



# Channel sponsorship

Statement following consultation on channel  
sponsorship

Statement

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# Contents

<b>Section</b>		<b>Page</b>
1	Summary	2
2	Introduction	4
3	Consultation responses	6
<b>Annex</b>		<b>Page</b>
1	Consultation questions	16
2	Section 9 of Ofcom's Broadcasting Code (revised)	17
3	Statutory provisions	20
4	List of respondents	22

## Section 1

# Summary

- 1.1 To date, the sponsorship of entire television channels and radio stations (“channels”) has been prohibited.
- 1.2 When Ofcom consulted on the content of its Broadcasting Code (“the Code”) in 2004 one of the questions it asked was whether it was necessary to maintain the ban on the sponsorship of channels.
- 1.3 Responses to the consultation showed support for removing the ban. Additionally, research conducted in 2005<sup>1</sup> showed that viewers were likely to accept channel sponsorship as a funding source for television.
- 1.4 Ofcom published the Code in May 2005 and it came into force in July 2005. As a result of the responses to the Code consultation, the new Code did not contain a rule prohibiting channel sponsorship. In the statement published to accompany the Code, Ofcom announced that, subject to further internal consideration, it intended to permit this form of sponsorship.
- 1.5 In February 2006 Ofcom published a separate consultation on channel sponsorship. The consultation document set out the regulatory issues surrounding channel sponsorship including whether sponsorship should be open to all channels and how and when channel sponsorship should be identified.
- 1.6 The consultation offered options for addressing each issue and stated Ofcom’s preference in each case.
- 1.7 In all cases, Ofcom recommended that minor amendments be made to the existing sponsorship rules in the Code to clarify that they apply to channel sponsorship as well as programme sponsorship arrangements. In addition, Ofcom recommended publishing guidance explaining how the rules would be interpreted in relation to channel sponsorship arrangements.
- 1.8 The consultation closed in April 2006. There were 21 responses. Overall there was broad agreement with the following proposals:
  - 1.8.1 in relation to ensuring credits for channel sponsors do not result in undue prominence for the sponsor, Ofcom proposed to make no changes to the Code itself but to issue guidance on how undue prominence can be avoided;
  - 1.8.2 in relation to ensuring the basic principle relating to programme sponsorship applies equally to channel sponsorship, Ofcom proposed amending the wording of the principle to include all broadcast sponsorship arrangements; and

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<sup>1</sup> ‘The Future of Television Funding’ research conducted by Human Capital on behalf of Ofcom in 2005.

- 1.8.3 in relation to ensuring that credits for channel sponsors are kept separate from other output, Ofcom proposed to make no changes to the Code because the existing rules can be applied equally to programme and channel sponsorship arrangements.
- 1.9 There was significant disagreement with Ofcom's proposals on two issues. These were:
- 1.9.1 Ofcom's recommendation that the sponsorship of channels that broadcast programmes that cannot be sponsored (e.g. news) should not be allowed; and
- 1.9.2 Ofcom's proposal that, to ensure channel sponsorship arrangements are transparent, the sponsor's name should not be incorporated into the channel name.
- 1.10 In relation to prohibiting the sponsorship of channels that broadcast programmes that cannot be sponsored, 12 respondents believed Ofcom's proposal was unnecessarily restrictive. Many of the respondents who disagreed with Ofcom's recommendation expressed support for one of the alternative options given in the consultation. This option would allow channels that broadcast a limited amount of unsponsorable content to be sponsored but prohibit the sponsorship of channels that broadcast a significant amount of unsponsorable content.
- 1.11 After considering the issue in the light of the responses received and the relevant statutory provisions, Ofcom now intends to permit channel sponsorship on all channels subject to:
- the channel broadcasting only a limited amount of unsponsorable content;
  - clear sponsorship messages that do not suggest that unsponsorable content is included in the sponsorship arrangement; and
  - sponsor credits not being broadcast around unsponsorable content.
- 1.12 Views on whether a broadcaster should be able to incorporate a sponsor's name into the name of its channel were evenly split. Some of those in favour of allowing a channel to be named after a sponsor considered this arrangement would make the sponsorship relationship clear to audiences.
- 1.13 Again, we have considered the issue in the light of the relevant legislation and the consultation responses. We remain of the view that including a sponsor's name in a channel name will not make sufficiently clear to audiences the nature of the relationship between the channel and the sponsor. We therefore consider that it is not appropriate at this juncture to allow a channel to include a sponsor's name in its title.
- 1.14 As a result of the consultation, Ofcom has now amended the rules relating to broadcast sponsorship (Section 9 of the Code). The new rules are published with this statement (Annex 2).
- 1.15 In addition to the revised rules, Ofcom intends to publish guidance on how the rules will be applied to channel sponsorship by the end of this year. Licensees are advised to await publication of this guidance before entering into any channel sponsorship arrangements to ensure compliance.

