



Ofcom guidance on Psychic television services predicated on premium rate telephony services

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Introduction

Ofcom has general regulatory responsibility for content standards in UK broadcasting. It has contracted out the regulation of most aspects of broadcast advertising to the ASA, but retains responsibility for the advertising all 'participation TV' ("PTV") services¹. These services are, in common with all other advertising-based services, subject to the provisions of the *BCAP Code: the UK Code of Broadcast Advertising* ("the BCAP Code"), but are the responsibility of Ofcom rather than the ASA.

This guidance is to aid those broadcasters that carry psychic PTV advertising content – whether as the sole output of their channels or in the form of teleshopping 'windows' supplied by another – and in particular to highlight Ofcom's likely interpretation of the relevant BCAP Code rules relating to some recent compliance issues.

This guidance is issued by Ofcom under the BCAP Code. The BCAP Code is drawn up and published by the Broadcast Committee of Advertising Practice Ltd ("BCAP") and is generally interpreted and enforced by the Advertising Standards Authority (Broadcast) Ltd ("ASA"). This arrangement whereby duties allocated by Parliament to Ofcom are carried out by BCAP and ASA has been effected through a procedure of contracting out² of Ofcom's statutory duties to regulate broadcast advertising.

The relevant body for the regulation of spot advertisements, traditional teleshopping, TV text and interactive TV advertisements continues to be the ASA.

Application of the BCAP code

Significant BCAP Code rules³

General

The overarching principles of the BCAP Code are that advertisements should not mislead or cause serious or widespread offence or cause harm, especially to children or the vulnerable.

¹ PTV is defined as long-form advertising (teleshopping) content that: (1) has as its primary purpose the promotion of premium rate telephony services (PRS), or (2) has as its primary purpose the promotion of paid interaction by viewers with content, through payment mechanisms other than PRS.

² Memorandum of Understanding between Ofcom and the ASA and BCAP and Basbof can be found at: http://stakeholders.ofcom.org.uk/binaries/consultations/reg_broad_ad/statement/mou.pdf

³ The full BCAP code can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

Broadcasters are responsible for ensuring that the advertising they transmit complies with both the spirit and the letter of the BCAP Code.

These general considerations of misleadingness, offensiveness and harm should be kept firmly in mind at all times: they are directly relevant to psychic PTV advertising content as broad principles and they inform the more specific rules that apply to psychic material.

Broadcasters should be aware that they must not materially mislead viewers. Therefore they should take note of the relevant rules in Section 3 of the BCAP Code (Misleading Advertising). For example, this section provides rules on areas such as pricing and superimposed text.

Importantly, this broadcast content should be readily identifiable as advertising. This is a key requirement of the BCAP Code (see in particular Rules 2.1 and 2.4.1). Therefore, nothing in psychic PTV material should suggest that the content is editorial: straps or other text, for example, must not contain any such description or suggest in any other way that the material is anything other than advertising.

Broadcasters should be aware that Ofcom considers broadcasters' compliance with its rules that serve to protect audiences from harm to be of particular importance. Ofcom therefore considers breaches of the rules in this area to be significant and, depending on the circumstances of the case, may consider taking further regulatory action against the licensee in question.

Rules specific to psychic PTV advertising content

Prior to 1 September 2010 the BCAP Code prohibited PRS-based live and personalised psychic PTV services from advertising. In now permitting this category of advertising, the BCAP Code places certain restrictions on it.

The relevant BCAP Code rules can be found in Section 15: *Faith, Religion and Equivalent Systems of Belief* (<http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-Code-pdf-versions.aspx>). Below is some guidance on the key rules in this area.

Rule 15.4

Importantly, the BCAP Code contains explicit prohibitions on certain types of psychic practices or practices related to the occult (Rule 15.4).

“Television advertisements must not promote psychic practices or practices related to the occult, except those permitted by rule 15.5...[meaning Rules 15.5.5 certain tarot-based services and 15.5.2 – see below].

Psychic and occult-related practices include ouija, satanism, casting of spells, palmistry, attempts to contact the dead, divination, clairvoyance, clairaudience, the invocation of spirits or demons and exorcism.”

Rule 15.5.2

The core rule in this area is Rule 15.5.2:

“Advertisements for personalised and live services that rely on belief in astrology, horoscopes, tarot and derivative practices are acceptable only on channels that are licensed for the purpose of the promotion of such services and are appropriately

labelled: both the advertisement and the product or service itself must state that the product or service is for entertainment purposes only”.

