



Guidance Notes

**Section 2:
Harm and offence**

Section Two

Harm and Offence

Guidance

This guidance is provided to assist broadcasters in interpreting and applying the Broadcasting Code. Research which is relevant to this section of the Code is indicated below.

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

We draw broadcasters' attention to the legislative background of the Broadcasting Code which explains that:

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

This section addresses potential and actual harm and/or offence. Broadcasters may make programmes about any issue they choose, (so long as they comply with the general law and the Broadcasting Code). The rules and this guidance cannot anticipate every situation. Moreover, social mores and sensitivities change both over time and in response to events.

Rule 2.1 Generally accepted standards

Generally accepted standards

We recognise that some programming may include material that has the potential to be harmful or offensive. This puts a responsibility on the broadcaster to take steps to provide adequate protection for the audience. The criteria outlined in the meaning of “context” give an indication of what this may involve. Ofcom regularly publishes complaints bulletins which provide information on matters members of the public have found harmful or offensive and Ofcom's decision in those cases.

Broadcasters and the public view and listen to material measured against a background of generally accepted standards. Ofcom licenses an increasing number of satellite and cable channels, who broadcast solely to non-UK countries where different standards may apply. The understanding of what is “generally accepted standards” should be underpinned by relevant research.

Generally accepted standards will change over time and will also vary according to the context (as set out under Rule 2.3 of the Broadcasting Code).

Generally accepted standards also apply where programmes invite viewers or listeners to participate in them. Broadcasters should ensure that they take all due care to avoid disadvantaging any viewer or listener who votes, enters a competition, takes part in a poll or otherwise interacts with a programme by participating in some way. Further guidance is provided with reference to Rules 2.2 and 2.11.

For further guidance on “generally accepted standards” please see rest of this guidance.

Harm: health and wealth claims

In previous investigations under Rule 2.1, Ofcom has identified claims or advice in programmes about viewers’ and listeners’ health or wealth as being potentially harmful. These have included, for example, statements that specific products, practices or activities will result in various benefits to health or wealth. This kind of content has also sometimes been accompanied by dismissive or derogatory comments about more conventional treatments or advice. Health or wealth claims could be especially harmful to people who are vulnerable, for example, those who are suffering from serious medical conditions, or are in serious financial difficulty, who may be more susceptible to these messages.

Programmes including health or wealth claims and advice may be broadcast, as long as broadcasters provide adequate protection for viewers or listeners from any potentially harmful content. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from potentially harmful material, and the broadcaster’s and audience’s right to freedom of expression, as set out in Article 10 of the European Convention on Human Rights (“ECHR”). We must also take account, where applicable, of the right to freedom of religion, as set out in Article 9 of the ECHR.

To assist us in carrying out our duties in this area, Ofcom commissioned a qualitative research report into audience attitudes on potentially harmful health and wealth claims in programmes. The report on this research can be found here: <https://www.ofcom.org.uk/research-and-data/tv-radio-and-on-demand/attitudes-to-potential-harm>. We have drawn on that research to provide guidance for broadcasters about the kinds of factors we are likely to consider when investigating potential breaches of Rule 2.1. Ofcom will assess each case on its merits, taking into account all relevant circumstances.

What factors should broadcasters consider when complying programmes that include health or wealth claims?

Our research indicates that there is a hierarchy of factors affecting the level of potential harm arising from health and wealth claims in programmes. These can be divided into primary, secondary and tertiary factors, according to their likely impact and importance.

There are also factors affecting the mitigation of potentially harmful content in programmes, and what might constitute adequate protection in these circumstances.

Factors affecting the level of potential harm

The primary factors affecting the level of potential harm are as follows:

- *Severity of situation.* There is a higher level of potential harm where claims are made about the most serious medical conditions (such as cancer or heart disease), or situations of extreme financial hardship. This is because the consequences of acting on advice in such situations could be more significant, for example failing to consult a qualified medical practitioner could be life-threatening.

- *Level of targeted exploitation.* The potential harm increases where content appears to be targeted at vulnerable people, such as the seriously ill, or those who are heavily in debt. These people may be isolated or desperate, and for that reason more susceptible to exploitation. There is a greater risk of harm if they seem to be directly addressed, or if persuasive messages, especially relevant to them, are included in a programme, with either the intention or the likely effect that they will act on that advice, for example by discontinuing existing medical treatment in favour of alternative treatments.
- *Authority of speaker.* If potentially harmful claims about health and wealth are made by a speaker who is perceived by the audience as having authority, then there is more chance of them treating those claims as credible and making decisions based on them. The kinds of figures who might possess such authority will depend on the context, but could include a well-known or popular presenter, a religious preacher or community leader, or anyone presented as an expert.

These are the secondary factors:

- *Absence of a range of information or views.* Where contentious issues are discussed or debated (for example, the efficacy of faith healing), the absence of a range of opinions or sources of information could exacerbate the risk of harm. However, this should not unduly limit freedom of expression or prevent religious and other specialist channels from presenting a particular viewpoint.
- *Discussion vs direction.* The tone of the content affects the level of potential harm arising from it. If potentially harmful claims are presented with a high degree of certainty, or advice is phrased as an explicit call or direction to action, the messages are likely to be more persuasive, with an increased chance that viewers or listeners will make decisions about their health or finances based on the content of the programme.
- *Advice based on limited information.* Broadcasters should bear in mind that advice in programmes is given with limited, or in some cases, no knowledge of the circumstances of individual audience members. This is particularly relevant to health-related advice, for example given in a phone-in programme, where viewers or listeners may have different levels of vulnerability, for a variety of reasons including their age and individual medical history, which is likely to affect how potentially harmful the content is for them.

