

## **Response to Participation TV consultation**

### General comments

**We welcome the opportunity to comment on the Consultation document.**

**The Disability Equality Duty puts on Ofcom and broadcasters the responsibility to consider how to positively contribute to disability equality and inclusion. In many cases participation TV accentuates the disadvantage that many disabled people face. Moreover, the cost element of Premium Rate Services (PRS) raises the potential “loss” to members of this community. Consequently it is particularly important that the needs of this community are considered by Ofcom in this review.**

**We believe that Ofcom should be very careful about taking action that could be regarded as discriminatory towards one or another type of service as this would undermine its role as regulator. In particular, if material is commercial in nature, and is recognised as such by its audience, but Ofcom don't treat it as such, there is a danger that Ofcom will lose its credibility.**

### Answers to specific questions

Q1. Do you agree that television broadcasters should be directly responsible for PRS in programmes and also for other forms of communication where viewers seek to interact with programmes? Please explain why.

**Yes because they, not the phone service provider, are responsible for the programme. Broadcasters have the choice which phone service is used, whether a premium rate service, or national rate service, or even a Freephone service.**

Q2. If so, do you agree that a variation to television licences would be the most appropriate way of ensuring that broadcasters are responsible for such PRS compliance?

**Yes.**

Q3. Do you agree that there is a need for broadcasters to obtain independent, third-party verification that they are in fact complying with the draft licence obligations set out in Paragraph 2 of the draft licence variation? If so, which of the options for verification discussed in Section 4 do you think is most appropriate? Are there other appropriate options? Again, please provide reasons.

**A danger to be avoided is a broadcaster just doing what is sufficient to meet third-party standards. We suggest that the broadcaster should demonstrate that it is complying with the licence requirements. Third-party verification would be a recommended way of providing ‘supporting evidence’, an example of “good practice”, but the broadcaster shouldn't be limited to it. This would provide Ofcom with more flexibility should it need it.**

**We would suggest that broadcasters are asked to specify what measures are taken to ensure that disabled participants can access and understand the rules of participation, and pricing information, before they participate and are being charged.**

Q4. Do you have any comments on the draft licence variation set out in Annex 5? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

**In section 2a the Licensee should take into account the needs and abilities of disabled people. For example, a paragraph such as the following could be added:**

**The Disability Equality Duty puts on broadcasters the responsibility to consider how to positively contribute to disability equality and inclusion. In many cases participation TV accentuates the disadvantage that many disabled people face. The cost element raising the potential “loss” to**

**members of this community (on average) whenever Premium Rate Services (PRS) are used, extra care needs to be taken to ensure that this community is not put at a disadvantage.**

**Section 3 – see comments to Q3 above.**

Q5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.

**Yes, we believe that the current review is an opportunity for Ofcom to be proactive about other media that it regulates.**

Q6. Which of the options proposed in Section 6 do you believe is most appropriate to ensure separation of advertising from editorial content? Please explain why.

**Option 2 or 4 for the following reasons:**

**Option 1 – Ofcom’s independent report on Participation TV, prepared by Essential, says that “many respondents expressed feelings of resignation and even acceptance of practices which were often described as scams.” (See paragraph 1.4.8)**

**Clearly some regulation is needed to renew the public’s trust in broadcasters with this genre of TV.**

**Option 3 – If labelling is provided, it would need to be accessible and understood by disabled viewers. This raises a number of issues. For example:**

- **Blind viewers would need to be able to access it, at a speed that they could understand.**
- **Where would the terms and conditions be so that they can easily be accessed?**
- **The terms and conditions would need to be easily understandable by those with learning difficulties.**
- **The broadcaster should not assume that the participant has other media to refer to, and so the terms and conditions would need to be provided in the same medium as the program.**

**One way forward with Option 3 would be for broadcasters to provide a Freephone number to an operator who is able to answer any questions that are posed by the viewer before any costs are incurred. The operator would need to be properly trained to help disabled people. Typical questions would be: How long will the call take? How much will it cost?**

**Option 2: This is fine when the editorial element of the programme genuinely involves the participation of viewers, such as the “letters page” or “Dear Doctor” page in a newspaper.**

**However, if in a programme a voice call is taken which is not audible to all viewers, but is two-way, as in the case of adult chat or psychic services, then the broadcaster is effectively just providing a service to an individual. So material such as Psychic TV and Adult Chat, where participants don’t really participate in the programme, is actually commercial use of the TV medium, and should be treated as such.**

**We recognise that Ofcom want to encourage a variety of programmes and a variety of funding approaches. So the issues of funding may need to be considered separately so that they can be thought through more carefully.**

**Research shows that some viewers see Participation TV programmes, such as Adult Chat, as entertainment rather than being commercial in nature. However, television advertising as a genre is not defined by the viewer’s attitude but by its commercial nature (3.13), and so viewer attitudes shouldn’t be the sole basis on which Ofcom assesses a programme for the purpose of this review.**

**If broadcasters really wished to demonstrate their programmes are not commercial, they would be willing to use a low cost or Freephone number, or donate profits to charity. We recognise that Ofcom is open to broadcasters using a variety of funding models, but believe that Ofcom need to be**

**able to regulate or deregulate accurately to maintain its own integrity, and also that of the viewer for the genre.**

**Option 4: This recognises the full commercial nature of programs such as Psychic TV and Adult chat: an individual pays a fee, and only they gain the benefit of the service (e.g. the advice given by the psychic). However as the broadcaster isn't just advertising the service, but offering to supply the service as well, Ofcom should consider regarding such material as teleshopping.**

Q7. Do you have any comments on the draft new rules and guidance in respect of Options 2, 3 and 4 set out in Annex 6? Please support your comments with adequate explanation and provide drafting proposals as appropriate.

**See response to previous question.**

Q8. Do you agree that Option 2 clarifies the existing provisions of the Broadcasting Code and therefore should not be limited to dedicated PTV only, but should apply to all editorial content (on both television and radio) which invites viewers to pay to take part? Please give reasons.

**No, we do not believe it clarifies the existing provisions of the Broadcasting Code.**

**When a service is being provided that is beyond the scope of the actual editorial content of the programme, it should be regarded as commercial in nature and hence classified as advertising or tele-shopping.**

Q9. Has Ofcom correctly identified, in Section 6 and the Impact Assessment in Annex 7, the various impacts arising from each option for dedicated PTV? Again, please give reasons.

**Yes**