

Response to the BBC Trust Review of the BBC Editorial Guidelines

Background

1. RadioCentre is the industry body for Commercial Radio. Its members consist of the overwhelming majority of UK Commercial Radio stations, who fund the organisation.
2. The role of RadioCentre is to maintain and build a strong and successful Commercial Radio industry - in terms of both listening hours and revenues. As such, RadioCentre operates in a number of areas including working with advertisers and their agencies, representing Commercial Radio companies to Government, Ofcom, copyright societies and other organisations concerned with radio, and working with stations themselves. RadioCentre also provides a forum for industry discussion, is a source of advice to members on all aspects of radio, jointly owns Radio Joint Audience Research Ltd (RAJAR) with the BBC, and includes copy clearance services for the industry through the Radio Advertising Clearance Centre (RACC).

Executive Summary

3. RadioCentre welcomes this opportunity to comment upon the BBC Editorial Guidelines. The Guidelines outline the values and standards that the BBC expects in respect of all its content on TV, radio and online. This review therefore represents an important opportunity to ensure that these values and standards are appropriate and serve the best interests of licence fee payers.
4. We recognise that this review has two specific focuses: the guidance that seeks to preserve accuracy and impartiality, and the guidance that seeks to mitigate harm and offence. These are, of course, critically important issues and preserving the BBC's public reputation depends to a large extent on getting them right.
5. However, we will limit our comments to Chapter 14 of the revised Editorial Guidelines, titled 'Editorial Integrity and Independence from external interests'. This is because the manner in which the BBC's publicly funded services treat commercial brands, products and services is also critical to preserving the BBC's reputation and, more importantly, to ensuring that the interests of licence fee payers are best served. We therefore urge the BBC Trust to emphasise the critical importance of this aspect of the Guidelines.
6. **We believe that BBC services (radio, TV and online) frequently afford commercial brands, products and services significant (and free) promotional coverage, in direct breach of the Editorial Guidelines** (both the current version and the version under consultation). We have raised this concern on a number of occasions, through both informal discussions with the BBC Executive and the BBC Trust, and through the formal editorial complaints process¹.
7. Fundamentally, in addition to breaching the BBC Editorial (and Fair Trading) Guidelines, we believe that this behaviour jars with the purpose of these services, as set out in the BBC six Public Purposes (and reflected in their service licences). Instead, **we believe that BBC services should only include commercial references in editorial in a manner and quantity that is necessary to fulfil the public purposes.** We suggest that this should be the clear intention of Chapter 14 of the Editorial Guidelines, if it is not already so. To achieve this, there needs to be a greater understanding within the BBC of when it is and is not editorially justified to broadcast commercial references - and Chapter 14 may need to be (further) amended accordingly.

RadioCentre's response

8. The manner in which BBC services treat commercial brands, products and services inevitably raises fair trading issues. We recognise that the BBC has clearly defined Fair

¹ RadioCentre has a number of complaints currently progressing through the BBC complaints process. These include: editorial and fair trading complaints against the features 'Radio 1 presents ... Coldplay' and 'U2=BBC'; an editorial complaint against the Radio 1 'Harry Potter Day'.

Trading Guidelines and seeks to keep editorial and fair trading issues separate; we will therefore ensure that all comments in this response are focused upon editorial issues. However, we believe it is important to consider fair trading and editorial alongside each other (rather than separately or in isolation), when a complaint (e.g. of the nature of RadioCentre's 'Radio 1 presents ... Coldplay' or 'U2=BBC') raises implications for both. Similarly, we believe that the BBC Trust, when considering amendments to Chapter 14, should consider what is stated in the BBC Fair Trading Guidelines. We therefore urge the BBC Trust to refer to RadioCentre's fair trading complaints for a fuller expression of the impact of the BBC's actions on commercial competitors (in addition to the soon-to-be-published findings from the BBC Executive Fair Trading Committee).

9. In addition, we understand that this review will not reopen previous editorial investigations or deal with editorial complaints, although it will seek to incorporate lessons from past editorial failings. References to RadioCentre's editorial (and fair trading) complaints are therefore included for illustrative purposes only. We urge the BBC Trust to refer to RadioCentre's editorial complaints for a full expression of our position, to avoid repetition of many of our arguments.
10. Through the process of submitting these editorial complaints, RadioCentre has become aware of what we perceive to be failings in the BBC's editorial complaints process and, specifically, the remit of the BBC Executive Editorial Complaints Unit. Whilst we recognise that these issues are outside the remit of this review, and understand that the BBC Trust plans to review the BBC's complaints processes in 2010, we believe that this is an important and appropriate opportunity to express briefly these concerns (and, hopefully, influence the scope of the BBC Trust's consultation on the complaints process, prior to its publication).

