

Ofcom Content Sanctions Committee

Consideration of sanction against	Life Show-Case Ltd in respect of its service Life Show-Case (TLCS 963)
For	Breaches of the Ofcom Broadcasting Code: <ul style="list-style-type: none">• Rule 10.1 – Broadcasters must maintain the independence of editorial control over programme content• Rule 10.2 – Broadcasters must ensure that the advertising and programme elements of a service are kept separate• Rule 10.3 – Products and services must not be promoted in programmes• Rule 10.4 – No undue prominence may be given in any programme to a product or service• Rule 10.5 – Product placement is prohibited. Product placement is defined in the Code as <i>“the inclusion of, or a reference to a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either)”</i>.
Between	18 July 2006 and 25 October 2006
Decision	To impose a financial penalty on Life Show-Case Ltd of £125,000 (payable to HM Paymaster General).

Summary

On the basis detailed in the Decision, under powers delegated from the Ofcom Board to Ofcom’s Content Sanctions Committee (“the Committee”), Ofcom has decided:

- 1) Life Show-Case (licence number TLCS 963) is a light entertainment channel for family viewing that broadcasts on the Sky platform (EPG¹ 139). The licensee of Life Show-Case is Life Show-Case Ltd (“Life Show-Case Ltd” or “the Licensee”).
- 2) Life Show-Case Ltd is ultimately owned by Life TV Media Ltd, which holds the licence for Life TV, the service upon which *Britain’s Best Breaks* was originally broadcast.
- 3) At the time of the breaches of the Code, Life Show-Case Ltd and Life TV Media Ltd had the same directors and compliance team.

¹ Electronic Programme Guide

- 4) *Britain's Best Breaks* was a travel series launched on Life TV in 2003 (Life TV is the subject of a separate sanctions decision concerning *Britain's Best Breaks*, see separate adjudication at http://www.ofcom.org.uk/tv/obb/ocsc_adjud/lifetv0407.pdf). Each 30 minute programme contained between 25 and 43 features, the majority of which were about accommodation and restaurants; other commercial organisations, for example tourist attractions and shopping centres, also appeared.
- 5) It had become apparent to Ofcom through its investigations into Life TV that organisations and businesses had paid the producer, Richland Media and Communications ("RMC"), to appear in the programme. For instance, RMC's website about *Britain's Best Breaks* strongly suggested that businesses could pay in order to be included in the programme. There was also a rate card on RMC's website, which gave prices for an 'advertising opportunity' with clear reference to appearances within the programme. The proprietor of one of the featured businesses also confirmed to Ofcom that he had paid for his business to be included in the programme.
- 6) This raised some very serious issues under the Broadcasting Code ("the Code"), in particular, as to whether the Licensee was trying to pass off what was effectively advertising content as editorial. There was no transparency to viewers who would have been unaware that organisations had paid to feature in the programme.
- 7) Ofcom recorded breaches of Rules 10.1, 10.2, 10.3, 10.4 and 10.5 of the Code against Life TV for the series *Britain's Best Breaks*. Ofcom was also in the formal process of considering the imposition of statutory sanctions against Life TV Media Ltd.
- 8) During its investigation and consideration of statutory sanctions regarding the service Life TV, Ofcom became aware that a new series of *Britain's Best Breaks* was being transmitted on another channel in the same group, Life Show-Case. This material raised identical issues to those raised by the previous series broadcast on Life TV. Ofcom was further contacted by a number of establishments stating that they had paid to feature in this editorial travel programme on the Life Show-Case channel.
- 9) The new series of *Britain's Best Breaks* started on Life Show-Case in July 2006. However, Life Show-Case had been broadcasting *Britain's Best Breaks* since 1 March 2006, when the previous series had moved from Life TV.
- 10) Ofcom's Content Sanctions Committee ("the Committee") heard oral representations from the Licensee before it considered whether to impose a statutory sanction and, if so, at what level. The Licensee stated that, with the benefit of fresh advice, it now accepted unreservedly that there had been breaches of Section 10 of the Code and apologised unreservedly for those breaches. The Licensee accepted that the breaches were serious. The Licensee also accepted that the breaches were repeated. However, it suggested that the breaches were not repeated in the sense of there being a whole raft of different breaches, but that there was a common problem with the programmes; so, if not a single breach, these were breaches at least of the same nature. The Licensee emphasised that the breaches were not deliberate.
- 11) The Committee was advised of new and additional compliance personnel

appointed to the Licensee (effectively a trebling of resource) and other compliance arrangements being put in place.