## Section 2

# Introduction

## Background to the consultation

- 2.1 The Communications Act 2003, which defines Ofcom's statutory duties, requires Ofcom to ensure unnecessary regulation is not imposed or maintained<sup>2</sup>. It also includes a requirement for Ofcom to set, review and revise (as appropriate) standards for the content included in television and radio services<sup>3</sup>. These standards include ensuring that broadcasters comply with the international obligations of the United Kingdom and specifically the requirements of European legislation as described by EC Directive 89/552/EEC, as amended by EC Directive 97/36/EC ("The Television Without Frontiers Directive").
- 2.2 In October 2004, Ofcom consulted on a new Broadcasting Code ("the Code"). The draft Code that formed part of the consultation included rules setting standards for the content of television and radio broadcasts. Section 12 of the draft Code contained the rules pertaining to broadcast sponsorship. One of the proposed rules in this section prohibited the sponsorship of television channels and radio stations ("channels").
- 2.3 One of the questions in the consultation was whether it was appropriate to retain the prohibition on channel sponsorship. The majority of respondents who expressed a view on this issue considered the prohibition unnecessary.
- 2.4 Additionally, research conducted in 2005 into the future funding of television showed that viewers were likely to accept channel sponsorship as a funding source for television. Full details of the research can be found at: <http://www.ofcom.org.uk/research/tv/reports/future/>.
- 2.5 Ofcom published its new Broadcasting Code in May 2005. Because of the views expressed on channel sponsorship during the consultation, the Code did not contain a rule prohibiting this activity. In the statement published to accompany the Code, Ofcom stated that it intended, subject to further internal discussion, to permit channel sponsorship.
- 2.6 In February 2006 Ofcom published a consultation setting out the issues to be addressed before it allowed channel sponsorship.

## The consultation

- 2.7 Section 9 of the Broadcasting Code contains the rules that apply to programme sponsorship. The objective of these rules is to prevent the unsuitable sponsorship of programmes on radio and television, with particular reference to editorial independence, transparency and separation. The consultation explored whether additional rules and/or guidance were needed to ensure that channel sponsorship arrangements comply with these requirements. It also identified existing rules that would require amendment to include channel sponsorship.

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<sup>2</sup> Communications Act 2003 section 6(1)

<sup>3</sup> Communications Act 2003 section 319(1)

- 2.8 The consultation asked six specific questions relating to the principles and rules. These questions, along with a summary of the responses are included in section 3 of this document. A full list of the questions is also included at Annex 1.
- 2.9 The questions covered the following areas:
- Editorial integrity – whether channels that broadcast programmes that are subject to sponsorship restrictions (e.g. news) should be open to sponsorship. Also, how much of a presence on the channel the sponsor should have.
  - Transparency – how channel sponsorship arrangements should be identified, including whether broadcasters should be allowed to incorporate the sponsor's name into the name of the channel.
  - Separation – how messages identifying the sponsor (“credits”) should be separated from programmes and advertising.
- 2.10 Ofcom's stated preferred option in all cases was to make minor amendments to Section 9 of the Code and use guidance to explain how the rules in this section will apply to channel sponsorship arrangements.

### **The statement**

- 2.11 This statement includes a summary of the consultation responses and Ofcom's decision on each issue (Section 3).
- 2.12 It also includes the revised rules for Section 9 of the Broadcasting Code that cover sponsorship arrangements (Annex 2).

### **Next steps**

- 2.13 In addition to the revised rules included with this statement, Ofcom intends to publish guidance on how it will interpret these rules in relation to channel sponsorship by the end of the year. Licensees should await publication of this guidance before entering into any channel sponsorship arrangements to ensure compliance.

## Section 3

# Consultation responses

- 3.1 The consultation was published on 7 February 2006 and closed on 20 April 2006. In total there were 21 responses. 11 of these were from licensees, nine from those working, or representing those working, within the broadcasting or sponsorship sectors and one from an individual.
- 3.2 The consultation asked seven questions. These are listed below with a summary of the responses received.
- 3.3 The first question related to the principle that introduces Section 9 (sponsorship) of the Code. This principle is that unsuitable sponsorship of programmes on radio and television is prevented, with particular reference to:
- transparency – to ensure sponsorship arrangements are transparent;
  - separation – to ensure that sponsorship messages are separate from programmes and to maintain a distinction between advertising and sponsorship; and
  - editorial independence – to ensure that the broadcaster maintains editorial control over sponsored programmes and that programmes are not distorted for commercial purposes.

