees with the approach. Ofcom intervention in individual cases would jeopardise the independence of ASA (Broadcast) and the Council's integrity would be called into question, making it difficult to attract the "right sort of decision-makers".

IPA:

Believes that Ofcom intervention in individual cases would impact on the independence of ASA (Broadcast), undermining the system's integrity and be more than likely to lose the industry's support.

ITV:

says the fact that Ofcom will be ultimately responsible for the new system should guarantee sufficient Ofcom input.

Channel 4:

Viewers must be satisfied that Ofcom is responsible for the overall effectiveness of the new system.

BSkyB:

To avoid risk of double jeopardy, Ofcom should only be able to act under the licence in relation to an alleged breach of the code where a licensee has failed to comply with an ASA direction. Failure to comply with a direction would be sufficient for Ofcom to take action against the licensee, thereby fulfilling its backstop role and its legislative duties.

Trading Standards Institute (TSI):

It may be preferable to have a 'long stop' provision where Ofcom could intervene in matters of significant public interest.

John Hooper CBE:

Ofcom should only intervene in individual cases in extremis, where matters of broad public policy are concerned or where a “big stick” is required to bring a recalcitrant advertiser to its senses.

National Heart Forum:

Concerned that Ofcom's inability to intervene in individual cases will give viewers no right of appeal against an ASA judgment to an independent body.

Question 5:

Do you believe there would be additional costs, or cost savings, for the broadcast and advertising industries as a result of the proposed changes? Please specify. If you anticipate higher costs in any area, do the benefits of the proposed new system justify these?

The Advertising Standards Board of Finance (Asbof):

Levy system is extremely cost-effective. It is estimated that the proposed broadcast 0.1% levy will from the start raise £3.5M per year. The total sum the advertising industry will be spending on self-regulation will be very considerable and due recognition should be given to it.

AA:

The broadcast advertising levy would result in new direct costs for advertisers. Advertisers have strongly supported this proposal. The extension of the levy to broadcast advertising will be straightforward for agencies to administer. Broadcasters will not incur additional costs because advertisers will pay in the levy. The industry has agreed that for the first six months, the levy will only be raised on agency bookings pending basbof discussions with broadcasters about the practicalities of applying it to direct bookings.

IPA:

There will be cost efficiencies with some shared management functions across the broadcast and non-broadcast parts of the ASA.

British Gas:

Does not expect their costs as an advertiser to be increased. A reduction is possible, over time, as efficiencies are realised.

RACC:

Notes additional costs for advertisers and “non savings” in licence fees and considers that this is unreasonable.

Commercial Radio Companies Association (CRCA):

Concerned that Ofcom does not intend to offer cost savings to licensees in the event of not providing them with advertising regulation and queries into what areas of regulation it intends to “reallocate such funds”.

European Sponsorship Association (ESA):

Queries whether the basbof levy would apply only to advertising and not to broadcast sponsorship spend.

ITV:

There will be additional costs for advertisers. Broadcasters will continue to fund pre-clearance but do not foresee incurring additional costs. Overall, broadcasters should be saving money through a reduction in their licence fees to Ofcom.

Teletext:

Additional financial receipts from advertisers will be spent on improvements to the system, including research and training. The benefits outweigh the additional costs the industry is prepared to invest.

QVC:

A reduction in broadcasters' licence fees would be expected. Unless Ofcom licence fees are reduced proportionally, there will be an increase in costs for advertising and teleshopping channels. If lesser costs in regulating remaining Ofcom functions are not passed on to broadcasters, teleshopping channels would be subject to a double levy. A system of set-off should therefore be found to avoid the same revenue being taken into account for the purposes of both broadcasting licence fees and basbof charges.

The Satellite and Cable Broadcasters Group (SCBG):

Expects reduction in costs of regulation to be reflected in a proportionate reduction in licence fees.