- 12) On the basis of the evidence provided, the Committee accepted that the breaches of Section 10 of the Code by Life Show-Case Ltd were not deliberate. However, it considered that these breaches were repeated (breaches of the same nature having occurred on a significant number of occasions), and that the repeated breaches were serious. The failure of the Licensee to appreciate the breaches and of the Managing Director to engage sufficiently with the issue at an early stage were considered by the Committee to be grossly negligent. The Committee considered that the Licensee was either reckless or grossly negligent in failing to appreciate that there were problems and that these problems involved the entire series of programmes and were not simply isolated incidents.
- 13) In particular, it was the Committee's view that, in this case, the Licensee had over time demonstrated the most reckless disregard for the seriousness of its position. This disregard included an apparent failure to take into account breaches identical in nature in respect of a previous series on a channel in the same group as the Licensee (and sharing the same Managing Director and compliance team). It also included an inexcusable failure to appreciate the seriousness of the issues and of the breaches that had already been found by Ofcom in the previous series broadcast on Life TV – despite the Licensee being aware that the previous breaches were already being considered for a statutory sanction. The Committee found it almost impossible to believe that, in these circumstances, the Licensee could not have been aware of the seriousness of Ofcom's concerns that establishments were paying for editorial references in *Britain's Best Breaks*.
- 14) In all the circumstances, and given the very serious nature of the repeated breaches, the Committee concluded that a financial penalty was appropriate. The Committee also gave consideration to whether the licence should be revoked. However, it concluded that it did not believe, at this time, that the Licensee was incapable of complying with the Code such that the licence should be revoked. However, the Licensee should be left in no doubt that Ofcom would take further breaches of the Code extremely seriously.
- 15) Taking into account all the facts and matters to which the Committee refers (see full adjudication), the Committee decided that it should reflect the serious nature of the repeated Code breaches and fine Life Show-Case Ltd £125,000 (payable to HM Paymaster General).

Background

1. Life Show-Case (licence number TLCS 963) is a light entertainment channel for family viewing that broadcasts on the Sky platform (EPG 139). The licensee of Life Show-Case is Life Show-Case Ltd ("Life Show-Case Ltd" or "the Licensee").
2. Life Show-Case Ltd is ultimately owned by Life TV Media Ltd, which holds the licence for Life TV (licence number TLCS 361). Life TV is also a light entertainment channel for family viewing that broadcasts on the Sky platform (this appeared at 160 on the Sky EPG but subsequently moved to 137). Life TV is subject to a separate consideration by Ofcom's Content Sanction Committee (please see adjudication at

http://www.ofcom.org.uk/tv/obb/ocsc_adjud/lifetv0407.pdf) in respect of the series *Britain's Best Breaks* broadcast on Life TV.

3. At the time of the breaches of the Code, Life Show-Case Ltd and Life TV Media Ltd had the same directors and compliance team.
4. *Britain's Best Breaks* was a travel series originally launched on Life TV in 2003. Each 30 minute long edition of *Britain's Best Breaks* focused on a particular part of the UK and featured a number of hotels, restaurants, shops and attractions in the relevant region. Each edition was broadcast daily at 18:30 and repeated on average twice a month throughout the year.
5. The third series of *Britain's Best Breaks* commenced on Life TV in 2005 and moved to Life Show-Case on 1 March 2006. Ofcom had concluded on 4 April 2006 that the **third series** of *Britain's Best Breaks* (as broadcast on Life TV, that is, before the series moved to Life Show-Case) was in breach of Rules 10.1 to 10.5 inclusive of the Code. Ofcom recommended that the matter, in respect of the licensed service Life TV, should be referred for consideration of a statutory sanction to the Content Sanctions Committee. Of particular concern was evidence that organisations had paid RMC, the production company, to be included in the programmes. This resulted in a lack of transparency for viewers, the Licensee's editorial independence being compromised and breaches of the product placement rule.
6. A fourth series of *Britain's Best Breaks* was broadcast on Life Show-Case from 18 July 2006 (according to the *Britain's Best Breaks* website) until it was pulled from the schedule, according to the Licensee, on 25 October 2006.

Britain's Best Breaks: 18 July 2006 to 25 October 2006

7. In late September 2006, whilst Ofcom was still in correspondence with Life TV Media regarding the possibility of sanctions in respect of *Britain's Best Breaks* as broadcast on Life TV, Ofcom noted that a new series of *Britain's Best Breaks* was now being broadcast on Life Show-Case. Ofcom was informed that the new series had started on Life Show-Case on 18 July 2006, by which time Ofcom had already found Life TV Media in breach of Rules 10.1, 10.2, 10.3, 10.4 and 10.5 (see adjudication for Life TV Media at http://www.ofcom.org.uk/tv/obb/ocsc_adjud/lifetv0407.pdf). Ofcom had established that RMC had included references to businesses in return for payment within the previous series of *Britain's Best Breaks* shown on Life TV.
8. The number of destinations featured in the fourth series is not clear. However, it is likely to have been at least 30 (the *Britain's Best Breaks* website indicated that the third series comprised 29 different destinations and, at 17 January 2007, the *Britain's Best Breaks* website listed over 40 different destinations in total). Each edition was broadcast repeatedly, on average twice a month, until the series was pulled from the schedule in October 2006. As with the previous series, once an edition had completed its 'run', it was removed from the Life Show-Case schedule. However, as with the previous series, it was available for purchase on DVD and establishments shown in the programme were also featured on the programme's own website², usually with a link to the commercial establishment's own website, and with an extract of the broadcast

² www.britainsbestbreaks.tv

programme that featured that establishment.

