APPENDIX 1 STATUTORY FRAMEWORK FOR THE REGULATION OF BROADCAST ADVERTISING



Advertising standards

1 The Communications Act 2003 requires Ofcom to set, and from time to time review and revise, codes containing such standards for the content of television and radio services licensed under the Broadcasting Acts 1990 and 1996 as seem to Ofcom to be best calculated to secure the standards objectives.

Sections 319(1), 319(3).

2 Ofcom has contracted-out its advertising standards codes function to the Broadcast Committee of Advertising Practice Limited (BCAP) under the Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004. That function is to be exercised in consultation with, and with the agreement of, Ofcom.

3 These provisions imposed on Ofcom by the Communications Act are therefore relevant to BCAP:

3.1 The standards objectives, insofar as they relate to advertising, include:

a) that persons under the age of 18 are protected;

b) that material likely to encourage or incite the commission of crime or lead to disorder is not included in television and radio services;

c) that the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes;

d) that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from inclusion in such services of offensive and harmful material;

e) that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented;

f) that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with [in particular in respect of television those obligations set out in Articles 3b, 3e,10, 14, 15, 19, 20 and 22 of Directive 89/552/EEC (the Audi Visual Media Services Directive)];

g) that there is no use of techniques which exploit the possibility of conveying a

message to viewers or listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred

Section 319(2).

3.2 In setting or revising any such standards, 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 these matters:

a) the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally, or in programmes of a particular description;

b) the likely size and composition of a potential audience for programmes included in television and radio services generally, or in television and radio services of a particular description;

c) the likely expectation of the audience as to the nature of a programme's content and the extent to which the nature of the programme's content can be brought to the attention of potential members of the audience;

d) the likelihood of persons who are unaware of the nature of the programme's content being unintentionally exposed, by their own actions, to that content;

e) the desirability of securing that the content of services identifies when there is a change affecting the nature of a service that is being watched or listened to and, in particular, a change that is relevant to the application of the standards set under this section...".

Section 319(4).

3.3 Ofcom must ensure that the standards from time to time in force under this section include:

a) minimum standards applicable to all programmes included in television and radio services; and

b) such other standards applicable to particular descriptions of programmes, or of television and radio services, as appeared to them appropriate for securing the standards objectives.

Section 319(5).

3.4 Standards set to secure the standards objectives [specified in para 3(e) above] shall in particular contain provision designed to secure that religious programmes do not involve:

a) any improper exploitation of any susceptibilities of the audience for such a programme; or

b) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

Section 319(6).

3.5 Standards set by Ofcom to secure the objectives [mentioned in 3(a), (h) and (i) above]:

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 of methods of advertising or sponsorship (whether generally or in particular circumstances).

Section 321(1).
[NB: "Programme" includes an advertisement Section 405(1)]

4 In addition the Broadcasting Act 1996 section 24(2) contains provisions permitting advertising on analogue ancillary services on channels 3, 4 and 5 only if directly related to advertising on the main service and digital ancillary services may carry no advertising of any kind.

5 BCAP works closely with the Committee of Advertising Practice to provide, insofar as is practicable and desirable, a co-ordinated and consistent approach to standards setting across broadcast and non-broadcast media.

6 The procedures for revision of the BCAP Codes, including consultation, are, to the extent applicable to BCAP's exercise of statutory functions, set out at section 324 of the Communications Act 2003.

7 Ofcom retains standards-setting functions for:

a) political advertising, the inclusion of which in television or radio services is prohibited by section 321(2) Communications Act, including decisions on whether an advertisement is "political advertising". But the rules on that remain in the BCAP Codes;

b) unsuitable programme sponsorship;

c) discrimination between advertisers who seek to have advertisements included in television and radio services. NB: Subject to that, broadcasters, like publishers and other media, are entitled to refuse advertisements they do not want to carry;

d) the amount and scheduling of advertising, save for the scheduling of individual spot advertisements.

Investigation and complaints

8 The Communications Act requires Ofcom to establish procedures for the handling and resolution of complaints about the observance of standards (as set out in the BCAP Advertising Code) and to include conditions in licences for programme services requiring licence holders to comply with Ofcom's directions in relation to advertising standards.

Sections 325(2), (4) and (5).

9 The Human Medicines Regulations 2012 require Ofcom to consider complaints that an advertisement included, or proposed to be included, in a licensed service or S4C is an impermissible advertisement for a medicinal product, unless the complaint seems to Ofcom to be frivolous or vexatious.

10 Ofcom has contracted out its powers of handling and resolving complaints about breaches of the BCAP Codes and the relevant provisions of Human Medicines Regulations 2012 to the Advertising Standards Authority (Broadcast) Limited (ASA(B)) under The Contracting Out (Functions Relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004.

11 ASA(B) will work closely with and under the umbrella of the Advertising Standards Authority to provide, insofar as is practicable and desirable, a co-

ordinated and consistent approach to advertising standards regulation across broadcast and non-broadcast media.

12 Ofcom retains complaint investigation functions in respect of:

a) political advertising;
b) unsuitable sponsorship;
c) discrimination between advertisers; and
d) scheduling of advertisements.

Statutory sanctions for breaches of advertising standards

13 Ofcom has similarly contracted-out its enforcement powers under the Communications Act, such that ASA(B) has these powers (including in relation to the Welsh Authority) for the purpose of securing compliance with the BCAP Codes, and with any additional requirements in licences for programme services in relation to advertising:

a) to require a licence holder to exclude from its programme service an advertisement or to exclude it in certain circumstances (Section 325(5)(a));

b) to require a licence holder to exclude from its service certain descriptions of advertisements and methods of advertising (whether generally or in certain circumstances) (Section 325(5)(b)). In respect of the additional licence requirements, such power may be exercised by ASAB only for impermissible medical advertisements;
NB: Detailed reasons must be given for any of those actions in relation to a medicinal product advertisement and reference must be made to any remedy available in court and any time limit that must be met. (Human Medicines Regulations 2012 Regulation 314);

c) to require, from any person who to ASA(B) seems to be responsible for an advertisement, provision of evidence relating to the factual accuracy of any claim and to deem a factual claim inaccurate if such evidence is not so provided (Broadcasting Act 1990 s.4(1)(c) and 87(1)(d) and Broadcasting Act 1996 s.4(1)(c) and 43(1)(d)).

14 Ofcom retains these powers conferred by the Broadcasting Acts 1990 and 1996 and the Communications Act 2003:

a) to direct the broadcast of a correction or statement of findings

b) to impose a financial penalty or shorten a licence period and

c) to revoke a licence.

Overseas advertising

15 Licensees should seek BCAP's advice if they want to have any rules in the Code disapplied because the advertising is on a programme service addressed exclusively to audiences outside the UK.

16 An advertisement that is aimed specifically and with some frequency at audiences in the territory of a single party to the 1989 Council of Europe Convention on Transfrontier Television must, with some exceptions, comply with the television advertising rules of that party. This does not apply:

a) if the party is a Member State of the European Union or

b) if its television advertising rules discriminate between advertising broadcast on television services within its jurisdiction and that on services outside its jurisdiction or

c) if the UK Government has concluded a relevant bilateral or multilateral agreement with the party concerned.