There are also tertiary factors:

- *Personal gain.* Commercial references included alongside health and wealth claims (for example references to products or services that are presented as treating health conditions, or explicit calls for charitable donations from those in financial difficulty) are of particular concern as they may invite or encourage viewers or listeners to take action based on the advice or claims made in the programme.
- *Genre.* There will also be different audience expectations depending on the genre of a programme, so that certain claims may be more justifiable in a religious programme or a documentary reflecting a particular point of view.
- *Audience size.* Where an audience for a programme is larger, as when the content is broadcast on a mainstream channel with popular appeal, the potential for harm

is therefore more widespread. However, importantly, this does not enable smaller broadcasters to transmit potentially harmful material without adequate protection for viewers or listeners.

- *Time of broadcast.* The timing of a broadcast may affect the composition of its audience, and therefore the potential harm, for example to children.

Ofcom reminds broadcasters that the requirement to provide adequate protection for members of the public from potentially harmful material applies to all programmes, regardless of their timing, audience size, genre, or the inclusion of commercial references which might give rise to an impression of personal gain¹.

These factors can serve as a useful guide for broadcasters, but they should not be treated as a checklist and applied without consideration of the wider context of the programme and the content. It is possible that other factors, not identified here, could also be relevant.

Providing appropriate protection from potential harm

There are various methods broadcasters can consider to provide appropriate protection for viewers or listeners from potential harm that might arise from health and wealth advice and claims in programmes. One approach commonly used by broadcasters is the inclusion of a warning, for example advising viewers or listeners to consult a qualified medical practitioner before making decisions based on the programme.

The effectiveness of these kind of warnings will depend on factors such as their frequency and positioning within the programme. For a longer programme, a single message at the beginning or end may not be sufficient. On the other hand, a scrolling message that remains on the screen throughout the programme may lose some of its impact through over-exposure.

Importantly, the effectiveness of a warning is likely to be significantly limited if the programme strongly contradicts the message. For example, if a warning advises viewers to seek advice from a qualified medical professional, and the programme then includes extensive denigration of conventional medicine. Conversely, a warning message which contradicts the content of the programme, for example a warning on a religious programme denying a belief in miracles, may be considered an unnecessary constraint on freedom of religion.

It is for broadcasters to decide how they provide adequate protection for their viewers and listeners from potentially harmful material in programmes.

Rule 2.2 Material misleadingness

Although it is a fundamental requirement of broadcasting that an audience should not be misled in the portrayal of factual matters, Ofcom only regulates the accuracy of programmes *per se* in News programmes.

Nevertheless, Ofcom is required to guard against harmful or offensive material, and it is possible that actual or potential harm and/or offence may be the result of

¹ Where appropriate, Ofcom will also assess commercial references for their compliance with Section Nine of the Code.

misleading material in relation to the representation of factual issues. This rule is therefore designed to deal with content that **materially misleads the audience so as to cause harm or offence**.

It is not designed to deal with issues of inaccuracy in non-news programmes and complaints that relate solely to inaccuracy, rather than with harm or offence, will not be entertained.

Whether a programme or item is “*materially*” misleading depends on a number of factors such as the context, the editorial approach taken in the programme, the nature of the misleading material and, above all, either what the potential effect could be or what actual harm or offence has occurred.

This rule does not apply to News. News is regulated under **Section Five**.

Broadcasters should also refer to Rules 2.13 to 2.16 and associated guidance. These rules concern, among other things, the broadcaster’s responsibility to avoid materially misleading audiences that are invited on air to participate in broadcast competitions and voting schemes.

Rule 2.3 Context and information

Offensive language

It should be noted that audience expectations and composition vary between television and radio and each medium has different listening/viewing patterns. Broadcasters should know their audiences.

The use of language (including offensive language) is constantly developing. Whether language is offensive depends on a number of factors. Language is more likely to be offensive, if it is contrary to audience expectations. Sensitivities can vary according to generation and communities/cultures.

Offensive material (including offensive language) must be justified by the context (as outlined under Rule 2.3 in the Broadcasting Code).

Broadcasters should be aware that there are areas of offensive language and material which are particularly sensitive.

Racist terms and material should be avoided unless their inclusion can be justified by the editorial of the programme. Broadcasters should take particular care in their portrayal of culturally diverse matters and should avoid stereotyping unless editorially justified. When considering such matters, broadcasters should take into account the possible effects programmes may have on particular sections of the community.

Similar considerations apply to other area of concern (as referred in the Broadcasting Code). For example, broadcasters should be aware that the use of bad language directly coupled with holy names may have a particular impact on people with strongly held beliefs which goes beyond any offence that may be caused by the bad language itself.

In addition to the editorial justification and context, broadcasters will wish to take into account:

- the individual impact of the particular swearword;
- the type of programme in which it appears. For example, in dramas and films, character and plot development may lessen the impact of such a phrase, whereas in a documentary, while a phrase can reflect the reality of a person or group, it may be less acceptable to the wider audience of viewers;
- whether information before or during the programme may lessen potential offence.

Research: Delete expletives? (2000) ASA, BBC, BSC, ITC; Offensive Language and Imagery in Broadcasting: A Contextual Investigation (2005) Ofcom; Violence and the viewer (1998) BBC, BSC, ITC

Discriminatory treatment or language (for example, matters relating to age, disability, gender, race, religion and sexual orientation)

There is a relationship between *representation* – the presence and inclusion of a diverse range of people on screen - and *portrayal* - the roles involved and the way that minority groups are presented in programmes. In standards regulation, the latter is assessed by *context* (as defined in the Code).