Question 6:

Does the proposed system appear capable of regulating fairly and effectively the advertising which appears on all those services which Ofcom will license, including small or specialist audience channels, foreign language stations, and very local or community broadcasters? If not, where might the problems arise?

ASA:

It regulates big value advertising and small local business advertising, UK-wide campaigns and small insertions, cross-border complaints and advertising in minority languages in ethnic press.

AA:

The same approach would be taken for broadcast advertising as in the existing self-regulatory system, where big brand advertisers inevitably shoulder the majority of the costs, but the ASA considers all complaints, regardless of whether the levy has been invoiced on the advertisements concerned. As regards small and local services, regulatory intervention would be primarily complaints-based, with staff monitoring only in problem areas. Foreign language broadcasters would be asked to provide details of product

substantiation in English. However, the system may, on occasion, need to pay for translation of key material in order to ensure an impartial approach has been taken. All licensees would be consulted about proposed code changes and small and local broadcasters could be asked to provide input on specialist issues that affect them.

BAAC:

Sees no problems as the proposals have been drawn up in a “channel neutral” way.

CRCA:

Yes, provided that specialist services and expertise are secured by the co-regulator.

Teletext:

The new system should have more resources to enable it to tackle foreign language and minority stations.

Telewest:

The type of advertising that appears on cable and satellite channels is likely to be “disproportionately problematic” for the regulator and the proposed system is likely to impinge on this sector far more than it does on the terrestrial PSB channels. It is therefore vital that experience of this sector is represented on the ASA (Broadcast) Council.

Kanal 5 (a UK licensed broadcaster whose channels are not received in the UK):

Concerned to ensure that their views will be properly considered both by BCAP and the ASA when adjudicating on adverts on its channels, notwithstanding that many of their advertisers would not be directly contributing to the levy.

SCBG:

Recommends that, given the specific nature of multi-channel broadcasting and the differences in approach as regards advertisers and advertising placed on specialist channels, specific expertise in the multi-channel sector is required on the ASA (Broadcast) Council and such representation be increased within BCAP.

Question 7:

Are the safeguards proposed sufficient to ensure that the co-regulatory system remains independent of the commercial interests and pressures of advertisers and broadcasters?

Asbof:

The proposed system will be independent of commercial interests and pressures of advertisers and broadcasters. The ASA chairman's authority

has never been questioned. Exactly the same situation would pertain concerning the regulation of broadcast advertising.

ASA:

Welcomes the safeguards. Of fundamental importance is fact that Ofcom would have no right of appointment or veto to co-regulatory system. All council members will continue to register their interests and take no part in the consideration of any matter where a conflict might arise. Industry members would be outvoted by lay members. The arms-length funding arrangements guarantee adequate resources and necessary anonymity.

AA:

The fact the ASA takes decisions independently of commercial interests in the non-broadcast sector is important. Independence of the ASA chairman is a crucial part of the existing system. The principle of appointment by basbof following consultation with the relevant government department applies. Safeguards in the proposed system regarding complaints handling include: funding/adjudication separation; adjudications by independently appointed ASA (Broadcast) Council; and transparent auditing procedures and performance indicators. Safeguards in the codes include: commitment to consult on code; commitment to operate with existing codes for the first two years; and existence of backstop Ofcom powers.

IPA:

The ASA has remained completely independent of commercial interests, government interference and pressure from advertisers. This position should continue to be the case.

Channel 4:

Just as the ASA is able to remain independent of commercial interests of non-broadcast advertising, ASA (Broadcast) would be able to remain independent of broadcast advertising.

Teletext:

The proportion of lay members on ASA (Broadcast) Council should ensure sufficient independence to counter any commercial bias or influence. This is backed up by Ofcom's backstop powers.

Debra Shipley MP:

It is extremely unlikely that the advertising industry will ever prioritise the interests of vulnerable groups over its own collective commercial interest. It is therefore necessary for the industry regulator to be a strong and independent presence without close links to industry.

