

# Ofcom Content Sanctions Committee

It is Ofcom policy to state the full language used on air by broadcasters who are the subject of a sanction adjudicated by the Content Sanctions Committee. Some of the language used in this decision may therefore cause offence.

<b>Consideration of sanction against:</b>	The British Broadcasting Corporation (“the BBC”)
<b>For:</b>	Breaches of Ofcom’s Broadcasting Code (“the Code”) in respect of:  <b>Rule 1.14:</b> “The most offensive language must not be broadcast before the watershed...”; and  <b>Rule 2.3:</b> “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context”.  In <i>Live Earth</i> Broadcast on BBC1 and BBC 2
<b>On:</b>	7 July 2007
<b>Decision:</b>	To direct the BBC to broadcast a statement of Ofcom’s findings on each of BBC1 and BBC2 in a form to be determined by Ofcom and on a specified occasion.

## 1. Summary

- 1.1 For the reasons set out in full in the Decision, under powers delegated from the Ofcom Board to Ofcom’s Content Sanctions Committee (“the Committee”), Ofcom has decided to impose a statutory sanction on the BBC. This is in light of the serious and repeated nature of the BBC’s failure to ensure compliance with the Code in respect of its broadcast of *Live Earth* on 7 July 2007.
- 1.2 The BBC is the main national public service channel, funded by the licence fee. Throughout the afternoon and evening of 7 July 2007, BBC 1 and BBC 2 broadcast live performances and presentations from music bands and other celebrities, who were appearing on stage at Wembley as part of a global and independently produced *Live Earth* event.
- 1.3 22 viewers complained that the BBC broadcast unacceptable language before the watershed during this programme. There were six instances of performers using the most offensive language, such as “motherfucker” and other variants of the word “fuck”.
- 1.4 Ofcom concluded that the broadcast of the most offensive language before the watershed was in breach of Rules 1.14 and 2.3 of the Broadcasting Code (“the Code”). It further concluded that the breaches were serious and repeated and consequently warranted the imposition of a sanction.
- 1.5 In coming to this decision, Ofcom took account of all the points put forward by the BBC in its defence. These included that:

- When the programme was being planned, the organisers of *Live Earth* had been co-operative and responsive to the BBC's concerns. The organisers, artists and/or their managers had given repeated assurances that problems such as those encountered in another BBC event broadcast on 2 July 2005 on BBC1 *Live8*, and subsequently found to have contravened Ofcom's Code at the time, would not recur;
  - the BBC had reasonably relied on such assurances;
  - it had taken further measures to ensure compliance with the Code on the day; and
  - it had considered it unnecessary to put a time delay on the broadcasts on the basis that an event billed as "live" should be broadcast as such. This view had been supported by a belief that short time delays were not necessarily effective.
- 1.6 Ofcom also took into account the fact that the BBC apologised on air and accepted that the broadcast before the watershed of offensive material represented sanctionable breaches of the relevant Code Rules. Moreover, the BBC had co-operated fully and promptly with Ofcom throughout the investigation and sanctions process.
- 1.7 With regard to the serious nature of the breaches, Ofcom noted in particular that:
- the breaches involved the repeated use of the most offensive language before the watershed;
  - there was in some cases a considerable delay in the broadcast of an apology;
  - the breaches involved the transmission of some of the most offensive language at a time children were likely to be in the audience (in the afternoon on a Saturday);
  - the BBC had previously been made aware that Ofcom had serious concerns over compliance failures with regard to the broadcast of similar and/or comparable events; and
  - the BBC had failed to deploy effective and appropriate procedures to prevent the broadcast of the most offensive language in a 'live' music event.
- 1.8 With regard to the repeated nature of the breaches, Ofcom took into account in particular that:
- Ofcom had previously found (in 2005) the BBC in contravention of the regulatory Code in effect at the time for broadcasting the most offensive language before the watershed in a similar 'live' event, namely *Live8*<sup>1</sup>; and
  - in *Live Earth* the most offensive language had been broadcast on six occasions, resulting in repeated breaches of the Code during this time.
- 1.9 In conclusion, Ofcom considered that the BBC had not sufficiently taken into account Ofcom's previous decisions in cases similar to *Live Earth*. This was particularly important since this programme involved the broadcast of the most offensive language before the watershed at a time when children were likely to be in the

---

<sup>1</sup> [http://www.ofcom.org.uk/tv/obb/prog\\_cb/pcb41/](http://www.ofcom.org.uk/tv/obb/prog_cb/pcb41/)

audience. In light of the serious and repeated nature of the breaches, and having given careful consideration to the BBC's representations (see Sections 4 and 7 below), the Committee decided that it was appropriate and proportionate in the circumstances to direct the BBC to broadcast a statement of Ofcom's findings on each of BBC1 and BBC2 in a form to be determined by Ofcom and on a specified occasion.