*Q1. Do you agree with Ofcom's proposal to amend the wording to reflect that the principles apply to all sponsorship arrangements? If not, how should Ofcom make it clear that the principles apply to channel sponsorship arrangements?*

- 3.4 There was widespread agreement with Ofcom's proposal (17 respondents).
- 3.5 One respondent objected to Ofcom's decision to permit channel sponsorship.
- 3.6 Another respondent did not believe the principle should apply to channel sponsorship because this form of sponsorship was a wholly different kind of brand communication. The respondent contended that the distinction between advertising and sponsorship was meaningless and the audience more sophisticated than the regulator credits. Applying out-moded rules would not provide a satisfactory solution to the way in which sponsored channels operate and would restrict the ability of brand owners to legitimately develop their brand communication activities by keeping pace with audience behaviour.

## Ofcom response

- 3.7 The decision to allow channel sponsorship was made following Ofcom's consultation on its Broadcasting Code. During this consultation, respondents were given the opportunity to express a view on whether channel sponsorship should be permitted. The majority of those who responded to this issue agreed with Ofcom's proposal to allow channel sponsorship. After careful consideration of all the evidence, Ofcom decided, in principle, to permit channel sponsorship. The purpose of the channel sponsorship consultation was therefore to determine not whether channel sponsorship should go ahead but what rules and/or guidance should apply to such sponsorship arrangements.

- 3.8 Ofcom has a statutory duty to set standards for the content of programmes to be included in television and radio services. In setting these standards, Ofcom must have regard to the desirability of maintaining the independence of editorial control over programme content (Communications Act 2003 section 319 4(f)). Ofcom also has a duty to ensure that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with (Communications Act 2003 section 319 2(i)). The international duties referred to include ensuring compliance with the TWF Directive. The Directive requires television programmes, sponsorship and advertising to be kept quite separate from one another. Any commercial communications, such as advertising and sponsorship, must be transparent and programmes should not be distorted for commercial purposes. It is therefore imperative that Ofcom applies the requirements of editorial integrity, transparency and separation to channel sponsorship arrangements.
- 3.9 We note that the majority of respondents agree with Ofcom's proposal and we consider amending the principle stated in Section 9 to include channel sponsorship arrangements is the most appropriate measure to take.
- 3.10 The second question related to channels that broadcast programmes that can either not be sponsored (e.g. news) or are subject to sponsorship restrictions (e.g. children's programmes).

*Q2. Do you agree with Ofcom's proposal to prohibit channel sponsorship on channels that carry unsponsorable content? If not, please give reasons and suggest how channels that carry unsponsorable content can be sponsored without the sponsorship including, or appearing to include, this content.*

- 3.11 Views on this issue were split, with a majority of respondents (12) regarding Ofcom's proposal to prohibit the sponsorship of channels that broadcast programmes that cannot be sponsored to be unnecessarily restrictive and, in some cases, biased against radio and public service broadcasters. There was also concern that the proposal would discourage channels from carrying news.
- 3.12 Of those respondents who disagreed with Ofcom's proposal, seven expressly supported the second option given in the consultation, which would allow channels to be sponsored subject to the amount of sponsorable content they broadcast.
- 3.13 Representatives of the radio industry were unanimous in their opposition of Ofcom's recommended policy. Some voiced concerns that the proposal was disproportionately detrimental to radio as most stations include some news output. One radio broadcaster advised that UK commercial radio has for many years broadcast sponsored programmes that contain unsponsorable material (i.e. news). However, to avoid any likelihood of listeners being misled into believing that news is sponsored, sponsor credits are kept away from the news and clearly refer to the programme or features that are sponsored. Another representative of the radio industry recommended that Ofcom concede that it was not always appropriate to treat both television and radio as near identical media and that the regulation of commercial radio should not be driven by the characteristics of commercial television.
- 3.14 A television broadcaster also argued that, in the case of radio, Ofcom's recommended option was overly restrictive. Where a radio stations carries only hourly news bulletins, and the remainder of its output is suitable for sponsorship, the respondent believed that the station should not be prevented from being sponsored.



However, provisions should be introduced into the Code to ensure that the sponsor's name is not referenced during, or immediately before or after, the news bulletin. While the argument related to radio, the broadcaster believed that similar issues could conceivably arise in television channels, some of which could carry unsponsorable content.