National Heart Forum:

It is difficult to imagine how non-lay members would act independently of the advertising business. Furthermore, no mention is made of the need for representation on the ASA (Broadcast) Council of a range of public interest experts.

Question 8:

Are the appeals arrangements adequate and sufficiently independent, and do they provide adequate recourse for advertisers, broadcasters and complainants? Are they better or worse than current arrangements?

Asbof:

The legality of the entire advertising self-regulatory system and in particular the independent review appeals system is watertight. The appeals system is better, fairer and more transparent than current broadcast regulatory arrangements.

ASA:

That the system benefits from review of adjudications by an independent outsider; ensures the ASA Council remains sovereign as the body responsible for making adjudications, but members are prepared to change their mind when confronted with compelling evidence of a substantial flaw or new material facts. An appeals body that had the right to set aside council adjudications could undermine the authority of the council and delay ordinary resolution of complaints as parties came to regard the appeal process as another stage of decision-making. Judicial review provides a safeguard should things go badly wrong.

AA:

The ASA has robust independent review procedures in place for non-broadcast advertising. Similar model would be used for broadcast advertising.

CRCA:

Applauds the introduction of an independent review process.

Teletext:

Proposed arrangements are potentially better owing to separation between case officers and the appeal process.

Telewest:

The review criteria is unsuitable for the broadcast environment, where much greater production and airtime costs apply and where broadcasters will potentially suffer significant economic disadvantage as a result of adjudications. If ASA (Broadcast) Council decisions stand pending review, it could be several weeks before a review is completed during which time significant revenue could be lost.

MTVNE:

The independent reviewer should have the power to overturn ASA (Broadcast) decisions or require ASA (Broadcast) to do so.

Debra Shipley MP:

Viewers will not be able to appeal adjudications to Ofcom, limiting an individual's right to redress to a higher authority.

Question 9:

If you wished to complain about broadcast advertising would you feel more confident or less confident complaining to the ASA (the proposed co-regulator) operating under the proposed system?

ASA:

Consumers might be expected to have confidence in a 'one-stop shop' arrangement, provided they were aware of its existence. 69% of respondents said in August 2003 that it would be a good idea if the ASA would become a "one-stop shop" for all consumer complaints across all media.

AA:

The ASA is a trusted and reputable brand; the non-broadcast self-regulatory system has operated well, generating public confidence. The fact that many complaints about broadcast advertising are sent to the ASA indicates confidence complaints will be properly addressed.

RAAC:

The ASA brand is generally more well-known to consumers than the legacy regulators' brands.

Teletext:

Believes the publicity for the well-known ASA brand could raise the profile of system and make it more visible and accessible to consumers and so build confidence.

QVC:

Most viewers already see the ASA as the appropriate body for complaints, even in relation to television advertising.

Question 10:

Ofcom proposes that the broadcasters should continue, as now, to be responsible for the advertising that they carry, and that they, rather than just the advertisers, would apply the co-regulator's decisions. Do you regard this as the right approach? If not, how would you see the system working?

AA:

Broadcasters are ultimately responsible for their broadcast material. They are the obvious party to apply co-regulator's decisions. However, advertisers and agencies share responsibility for the effective working of the system and would be expected to co-operate with and abide by ASA decisions.

IPA:

One of the key strengths of the ASA/CAP system is the preparedness of media owners to prevent publication of communications that have fallen foul of self-regulatory codes on ASA judgement.

British Gas:

The broadcaster is in the position to deliver compliance and it is important that this person is held responsible.

RACC:

Radio broadcasters do not want to give up control or responsibility for their advertising breaks. They will wish to grasp the opportunity to take ownership of a code and withdrawing or amending commercials.

Teletext:

It would be unjust to allow any external commercial body to have influence over the rights and duties with respect to advertising content of broadcasters.

MTVNE:

Some responsibility or liability should be apportioned to advertisers who are not really regulated as such under the proposed system. Ofcom should explore ways of ensuring that advertisers feel regulated.