## 2. Background

- 2.1 *Live Earth* was a 24-hour, seven-continent series of concerts. It took place on 7 July 2007, involving more than 100 music artists. The event was put together by the Alliance for Climate Protection, The Climate Group and other international organisations to encourage individuals, corporations and governments to take action to prevent climate change.
- 2.2 Part of the *Live Earth* event which took place at the new Wembley Stadium in London was broadcast by the BBC. The principal BBC television coverage on 7 July 2007 began on BBC2 at 12:30, switching to BBC1 at 17:30 until 22:00. This event, featuring contemporary bands and other celebrities, attracted an audience which included children.
- 2.3 The broadcasts were supplemented by backstage interviews and studio elements. The studio elements were hosted on BBC2 pre-watershed by Jonathan Ross and then Graham Norton, and on BBC1 pre-watershed by Jonathan Ross. The studio elements generally provided for comment and analysis of the day's unfolding events either by the presenter or by guests invited into the studio.
- 2.4 There were six instances, across both channels, when performers on stage used the most offensive language before the watershed ("fuck", "fucking", "motherfucker"). In some cases, these words were used during the course of songs being performed by guest artists. In some instances, apologies were given on air. However, in all but one of these instances, the apology that was given was not made immediately.

## 3. Legal Framework

### The Communications Act 2003

- 3.1 Section 319 of the Communication Act 2003 ("the Act") requires Ofcom to set standards for the content of programmes, and to include them in one or more codes. In setting these standards Ofcom must secure the standards objectives set out in section 319(2) of the Act. These include the following standards which are relevant to the breaches in this case:
  - that persons under the age of eighteen are protected (section 319(2)(a)); and
  - 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 the inclusion in such services of offensive and harmful material (section 319(2)(f)).
- 3.2 In applying the standards it sets under section 319, Ofcom is required to have regard to the principles under which its regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. It must also have regard to any other principles representing best regulatory

practice (section 3(3)). Ofcom must also have regard to a number of other considerations as they appear relevant in the circumstances. These include:

- the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the United Kingdom (section 3(4)(a));
- the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g));
- the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h));
- the desirability of preventing crime and disorder (section 3(4)(j)); and
- the different interests of persons in different parts of the United Kingdom, of different ethnic communities within the United Kingdom (section 3(4)(l)).

3.3 Section 198 gives Ofcom the function of regulating provision of the BBC's services and the carrying on by the BBC of other activities connected to the provision of the BBC's services. Ofcom's duties and powers in relation to carrying out this function are set out in the Communications Act, the Broadcasting Act 1996 and the BBC Charter and Agreement. In particular, Clause 46 of the BBC Agreement states that the BBC must observe certain standards set by Ofcom under section 319 of the Act, including those relating to the protection of persons under the age of eighteen (s.319(2)(a)) and the application of generally accepted standards so as to provide adequate protection for the public from harmful or offensive material (s.319(2)(f)) (Annex 10). Clause 46 of the Agreement is included in the list of "Relevant Enforceable Requirements" under Clause 95. As a result, the BBC is required to comply with programme standards set by Ofcom including, for the purposes of this adjudication, Rules 1.14 and 2.3 of the Ofcom Broadcasting Code. (See subparagraphs 3.10 and 3.11.) .

3.4 Section 198(3) of the Act requires the BBC to pay penalties to Ofcom in respect of any contraventions by the BBC of any provision made under Part 3 of the Act or the BBC Charter and Agreement that is imposed by Ofcom in exercise of the powers conferred on it. Clause 94 of the BBC Agreement gives Ofcom the power to fine the BBC if it is satisfied that the BBC has contravened a "Relevant Enforceable Requirement". Where it does so, section 198(5) of the Act states that *"the maximum penalty that may be imposed on the BBC on any occasion by Ofcom in exercise of a power conferred by virtue of the BBC Charter and Agreement is £250,000"*.

### **The Human Rights Act 1998**

3.5 Under section 6 of the Human Rights Act 1998, there is a duty on Ofcom (as a public authority) to ensure that it does not act in a way which is incompatible with the European Convention of Human Rights ("the Convention").