- 3.15 Another television broadcaster believed that banning this source of funding because a television channel carries news and current affairs discriminated against public service broadcasters (PSBs). This would be particularly inappropriate given the pressures, identified by Ofcom, of funding PSBs in the digital world<sup>4</sup>. There was also an argument that precedent already existed for news content to be shown effectively within a sponsored programme or segment. For example, day parts that include news can be sponsored e.g. "Daytime brought to you by..." or films that break for news bulletins.
- 3.16 One individual suggested that if a channel that carries news is sponsored, the news output should be supplied by an independent source (e.g. IRN). This would prevent concerns over the integrity of the news.
- 3.17 Two respondents expressed concern that the prohibition would cover channels that broadcast sports and entertainment news.
- 3.18 Six respondents agreed with Ofcom's recommendation. The perceived integrity of news and clarity for broadcasters were cited as reasons for including the prohibition. One respondent suggested the prohibition be extended to channels that carry religious programming.

### **Ofcom response**

- 3.19 We have considered Ofcom's position in the light of the responses received and the relevant statutory provisions. Ofcom has a duty to ensure that unnecessary regulation is not maintained but must prevent the unsuitable sponsorship of programmes. This includes ensuring that news (on television and radio) and current affairs (on television only) programmes are not sponsored.
- 3.20 Because the prohibition on the sponsorship of news and current affairs programmes on television is partly drawn from the TWF Directive (it is also based on the Act requirements regarding unsuitable sponsorship and editorial integrity), we have considered whether different rules for television and radio in this area are appropriate. We can see no justifiable reason for adopting a different approach to each sector as, based on the audience experience, the sponsorship of a radio station that broadcasts hourly news bulletins is unlikely to be considered different to the sponsorship of a television channel that broadcasts hourly news bulletins.
- 3.21 After re-evaluating the issue, we believe that allowing the sponsorship of channels that carry mixed genres of programmes (including programmes that are subject to sponsorship restrictions) is not necessarily incompatible with the relevant legislation. This is for the following reasons:

#### Editorial integrity

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<sup>4</sup> Ofcom review of public service television broadcasting - Phase 3 - Competition for quality - <http://www.ofcom.org.uk/consult/condocs/psb3/>

One of the concerns of the legislation is the maintenance of editorial integrity. We believe that the Code already contains sufficient safeguards to stop channel sponsorship arrangements undermining editorial integrity. Section 9 of the Code prohibits a sponsor from influencing the content and/or scheduling of programming in such a way as to impair the responsibility and editorial independence of the broadcaster. Section 10 ensures that programmes are not distorted for commercial purposes. The rules in these sections will continue to apply to all programmes broadcast on a sponsored channel. In addition, Section 5 of the Code requires that news, in whatever form, must be reported with due accuracy and presented with due impartiality. This requirement will help ensure that news content on a sponsored channel is not distorted as a result of the sponsorship arrangement.

For television, while the TWF Directive specifically prohibits the sponsorship of news and current affairs programmes, it is silent on the concept of channel sponsorship. Provided revenue from a television channel sponsorship arrangement contributes to the service as a whole and does not directly fund news and current affairs programmes, we believe that it will not conflict with the requirements of the Directive.

To ensure that channel sponsorship arrangements do not include (or are not seen to include) content that cannot be sponsored, we propose restricting sponsorship to channels that carry wholly or mainly content that can be sponsored and are not primarily regarded as a news service. This will prevent dedicated news channels, and channels primarily known as news suppliers, from entering into channel sponsorship arrangements. In addition, for those channels that carry some restricted content, we will require that messages identifying the sponsorship arrangement (credits) include a clear statement about what is sponsored (i.e. the channel) and are not placed around the restricted programmes.

### Harm & Offence

The advertising scheduling rules that prevent certain categories of products from sponsoring certain types of output (e.g. an alcohol brand sponsoring a children's programme) are primarily based on Ofcom's duty to ensure that members of the public are protected from harmful and offensive material<sup>5</sup> and that persons under the age of eighteen are protected<sup>6</sup>. If a channel is sponsored by a company that is prohibited from advertising around some of the programmes shown on the channel, we propose that credits for the sponsor should not appear around this output. This, in effect, applies the same restrictions to the sponsor's credits as to its advertising.

3.22 In view of the above, Ofcom has decided to permit channel sponsorship on all channels subject to:

- the channel broadcasting only a limited amount of unsponsorable content;
- the overall character of a channel (e.g. a channel that is primarily regarded as a news supplier will be considered unsuitable for channel sponsorship);

<sup>5</sup> Communications Act Section 3(2)(e)

<sup>6</sup> Communications Act Section 319(2)(a)

- clear sponsorship messages that do not suggest that unsponsorable content is included in the sponsorship arrangement; and
- sponsor credits not appearing around unsponsorable content.

3.23 We intend to publish guidance on the factors to be taken into consideration when determining the suitability of a channel sponsorship arrangement. This will include advice on the amount of unsponsorable/restricted content shown on a channel and how Ofcom will decide the general character of the channel i.e. the type of service the channel is primarily regarded as. If in any doubt about the suitability of a channel sponsorship arrangement, broadcasters will be advised to contact Ofcom.