Research suggests that viewers and listeners appreciate programmes that are representative of the diverse society in which they live. If there is an under-representation, the use of stereotypes and caricatures or the discussion of difficult or controversial issues involving that community may be seen as offensive in that it is viewed as creating a false impression of that minority.

Research: Multicultural broadcasting: concept and reality (2002) BSC, ITC, BBC, RA; Disabling prejudice (2003) BBC, BSC, ITC; Representations of ethnicity and disability on television (2003) BSC, ITC

Information, labelling and warnings

Viewers and listeners are taking an increasing responsibility for what they watch and listen to and, for their part, broadcasters should assist their audience. Apart from the general considerations given in the Code about context, giving clear information and adequately labelling content may also reduce the potential for offence.

Where a programme has dealt with a particularly sensitive issue, broadcasters may wish to provide a helpline specific to that issue.

Research: The Broadcasting Standards Regulation (2003) BSC, ITC; Striking a balance: the control of children's media consumption (2002) BBCBSC, ITC; Dramatic Licence: fact or fiction? (2003) BSC; Audio Visual content information (2005) Ofcom

Trailers and programme promotions

Trailers come upon audiences unawares, so that people are not able to make informed choices about whether to watch or listen to them. Broadcasters should bear this in mind when scheduling trailers which may include potentially offensive material.

Broadcasters should also bear this in mind when scheduling trailers which may include challenging material (which includes but is not limited to, the use of the most offensive language, graphic violence or sexually explicit scenes).

The requirement in Rule 2.3 that broadcasters must ensure that material which may cause offence is justified by the context, equally applies to programme trailers. Therefore, trailers including challenging material (see above) may, in principle, be permitted post-watershed, provided they are sufficiently contextualised. It is therefore expected that:

- where such a trailer is broadcast during programming that is dissimilar in content – advance information should be given; or
- where the content of the trailer is substantially similar* to the programming either side of it - no advance information may be necessary.

In such cases, where the content of the trailer is substantially similar to the programming either side of it, then, it is not likely to be necessary for broadcasters to provide further advance information if either:

- such information has already been given to the audience about the programme broadcast before the trailer (e.g. “the following programme contains language that some viewers might find offensive”); or
- the likely expectation of the audience is that the programme contains challenging material and the trailer contains substantially similar material.

*Broadcasters should note the use of the term “substantially similar”. Simply because programming either side of a trailer contains adult themes does not mean that any trailer would be permitted e.g. audiences watching a programme containing offensive language would not necessarily expect a trailer broadcast during that programme to contain graphic violence or sexually explicit scenes.

Rule 2.4 Violent, dangerous or seriously anti-social behaviour

Broadcasters should have the creative freedom to explore areas which may raise serious social issues. This editorial freedom may extend to the style and tone of the programme as humour or dramatisation may provide easier access to difficult topics. However there are a range of activities that may be more problematic and the approach, such as information given before the programme or before an activity and the tone of commentary, is important in setting the parameters.

Late night shows featuring extreme sports or stunts have raised issues about the glamorisation of such activities. Even when scheduled appropriately, late at night, they may still raise questions in terms of vulnerable and younger viewers who may be encouraged to believe such behaviour is easily/harmlessly copied or acceptable.

Research: Dramatic Licence: fact or fiction? (2003) BSC; Violence and the viewer (1998) BBC, BSC, ITC; Knowing the score (2000) BSC, BBFC;

Rule 2.5 Suicide and self-harm

This rule reflects a continued concern about the impact of real or portrayed suicide, and self-harm, on those whose minds may be disturbed. Whilst it is always difficult to prove causality, various studies have shown that there may be a short-lived increase in particular methods of suicide portrayed on television. Broadcasters should consider whether detailed demonstrations of means or methods of suicide or self-harm are justified.

Rules 2.6, 2.7 and 2.8 Exorcism, the occult and the paranormal

Broadcasters and members of the public's attention is directed to the *Fraudulent Mediums Act 1951*. If members of the public believe that practitioners are acting in a way that would be caught by the provisions of this Act, it is a matter for the law and not for this Code.

For the following topics see guidance to Rule 1.27:

- Exorcism
- Occult
- Tarot
- Spells
- Paranormal
- Divination
- Astrology

Rule 2.9 Hypnosis

Elements of the hypnotist's routine may be broadcast to set the scene. However, it is important not to broadcast the routine in its entirety, nor to broadcast elements that may cause a member of the audience to believe they are being influenced in some way.

Broadcasters and interested members of the public will wish to be aware of the provisions of the *Hypnotism Act 1952*. If members of the public believe that practitioners are acting in a way that would be caught by the provisions of this Act, it is a matter for the law and not for this Code.

Rule 2.11 Subliminal Images

An image (however brief) that can be seen by viewers is not subliminal.

Rule 2.12 Flashing Images

Flashing images and/or patterns can cause seizures in people with photosensitive epilepsy. The Ofcom guidelines, based on scientific research, are intended to limit the incidences of seizures and a warning should only be used in place of the guidelines if editorially justified.

See attached Annex 1

Rules 2.13 to 2.16 Broadcast competitions and voting

Audience participation

Rules 2.13 to 2.16 apply to all broadcasters (Ofcom licensees, the BBC and S4C). Every Ofcom broadcast licensee is reminded that it is also ultimately responsible (as a condition of its licence to broadcast) for any communication with its audience that is publicised in (a) programme(s).