Guaranteeing Editorial Integrity and Independence in BBC content

11. The BBC Editorial Guidelines already seek to prevent the following, in the existing Editorial Integrity and Independence chapter (Chapter 13):

- The perception of endorsement of commercial products/services; and
- Undue prominence of a commercial product.

Yet experience would suggest that the guidance within Chapter 13 is insufficiently understood and/or insufficiently drafted.

12. We recognise that a number of amendments have already been made to the 'Editorial Integrity and Independence' chapter of the Guidelines, some of which may partly be attributed to RadioCentre's editorial complaints. These include:

- 14.2.6 'We must never include a link on a public service website or within the editorial content of a commercial site, in return for cash, services or any other consideration in kind' [*This requirement was in the previous version of the guidelines, but it has now been upgraded to a principle*]
- 14.3.7 'Any proposal to use commercial logos on BBC Online must be approved in advance by a senior editorial figure or, for independents, by the Commissioning Editor.'
- 14.4.7 'We must ensure there is no element of plugging when we review products or services. We should review a range from different suppliers. We should not normally give details on air of how and where to obtain products or services. Such details should only be given in exceptional circumstances when there is a very strong editorial justification and we should cover a range of outlets'. [*This section has been strengthened from the previous version of the guidelines*]
- 14.4.18 Logos and Credits Online. 'Editorial references to companies or other organisations on BBC Online should not normally contain any use of their logo. Use of commercial logos on BBC sites must be editorially justifiable. Proposals to use commercial logos on BBC Online must be approved in advance by a senior editorial figure or, for independents, by the Commissioning Editor'

13. These amendments are welcome, and go some way to addressing RadioCentre's concerns. However, minor amendments will not fully address our substantive concern: that BBC services routinely include commercial references in editorial in a manner that directly breaches both the letter and spirit of the guidelines that seek to preserve editorial integrity and independence in BBC content.
14. We believe that Chapter 14 of the Guidelines (and Chapter 13 before it) as currently drafted should be sufficient to prevent inappropriate commercial references in BBC editorial. Their intention is clear. The fact that this guidance is so repeatedly breached suggests that either it is not fully understood (indicating a failure of compliance) or that there is a widespread perception that these breaches are acceptable and no action will be taken to prevent them in the future (perhaps indicating a more fundamental problem, namely a misunderstanding of the extent to which BBC services should act like commercial services). Certainly we would suggest that breaches of the current Chapter 13 by Radios 1 and 2, as alleged in RadioCentre's complaints, are partly indicative of these services' tendency to prioritise popularity and reach over the delivery of the BBC's public purposes.
15. The BBC Trust is unlikely to have had sufficient time to consider the implications of RadioCentre's editorial complaints prior to the conclusion of this review of the Editorial Guidelines. **We would therefore suggest that the BBC Trust consider the need for further revisions to the Guidelines when adjudicating RadioCentre's complaints.** We would also hope that the BBC Trust consider how to communicate and expand upon any sanctions and revisions that may flow from the outcome of RadioCentre's complaints, to ensure that breaches of this nature do not reoccur.
16. Until the BBC Trust has fully considered RadioCentre's various editorial complaints, and ruled on the extent to which the Editorial Guidelines have been breached, we cannot gauge the extent to which BBC services will continue to be allowed to include inappropriate commercial references in editorial. It is therefore difficult to recommend further changes that must be made to Chapter 14 of the Guidelines to ensure that further breaches do not occur. However, we do have a number of recommendations, which we believe should be implemented regardless of the outcome of RadioCentre's complaints. These are detailed below.

The need to define 'editorially justified'

17. When deciding whether to include a commercial reference in BBC editorial content, it is often expressed that it is appropriate to do so when it is 'editorially justified'. For example, the Guidelines state that programme makers must ensure that "*references to trade names, brand names and slogans are clearly editorially justified*"². When reviewing products or services, programmer makers "*should not normally give details on air of how and where to obtain products or services. Such details should only be given in exceptional circumstances when there is a very strong editorial justification*"³.
18. Much then depends on the definition of what constitutes 'editorially justified', yet nowhere is this expressed in the Editorial Guidelines. We understand that it may be difficult to provide a 'one-size-fits-all' definition, as editorial justification depends to such a large extent on context. Yet to base so much on an undefined term would suggest a significant regulatory failing, making it difficult for both programmers and regulators to judge whether output is both appropriate and falls within the parameters of the Guidelines.
19. **We believe therefore that the BBC Trust must include within the revised Guidelines guidance on how to judge editorial justification. We would suggest that this guidance includes reference to a service's service licence and the BBC Public Purposes.** Whilst remaining suitably flexible, this guidance would serve as a reminder of the ultimate purpose of BBC services (the promotion of the public purposes), and ensure that editorial justification is not simply interpreted as satisfying audience demand.