3.24 Questions 3 and 4 related to the transparency of sponsorship arrangements.

*Q3. Do you agree with Ofcom's proposal to amend the Code rules on transparency to include channel sponsorship? If not, how should Ofcom make it clear that the transparency rules apply to channel sponsorship arrangements?*

3.25 Three television broadcasters considered amending the Code unnecessary and believed it more appropriate for Ofcom to issue guidance on this subject.

3.26 One individual disagreed with the proposal and believed it would effectively kill any chance of 'brandcasting' on traditional television. He argued that the distinctions between advertising, sponsorship and editorial content were vacuous and would become increasingly meaningless.

3.27 A majority of respondents (13) agreed with Ofcom's proposal.

### **Ofcom response**

3.28 The current rules in the Code that ensure sponsorship arrangements are transparent refer to sponsored programmes only. While it may be possible for Ofcom to use guidance to explain that the rules apply also to channel sponsorship arrangements, we consider it more appropriate to state this explicitly in the rules for two reasons:

- clarity for Code users – it will be immediately apparent to readers of the Code that the rules apply to all broadcast sponsorship arrangements.
- enforceability – it may prove difficult for Ofcom to find a channel sponsorship arrangement in breach of the transparency rules if the rules refer only to programme sponsorship.

3.29 We will therefore amend the rules to include all broadcast sponsorship.

*Q4. Should broadcasters be allowed to name their service after a sponsor e.g. The Acme Channel? Please give reasons for your answer.*

3.30 Views on this matter were split. Eight respondents agreed with Ofcom that, to ensure channel sponsorship arrangements are transparent, channels should not be named after their sponsors.

3.31 Two of these respondents were concerned that Ofcom's proposal to use guidance to prevent channel names including the name of the sponsor was flawed. If the Code did not contain a specific rule, it would remain open to broadcasters to include the sponsor's name in the channel name. The respondents believed that Ofcom should

adopt a specific rule prohibiting this practice. One of the respondents believed that, should Ofcom subsequently wish to remove the prohibition, it would be appropriate to consult further, citing supporting evidence as appropriate.

- 3.32 Nine respondents considered that broadcasters should be able to name their service after a sponsor. These respondents included television broadcasters, representatives of the radio industry and those representing the advertising industry.
- 3.33 One broadcaster argued that including the name of the sponsor in the channel name would not pose significant regulatory issues. Ofcom had identified two potential issues: viewer confusion and administrative burden. The first could be addressed by ensuring that it is made clear to audiences who has editorial control and responsibility of a channel. Any complaints from audiences could be sent to Ofcom, who will have the correct contact details for the broadcaster. The latter issue would be a disincentive for channels wishing to include a brand name in their channel name, but this is not an issue that should be a concern for Ofcom. A different broadcaster considered a ban unnecessary and believed that Ofcom underestimated viewers, especially the more media literate multi-channel audiences.
- 3.34 Another broadcaster believed that a ban on naming channels after a sponsor could place digital multi-channels (who could offer a specific niche fix with an advertiser) at a disproportionate disadvantage to those channels carrying a mix of elements where such commercial arrangements are less likely to be attractive. It should be the regulator's function to enable the industry to achieve maximum flexible commercial viability whilst maintaining the principle of transparency. Issues should be assessed on a case by case basis rather than seeking an administrative cost benefit of an automatic ban.
- 3.35 Representatives of the advertising industry contended that allowing sponsor names in the channel name would increase not decrease transparency for the viewer. It is standard practice for sponsoring companies' names to be attached to sponsored events; there is no evidence that this has had any adverse effect on people's views of such events. One representative of the advertising industry supported allowing sponsor names to be incorporated into channel names, but suggested that naming a channel after a sponsor should be prohibited on radio stations that carry news (if Ofcom allows such stations to be sponsored).
- 3.36 One respondent who agreed with Ofcom's proposal recommended that the prohibition be reviewed after a period of time with a view to relaxation once audiences became more familiar with channel sponsorship arrangements.

### Ofcom response

- 3.37 Again, we have considered the issue bearing in mind the relevant legislation and the consultation responses. We remain of the view that it is not appropriate at this juncture to allow a channel to include a sponsor's name in its title (regardless of the channel's content). Based on the requirements of the Act and the TWF Directive, the Code requires sponsorship arrangements to be transparent.
- 3.38 Because audiences are not familiar with the concept of channel sponsorship, we believe that naming a channel after a sponsor (e.g. The Acme Channel) will not make sufficiently clear the nature of the arrangement between the sponsor and the channel. It is important that audiences can distinguish between a company that holds the licence for a channel, and is therefore responsible for the content it

transmits, e.g. The Hallmark Channel, and a channel sponsor that has no editorial responsibility for the content.