9. As with the previous series transmitted on Life TV, Ofcom had serious concerns regarding product placement, separation of advertising from programme content, undue prominence, product promotion and editorial integrity.
10. Each 30 minute programme contained around 25 features or more, most of which seemed to be about accommodation and restaurants; other commercial organisations, for example tourist attractions and shopping centres, also appeared. The premises were featured in some detail and film included footage of the services offered, often in addition to shots of their hoardings. Featured establishments were all named by the presenter and described in such favourable terms with lingering close-ups (e.g. of food) that each programme had a distinct feel of advertising. This raised serious questions regarding the Licensee's independence of editorial control (Rule 10.1), separation of advertising and programming (Rule 10.2), promotion of products and services in programmes (Rule 10.3), undue prominence (Rule 10.4).
11. Having viewed the content of the new series, Ofcom also had concerns (described in paragraph 12 below) that, despite its finding on 4 April 2006 that product placement had occurred in the third series of *Britain's Best Breaks* on Life TV in breach of Rule 10.5, the Licensee had allowed the broadcast of a new series of *Britain's Best Breaks* on Life Show-Case where product placement continued to occur.
12. Therefore, on 19 October 2006, the Executive contacted the proprietor of a bed-and-breakfast featured in the new series of *Britain's Best Breaks*. He said that a representative from RMC had visited him earlier in 2006 and explained how his establishment would benefit from inclusion in the programme. The proprietor advised that he paid £1600 for a reference within the programme. Ofcom was subsequently contacted by proprietors of at least five different establishments, each of whom claimed to have paid RMC sums varying from £500 to £3000 to appear in the programme. These calls were not solicited by Ofcom, but were made in response to concerns about the programme no longer being broadcast. This information served to confirm the validity of Ofcom's existing concerns about product placement in the series. It also indicated that the Licensee had failed to maintain independence of editorial control (in breach of Rule 10.1) and to keep advertising and programme content separate (in breach of Rule 10.2).
13. The broadcast of *Britain's Best Breaks* on Life Show-Case from 1 March 2006 until the end of that particular series (that is, the third series) does not form part of this sanctions case. However, Ofcom has seen no evidence to suggest that, when the third series of *Britain's Best Breaks* moved from Life TV to Life Show-Case, changes were made to ensure compliance with the Code. The Executive considered that it was extremely unusual for a series to move from one channel to another mid-series, and noted that the Licensee had provided no explanation for this at the time.
14. Ofcom had already found the previous series of *Britain's Best Breaks* on another channel in the Licensee's group (Life TV) to be in serious breach of the Code and was considering the imposition of statutory sanctions. Ofcom therefore wrote to the Licensee on 24 October 2006, explaining its concern that the fourth series of *Britain's Best Breaks* on Life Show-Case did not appear

discernibly different from those programmes previously shown on Life TV, in terms of the descriptions of establishments featured. The Licensee was informed that, as before, many of these descriptions appeared unduly prominent in breach of Rule 10.4, taking into account their frequency, level of detail and the language used, often to the extent that they appeared to be effectively promoting the relevant establishment, in breach of Rule 10.3. Ofcom also told the Licensee that it (Ofcom) had reason to believe that RMC had continued to invite establishments to be featured within the programme in return for payment, i.e. that product placement had occurred in breach of Rule 10.5.

15. John Hammond, Managing Director of both the Licensee and Life TV Media Ltd, sent a brief response on 25 October 2006, stating that he had instructed that the new series should be immediately suspended while investigations were made into the matter.
16. On 7 November 2006 SJ Berwin, acting for Life Show-Case Ltd and Life TV Media Ltd (but not differentiating between the two and referring to them instead as "Life TV") advised Ofcom that Life TV had understood Ofcom's concerns in respect of the third series to have related only to the five editions specifically referred to in the draft sanctions report prepared at that time in respect of Life TV Media. SJ Berwin said that Life TV now appreciated that this was not the case and that "*an important part of Ofcom's complaint related to the method of funding by the programme-maker [RMC]*".
17. SJ Berwin said that Life TV had considered at the time of broadcast of the new series that changes made in relation to its editing of *Britain's Best Breaks* were sufficient to ensure the content would comply with the Code. They said that Life TV now appreciated that the editorial changes may not have been enough to ensure compliance. They also said that Life TV was not aware prior to Ofcom's letter of 24 October 2006 that RMC had invited participants to be featured in the new series "*specifically in return for payment*". SJ Berwin said: "*Whilst Life TV was aware that payments could be made to RMC for inclusion on the promotional DVD and the website, it was understood that participants did not pay for air-time on the BBB [Britain's Best Breaks] programme.*"
18. SJ Berwin went on to say that:
 - Life TV had no knowledge of the payment made by the proprietor whom Ofcom had contacted but accepted Ofcom's comments in this regard;
 - all broadcasts of the new series had been suspended as an immediate response to Ofcom's letter;
 - Life TV had now sought to terminate the arrangements with RMC; and
 - Life TV had now instructed a person with significant compliance experience to support its compliance officer in ensuring all future programmes fully complied with the Code.
19. Between 1 November 2006 and 7 December 2006, Ofcom received five separate telephone calls – all unsolicited – from individuals in various parts of the country who advised that they had paid RMC (payments ranged from £500 to £3000) for their establishments to appear in *Britain's Best Breaks* on Life Show-Case. The callers contacted Ofcom because the programmes were not being broadcast in accordance with their expectations.
20. In light of the evidence, Ofcom recorded breaches of the Code against *Britain's*

Best Breaks on Life Show-Case. Specifically, on the basis of all the information elicited during its investigation, Ofcom concluded that:

- it appeared that the Licensee had not maintained independence of editorial control over the content of *Britain's Best Breaks* (breach of Rule 10.1);
 - in each edition, many of the features appeared to be advertising rather than editorial content, in that they were excessively detailed and favourable, going far beyond the typical content of other holiday programmes, and often providing contact details; there was often a clear sense of a 'sell' or call to action (breach of Rules 10.2 and 10.3);
 - the manner in which the majority of businesses were featured within the programme was unduly prominent, even where the reference did not go so far as to be considered promotional (breach of Rule 10.4); and
 - product placement had occurred (breach of Rule 10.5).
21. It was Ofcom's view that, by this stage, the Licensee should have been in no doubt from the ongoing Ofcom sanctions case concerning Life TV in respect of the previous series that Ofcom had extremely serious concerns about *Britain's Best Breaks*. In particular, Ofcom had already found Life TV Media Ltd in breach of Rule 10.5, which prohibits product placement. In correspondence regarding the previous series, Mr Hammond (then Managing Director of Life TV Media Ltd and Life Show-Case Ltd) said: *"I am unable to comment on whether the producers or production company receive funds from the organisations featured. How a programme is funded is not a question we would normally ask."* It was pointed out that Ofcom had made it absolutely clear that this was not an acceptable response and that it is a broadcaster's responsibility to ensure that product placement, which includes payment to a producer, does not occur.
22. Taking account of all the evidence, the Licensee was informed that Ofcom had difficulty in accepting that the Licensee was not aware that RMC was charging establishments featured in the latest series of *Britain's Best Breaks*.
23. In view of the previous findings and the evidence, it was considered that the breaches in respect of the latest series of *Britain's Best Breaks* were extremely serious, being both repeated and in the view of the Executive possibly deliberate.
24. It was the Licensee's view that a referral to the Committee was neither necessary nor appropriate. It argued that both the Life TV case and the Life Show-Case case raised identical issues. In its written submissions SJ Berwin, on behalf of Life Show-Case, stated that:
- "(a) Life Show-Case now understands the heart of Ofcom's concern was the method of funding by the programme-maker, Richland Media Communications ("RMC"). Our client took no part in the making of the programmes and had been assured by RMC that contributors in the programmes did not pay for airtime on Life Show-Case. In the light of Ofcom's investigations, it now accepts that this was not always the case;*
- (b) as a result, the breaches of the Code were not deliberate. Life TV and Life Showcase had, on advice, considered that the earlier findings against Life TV related to five specific episodes of BBB only. Accordingly, the subsequent broadcasting by Life Show-Case of BBB was done on the genuine belief that sufficient editorial changes had been made to the programmes to ensure*

compliance;

(c) no consumer, other than the initial complainant against Life TV (a competitor of RMC) has, as far as we are aware, complained about BBB;

(d) the viewing figures of BBB while on the Life Show-Case channel were low. The highest recorded figure of Britain's Best Breaks viewers broadcasts [sic] on the channel was 13,000. However, the average number of viewers was significantly lower, at approximately 4-5000. Accordingly, the potential harm to consumers from the broadcasts is limited;

(e) Life Show-Case did not make any financial gain from the breaches of the Code;

(f) as set out in our letter to Mr Banatvala, a new second compliance officer had been recruited to ensure all future broadcasts are compliant.”

25. It was also pointed out that Life Show-Case had taken *Britain's Best Breaks* off-air from 25 October 2006 (the day after Ofcom launched its investigation into the Licensee's transmission of *Britain's Best Breaks*) and that Life TV had ended its agreement with RMC.
26. It was Ofcom's view that in the context of all the correspondence and material dating from August 2005, it was clear that Ofcom's concerns were focused on the funding arrangements between the producers and the establishments featured in the series. Ofcom did not consider that, in light of all the evidence, it could be reasonably surmised by the Licensee that Ofcom's concerns related to only five programmes broadcast on Life TV (which had been cited as way of example). Any licensee properly aware of its duties under the Code would have been aware that sufficient editorial changes were not, or in some cases even could ever have been, made to the programmes to ensure compliance. In the Executive's view, the breaches appeared to be at least the result of serious recklessness, if not deliberate disregard. In any event the breaches were extremely serious and repeated.
27. The Licensee was informed that Ofcom did not require a complaint from a viewer in order to consider whether particular output had involved a breach of the Code. Moreover, in these particular circumstances, it was not relevant to the seriousness of the breaches that no viewers had complained about *Britain's Best Breaks* on Life Show-Case: it would not have been transparent to viewers that establishments were featured in *Britain's Best Breaks* in return for payment and it was therefore not surprising that Ofcom received no complaints.
28. The number of viewers was only of very limited relevance in deciding the seriousness of a breach of the Code. Ofcom was required to ensure compliance with the requirements of the TWF Directive³ and the Code, independent of the number of viewers. In addition, the rules in Section 10 were intended both to protect viewers from advertising messages in editorial content and also to ensure that broadcasters did not circumvent the advertising minutage rules. Product placement as defined in the Code very clearly included payment made to the programme producer. Even if Life Show-Case Ltd did not make any direct financial gain, the production costs of *Britain's Best Breaks* were subsidised so reducing the cost of the programming. Moreover, the Licensee's ultimate owner, Life TV Media Ltd, had finally advised Ofcom in January 2007 that it did receive payment from RMC in respect of *Britain's Best Breaks*. The nature of those payments only came to light at the hearing before the Content Sanctions Committee.