² 14.4.2, Chapter 14 of the revised BBC Editorial Guidelines, p. 126

³ 14.4.7, Chapter 14 of the revised BBC Editorial Guidelines, p. 127

Applying the Guidelines to a series of programmes

20. Through the process of submitting editorial complaints, it has become apparent that the remit of the Executive Editorial Complaints Unit is confined to considering breaches of editorial standards only within specific items. The ECU cannot then consider the quantum of prominence across a number of programmes (even when they constitute a programming feature). This is not made apparent to complainants, prior to submitting a complaint. This caveat has limited consideration of RadioCentre's editorial complaints and, we believe, constitutes a failing of the BBC editorial complaints process.
21. However, we believe that it also constitutes a failing of the Guidelines themselves. For example, a number of the individual programmes within the Radio 1 'Harry Potter Day' may have been 'editorially justified' (subject to the caveat we outline earlier in paragraphs 18 and 19), and within the parameters of the Editorial Guidelines, if executed appropriately. However, we do not believe that the same can be said for the overall totality of the feature itself. Repeated and significant references to a commercial product (the Harry Potter film) across the whole of Radio 1's daytime programming undoubtedly constituted undue prominence and endorsement of a commercial product. Yet the response of the BBC Executive to our complaint would suggest that little consideration was given to whether the feature **as a whole** fell within the parameters of the Guidelines.
22. It must be made clearer within Chapter 14 of the Editorial Guidelines that, in the case of a programming feature that runs across a number of programmes within one service or across a number of BBC services, **consideration of undue prominence, endorsement of commercial products/services and editorial justification must be applied to the feature itself, in addition to each of the constituent parts of that feature.**

Concerns about 'consideration in kind'

23. We also believe that our concerns regarding product placement have not been sufficiently addressed during the complaints process, due to a failing of the Editorial Guidelines.
24. The Guidelines state that BBC services '*must never include a product or service in our output in return for cash, services or any consideration in kind*'. We believe that a band/artist's willingness to grant a BBC Radio service a certain degree of access, such as a first single play, interview or live performance, may constitute 'consideration in kind'; namely access guarantees in return for a level of promotion greater than that accorded to other artists. However, the Editorial Complaints Unit rejected this argument, stating that they '*do not regard access, whether exclusive or otherwise, as constituting a 'consideration' in the sense envisaged in the guidelines*'.
25. By contrast, we do believe this sort of access constitutes 'consideration in kind', especially when there is exclusive or very limited availability/access to commercial operators for the same material. For example, members of a band promoting a new album, or members of a film promoting a new movie, may only have very limited diary availability for personal appearances in the UK. When the BBC secures that availability on an exclusive basis, it forecloses reasonable commercial opportunities to all other radio providers. Access to well-known personalities is undeniably a valuable commodity.
26. We seek the BBC Trust's views on this matter, and wish for the Editorial Guidelines to be amended accordingly (including greater definition of what constitutes 'consideration in kind').

The BBC Editorial Complaints Process

27. We recognise the need to ensure that the BBC editorial complaints process contains sufficient checks and balances to protect the interests of licence fee payers, whilst giving the Executive appropriate opportunity to respond. However, RadioCentre's own experience of the complaints process would suggest that it can require a greater investment of time and resource than necessary, and certainly more than most individuals and organisations should reasonably be expected to dedicate.

28. We believe that the multi-stage complaints process should be more flexible than at present, to reflect circumstance and to ensure that the balance of power is not unfairly skewed in favour of the BBC and not the complainant. For example, the requirement to always seek two responses from the BBC Executive before escalating a complaint to the Editorial Complaints Unit is unwieldy and unnecessarily delays the complaints process. For example, RadioCentre had requested that the BBC Trust consider our Harry Potter complaint, after receiving one unsatisfactory response from the Executive. Between them, the BBC Trust and Executive decided that RadioCentre would have to seek a further response from the Executive. This has not yet been received, further delaying the complaint, and we do not believe that the Executive will be able to provide any information that it was not able to provide in its initial response. We therefore question the justification for this delay.
29. In addition, it has not yet been explained to RadioCentre why our Harry Potter complaint was initially rejected by BBC Information, for allegedly falling outside the 30 day timeframe in which to complain about a BBC item. The BBC's editorial complaints process quite clearly stating that complainants have 30 working days to submit a complaint, and RadioCentre's complaint clearly fell within this threshold. This intervention delayed the initial consideration of the complaint.
30. The consequence of these delays is that RadioCentre's Harry Potter complaint, initially submitted in August 2009, remains with the BBC Executive at the end of December 2009. This is self-evidently unsatisfactory, while also falling outside the intention of the editorial complaints process.

December 2009.