This section incorporates broader guidance on the use of participation techniques – notably premium rate telephone services (PRS) – within programmes. Such guidance is placed here, as much participation concerns broadcast competitions or voting, and, more generally, Section Two of the Code covers the subjects of harm and misleadingness, both of which are core concerns in the operation of participative interactivity.

When considering financial harm (and misleadingness resulting in financial harm), broadcasters should also bear in mind that where revenue is generated from interactivity this will generally be regarded as an aggravating factor for penalties in cases of proven compliance failure.

Where a broadcaster's compliance system for a broadcast competition or vote is inadequate or fails, this may give rise to a breach of Rule 2.13 and/or Rule 2.14 if the audience has been misled about the standards it can reasonably expect for treatment of its communication with broadcasters. (PRS are typical means by which broadcasters encourage participation – see below).

In these cases, harm or offence (or both) may arise in one of two ways:

- The audience's trust may have been abused, whether or not the interactive mechanism is free or charged for. Where the audience feels it has been misled or otherwise treated unfairly or negligently, this may cause serious offence; and where trust in broadcasting is undermined Ofcom is likely to conclude that harm has been caused; and/or
- Where a viewer or listener has paid a premium to interact with a programme, there is a clear potential for financial harm.

Voting schemes and competitions share certain characteristics, such as the imperative to aggregate interactions efficiently, the need to build in sufficient time for viewers to interact and for processing votes and entries, and the importance of contingency procedures in the event of technical or other problems. Guidance on these and other matters can be found below.

Premium rate telephone services in programmes

As broadcasters are responsible for 'means of communication' with the public, complaints to Ofcom about the use in programmes of telephone lines, SMS messaging, internet communication and so on will normally be dealt with at least by Ofcom. However, because the use of premium rate services will usually involve a specialist service provider regulated under the Code of Practice administered by PhonepayPlus (PP+), Ofcom and PP+ will co-ordinate investigations closely.

PP+ has a prior permission scheme for PRS service providers who provide services to broadcasters. A service provider must demonstrate that it has sufficient technical capacity, expertise and contractual clarity to be able to provide PRS services to broadcasters. If it deems it appropriate, generally because bad practice is established, PP+ can withdraw permission from a service provider, barring it from broadcast PRS operation.

Therefore, broadcasters should be aware that any service provider they contract with for broadcast PRS services must hold the necessary prior permission status. PRS have been the most usual source of problems in the area of audience participation and therefore require particular scrutiny.

Television broadcasters' licences issued by Ofcom therefore require verification by an independent third party in respect of PRS voting and competitions, where these are publicised in programmes – see separate guidance document at:

http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/guidance_verification_obj.pdf

Television broadcasters' attention is also drawn to PP+'s *A Statement of Expectations on Call TV Quiz Services*, which can be found in Annex 2 of the document at:

http://www.phonepayplus.org.uk/~media/Files/PhonepayPlus/Consultation-PDFs/Calltvquiz_SoE.pdf

This should, where relevant, be considered alongside the PP+ Code of Practice.

Ofcom radio broadcast licensees are reminded of their responsibility to adhere to the requirements of the RadioCentre's '*Code of Practice on Premium Rate Interaction*', which can be found at:

http://www.radiocentre.org/files/commercial_radio_premium_rate_interaction_code.pdf

Ofcom is currently monitoring the efficacy of this Code. During 2011, we will assess whether it is necessary to consider varying *radio* broadcasters' licences to require verification by an independent third party in respect of PRS broadcast competitions and voting that are publicised in programmes.

General fairness

The general conduct and design of competitions (including Call TV quiz services)

Ofcom expects all competitions to be run fairly and honestly. Broadcasters who run them are inviting viewers and listeners to take part in schemes on terms that would be assumed to be equitable and free of deception. All aspects of a competition should therefore be clear and fair.

Technical issues and production pressures

Two features have been found particularly likely to produce difficulties with the proper running of competitions: the technical complexity of telephony and other communication technology chains, and the pressures of production, particularly live production. Each can give rise to problems by itself, but frequently the two effects interrelate.

Technical issues

Broadcasters are strongly advised to seek expert guidance on all parts of the systems used by the audience for entry to competitions and relied on by broadcasters for the administration of competitions. This will include, as appropriate, expertise in such matters as telecommunications network capacity, 'latency' in mobile networks, reliability of equipment, service provider and aggregator capability, and the efficiency and robustness of communication between producers, service providers and others.

Broadcasters may not always have direct operational control of elements within the supply chain, for example telephone networks. But broadcasters do have control over the choice of particular means of communication and of contractors and intermediaries, and over contracts and other agreed protocols. Bearing in mind that responsibility in this area cannot be reassigned by broadcasters, licensees are advised to be able to demonstrate that all due care has been taken with network selection and operational arrangements. In the case of mobile networks this should include decisions about the choice of billing method.

Ofcom understands that PRS provision now generally allows lines to be closed at the end of voting and competition entry periods such that calls made outside those periods do not incur a premium charge. Arrangements in which calls continue to be so charged outside allotted entry or voting periods are very much more likely to be found in breach of the Code (or of licence conditions, as appropriate). Broadcasters should make every effort to ensure that PRS charges are not applied in such circumstances. Generally, because network charges may be incurred, broadcasters should make clear to audiences that early or late calling may attract some charge, unless steps have been taken to ensure that such calls are not in fact terminated and that no charge at all can be incurred.

In general, the robustness of systems should be assured whether interaction is free or charged for.