³ the EU Television without Frontiers Directive

29. The continuing compliance problems with *Britain's Best Breaks* were so fundamental that the appointment of another compliance officer at this stage did not materially alter the argument for a statutory sanction of some significance. The Licensee's Managing Director himself knew that Ofcom had found product placement to have occurred in the previous series of *Britain's Best Breaks* shown on Life TV but yet he appeared to have taken wholly insufficient action to ensure no recurrence of such a breach in *Britain's Best Breaks* on Life Show-Case.
30. Ofcom welcomed that Life Show-Case Ltd had taken *Britain's Best Breaks* off air as from October 2006 and Life TV Media Ltd had terminated its agreement with RMC. However, despite Ofcom's previous finding in April 2006, a number of programmes in the fourth series of *Britain's Best Breaks* were broadcast from 18 July 2006 until October 2006 and they were in breach of the Code.
31. The Ofcom Executive considered that the breaches were serious, repeated and possibly deliberate; and in all the circumstances, a statutory sanction should be considered. Ofcom's concerns were compounded by the fact that Ofcom had already recorded identical breaches against the same programmes (albeit a different series) broadcast on another channel in Life Show-Case's group, Life TV.
32. Life Show-Case transmitted a series of programmes where organisations and companies paid the production company considerable amounts of money for references and promotion within what was being claimed to be editorial content. There was no transparency and viewers were unlikely to have been aware that such transactions had taken place.
33. Taking into account:
 - this lack of transparency;
 - the fact that *Britain's Best Breaks* was a long-running series (first broadcast in 2003 on sister channel Life TV) and was broadcast daily;
 - and that the Executive had already found the previous series on Life TV to be in breach of Rules 10.1 to 10.5 of the Code;

the Executive considered that the current breaches by Life Show-Case Ltd on Life Show-Case were serious and repeated.

Referral to Ofcom's Content Sanctions Committee

34. Ofcom's Executive viewed the Code breaches by Life Show-Case Ltd as serious and repeated and possibly deliberate. In accordance with Ofcom's published procedures (Outline procedures for the consideration of statutory sanctions) the Executive recommended that the case be referred to Ofcom's Content Sanctions Committee ("the Committee").
35. Ofcom's Outline procedures for statutory sanctions state that: "The imposition of a statutory sanction against a licensee is a serious matter. Ofcom will impose a statutory sanction if it believes that a licensee has repeatedly, deliberately or seriously breached the terms of its licence conditions or Ofcom's statutory Codes."

The Hearing

36. Ofcom held an oral hearing on 19 March 2007 before the Committee, to give the Licensee a full opportunity to make representations before deciding whether the Code breaches by Life Show-Case Ltd warranted the imposition of statutory sanctions, and if so at what level. Life Show-Case Ltd was represented by John Hammond (Managing Director of Life TV Media Ltd and Life Show-Case Ltd), Jim Brathwaite CBE non-executive Chairman (and executive Chairman designate) of Life TV Media Ltd and Life Show-Case Ltd, James Eadie (Barrister), Charlotte McMillan and Hannah Parry (both of S J Berwin).
37. The Committee was advised that Mr Brathwaite CBE, who had been the non-executive Chairman of Life TV since October 2006, was to become executive Chairman from the end of March 2007, and that his credentials included current involvement with the Better Regulation Commission. John Hammond had been a director of Life TV since its inception, and Managing Director of Life TV since early 2005.
38. Mr Eadie then asked the Committee whether, since the points he had to make by way of explanation and mitigation were effectively common to both the Life TV Media and Life Show-Case matters, it would be acceptable to make all the points he wished to make compositely. The Committee agreed to this, but made clear that it would continue to treat the cases against Life TV Media Ltd and Life Show-Case Ltd as separate cases. Mr Eadie stated that he would use the term "Life TV" as a composite to cover Life TV Media Ltd and Life Show-Case Ltd.
39. In his representations on behalf of the Licensee, Mr Eadie explained that Life TV had genuinely believed that the entire set of programmes was not tainted; even when the problems had been pointed out by Ofcom, it still genuinely considered, on the basis of advice it had received, that a position that there had been no breach of the Code could be fairly and properly supported. However, Life TV had now had the opportunity, with the benefit of fresh advice, to reconsider the matter and accepted unreservedly that that was not a tenable position. It accepted that there had been breaches and that it should have reacted differently, and it apologised unreservedly for those breaches.
40. The Licensee requested that, in its consideration of a statutory sanction, the Committee should take into account that Life TV accepted that the breaches were serious, that Compliance should have picked them up, and that there should have been a different reaction within the Life organisation, both before and after the entirely legitimate concerns were raised. Life TV also accepted that the breaches were repeated. However, it was suggested on behalf of the Licensee that the breaches were not repeated in the sense of there being a whole raft of different breaches, but that there was a common problem with the programmes; so, in reality, if not a single breach, these were breaches at least of the same nature.
41. Life TV pointed out that so far as it was aware there was only one complaint, which appeared to have been from a competitor. The programme had a relatively small audience, and the audience was not of a particularly vulnerable kind; however, the Licensee recognised that those factors did not render the breach "unserious". Life TV stated that it now clearly understood that the core of the concern raised was that the lines between editorially independent

content and advertising had been blurred, and that the audience, however small and sophisticated and despite the nature of travel programmes generally, did not know this.

