

## **BBC response to Ofcom consultation on changes to the Broadcasting Code**

We have responses to questions 7,8,12,17,30,36 and 44 only.

### **Competitions and Voting Rules (Code Section Two)**

*Question 7: a) Do you consider that the introduction of new rules in relation to competitions and voting is appropriate? b) Do you agree with our proposed new rules in relation to competitions and voting (proposed Rules 2.11 to 2.13 to replace Rule 2.11)? c) If you do not agree with our proposed new rules, please explain why and suggest alternative wording where appropriate.*

- a. Yes
- b. We have no objections to proposed Rules 2.11 to 2.13, but consider proposed rules 9.11 & 10.12 would be more appropriate as new rule 2.14. In particular, we believe a failure to communicate “significant conditions that may affect a viewer’s decision to participate” would be “materially misleading”. We discuss this point in more detail in our response to question 17
- c. Ofcom’s intention is not clear here. The term “fairly promoted” should be defined. If the test is that the promotion does not “materially mislead”, then it is covered by the second part of proposed 2.11.

*Question 8: a) Do you consider that the introduction of new meanings in relation to competitions and voting are appropriate? b) Do you agree with our proposed new meanings in relation to competitions and voting? c) If you do not agree with our proposed new meanings, please explain why and suggest alternative wording where appropriate.*

- a. Yes
- b. No
- c. Competition: We do not consider it good practice to use, in a definition, the word that is being defined. Secondly, as currently drafted, it may encompass a prize draw. We therefore suggest: "An element featured in a programme which requires viewers and/or listeners to exercise skill or judgment or to display knowledge for the purpose of winning a prize".

*Question 9: a) Do you wish to suggest an alternative approach to the proposed set of rules in relation to competitions and voting? If so, please outline your proposals, which should comply with relevant legislation (including the Communications Act 2003, the Audiovisual Media Services Directive, the AVMS Directive (Implementation) Regulations 2009 and Article 10 of the European Convention on Human Rights.*

- a. See our response to question 7, above.

### **Commercial References in Television Programming Rules (Code Section Nine)**

*Question 12: a) Would you consider that it appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so please explain why. If not, please explain why not. b) If Ofcom were to introduce rules in relation to Public Information Programming: i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please*

give details. ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on viewers, the television industry and any other parties? iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why. iv. Do you consider that additional or alternative safeguards to those included in the draft potential rules are necessary? If so, please provide details. v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions? vi. Do you consider it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.

- a. In principle, we believe it appropriate that Ofcom introduces rules that would allow Public Information Programming. However, proposed rule 9.29 is unclear, and raises issues when broadcasting across national borders, as “matters relating to political, industrial or public controversy” vary from country to country. A matter, such as the use of condoms to prevent sexually transmitted diseases, may be public information in the UK, but there are countries such as Poland where any public discussion of birth control is regarded as controversial, or offensive. The rule should therefore either be amended or supported by clear guidance explaining how Ofcom will assess any allegation of a breach of this rule. Will it be against UK standards, or wherever the service is received?

*Question 17: a) Do you consider that the introduction of a new competition and voting section is appropriate? b) Do you agree with the proposed new competition and voting section for Section Nine? c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate. d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee? e) If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why.*

- a. In principle, we accept that the Code and compliance with its provisions would benefit from clearer rules on competitions and voting.
- b. In part only, see below
- c. 9.10: The preface to this section refers to 319(4)(f) of the Communications Act 2003, which is not directed to preventing harm, but ensuring editorial independence. Matters concerning harm should be dealt with in a section of the Code referencing the relevant part of the Act - in this case, Section 2. More generally, Ofcom has not had any difficulty in considering “financial harm” an aggravating matter when assessing the gravity of breaches of existing 2.2 & 2.11, so it is unclear why the test in a “commercial references” chapter is “financial harm”. A more appropriate test in these circumstances would be whether the broadcaster intended to profit by the unfair competition, for example, by allowing commercial considerations to override editorial independence.  
9:11: It is not clear how a competition could be in breach of this rule without also being in breach of proposed rule 2.12 - “Terms and Conditions” being part of a competition’s “Rules”. More generally, it is not clear why the proposed 9.11 should appear in a chapter covering commercial references (ie, which address situations where a broadcaster acts in a way that may fail to maintain

the independence of editorial control) as there is no clear test of the mischief it is designed to prevent.

- d. No.
- e. Commercial references in BBC licence fee funded services are not regulated by Ofcom, by the Memorandum of Understanding between Ofcom and the BBC Trust. More generally, as drafted, the proposed section 9 has a principle “to ensure that audiences are protected from the risk of financial harm (consumer protection)” which, it is explicitly stated, does not apply to the BBC. That is contradicted by the statement that rule 9.10, which refers to “financial harm” does apply to the BBC. This appears to be inconsistent.

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

*Question 30: a) Would you consider that it is appropriate for Ofcom to introduce rules that would allow Public Information Programming (as described above)? If so, please explain why. If not, please explain why not. b) If Ofcom were to introduce rules in relation to Public Information Programming: i. Are there any potential programmes that you believe could comply with the potential rules but that you consider would be undesirable or arguably not in the public interest? If so, please give details. ii. What impact (e.g. social, economic, equality) do you think the potential rules would have on listeners, the radio industry and any other parties? Please provide any evidence or data to support your answer. iii. Do you consider that the potential rules would maintain the editorial independence of the broadcaster and provide adequate consumer protection? If not, please explain why. iv. Do you consider that additional or alternative safeguards to those included in the draft proposed rules are necessary? If so, please provide details. v. Specifically, should there be any restriction on the type of non-commercial, not-for-profit entities permitted to fund Public Information Programming, and if so, what restrictions? vi. Do you consider that it would be appropriate for Ofcom to review these rules two years after their introduction? If not, please explain why.*

Please see our response to Question 12

*Question 36: a) Do you consider that the introduction of a new competition and voting section is appropriate? b) Do you agree with the proposed new competition and voting section for Section Ten? c) If you do not agree with our proposed new competition and voting section, please explain why and suggest alternative wording where appropriate. d) Do you agree that it is appropriate to apply these rules to BBC services funded by the licence fee? e) If you do not agree that it is appropriate to apply these rules to BBC services funded by the licence fee, please explain why and suggest drafting changes where appropriate.*

Please see our response to Question 17.

#### Sections of the Code where no revisions proposed

*Question 44: a) Do you agree with the proposed approach which only proposes changes to Section One of the Code in relation to material of a sexual nature, only proposes changes to Section Two in relation to Competitions and Voting, and proposes no changes to Sections Three to Eight. b) If you do not agree with our approach, please explain which other sections of the Code you consider should be reviewed and why. c) Do you agree with Ofcom’s approach which will be to*

*provide, and update, guidance to all sections on an on-going basis? If so, are there particular areas where you consider an updating of guidance would be helpful?*

- a. No
- b. The preface to the Code outlining the legislative background is unclear in relation to the BBC World Service. The ninth paragraph ends “Sections Five, Six, Nine and Ten of the Code to not apply to BBC Services funded by the licence fee or grant in aid”. In our view, s198(9) of the Communications Act 2003 should be taken to mean that no part of the Code applies to the BBC World Service funded by grant in aid. Ofcom has previously accepted this point in discussion with the BBC.