'Red button' activities on certain platforms can be subject to user interaction such that entries and votes can be charged without the relevant interaction having been fully registered. This happens if users interact (i.e. press the red button or equivalent) in a way that requires an online connection but then 'navigate' away from that connection prematurely.

- Broadcasters using 'red button' routes for interactivity should ensure that where a risk of user navigation 'error' exists such that charges might be incurred without the relevant interaction having been completed, viewers who select the relevant chargeable option receive a specific visual on-screen warning explaining how to minimise any risk of their entry being charged but not received.

Production pressures

It is evident that some competitions have been operated improperly because production and editorial values have been placed before obligations of fairness: some broadcasters have regarded the maxim 'the show must go on' as trumping their regulatory (and ethical) duties.

One key consideration in the production planning for competitions is time. In live programming this concern is especially acute. Broadcasters will wish to consider carefully whether shorter live programmes are capable at all of providing sufficient time for the proper administration of competitions, mindful that some extra time may be necessary because of technical or other problems. **Similar considerations apply to voting schemes.**

Strains on the production process include competitions attracting no correct answers, technical problems leading to a breakdown in the process of gathering entries, choosing winners and communicating the necessary details, and difficulties with putting winners to air.

Broadcasters should, therefore, consider carefully whether the time for entry and for processing is safe and, importantly, be prepared to abort a competition and if necessary make clear to the audience that this has been done.

- The time for closure of the entries to a competition should take due account in each case of the technical capacity, the likely level of response, and the time needed for winners or successful entrants to be selected fairly.
- In the event of a significant failure in the process becoming known before a result is broadcast, the result should be withheld until the failure is rectified and the audience so notified, if appropriate.

There are further areas of advice indirectly related to production that broadcasters are reminded are also very important. For example, the handling of competition entries may be unfair if statistical flaws are introduced, for instance by selecting from proportions of entries from different routes (telephone, internet, post etc), or the exclusion of some entries by 'sampling' during an entry period. These techniques can easily bring about unfairness unless very close attention – likely to include expert statistical advice – is paid to the way they are used.

Further, it is Ofcom's view that competitions resolved through the random picking of a winner are generally understood by viewers to operate as simple draws analogous to raffles and similar 'winner out of a hat' schemes: in other words, that all entries from which a winner will be chosen are entered into the pool. The selection should of course be genuinely random.

Where competitions are resolved in a different manner, for example by the first caller chosen or the automated elimination and selection of callers at the point of contact, it may be appropriate to adopt a different approach, but it is imperative that any selection method is fair and that great care is taken to ensure that viewers or listeners are made aware of the method of choosing winners or candidate winners.

- Without justifiable reason to do otherwise, any process of shortlisting or selecting winners or successful entrants should begin only after the time set for closure of entries and after an additional time calculated to enable all entries to be aggregated;

In all cases Ofcom's advice is that licensees should explain to viewers and listeners how a competition is run and the methods used for selecting winners.

Pricing

This subject is of great importance. Licensees are advised to consider carefully the information they make available to viewers about costs and to give as much clear detail as is practicable. The cost to viewers of using Controlled Premium Rate Services (CPRS) or other communications services, in which the revenue generated is shared between relevant parties, must be made clear to them and broadcast as appropriate. Such information should always be delivered in a way that is clear and comprehensible to the audience.

Controlled PRS are those services which are subject to Ofcom's PRS Condition which Ofcom has made for the purpose of regulating the provision, content, promotion and marketing of PRS in accordance with Section 120 of the Act.

Controlled PRS are premium rate goods and services that viewers can buy by charging the cost to their phone bill or pre-pay account. These services tend to cost more than a normal phone call or text message and are regulated by PhonepayPlus.

Other telephony services include Unbundled Tariff Numbers (UTN) which are those telephone numbers starting 084, 087, 09 and 118.²

The principle underpinning UTN ensures listeners and viewers are aware of how much of their money is paid to their phone company and how much is passed to others (such as the organisation or service being called). The 'unbundled tariff' structure involves the separation of the retail price into two separate elements consisting of:

- a) the Access Charge: which is paid to the phone company originating the call; and
- b) the Service Charge: which is paid to the phone company terminating the call and may be shared with the company providing the service.

The Access Charge is a single, pence per minute amount, for each consumer's tariff package and is the same across all UTNs. Consumers can find out their Access Charge through their phone provider. Each individual 084, 087, 09 or 118 number has a single service charge that applies to calls to that number from all fixed and mobile phones.

The Service Charge is the charge linked to each individual 084, 087, 09 or 118 number. It is the amount which applies to calls to that number from all fixed and mobile phones. Importantly, the Service Charge must be identified whenever the number is presented (i.e. in advertising and programming).

Broadcasters are required to give viewers specific pricing information when UTN are used; in particular broadcasters are required to make clear in a prominent position

² Some UTNs are also classified as controlled PRS, specifically 087 numbers with a service charge higher than 5.833p (excluding VAT), 09 and 118 numbers.

and in close proximity to the UTN, the relevant Service Charge³. Ofcom advises that one of the following messages are used, either:

“Calls cost [i.e. service charge] per minute plus your phone company’s access charge”,

or:

“Calls cost [i.e. service charge] per minute plus your network access charge”.

Further information on the unbundled tariff structure is available at: <http://www.ukcalling.info/>. Broadcasters may want to refer to this website in the terms and conditions attached to the use of the relevant UTN.