Question 11:

We would welcome your views on the degree to which, from your reading of the proposal, the new co-regulatory body would be either more or less transparent and accountable than are current arrangements. Would such transparency and accountability be sufficient?

ASA:

Its established approach will make the new system considerably more transparent than current arrangements. Because the system will be accountable to Ofcom, decisions will have to be robust, defensible and open to scrutiny. Ofcom will hold a 'lock' on codes and ASA will be "highly accountable" for its performance against published standards. Any aberrations would be picked up very quickly. Additionally, there will be a separation between code owning and enforcement role of BCAP and the complaints resolution role of ASA (Broadcast). Decisions will involve a further tier of responsibility. There will also be an independent review process.

AA:

Areas of greater transparency include: decisions taken by ASA (Broadcast) Council, instead of regulator staff; independent reviewer; and separation of staff monitoring from complaints handling. Greater accountability will be delivered by: weekly publication of complaints; reporting and auditing measures; and robust and published key performance indicators.

British Gas:

The proposals do not discuss this aspect in any detail. Much depends on the mechanics of the inter-relationships involved and Ofcom/ASA communications policies and strategies.

Telewest:

There is a need for more detail as to how Ofcom will audit the co-regulator's performance to ensure that it is satisfied with regulation.

Presswise:

The proposed structural arrangements should incorporate opportunities for citizens and consumers to be involved in code drafting, complaints procedures, adjudications and appeal/review procedures.

Andrew Lansley CBE MP:

It should be made explicit that the proposal would not diminish Ofcom's accountability to Parliament.

Debra Shipley MP:

The proposed model is "unresponsive to public wishes" in that the impetus for code changes has to come from the ASA itself, which is neither truly independent nor representative.

Question 12:

Do you have any comments on any of these allocations of responsibility, or on the functions themselves, or on any of the issues discussed? In particular, do you think the proposal to transfer teleshopping and the non-editorial elements of sponsorship to the ASA (Broadcast) is appropriate?

ASA:

The allocation is sensible. Judging appropriateness of scheduling is not unlike context decisions the ASA has to make in non broadcast media. On sponsorship, there will need to be clear procedures so that complaints are handled seamlessly. Teleshopping channels should be treated as advertising and fall to ASA (Broadcast) and BCAP. Teleshopping is a sphere of advertising activity that will test new system.

AA:

The proposed division of responsibilities is clear. There would be some natural divisions of responsibility (where, for example, scheduling decisions closely related to advertising content could be taken by the self-regulatory system, while others would fall more appropriately into Ofcom's remit), but any grey areas would be discussed between Ofcom and the self-regulatory system. The proposal to transfer teleshopping to the new system is supported in that it is not satisfactory to have two regulators responsible for different aspects of the same code. A two stage approach would cause confusion and undermine the new system. However, the teleshopping definition needs to be reconsidered before responsibility is transferred. Under existing procedures, some teleshopping channels funded by premium rate telephone numbers would be more appropriately regulated by ICSTIS. As regards sponsorship, the proposed division of responsibilities sounds sensible and is modelled on the existing system for radio. However, television broadcasters support a single regulatory point of contact for television

sponsorship, rather than a split jurisdiction, and believe because of editorial issues responsibility would most appropriately lie with Ofcom. The AA therefore recommends that radio sponsor credits should transfer to the self-regulatory system, but that television sponsor credits should remain with Ofcom.

IPA :

Believes that teleshopping is a form of advertising and should be treated in same way as other advertising. It supports the proposal that non-editorial issues should be considered by the ASA, with editorial and programming matters remaining with Ofcom.