3.6 Article 10 of the Convention provides for the right to freedom of expression. It encompasses the broadcaster's right to "impart information and ideas" and also the audience's "right to receive information and ideas without interference by public authority". Such rights may only be restricted if the restrictions are "prescribed in law and necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

health and morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary” (Article 10(2) of the Convention).

- 3.7 Ofcom must exercise its duty in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

### **The Ofcom Broadcasting Code**

- 3.8 Standards set by Ofcom in accordance with section 319 of the 2003 Act are set out in Ofcom’s Broadcasting Code (“the Code”) which came into force on 25 July 2005.
- 3.9 Accompanying Guidance Notes to each section of the Code are published and from time to time updated, on the Ofcom website. The Guidance Notes are non-binding but assist broadcasters to interpret and apply the Code.

### **Relevant provisions of the Ofcom Broadcasting Code**

- 3.10 **Rule 1.14:** “The most offensive language must not be broadcast before the watershed...”; and
- 3.11 **Rule 2.3:** “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context”.
- 3.12 The meaning of “context” is explained after Rule 2.3 where it is made clear that context includes, but is not limited to: the editorial content of the programme; the service on which the material is broadcast; the time of broadcast; the degree of offence likely to be caused; the likely size and composition of the potential audience and likely expectation of the audience; the extent to which the nature of the content can be brought to the attention of the potential audience; and the effect of the material on viewers who may come across it unawares.

### **Remedies**

- 3.13 Clauses 93 and 94 of the BBC Agreement set out the possible sanctions that Ofcom can impose against the BBC in relation to a breach of the Code. These are:
- a direction to broadcast a correction or statement of Ofcom’s finding, or both (Clause 93(1));
  - a direction not to repeat a programme (Clause 93(5)); and
  - the imposition of a financial penalty up to a maximum of £250,000 on any occasion (Clause 94).

## **4. Ofcom’s Investigation**

- 4.1 Ofcom wrote to the BBC requesting comments, following receipt of 22 complaints that the BBC had broadcast strong language before the watershed. In particular, Ofcom asked for the BBC’s views on how it believed the programmes had complied with Rules 1.14 and 2.3 of the Code. It also asked the BBC to comment on its decision not to operate a time delay with *Live Earth* in light of Ofcom’s finding on *Live8* (published in Ofcom Broadcast Bulletin 54 on 20 February 2006).
- 4.2 *Live8* had been a similar ‘live’ event, broadcast on BBC1 on 2 July 2005. On that occasion the most offensive language had also been broadcast before the

watershed. In *Live8*, various performers used strong, offensive and most offensive language and 55 viewers complained. A number of them were watching with children and were surprised that the BBC had not used a delay system to prevent such language being broadcast. The BBC was found by Ofcom to have contravened the regulatory code in effect at the time.

- 4.3 In addition, Ofcom noted that Ofcom's Broadcast Bulletin has included other similar findings, which should have served as helpful guidance in this area and which the BBC should have been aware of. These were, principally, *The Brits*, ITV1, 14 February 2007, 20:00 (Finding: Bulletin 86 – not in breach); and *Big Brother 7*, 18 August 2006, 20:00 (Finding: Bulletin 74 – in breach). These findings both related to the broadcast of strong language before the watershed and should, therefore, provide a useful resource for all broadcasters when deciding what appropriate measures might be taken when transmitting 'live' events.