Repeat Broadcasts

- If a former live competition or programme containing live voting is re-run so that it is no longer possible for the audience to participate by contacting the number given on air, then Ofcom would expect this to be made clear to the audience. On television, text stating “pre-recorded” is likely to be insufficient unless the phone line is also dead or the number on screen is also illegible. Broadcasters may also need to be aware of PP+’s Code of Practice concerning this matter.

Free Entry Route

The Gambling Act 2005 contains provisions for lotteries. These include the terms on which free entry routes can be offered and promoted as a means to avoid prize competitions becoming illegal lotteries. Licensees are urged to seek expert legal advice on the law in this area. The Gambling Commission has published guidance, available at:

<http://www.gamblingcommission.gov.uk/Gambling-sectors/Lotteries/About-the-lottery-industry/Running-a-lottery/Free-draws-and-prize-competitions.aspx>

Scope of Rules 2.13 to 2.16

These rules concern broadcast competitions (of whatever difficulty) and voting, and generally apply whenever a competition or vote is publicised or run, or when their results are reported on air.

Ofcom believes that participation in which viewers or listeners are likely to have a strong personal interest in the outcome requires the provision of specific protection for participants from harm. General entertainment programmes such as contests and gameshows are not therefore generally classified as broadcast competitions.

Likewise, voting does not generally include opinion polls. However, broadcasters should note Rule 2.2 of the Code, which concerns misleadingness of (other) factual matters.

Rules and terms & conditions

³ The Telephone Number Condition binding non-providers to set out in the condition in Annex 12 of the 2013 NGCS statement, and the requirement for Communications Providers (i.e. “phone providers”) is set out in the amended General Condition 14 in Annex 8 (available here: <http://stakeholders.ofcom.org.uk/binaries/consultations/simplifying-non-geo-no/statement/ANNEXES.pdf>)

Rule 2.15 refers to the requirement for broadcasters to draw up rules for broadcast competitions and votes. The term 'rules' here is used to mean any rules concerning, for example, the mechanic of a competition but also applies to any terms and conditions that, for instance, stipulate entry or participation requirements. This covers both general sets of terms and conditions that a broadcaster may have in place to cover all its broadcast competitions and/or votes, and any specific rules for each individual competition or vote.

In other words, Rule 2.15 is intended to cover all rules, terms and conditions that are applicable to the broadcast competition or vote.

Rule 2.15 requires that rules are "clear and appropriately made known". For example, we expect rules that limit those who can take part in a competition to be broadcast. (Note: their broadcast is not expected if specific individuals – e.g. previous prize winners – have been informed directly). In particular, where an entry limitation is considered to be significant (e.g. an age restriction for entering a competition) broadcasters should air them orally each time a competition is run and on a regular basis throughout longer sequences.

We strongly recommend that broadcasters produce written rules that support all and/or specific competitions being broadcast by them. Where the competition is broadcast on television, details of where the relevant rules are available (e.g. on the channel/programme's website) ought to be aired regularly, while on radio, where competition strands are often shorter, we would normally expect such details to be mentioned at least occasionally. Broadcasters may also need to be aware of PP+ requirements regarding this issue, including those in its Statement of Expectations.

Competitions are sometimes run simultaneously on various local/regional services (e.g. on a radio network), and this may result in participation being spread wider (i.e. beyond the local area) than might be obvious to the viewer/listener in any one area. In such circumstances, and where the main prize is not awarded by each service, we would normally expect that, in order to be fair, it has to be made clear that other services are participating. This should be done both on air and in any written rules, whenever the competition or its results are run.

Solutions and Methodology

A cause of complaint has been that, at the end of a competition, the way in which the solution is reached ('methodology') has not been explained on air and, in some cases, the answer has not been given. As many competitions are cryptic, this leads some of the audience to doubt whether the solution given is correct and to question the legitimacy of the competition. This is often because the complainant cannot understand the methodology. A further concern expressed by complainants is that as many competitions have more than one possible solution, the broadcaster may change the answer while a competition is on air, preventing it being solved too early. Sufficient transparency is therefore necessary in order to ensure that competitions are both conducted fairly and seen to be conducted fairly, to avoid unnecessary audience concern.

- Except where the logic behind an answer to a competition question is readily recognisable to a reasonable viewer, the methodology used to produce it should be adequately explained during the broadcast at the time the answer is given. The same guidance – the broadcast of both the answer and any

explanation of how it was arrived at – applies in the event that no entrant is successful.

It is expected by Ofcom that explanations of methodologies will normally be given during a programme. But there may be occasions where it is appropriate for licensees to provide that explanation in additional ways, such as on a website. When this is done, clear directions to viewers about how to access the methodology should be given. With complicated methodologies, it is likely that a web page or other medium that can allow viewers time to study the explanation or make a copy of it will be particularly appropriate, although licensees should always expect to give the methodology on air as well.

None of the guidance given above about disclosing methodologies should be understood as justifying any methodology that is unfair. Ofcom regards obscure or absurd methodologies, of any sort, as unfair. The Code is most likely to be breached in this respect where arbitrary or contrived puzzles are presented in a way that suggests they can be solved by straightforward means. Further discussion about this is given below.