- 3.39 In addition, for those sponsored channels that broadcast a limited amount of content that cannot be sponsored, naming the channel after the sponsor is likely to create the impression that the unsponsorable content is included in the sponsorship arrangement.
- 3.40 For the reasons stated above, we believe that credits should describe explicitly the relationship between the channel and the sponsor (e.g. Pop FM sponsored by Acme). We consider that guidance, which explains that naming a channel after the sponsor is incompatible with the Code rules on transparency, is the most appropriate regulatory approach.

*Q5. Do you agree with Ofcom's proposal to make no amendment to the Code regarding the separation of sponsorship from advertising and programming? If not, please give reasons.*

- 3.41 There was significant agreement (16 respondents) with Ofcom's proposal.
- 3.42 One respondent believed that, for clarity, Ofcom should include a rule in the Code specifying that channel sponsorship credits should be separate from other content.
- 3.43 One individual believed the regulations did not take account of the fact that channel sponsorship should be about programming that reflects the values of the brand, rather than divorced from it.

### Ofcom response

- 3.44 The rules in the Code that ensure sponsorship is separate from advertising and programmes are based on Ofcom's statutory duties that editorial control over programme content should be maintained and, for television, that advertising and programme elements of a service should be kept separate. They refer generally to sponsorship on television and radio but not specifically to programme sponsorship arrangements. We therefore remain of the view that amending the rules is unnecessary.

*Q6. Do you agree with Ofcom's proposal to make no amendment to the Code but to publish guidance on the acceptable level of prominence for channel sponsor credits? If not, please give reasons.*

- 3.45 Again, there was significant agreement (16 respondents) with Ofcom's proposal.
- 3.46 One broadcaster considered it important for Ofcom to clarify, as far as possible, the boundary between due and undue prominence. If a channel is sponsored, there must be some discernable benefit for the sponsor via a degree of acceptable prominence. Many respondents echoed the view that, for channel sponsorship to be an attractive proposition, a degree of prominence for the sponsor would be necessary.
- 3.47 Another broadcaster believed it unnecessary to amend the Code or issue guidance on this matter and considered that broadcasters should be allowed to make decisions based on the existing undue prominence rules.

- 3.48 One respondent, who agreed with Ofcom's proposal, believed that there should be additional rules to separate credits from news and current affairs programmes (if Ofcom permits channels that carry such content to be sponsored).

### Ofcom response

- 3.49 We recognise that channel sponsorship arrangements will need to be identified not only for transparency but also for the promotional benefits to the sponsor. We intend to publish guidance to help broadcasters establish how, when and where credits can be placed to give the appropriate degree of recognition for the sponsor while avoiding undue prominence.

*Q7. Have we correctly identified the significant issues surrounding the regulation of channel sponsorship? If not, what other matters should Ofcom take into account that are not raised in this consultation?*

- 3.50 Representatives of the advertising industry advised that some advertisers wanted greater clarity in the Guidance Notes on sponsorship. These notes should be used to expand on and interpret the Code but care needs to be taken that they do not become a tool for additional regulation, as this could create a lack of clarity.
- 3.51 Concern was expressed, by representatives of the community media sector, that funding by non-commercial organisations (e.g. government or voluntary sector initiatives promoting regeneration projects and supporting local communities) could be jeopardized by overly restrictive channel sponsorship regulation. This form of sponsorship had great potential to benefit local communities and it would be unfortunate if these benefits were deemed incompatible with the provision of news services to local communities. There was concern that the discussions outlined in the consultation document did not sufficiently explore these issues and were based on the traditional view of sponsorship as being primarily to do with commercial branding.
- 3.52 One respondent asked Ofcom to issue additional, specific guidance on charitable appeals broadcast on sponsored channels. It also asked that the definition section of the Code include a definition of a sponsored channel.

### Ofcom response

- 3.53 We intend to publish specific guidance for channel sponsorship and additional guidance on Rule 9.14 (the content of sponsor credits on television) later this year. We will also consider updating the remaining guidance on sponsorship.
- 3.54 Not all funding arrangements are classified as sponsorship. The Code defines sponsorship as funding supplied by a sponsor "with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest". It is possible that some of the funding arrangements described by the community media may not be sponsorship. For those that are, Ofcom's intention to allow channel sponsorship for all channels that broadcast wholly or mainly content that can be sponsored should open up opportunities for community channels that broadcast a limited amount of news.
- 3.55 Charitable appeals broadcast on a sponsored channel will be subject to the same rules that apply to charitable appeals on channels that are not sponsored. The revised Section 9 of the Code contains a definition of channel sponsorship.