The terrestrial commercial PSB broadcasters and Interactive Digital Services joint response:

It is not practical, or desirable, to divide responsibility for regulating TV sponsorship between two bodies. Ofcom should be a single regulatory point of contact for both editorial and presentational television sponsorship issues. TV sponsorship is more closely associated with that of programming than advertising. Sponsorship credits are counted as programme time, not against advertising minutage. Specific rules on editorial control and undue prominence underpin TV and radio sponsorship rules, but TV sponsorship rules are considerably more detailed than for radio, largely due to the increased potential for commercial influence television medium allows. The close relationship between sponsorship and programming in television necessitates integrated approach to regulation through a single regulator. ASA (Broadcast) could be well-equipped to assume responsibility for the regulation of all sponsorship issues, but this may prove impossible as it would involve the transfer of all editorial rules related to sponsorship from Ofcom to ASA (Broadcast).

Channel 4:

Disagrees with proposal for new co-regulatory body to be regulating programme sponsorship. It says there are far too many overlaps between programme and sponsorship codes for these to be separated in regulatory terms. In particular cases, a decision taken concerning the sponsorship of a programme could be very different from a decision concerning the same programme regarding programme content taken by Ofcom. Such clashes of view could undermine the proposed system. A different view taken by different parties could cause undue and unnecessary friction in relation to presence or undue prominence of sponsors' products/services within sponsored programmes. The same arguments can be applied to advertiser supplied programmes. Therefore, Ofcom should retain direct control of the sponsorship code and any adjudication following a complaint.

CRCA:

Comments that it will be a new departure for radio that the regulator will be able to intervene where no complaints have been received.

GMTV:

Sponsorship is closely linked to editorial issues and Ofcom should retain a remit for this area.

Teletext:

It seems sensible for teleshopping and non-editorial elements of sponsorship should reside with same body as advertising regulation.

BSkyB:

Ofcom should retain responsibility for all aspects of programme sponsorship – at least until a full review of the existing code has been concluded. The link between sponsorship and programming is such that some consideration of content and nature of sponsored programmes is required in assessing alleged breach. Ofcom is responsible for the programme code and therefore has jurisdiction on content issues. The proposed division could lead to additional regulation of broadcasters as both bodies may have to consider each complaint to assess whether it has jurisdiction. Whilst the retention of responsibility for programme sponsorship by Ofcom may dilute benefit of creation of a single advertising regulator, it would result in less confusion than would be the case with the proposal to split responsibility for programme sponsorship between Ofcom and ASA.

SCBG:

The proposed split in responsibility for sponsorship regulation will be confusing for consumers and complicate compliance procedures for broadcasters. SCBG advocates a single regulatory point of contact for both editorial and presentational sponsorship issues.

Telewest:

Teleshopping is effectively advertising and responsibility for its regulation should sit wholly within the proposed co-regulator.

MTVNE:

Sponsorship issues should remain wholly with Ofcom to avoid confusion to consumers and broadcasters.

QVC:

Teleshopping channels are primarily retailers of goods rather than providers of airtime. They do not generate or receive advertising revenue. It is therefore more appropriate for teleshopping to be considered as a separate sector in the proposed new body. Teleshopping compliance costs for ASA(Broadcasting) need to be separated out or fairly apportioned so that if pre-clearance improved company procedures and improved training bring down number of complaints investigations, contribution to basbof from teleshopping industry will be reduced as well.

QVC:

Believes in the interests of clarity and consumer confidence, it is appropriate to transfer the regulation of teleshopping to ASA (Broadcast). It would be inappropriate and unfair for teleshopping companies to suffer an additional

layer of content regulation as compared with other types of retailers bound by the distance selling rules.

Best Direct (International) Ltd:

The separation of regulation of television shopping and spot advertising would result in there being two regulators - disadvantageous to consumer and advertising industry in that ability for the consumer to have a 'one-stop shop' for complaints would be lost. Both sides of the industry operate under the same codes and there is no reason why the ASA should not be able to regulate the teleshopping industry as effectively.