- Where a competition is cryptic or ambiguous, or there appears to the audience to be more than one possible answer to a competition, broadcasters must, when requested by Ofcom, provide evidence that the competition has been run fairly. Broadcasters should be able to provide Ofcom with the correct answer and the methodology used to arrive at that answer, together with evidence that it could not have been changed after the competition started. For example, a broadcaster may choose, before a competition is run, to place its chosen methodology and/or answer with an independent professional third party (e.g. an auditor or solicitor).
- Ofcom recognises that competitions may be carried forward to another time/day. Appropriate transparency about this is important. However, where competitions form the essential feature of a programme (e.g. in the case of Call TV quiz services or similar) an audience should be given the correct solution and its associated methodology, when a competition ends.
- For a competition to be conducted fairly, we believe its correct solution should be reasonable (i.e. not unfairly obscure) and certain. This applies to all competitions, including those that Ofcom judges to be dependent to any extent on factual recall and/or the application of established protocol (e.g. accepted mathematical process). However difficult or cryptic the competition, where a specific methodology is used, we would expect application of that methodology to produce only the correct solution. All methodologies should be clear, comprehensive and precise.
- If a methodology is re-used in any later but similar competition by a broadcaster, the instructions or questions given to viewers and listeners in the subsequent quizzes should not differ materially from those given to the audience when the methodology was used previously. It is expected that the audience shall not be led to believe that a different methodology applies in the later competitions. For example if a methodology is re-used, any instruction or question given to the audience in the first broadcast of the competition (e.g. “add all the numbers”) and the name of the competition should remain the same, and not be changed (e.g. “add all the numbers” to “solve the sum”). Equally, if the name of a quiz, and the instructions or questions issued to the

audience, are repeated in a subsequent competition, and if the information the audience has to consider is in a similar format, the methodology should be the same.

- In order to conduct a competition fairly, an audience should not be misled by a broadcaster stating or implying that a competition is simple if it is actually difficult or cryptic.

Prizes and winners

- Prizes should be despatched within a reasonable time (note: where relevant, PP+'s requirements may apply), unless indicated otherwise when the prize is described.
- If particular prizes become unavailable post-broadcast, we would expect comparable substitutes to be provided.
- We would strongly advise broadcasters not to present a monetary prize as a possible resolution of financial difficulty (e.g. as a means of paying off credit card debt). See also Rule 2.1.
- As best practice and to forestall audience concern, broadcasters may wish to consider listing the names of all winners, with their permission, on an appropriate website as soon as possible after their wins.

Annex 1

Ofcom Guidance Note on Flashing Images and Regular Patterns in Television

Re-issued as Ofcom Notes (25 July 2005)

Revised and re-issued by the ITC in July 2001

Editorial amendment June 2002

1. Flickering or intermittent images and certain types of regular pattern can cause problems for some viewers who have photosensitive epilepsy. These guidelines have been drawn up following consultation with leading medical opinion in this area with the aim of reducing the risk of exposure to potentially harmful stimuli.

2. Television is by nature a flickering medium. In Europe each transmitted picture is refreshed 50 times each second and interlaced scanning generates flicker 25 times each second. It is therefore impossible to eliminate the risk of television causing convulsions in viewers with photosensitive epilepsy. To reduce risk the following guidelines on visual content should be applied when flashing or regular patterns are clearly discernible in normal domestic viewing conditions. It should be noted that the level of any cumulative risk arising from successive sequences of 'potentially harmful' flashes over a prolonged period is unknown. If, as medical opinion suggests, the risk of seizures increases with the duration of flashing, broadcasters should note that it is possible that a sequence of flashing images lasting more than 5 seconds might constitute a risk even when it complies with the guidelines below.

3. **A potentially harmful flash** occurs when there is a pair of opposing changes in luminance (i.e., an increase in luminance followed by a decrease, or a decrease followed by an increase) of 20 candelas per square metre (cd.m⁻²) or more (see notes 1 and 2). This applies only when the screen luminance of the darker image is below 160 cd.m⁻². Irrespective of luminance, a transition to or from a saturated red is also potentially harmful.

3.1.1. Isolated single, double, or triple flashes are acceptable, but a sequence of flashes is not permitted when both the following occur:

- i. the combined area of flashes occurring concurrently occupies more than one quarter of the displayed (see note 3) screen area; and
- ii. there are more than three flashes within any one-second period. For clarification, successive flashes for which the leading edges are separated by 9 frames or more are acceptable, irrespective of their brightness or screen area.

4. **Rapidly changing image sequences** (e.g. fast cuts) are provocative if they result in areas of the screen that flash, in which case the same constraints apply as for flashes.

5. A **potentially harmful regular pattern** contains clearly discernible stripes when there are more than five light-dark pairs of stripes in any orientation. The stripes may be parallel or radial, curved or straight, and may be formed by rows of repetitive

elements such as polka dots. If the stripes change direction, oscillate, flash or reverse in contrast they are more likely to be harmful than if they are stationary. If the patterns obviously flow smoothly across, into, or out of the screen in one direction they are exempt from restriction.

5.1. Potentially harmful patterns are not permitted when either of the following two conditions apply:

i. the stripes are stationary and the pattern occupies more than 40% of the displayed screen area; or

ii. the stripes change direction, oscillate, flash, or reverse in contrast and the pattern occupies more than twenty five per cent of screen area; and in addition to either of the above two conditions applying, when

iii. the screen luminance of the darker bars in the pattern is below 160 cd.m⁻² and differs from the lighter bars by 20 cd.m⁻² or more (see notes 1 and 2).

Footnotes:

1. Video waveform luminance is not a direct measure of display screen brightness. Not all domestic display devices have the same gamma characteristic, but a display with a gamma of 2.2 may be assumed for the purpose of determining electrical measurements made to check compliance with these guidelines (see appendix I).

2. For the purpose of measurements made to check compliance with these guidelines, pictures are assumed to be displayed in accordance with the 'home viewing environment' described in Recommendation ITU-R BT.500 in which peak white corresponds to a screen illumination of 200 cd.m⁻².