42. It was emphasised on behalf of Life TV that the breaches were not deliberate. The Licensee claimed that there was no evidence of a deliberate flouting of the rules and, secondly, that any such suggestion would involve the allegation that Life TV had deliberately decided potentially to bring down the current consequences on their own head. It was submitted that Life TV could not realistically have hoped to get away with it if it had been deliberate, and that it was unrealistic that it would have put the enterprise at risk for the “genuinely tiny rewards of broadcasting this programme to an audience of a few thousand”.
43. Mr Eadie suggested to the Committee that it would need to consider the appropriate sanction on the basis that, at worst, it was dealing with serious but genuine misjudgements, and his submission would be that the ultimate or most serious sanctions should and could only properly be imposed in the most serious cases.
44. So far as the content of the programmes was concerned, and the issue of whether or not it should have been perfectly obvious to all concerned that there was a genuine problem with these, Mr Eadie said that these were holiday or destination programmes and in their nature they sometimes called for difficult judgments. He added that they were inevitably focused on service providers; good service providers could properly be praised in those programmes, and he referred to a variety of other programmes which had been mentioned in the papers before the Committee. The Licensee did not believe that it was entirely clear and obvious simply on the face of the programmes that there was a flagrant breach.
45. Mr Eadie acknowledged on behalf of Life TV that in some respects and at some times the divide between RMC as production company and Life TV as broadcaster was not as entirely crisp and clean as one would have liked; however, that core distinction, production company on one side and broadcaster on the other, did remain throughout their relationship.
46. Life TV had understood that RMC offered featured establishments a range of services connected to these programmes, in particular, DVDs, footage for use, for example, on hotels’ websites, and also the provision of links from the *Britain’s Best Breaks* website itself.
47. At the hearing Life TV fully accepted that it should have been put on high alert, and should have prompted far more searching enquiries and a greater clarity of answers than in fact occurred once it was appreciated that **any** money was paid by the service providers to the producer. But it was not clear to Life TV at the time, based on what it was told by RMC, that it was simply being used, in effect, as an editorial conduit for adverts.
48. Life TV said that it now accepted that there was powerful evidence to suggest that RMC did charge companies for inclusion in the programmes that were broadcast; this evidence included the rate card for the 2005/06 season which had been displayed on RMC’s website. Life TV also fully acknowledged that more could and should have been done to explore that issue with RMC. However, Mr Eadie said that Life TV had received repeated assurances from

the production company that contributors did not pay for inclusion on the programme. Mr Eadie asked that the Committee bear in mind, when considering the nature of sanction for the breach, that it specifically raised the matter with the producer and was given that specific assurance. The Committee later questioned Mr Hammond on the number and identity of service providers who had appeared in the programme but elected not to buy the "extra services" of appearance on the website or provision of DVDs. Mr Hammond replied that there were many such service providers, and that he had been given a list in a telephone conversation with RMC; however, given all the information to hand now, he thought it unlikely that there were any restaurants or hotels on this list.

49. Mr Eadie submitted that it was questionable whether or not normally and as a matter of routine a broadcaster should be expected to ask a producer how a programme was funded. However, Life TV accepted that, in the case of a programme where there was some cause for concern, that was plainly a proper and relevant question that should have been asked, as in this particular case. If asked and answered accurately, this would have raised the gravest concerns, because it would have made crystal clear that what appeared to have been done was a payment for broadcasting, and that raised real issues under Rule 10.5 of the Code.
50. It was accepted by Life TV that there were some failings in its handling of the matter once issues were raised by Ofcom. It fully recognised that it should have appreciated earlier that there were serious and fundamental problems not just with individual isolated programmes (i.e. problems which could have been dealt with simply by editing editorial content), but with the concept of *Britain's Best Breaks* in its entirety, and that it should have been taken off air sooner than occurred. But reliance was placed on what it was told and advice given by compliance and other advisers. Following a discussion later in the meeting about the time at which it should have been clear to the Licensee that it was the whole series previously broadcast on Life TV which presented problems, and not just the five programmes cited by way of example, it was emphasised by Mr Eadie that nothing which he had said at the meeting on behalf of the Licensee should be taken as an indication that Ofcom had not made its concerns perfectly clear.
51. The Committee was advised of new and additional compliance personnel who had been appointed to Life TV – effectively, a reorganisation and trebling of the compliance staff - and new compliance arrangements concerning such personnel. In addition, there was a planned programme of involvement of S J Berwin to ensure that the legal aspects of compliance were fully brought home to those with responsibility for that function within the Licensee's group. Mr Eadie also outlined other proposals which Life TV considered would strengthen the compliance function. Mr Eadie advised that the Board were now clear that they needed to take a serious and direct interest (not merely at one remove) in ensuring that steps were taken to make sure that the compliance function worked properly; it was suggested that the appointment of Jim Brathwaite CBE, who had directly relevant experience of compliance, was an important step in that regard.
52. During its subsequent questioning, the Committee confirmed that it understood the Licensee's explanation for the programme being taken off the Life TV channel on 28 February 2006, and broadcast on Life Show-Case from 1 March 2006, until taken off air completely (i.e. to enable *Britain's Best Breaks* to

continue to be available at the same time slot, following Life TV's taking certain live teleshopping content). However, the Committee could not understand why this had never been mentioned in any of the correspondence with Ofcom in the ensuing six months. Mr Hammond explained that, internally, little division was seen between the different entities; the different subsidiaries internally were run as one, with the same compliance officer and the same officers in most positions. He assured the Committee that there was never any intent to cover up the fact that the programme had moved to Life Show-Case, and no advice had been received (from the previous advisers then engaged) that this should be advised to Ofcom. The Licensee also advised that, at that time, it was still thought that Ofcom's concerns related only to the five programmes cited by way of example in the case against Life TV Media Ltd in respect of its service Life TV.