## Other matters

### Impact Assessment

3.56 A broadcaster questioned why the channel sponsorship consultation did not contain a regulatory impact assessment (RIA). It highlighted the fact that Ofcom did not consider the issue of channel sponsorship to be so sufficiently significant as to include it in its regulatory impact assessment on the proposed changes to the Broadcasting Code in 2004. The broadcaster believed that Ofcom was potentially in breach of its statutory duties by denying itself and its stakeholders the benefit of an impact assessment of the proposals. Had Ofcom conducted a regulatory impact assessment as part of this consultation, stakeholders would be better able to assess whether the overall benefits of allowing channel sponsorship outweighed the disadvantages of any necessary additional rules.

### Ofcom response

3.57 While channel sponsorship was not identified as a separate and significant issue in the RIA that accompanied Ofcom's consultation on the Broadcasting Code, stakeholders were asked, as part of the consultation, for their views on whether this activity should be permitted. Additionally, the RIA asked whether the significant changes (as described in the opening paragraph of the RIA) were correctly identified and, if not, what other changes were significant, and why.

3.58 The broadcaster in question chose not to respond to the Broadcasting Code consultation on this point. Further, no other response identified a proposal by Ofcom to permit channel sponsorship as a change sufficiently important that it would require an impact assessment. Ofcom took this evidence into account in reaching a decision in principle to allow channel sponsorship.

3.59 While the channel sponsorship consultation did not include a separate and formal impact assessment on allowing channel sponsorship (because the decision in principle to allow channel sponsorship was made following the Code consultation), it did in fact examine the benefits and disadvantages of applying different levels of regulation to channel sponsorship arrangements. This information was presented in the manner of an impact assessment, and fulfilled any duties which Ofcom might have to publish an impact assessment before implementing an important proposal.

### Erratum - Rule 9.6

3.60 Rule 9.6 of the Code addresses sponsor references within sponsored programmes. The rule is intended to prevent promotional references within a sponsored programme not only to the sponsor but to any of its other direct or indirect interests. Because of an inadvertent error, the wording of this rule published in the Broadcasting Code in May 2005 differed slightly to that which had appeared in Ofcom's consultation on the content of the Code. The published rule states that a sponsor should have no direct or indirect interest in the content of the sponsored programme: this suggests a more restrictive regulatory position than intended. Broadcasters have queried this wording.

3.61 We have taken the opportunity presented by the channel sponsorship consultation to amend Rule 9.6 to ensure that it now more accurately reflects the drafting of and intention behind the rule that formed part of the Code consultation.

3.62 The existing rule states:

“There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products and no promotional generic references. The sponsor must also not have any other direct or indirect interest in the editorial content of the sponsored programme. Non-promotional references are permitted only where they are editorially justified and incidental.”

3.63 This rule will be replaced by the following wording with immediate effect:

“There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental”



## Annex 1

# Consultation questions

1. Do you agree with Ofcom's proposal to amend the wording to reflect that the principles apply to all sponsorship arrangements?  
If not, how should Ofcom make it clear that the principles apply to channel sponsorship arrangements?

2. Do you agree with Ofcom's proposal to prohibit channel sponsorship on channels that carry unsponsorable content?  
If not, please give reasons and suggest how channels that carry unsponsorable content can be sponsored without the sponsorship including, or appearing to include, this content.

3. Do you agree with Ofcom's proposal to amend the Code rules on transparency to include channel sponsorship?  
If not, how should Ofcom make it clear that the transparency rules apply to channel sponsorship arrangements?

4. Should broadcasters be allowed to name their service after a sponsor e.g. The Acme Channel? Please give reasons for your answer.

5. Do you agree with Ofcom's proposal to make no amendment to the Code regarding the separation of sponsorship from advertising and programming?  
If not, please give reasons.

6. Do you agree with Ofcom's proposal to make no amendment to the Code but to publish guidance on the acceptable level of prominence for channel sponsor credits?  
If not, please give reasons.

7. Have we correctly identified the significant issues surrounding the regulation of channel sponsorship?  
If not, what other matters should Ofcom take into account that are not raised in this consultation?

## Annex 2

# Section 9 of Ofcom's Broadcasting Code (revised)

## Section Nine:

### Sponsorship

(Relevant legislation includes, in particular, section 319(2)(i) and (j) and 319(4)(e) and (f) of the Communications Act 2003, Articles 1(e), 10(1) and 17 of the Television Without Frontiers Directive, and Article 10 of the European Convention on Human Rights.)

This section of the Code does not apply to BBC services funded by the licence fee or grant in aid.