Rule 15.5.3

The BCAP Code also contains explicit prohibitions in Rule 15.5.3 regarding specific material in psychic PTV advertising content. Such material must **not**:

- include claims for efficacy or accuracy – this covers both explicit and implicit claims made by presenters/psychics and the broadcast of viewer testimonials or endorsing comments (see “*Use of testimonials*” below) i.e. any reference that implies psychic content is anything but entertainment;
- predict negative experiences or specific events – the latter including births, deaths, marriages or new jobs;
- offer life-changing advice directed at individuals, including advice related to health (including pregnancy) or financial situation. Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely. Ofcom has published a Finding that illustrates its interpretation of life-changing advice⁴;
- appeal to children – this is rarely an area of concern for this sector, however broadcasters are directed to Section 5: Children, and Section 32: Scheduling, in the BCAP Code, for further guidance; and
- encourage excessive use.

It is vital to remember that this rule allows psychic PTV advertising content to be presented only as *entertainment*. To be clear, it is not sufficient to rely only on on-screen text to fulfil this requirement of Rule 15.5.3. The advertising as a whole must reflect this principle. The Code therefore does not permit the advertising of psychic services on any other basis: psychic readings cannot stray beyond the carefully circumscribed area of entertainment and should never be presented as reliable, substantiated or offering anything other than a form of entertainment.

With this in mind we would stress that the intention behind the rules in BCAP Section 15 is to protect those viewers who are vulnerable, for example because of sickness or bereavement and more generally to prevent potentially harmful advertising from exploiting the audience, for example financially. (See also Rule 15.12)

Techniques and Props

i) Use of “props” e.g. chicken bones, tea leaves, crystal balls, rocks and pendulums.

The BCAP Code does not explicitly state the range of props acceptable for use in psychic PTV advertising content. Therefore we would consider such content on a case by case basis, and with reference to Rule 15.5.2 which refers to “...astrology, horoscopes, tarot and derivative practices ...”.

⁴ Note: this Finding relates to programme material that was assessed against the Ofcom Broadcasting Code. However, the principle of ‘life-changing advice’ is equally applicable to advertising content. <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb112/issue112.pdf>

Ofcom considers the use of props such as chicken bones, tea leaves etc are not in principle problematic, however the use of such materials to indirectly promote or in any other way imply a prohibited psychic practice or practice related to the occult (see Rule 15.4, as set out above) is likely to be unacceptable.

ii) Use of testimonials

All material that appears within psychic PTV content is advertising and is therefore subject to the BCAP Code, whatever its source.

Comments from callers endorsing the efficacy or accuracy of psychics/presenters or of the services offered are therefore prohibited under Rule 15.5.3 (as referred to above), in the same way as claims of efficacy or accuracy made by presenters or psychic performers themselves. This applies irrespective of whether such claims appear in live or pre-recorded content, are spoken or appear in text on-screen.

Ofcom has published Findings in Broadcast Bulletins 180⁵ and 184⁶ which highlight its interpretation of claims of efficacy or accuracy with regards to the psychics, presenters or services offered.

iii) References to 'spirit guides'

Ofcom considers that references to 'spirit guides' used by presenters are not in principle problematic under the BCAP Code. However the use of 'spirit guides' to promote indirectly or imply a prohibited psychic practice or practice related to the occult (see Rule 15.4, as set out above) is likely to be unacceptable, for example using a 'spirit guide' as an apparent means of contacting a dead loved one of a viewer.

For clarity, the use of a 'spirit guide' – which includes some supposed supernatural advisor of obscure, mythological or ancient provenance – is not, in Ofcom's opinion, akin to communicating with the dead.

Licensing

Broadcasters are reminded that that they are required to be separately licensed by Ofcom for the purpose of the promoting live psychic PTV advertising content or telecommunications-based sexual entertainment services. Broadcasters should note that requirement applies equally to broadcasters who carry teleshopping windows for this type of content. A licensee planning to carry psychic PTV material should therefore contact Ofcom's broadcast licensing team in advance of showing this material.

⁵ *Psychic Interactive, Psychic TV, 25 January 2011, 10:30-11:15:*
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf>

⁶ *Psychic TV Teleshopping feature, Big Deal, 11 March 2011, 21:30-22:00:*
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf>