

S4/C

S4C's response to the Ofcom Participation TV: protecting viewers and consumers and keeping advertising separate from editorial.

17th October 2007

The following provides a summary of the type of services carried and offered by S4C. It also provides an outline of the action taken to date in ensuring that competitions and use of phones on S4C's services is managed in an open, fair and transparent manner, and reducing the risks to the viewing public and to S4C.

1. S4C channels

- 1.1 Independent television companies are responsible for producing the majority of S4C's programmes, with ITV Wales also producing some of the content. In addition, the BBC provides us with over 10 hours a week of programming.
- 1.2 We do not produce our own programmes and commission the content in accordance with the Ofcom approved S4C Code of Practice and the Terms of Trade.
- 1.3 The new strategic partnership between the BBC and S4C offers us the control over the commissioning of content produced for us, standardising the terms and rights for the uses.
- 1.4 We currently broadcast S4C on analogue, S4C Digidol and S4C2 on the digital platforms and also offer simulcast broadcast on IPTV and broadband in the UK. On S4C analogue we also broadcast the most popular Channel 4 programmes, with over 70% of that output (usually re-scheduled) shown on the analogue channel.

2. Use of competition lines and premium rate services on S4C

- 2.1 In March this year we decided to review the procedures for competitions, and the use of phone/text lines, in the content we commission directly and in the content supplied to us by the BBC. We also audited the use of helplines, support services and marketing activities linked to transmissions on S4C channels.
- 2.2 The occasions where a charge (over and above that charged by the service network provider) is made for phone and text calls to S4C viewers are rare. When a fee is payable, the review has confirmed that usage is being managed fairly (and where relevant) in line with the Phonepay Plus (ICSTIS) guidelines.
- 2.3 The review concluded that although procedures for managing competitions were considered and discussed, the details were not documented at S4C.
- 2.4 Arrangements for transmission management are documented at S4C, and reviewed from time to time. Marketing activities were found to be managed fairly.
- 2.5 Taking this into consideration we have decided to take a more pro active approach - moving to approve beforehand the documented arrangements for competitions and for the use of any phone lines in our content and services. As part of the commissioning process for all programmes, producers are now asked to provide details about any competitions or phone / text services that will be offered. Producers are provided with guidelines on the type of information that should be supplied to S4C. The details are discussed with the Content Editor, and incorporated within the agreements. The warranties in the standard commissioning agreement relating to compliance with all relevant codes would be unaffected.
- 2.6 Competitions information was not collated centrally at S4C. We have now centralised the task and a nominated officer has responsibility for co-ordinating the details.
- 2.7 We are discussing an audit provision in the standard commissioning terms with TAC (on behalf of producers in Wales). This audit would serve to check and verify compliance with the procedures incorporated within the Commissioning Agreement. We endeavour to agree an appropriate mechanism for the programmes produced for us by the BBC.

Points outlined in 2.6 and 2.7 above should facilitate the task of monitoring and ensuring compliance with relevant codes and guidelines.

2.8 We will review our arrangements periodically. We will also take into consideration the recommendations of this consultation process or the introduction of new codes or guidelines affecting such services.

We have addressed those questions that are most relevant to S4C public services and the S4C2 service offering coverage of the Welsh Assembly Government's proceedings i.e. questions 1 to 5 and 8. We have not sought to offer a comprehensive answer to specific PTV issues in the consultation document.

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Question 1. 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

We accept that S4C should take responsibility for the use of Premium Rate Services and other forms of communication in programming **commissioned** by us. This may be difficult to monitor and regulate in practice, as we commission all (see Section 1 above) of our programming from third party producers. We assume that it will be less of a problem for broadcasters who produce their own content in-house.

Extended responsibility would oblige commissioner broadcasters such as S4C to exercise greater control and to intervene more in certain types of programming, especially entertainment, quiz and magazine programmes where viewer participation largely occurs. Section 2 above outlines the actions already taken by us to try and address the issues. The contractual arrangements are under discussion with TAC as part of a wider review of the Code of Practice and terms of Trade. The details will also need to be considered with the BBC. Any guidance given by S4C to producers will not compromise the producers' contractual responsibility to deliver programming which complies with all relevant codes and the producers's warranties given on this issue would not be affected by the new arrangements.

We have a duty as a broadcaster to comply with the Broadcasting Codes. However in this case we do not accept that we should have responsibility for the competitions and services within English language programmes commissioned and controlled by Channel 4, but broadcast on S4C.

S4C relies on any information provided by Channel 4 for competitions and services within the Channel 4 English language programmes transmitted on S4C. We strive to improve the flow of communication to S4C, but have no control over the availability or accuracy of such information. We have internal documented procedures for managing the presentational aspects of Channel 4 programming broadcast (both simulcast and time shifted) on S4C. We regularly review these procedures for the changing demands of the types of services and competitions offered within the Channel 4 programmes.

The English language programming becomes less of an issue as switchover approaches (2009/2010 in Wales) and the S4C Digital becomes our main channel.

Question 2. 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?

If the new rules are intended to apply to all broadcasters (which we assume to be the case) then a variation to the Ofcom Broadcasting Code may be clearer and fairer. The same view applies to issues raised in subsequent questions.

Licence variation will only apply to services or channels which are operated under licence from Ofcom. This does not affect the S4C or S4C Digidol services, but may affect S4C2 should S4C decide to broadcast general programming on the channel at any time in the future.

Question 3. 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.

We believe that S4C should be entitled to select appropriate systems or procedures for ensuring that we comply with our obligations and responsibilities, in line with the self regulatory approach adopted by Ofcom and consistent with all other compliance obligations.

We believe that independent third party verification is not strictly necessary and so should not be the preferred option. It could be argued that Ofcom would be treating Premium Rate Services and participation TV differently and disproportionately to our other obligations.

Instead, if the Broadcast Code is amended, S4C could provide evidence of a framework for managing and complying with the obligations, and use the current monitoring arrangements to ensure compliance with the relevant codes and guidelines. The roles of the executive and the Authority are clear and separate, with the Authority having responsibility for post broadcast monitoring.

Option C (the compulsory model) is preferable – it ensures consistency of treatment between broadcasters and provides certainty. Please note our comments in response to question 2 and that a statutory instrument or variation to the Ofcom Broadcasting Code (rather than the licence) may be clearer and fairer.

Please also note our response to question 1 and the scope of responsibility in relation to Channel 4 English language programming broadcast on S4C.

Question 4. 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.

The expression ‘where such communication is publicised in programmes’ is vague and unclear. The expression ‘where such communication forms part of the programme on screen and is publicised during the programme’ may be clearer.

The concept of ‘disadvantage’ requires further clarification - perhaps by means of separate guidance notes.

Question 5. Do you agree that the draft licence obligations should not be limited to television but should also apply to radio broadcasters? Please provide reasons.

As a principle, it seems reasonable that any new licence obligations should apply to radio services as well. This is on the basis and bearing in mind that the same problems have arisen in relation to radio programmes.

Question 8. 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.

Whilst we understand what Ofcom intends to achieve with the new draft rules in Option 2, we find the proposed new rules vague.

We note that the Consultation paper indicates that it is intended that ‘the new rules would be supplemented by guidance in the Broadcasting Code’. There is also a need for further clarification and support in the form of more comprehensive Guidance Notes. So, for

example, the guidance currently incorporated in the new rules refers only to dedicated PTV services and does not clarify that the rules also apply to participation TV in mainstream television services.