Sit-up Ltd:

Does not believe the proposals amount to self-regulation in any meaningful way for the teleshopping industry. BCAP will have very few teleshopping industry representatives; the new body has no knowledge of the teleshopping sector and the core sanctions will remain with Ofcom in any event. The current regime has worked well in building confidence in the teleshopping sector; placing future code creation under the auspices of a group who are mainly responsible for other areas of advertising regulation might act to the detriment of the £1bn per year teleshopping industry; ultimate sanctions of fines and licence withdrawal should be deployed by the body responsible for monitoring adherence to code. Costs of regulating the industry will rise if the proposals proceed as the costs would be passed on to the teleshopping broadcasters themselves.

BTSA:

Says it makes no sense to separate spot advertising from long-form teleshopping adverts. Both operate under same codes. To split teleshopping from spot advertising would require Ofcom to retain responsibility for the advertising code and its interpretation. Furthermore, the confusion for viewers would destroy benefits of the proposed new system, a one-stop shop for all advertising complaints.

TSI:

Has doubts about the proposal to transfer teleshopping to the new body. This type of advertising is very different to spot advertisements. Teleshopping controls should be more fully developed and discussed before transfer to the new body.

National Heart Forum:

The proposal to divide scheduling and content responsibilities will make it difficult to maintain an integrated approach to programme and advertising policy, for example, on watershed issues.

Question 13:

Do you consider that the enforcement and sanctioning process would provide effective protection for viewers and listeners from harmful, offensive or misleading advertising material?

ASA:

The new system will have proactively to monitor research and challenge in order to secure compliance. Consumers will enjoy no less protection under new arrangements than under the current system.

AA:

The fact that it would be a licence condition for broadcasters to comply with ASA (Broadcast) directions is important for ensuring compliance. It is also helpful that ASA (Broadcast) could refer to Ofcom broadcasters who do not comply.

RACC:

On the proviso that harmful advertising is minimised before broadcast, and that in the event of it getting on air it is swiftly removed from air, the enforcement and sanctioning process would provide effective protection.

Teletext:

Enforcement and sanctioning powers, backed up by Ofcom's backstop powers would provide effective protection for viewers and listeners from harmful offensive or misleading advertising material.

John Hooper CBE:

The public will need to be reassured the new system can be fast and effective. There appears to be no detail in the proposals to ensure the ASA's ability to act immediately when required.

Debra Shipley MP:

In terms of sanctions, Ofcom is not acting as a higher authority in relation to offending advertisers as it can only make sanctions against broadcasters.

National Heart Forum:

The proposals will reduce protection to low levels found in the non-broadcast arena.

Question 14:

Do you consider that these audit and recovery measures are adequate to enable Ofcom to fulfil its statutory duties?

ASA:

Welcomes the proposal for annual statements setting out what Ofcom and stakeholders expect from self-regulatory bodies. All parties must take possibility of a surge in complaints encouraged by new system into account

in agreeing targets in the first two years. Initial targets should be reviewed in light of experience, the assumption being they would be reviewed downwards. Key performance indicators should track overall compliance and would expect to continue to monitor customer satisfaction.

AA:

The measures are tough and rigorous to ensure system is effective.

Question 15:

In the event of serious failure of the co-regulatory system, Ofcom would retain the right to revert to full statutory regulation. The industry has proposed that to give the system time to establish itself Ofcom should refrain from taking this action for an agreed period, perhaps two years. Is this reasonable, and does two years seem appropriate?

ASA:

Recognises a wholly new system will need some time to settle down. The two year probationary period is reasonable and could not be an excuse for failing to address problems promptly and effectively. The ASA would work with BCAP and basbof to address any teething troubles and would co-operate fully with Ofcom so as to achieve satisfactory solutions.

AA:

Two years is appropriate to allow the system to get over teething pains. An initial period of grace would justify investment of time and money in setting up the new system. The contract should be for a maximum period of 10 years, with an automatic extension if performance is considered satisfactory.

Teletext:

Believes if self-regulation is to work it must be completely unfettered or it will not be self regulation.