3. It may be assumed that overscan on modern domestic television receiver displays will normally be in the range 3.5% ± 1% of the overall picture width or height (as indicated in EBU Technical recommendation R95-2000).

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Further References

Relevant Codes

The ITC Programme Code, *Autumn 1998, Section 7.3 revised September 1999, Section 1.12(iii) revised Spring 2001*

Ofcom Broadcasting Code, Harm and Offence, Section 2.10 (date tbc)

The ITC Advertising Standards Code, *September 2002*

External Publications

Harding, Graham F.A., & Jeavons Peter M. *Photosensitive Epilepsy (1994) ISBN: 0898683 02 6*

Harding, Graham F.A. *TV can be bad for your health, Nature Medicine Vol.4 No.3 March 1998*

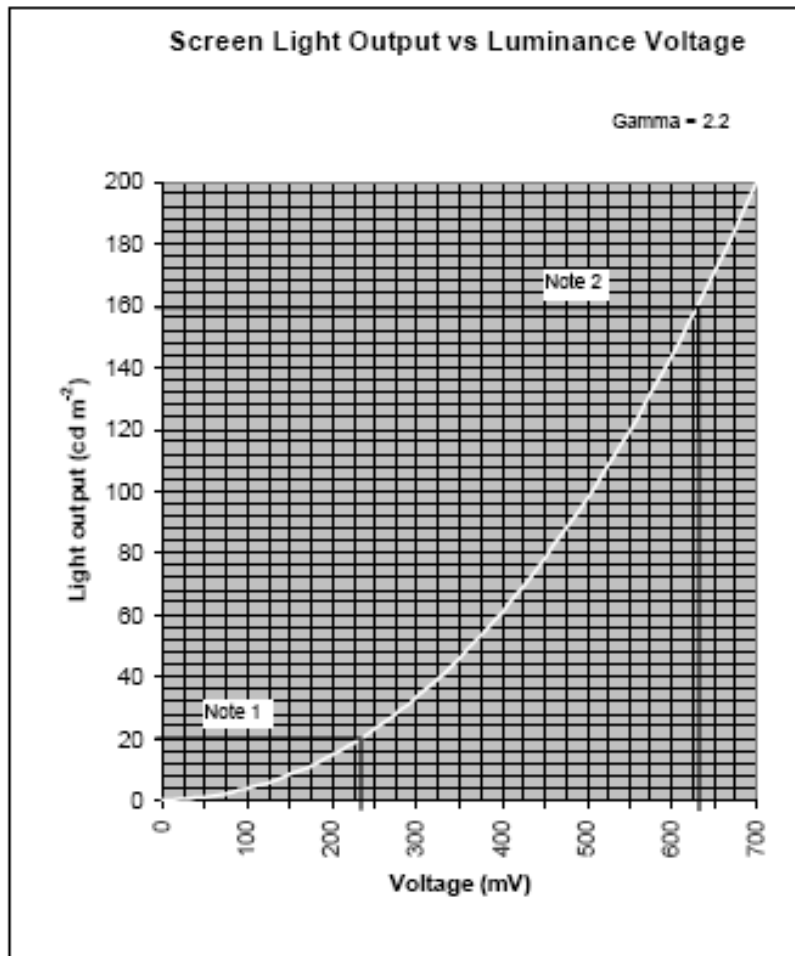
Wilkins, Arnold J. *Visual Stress (1995) ISBN 0 19 852174 X*

Ofcom Guidance Note on Flashing Images and Regular Patterns: Luminance Measurement

Screen luminance may be measured using a hand-held spot photometer with a CIE characteristic designed for making measurements from a television screen. The display conditions are those of the 'home viewing environment' described in Recommendation ITU-R BT.500. For accurate results, the display brightness and contrast should first be set up using PLUGE (Rec. ITU-R BT. 814) with peak white corresponding to a screen illumination of 200 cd.m⁻².

As an alternative, the following graph and table may be consulted if electrical measurements are more convenient. This shows the typical relationship between luminance (monochrome) voltage and the emitted light output of a television display.

There are measurement uncertainties associated with both methods. Nevertheless, flashing images or regular patterns described in this Guidance Note as being potentially harmful can be expected to be obviously discernible. Such potentially harmful images occur only rarely during the course of programme material with scenes that appear natural or represent real life; examples include photographers' flashlights or strobe lights in a disco. Part of the purpose of the Guidance Note is to assist programme producers to avoid inadvertently creating video effects that contain flashing images or patterns likely to be harmful.



Voltage (mV)	Light (cd/m ²)
0	0.1
25	0.4
50	1.2
75	2.3
100	3.8
125	5.8
150	8.3
175	11.2
200	14.6
225	18.6
234	20.1
250	23
275	28
300	33.5
325	39.5
350	46.1
375	53.2
400	61
425	69.3
450	78.1
475	87.6
500	97.6
525	108.3
550	119.5
575	131.4
600	143.9
625	157
631	160
650	170.7
675	185
700	200

Notes:

1. A luminance voltage of 234 mV results in light output of 20.1 cd.m-2. If the **brighter** image of a flash or pattern is **above** this level, then it is potentially harmful if the light output between the darker and brighter images differs by 20 cd.m-2 or more.

2. A luminance voltage of 631 mV results in light output of 160 cd.m-2. If the **darker** image of a flash or pattern is **below** this level, then it is potentially harmful if the light output between the darker and brighter images differs by 20 cd.m-2 or more.