53. On a number of occasions, Mr Hammond referred to the reliance he had placed on the advice of others, including the Licensee's compliance officer at the time and its previous legal advisers, in addressing the concerns raised by Ofcom. Whilst the Committee referred to Mr Hammond on a number of occasions as an experienced television executive, Mr Brathwaite suggested that, whilst Mr Hammond was experienced in media, this was in the unregulated media. In Mr Brathwaite's view there had been a great deal of naivety in running Life TV, but he said that that naivety was not there now. He also explained that, when the matter had been brought to his attention as a possible problem, it was he who had said that the programme should be taken off air immediately (October 2006); (at this time the programme was being broadcast on Life Show-Case).
54. The Committee was advised that the relationship between Life TV and RMC had been terminated, and steps taken to ensure that the situation currently under consideration did not arise in the future; these included a relevant warranty in Life TV's precedent purchase document.
55. Mr Eadie made representations on the question of the level of sanction. First, he gave some details about the financial background of the company, which he said was coming out of a very troubled financial period. Although it was making an operating profit, there were still significant liabilities, so it was operating in deficit.
56. Mr Eadie submitted that the scale of the fine proposed by the Executive (£125,000 to £175,000 in respect of Life Show-Case Ltd) was enormous compared with the total gross revenue stream generated by the programmes and the overall general total money being made by this group of companies. Taking into account the penalty separately proposed for the Life TV Media Ltd case (£75,000 to £125,000), the combined figure proposed would wipe out, probably two or three times over, the entire profit made by this group of companies since they started operating. That was in his view very disproportionate.
57. Mr Eadie contended that revocation would not be an appropriate sanction, on the grounds that it would be a grossly disproportionate sanction to impose in this case, and that the consequences would be to put the Licensee out of business. He submitted that this was the most serious sanction which could be imposed, and should be reserved for the most serious cases.
58. Mr Eadie then referred to the past breach for which the Licensee's holding

company, Life TV Media Ltd, had been fined £12,000. He noted that the breach arose as a result of a 'genuinely inadvertent mistake'. Life TV Media Ltd had taken too much on trust from the suppliers. He acknowledged the similarities with the current case, although this was, he said, in a different context. But he emphasised the series of steps which had now been taken, particularly in relation to compliance, to ensure that this did not happen again.

59. Mr Eadie said that his client accepted that a penalty was almost inevitable, but the question was at what level. He submitted that the breach committed by Life TV Media Ltd and Life Show-Case Ltd was a composite breach, and that it was not appropriate to impose a fine against Life TV Media Ltd, and then to impose an additional (larger) fine against Life Show-Case Ltd. In his view, a single level of penalty should be arrived at which was appropriate to that composite breach. He suggested that the level of penalty should be nothing like the level suggested by the Executive either together or individually, and that the suggested penalty bore no relation to the seriousness of the breach or to the amount of money that the Life group of companies had available to pay that sanction.

Sanctions Decision

60. The Committee carefully considered all the oral evidence it had heard together with the written representations previously provided by the Licensee and further written evidence provided to the meeting. The Committee did not agree with the Licensee that this case of breach and that of Life TV Media Ltd should be looked at compositely when considering the seriousness of the breach and the level of any penalty. Each company was a separate licensee and was broadcasting under a separate licence. In addition, the decision to broadcast a new fourth series on Life Show-Case was separate from the decision to broadcast it on Life TV. Moreover, the Licensee's decision to broadcast the fourth series was made in the knowledge that Ofcom had already advised Life TV Media Ltd that its broadcasting of almost identical material (in the third series) was in breach of the Code.
61. Having considered all the evidence and carefully listened to the Licensee's representations, the decision of the Committee was as follows.
62. On the basis of the evidence provided, the Committee accepted that the breaches of Section 10 of the Code by Life Show-Case Ltd were not deliberate. However, the Committee considered that the breaches of the Code by Life Show-Case Ltd were repeated (breaches of the same nature having occurred on a significant number of occasions), and the repeated breaches were serious. The seriousness of the repeated breaches was compounded by the fact that, at the time the Licensee commenced broadcasting the material on Life Show-Case (18 July 2006), the Licensee was already aware of Ofcom's concerns in relation to *Britain's Best Breaks*, and was aware of Ofcom's finding in April 2006 (confirmed on 18 July 2006) that its holding company, Life TV Media Ltd, was in breach of the Code and that Ofcom was considering the imposition of statutory sanctions. In the Committee's view, the fact that the nature and seriousness of the breaches of the Code had not been appreciated by the Licensee and that, despite his dealings with Ofcom in relation to the Life TV Media case, the Managing Director had still failed to recognise and engage sufficiently with the issue, were either reckless or grossly negligent on the part of the Licensee. Furthermore, the Committee found extraordinary the

Licensee's failure to mention to Ofcom until 10 January 2007 the fact that *Britain's Best Breaks* had moved to Life Show-Case from another licensed channel in the Licensee's group.