National Heart Forum:

Disappointed at no commitment to carry out reviews during the first 2 years.

Question 16:

Does the approach to the Regulatory Impact Assessment described in Annex 3 seem practical and fit for purpose? Do its conclusions make sense?

TSI:

Unclear how, as stated in the summary, new and re-deployed costs of co-regulation can be seen merely as a transfer of costs and therefore neutral.

QVC:

Disagrees the proposal is cost neutral as there will be significant costs in

setting up and running of the new body, but with no proposed diminution of Ofcom tariffs.

Section 8

List of respondents to the consultation

Consultation on the Future Regulation of Broadcast Advertising

- 1 Abbott Mead Vickers BBDO
- 2 Advertising Association (AA), The
- 3 Advertising Producers Association (APA)
- 4 Advertising Standards Authority (ASA)
- 5 Advertising Standards Board of Finance (ASBOF)
- 6 Alcohol Concern
- 7 Alcohol Focus Scotland
- 8 A.M.S Media Group
- 9 Bacardi-Martini Group
- 10 Best Direct
- 11 BMP DDB
- 12 British Gas
- 13 Broadcast Advertising Clearance Centre (BACC)
- 14 Brodie, J. (Individual)
- 15 BSkyB
- 16 British Television Shopping Association (BTSA)
- 17 Cadbury Trebor Bassett
- 18 Channel Four Television
- 19 Christian Broadcasting Council (CBC)
- 20 Chrysalis Radio
- 21 Cinema Advertising Association (CAA), The
- 22 Cleaver, R. (Individual)
- 23 Commercial Radio Companies Association (CRCA)
- 24 Consumers Association
- 25 Crookes Healthcare
- 26 Diageo Great Britain
- 27 Dixons Group PLC
- 28 Draughn, G (Individual)
- 29 English, P. (Individual)
- 30 European Advertising Standards Alliance (EASA)
- 31 European Publishers Council (EPC)
- 32 European Sponsorship Association (ESA)
- 33 Five
- 34 Food Standards Agency (FSA)
- 35 GMTV
- 36 Hooper, J CBE (Individual)
- 37 Institute of Practitioners in Advertising (IPA)
- 38 ITV
- 39 ITV / GMTV / Channel Four / Five / Interactive Digital Sales
- 40 Kanal 5
- 41 Locke & Associates (referred to in text as 'Stephen Locke and Associates')
- 42 M & C Saatchi
- 43 McCann Erikson / IPA
- 44 Mediawatch
- 45 Mediawise (The Presswise Trust)
- 46 Medicines and Healthcare Products Regulatory Agency (MHRA)
- 47 Mitchell, P. (Individual)
- 48 MP - Andrew Lansley CBE

- 49 MP - Debra Shipley
- 50 MTV
- 51 National Consumer Council (NCC)
- 52 National Family and Parenting Institute (NFPI)
- 53 National Heart Forum (NHF)
- 54 Newspaper Society, The
- 55 Panting, G. (Individual)
- 56 Periodical Publishers Association (PPA)
- 57 Portman Group, The
- 58 Procter & Gamble UK
- 59 Proprietary Association of Great Britain (PAGB)
- 60 Q Radio Network
- 61 QVC
- 62 Radio Advertising Bureau
- 63 Radio Advertising Clearance Centre (RACC)
- 64 Satellite & Cable Broadcasters Group (SCBG)
- 65 Seven Seas
- 66 SIBC 96.2 fm
- 67 Sit-up Ltd
- 68 Steve, R. (Individual)
- 69 Sustain
- 70 Teletext
- 71 Thane Direct UK Ltd
- 72 Trading Standards Institute
- 73 Tubb, R. (Individual)
- 74 TV Travel Shop
- 75 Unilever
- 76 Writers Guild of Great Britain, The
- 77 Zenith Optimedia UK Group

Also received: 1 confidential response