### Principle

**To ensure that the unsuitable sponsorship of programmes on radio and television is prevented, with particular reference to:**

- **transparency – to ensure sponsorship arrangements are transparent;**
- **separation – to ensure that sponsorship messages are separate from programmes and to maintain a distinction between advertising and sponsorship; and**
- **editorial independence – to ensure that the broadcaster maintains editorial control over sponsored content and that programmes are not distorted for commercial purposes.**

**In this Principle, programmes include "channels" as defined below.**

### Rules

Meaning of "sponsored programme", "sponsored channel" and "sponsor":

A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest.

A channel is a television or radio service. A sponsored channel is a channel that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest.

Costs include any part of the costs connected to the production or broadcast of the programme or channel.

A sponsor is any public or private undertaking (other than the broadcaster or programme producer), who is sponsoring the programme, programming or channel in question with a view to promoting their or another's name, trademark, image, activities, services, products or any other direct or indirect interest. This meaning extends to those who are otherwise supplying or funding the programme or channel.

## **Content that may not be sponsored**

9.1 The following may not be sponsored:

- news bulletins and news desk presentations on radio; and
- news and current affairs programmes on television.

Meaning of “current affairs programme(s)”:

A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.

## **Prohibited and restricted sponsors**

9.2 No channel or programme may be sponsored by a sponsor that is not allowed to advertise on the relevant medium, with the exception of betting and gaming companies.

9.3 Betting and gaming companies must not sponsor channels or programmes aimed at people under eighteen.

9.4 Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.

## **The content of sponsored output**

9.5 A sponsor must not influence the content and/or scheduling of a channel or programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

9.6 There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products or to any of its other direct or indirect interests. There must be no promotional generic references. Non-promotional references are permitted only where they are editorially justified and incidental.

Meaning of “promotional reference”:

This includes, but is not limited to, references that encourage, or are intended to encourage, the purchase or rental of a product or service.

## **Sponsorship credits**

*Television and radio*

9.7 Sponsorship must be clearly identified as such by reference to the name and/or logo of the sponsor. For programmes, credits must be broadcast at the beginning and/or end of the programme.

9.8 The relationship between the sponsor and the sponsored channel or programme must be transparent.

#### *Radio*

9.9 During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.

9.10 Credits must be short branding statements. However, credits may contain legitimate advertising messages, except credits for betting and gaming companies.

9.11 Credits must be cleared for broadcast in the same way as advertisements.

9.12 Programme trails are treated as programmes and the same sponsorship rules apply.

#### *Television*

9.13 Sponsorship credits must be clearly separated from programmes by temporal or spatial means.

9.14 Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

9.15 Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must remain brief and secondary.

## Annex 3

# Statutory provisions

## Relevant Legislation

### Extracts from Communications Act 2003

#### Section 6 Duties to review regulatory burdens

(1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve-

- (a) the imposition of burdens which are unnecessary; or
- (b) the maintenance of burdens which have become unnecessary.

#### Section 319 OFCOM's standards code

(1) It shall be the duty of OFCOM to set, and from time to time to review and revise, such standards for the content of programmes to be included in television and radio services as appear to them best calculated to secure the standards objectives.

(2) The standards objectives are -

[...]

- (i) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with;
- (j) that the unsuitable sponsorship of programmes included in television and radio services is prevented; [...]

(4) In setting or revising any standards under this section, OFCOM must have regard, in particular and to such extent as appears to them to be relevant to the securing of the standards objectives, to each of the following matters-

[...]

- (f) the desirability of maintaining the independence of editorial control over programme content.

#### Section 321 Objectives for advertisements and sponsorship

(1) Standards set by OFCOM to secure the objectives mentioned in section 319(2)(a) and (g) to (j) -

- (a) must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and
- (b) may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances).

### Extracts from the Television Without Frontiers Directive (89/552/EEC), as amended by (97/36/EC)

## Article 1

For the purposes of this Directive:

(e) 'sponsorship' means any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products;

## Article 10

1. Television advertising and teleshopping shall be readily recognisable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.

## Article 17

1. Sponsored television programmes shall meet the following requirements:

- (a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;
- (b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;
- (c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

## Annex 4

# List of respondents

Ofcom received 21 responses to the consultation in total. Of these 4 were submitted on a confidential basis. Non-confidential responses were received from:

- Advertising Association
- Ardi Kolah Brand Communication & Sponsorship Consultant
- British Horseracing Board
- Broadcasting Trust
- BSkyB
- Channel 4
- Community Channel
- Community Media Association
- CRCA
- Emap Radio
- Forest of Dean Radio
- Institute of Local Television and ACTO
- ISBA
- ITV
- IUR-fm
- Mark Sutherland
- Ross-FM Community Radio