63. The breaches, which by their very nature were serious, had continued over the whole series and were not simply isolated incidents. However, the Committee noted that they had occurred over a much shorter period of time than the same breaches committed by Life TV Media Ltd. The Committee considered that it was inexcusable that the Licensee had failed to appreciate that there were problems (despite being aware of Ofcom's concerns) and that these problems involved the entire series of programmes and were not simply isolated incidents. In the Committee's view, the Licensee had demonstrated a reckless disregard for the seriousness of the situation, despite being aware of Ofcom's detailed questioning and increasing concerns in relation to *Britain's Best Breaks*.
64. The Committee was concerned as to whether even now Mr Hammond understood the issues involved. Whilst the five programmes (broadcast by Life TV Media Ltd) viewed by Ofcom and cited as examples for Ofcom's concerns had been taken off air in April 2006 pending further review and re-editing, the series was simply transferred to Life Show-Case from another broadcaster within the Licensee's group. Mr Hammond had confirmed that he had viewed the programmes himself and, in the view of the Committee, it should have been clear to him, whether or not he was an experienced TV professional, that the problem was serious, and that by its very nature (that is, the matter of how *Britain's Best Breaks* was funded) this meant that there was a serious and fundamental problem with the series as a whole, not just the five programmes which Ofcom had originally given by way of example.
65. The Committee noted Mr Hammond's comments in the current case about the steps taken following the previous sanctions finding in 2005 and also noted the Licensee's representations about the compliance procedures which it had recently put in place. However, the Committee was at a loss to see what effective action had been taken by the Licensee up to October 2006 (the point at which the series ceased to be broadcast) to show that compliance was being taken seriously and that the Licensee was fulfilling its compliance responsibilities. This raised serious questions about the adequacy of the Licensee's compliance procedures during the relevant period (July to October 2006), which in the view of the Committee had been singularly ineffective.
66. The Licensee had been aware back in 2004 of concerns previously raised by Ofcom about *Britain's Best Breaks*. Given this, and Ofcom's recorded breaches of the Code in April 2006 against the third series broadcast on Life TV, the Committee considered that the Licensee should have been in no doubt about its responsibilities to ensure that product placement, which included payment to a producer, did not occur. The fact that Life TV Media Ltd was also in the formal process of sanctions in respect of its service Life TV for *Britain's Best Breaks* only added to the Committee's deep concerns.
67. The Committee took into account that, more recently, steps did appear to have been taken to put in place more robust compliance arrangements for the Licensee.
68. The Committee was advised that it was entitled to consider revocation of Life Show-Case Ltd's licence. However, the Committee took into account the

Licensee's representations, in particular, its assurance that new compliance arrangements had been put into place, and the new executive role to be assumed by the Chairman. The Committee also took into account that the Licensee now accepted that it should have been on greater alert, and should have made greater enquiries to establish the position for itself, given what it now accepted was "powerful evidence" that payments were made in return for inclusion in the programme (i.e. product placement). In these circumstances, the Committee concluded that, while Life Show-Case Ltd clearly had some very serious compliance failures, it did not yet believe that the Licensee was incapable of complying with the Code such that the licence should be revoked. However, the Licensee should be left in no doubt that Ofcom would take further breaches of the Code extremely seriously.

69. In all the circumstances and given the serious nature of the repeated breaches, the Committee concluded that a financial penalty was appropriate. Under the Communications Act 2003, section 237(3), a financial penalty in this case may not exceed the greater of £250,000 or 5 per cent of Life Show-Case Ltd's qualifying revenue for the relevant period (2005). This meant that the maximum penalty which the Committee could impose was £250,000. When setting the level of the penalty, the Committee took into account the relevant qualifying revenue of Life Show-Case Ltd.
70. The Committee referred to Ofcom's Penalty Guidelines which set out a number of factors which it should take into account when determining the level of penalty to be imposed including:
- the seriousness of the contravention;
 - any gain (financial or otherwise) made by the regulated body in breach;
 - size and turnover of the regulated body;
 - the duration of the contravention;
 - continuation of the contravention after being notified of a contravention by Ofcom;
 - the extent to which senior management knew, or ought to have known, that a contravention was occurring.
71. In all the circumstances, the Committee determined that the appropriate level of fine was £125,000. The Committee considered that the fine to be imposed on Life Show-Case Ltd should not only be separate to that imposed on Life TV Media Ltd (in respect of its service Life TV) but also greater. This is because the Licensee should have been aware of Ofcom's concerns, and finding of breaches, relating to the series on Life TV, and should have acted in a much more responsible manner. The Committee emphasised that the Licensee had compounded the seriousness of the position by starting to broadcast the fourth series of *Britain's Best Breaks* when it was well aware that Ofcom had already found its holding company in breach of Section 10 of the Code in respect of the same programme and was now considering sanctions. The Committee considered whether it should impose a considerably higher fine on Life Show-Case Ltd than it had on Life TV Media Ltd. However, the Committee considered that this would be disproportionate in all the circumstances, particularly given the Licensee's admission that it should have been on greater alert, and made greater enquiries to establish the position for itself given what it now accepted was "powerful evidence" that payments were made in return for inclusion in the programme, the fact that the programme was broadcast by Life Show-Case Ltd for a shorter period of time than by Life TV Media Ltd and the fact that its qualifying revenue was considerably less than that of Life TV Media Ltd (against which a fine was being separately imposed).

72. Having taken account of the representations made and considered the relevant facts as outlined above, the Committee decided to impose a financial penalty on Life Show-Case Ltd of £125,000 (payable to HM Paymaster General).

Members comprising the Committee for the decision are:

Philip Graf (Chairman)
Richard Ayre
Joyce Taylor

20 April 2007