### **BBC's response to Ofcom's investigation**

- 4.4 The BBC accepted that the broadcasting before the watershed of the words cited by Ofcom represented breaches of the relevant Code Rules. It did not seek to argue that the contextual justifications allowed for in Rule 2.3 altered the case against it in relation to children in the audience. It argued, however, that the context of *Live Earth*, as opposed to *Live8*, was different.
- 4.5 In the case of *Live Earth*, the BBC said it had been given full sight of running orders, films and scripts in advance and had not been denied access to artists and their managers. There had been meetings and written communications both internally and between *Live Earth* organisers and the BBC. The organisers had given repeated written assurances that the problems seen at *Live8* would not recur, and that all the required steps would be taken in relation to artists and their managers.
- 4.6 In addition, the BBC said that it had identified the artists whom it regarded as potentially problematic, and had taken steps, for example by briefing artists and monitoring the live output, to avoid the broadcast of inappropriate material before the watershed.
- 4.7 In the light of the experience of *Live8*, the BBC said its production team and presenters were aware of the need for an appropriate apology in the event of lapses, and for other actions (such as cutting back to the studio or taking a decision not to broadcast the remainder of the set) in the event that lapses were, or seemed likely to be, repeated.
- 4.8 The BBC considered, amongst other things, that the use of a short time delay was not appropriate because it would have resulted in coverage which was in no sense 'live', of an event which was accessible 'live' on other UK platforms.
- 4.9 In the BBC's view, there was a significant difference between *Live Earth* and programmes such as *The Brits* and *Big Brother*. For example, the BBC believed that there was a degree of predictability and control more akin to a studio production with such programmes rather than with a 'live' rock event. It went on to point out that at a 'live' rock event, monitoring takes place amid high sound levels, and it is not always apparent when lyrics include offensive language.
- 4.10 The BBC concluded by saying that it much regretted the instances of the broadcast of strong or most offensive language before the watershed. However, in the light of the high degree of co-operation on the part of the *Live Earth* organisers and the measures taken before and on the day, it believed that the decision to broadcast the

event without a time delay had been a reasonable one. Further, where it could not be avoided, the most offensive language had been duly acknowledged and apologised for.

## 5. Ofcom's findings on the breaches

- 5.1 Ofcom took the responses from the BBC into account and on 13 November 2007, it recorded the following breaches in relation to material broadcast on BBC1 and BBC2 on 7 July 2007:  
**Rule 1.14:** the broadcast of the most offensive language before the watershed; and  
**Rule 2.3:** in applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context.
- 5.2 Specifically, Ofcom decided that the most offensive language had been broadcast on BBC1 and BBC2 repeatedly before the watershed and that this material was not justified by the context of broadcasts that were likely to appeal to children; and that the likely audience would have expected to have been protected from the most offensive language in such a programme on BBC TV's flagship services.
- 5.3 Ofcom decided that, notwithstanding the preventative measures the BBC had taken and any assurances it had received from the organisers, the BBC had failed to use a reliable and effective system to avoid the breaches which took place. The use of strong and the most offensive language by artists taking part in the event was, in Ofcom's view, both likely and foreseeable. Moreover, it was clear from the BBC's response that this eventuality had been anticipated by the BBC. Yet, the BBC had decided against applying a time delay to the broadcast, or putting in place any similarly reliable and effective system to avoid such language being broadcast before the watershed. Ofcom noted that this decision had been reached in spite of the previous *Live8* Finding.
- 5.4 Ofcom did not accept the BBC's argument that the fact that the event was 'live' meant it would not be appropriate or practicable for the BBC to apply some kind of masking system or delay.
- 5.5 Ofcom acknowledged that apologies were broadcast in relation to the offensive language. However, it noted that only one of these apologies was made immediately following the broadcast of one instance of offensive language. In relation to all the remaining instances, it was concerned to note that it had taken the BBC some time to air the apologies – on one occasion, up to half an hour after the broadcast of the language in question.
- 5.6 With reference to the BBC's submission that the context of *Live Earth* was very different from the *Live8* broadcast, Ofcom considered that there were, in fact, significant parallels between the two events: a 'live' event broadcast before the watershed and featuring personalities and performers likely to attract a wide range of viewers, scheduled throughout the day, and therefore likely to have a significant number of children in the audience.

## 6. Referral to the Content Sanctions Committee

- 6.1 Taking all the circumstances into account, Ofcom considered that this case was sufficiently serious to warrant the consideration of the imposition of a statutory sanction. In particular, this was warranted in Ofcom's opinion on account of the seriousness and repeated nature of the breaches and the fact that the BBC had been subject to a finding which Ofcom considered to have significant parallels with the breaches that had been found to have occurred on this occasion.

6.2 Ofcom therefore referred the case to its Content Sanctions Committee (“the Committee”) for the consideration of a statutory sanction. Accordingly, the BBC was given the opportunity to make written representations, a summary of which can be found at Section 7 below.

## 7. BBC’s written representations on the imposition of a sanction

- 7.1 In its representations to Ofcom, the BBC reiterated that it accepted that the broadcasting before the watershed of the most offensive language cited by Ofcom represented breaches of the relevant Rules, and that it had not sought to argue that the contextual justification allowed in Rule 2.3 altered the case in relation to the children in the audience.
- 7.2 It questioned whether the breaches were of such an egregious kind as to warrant the imposition of a financial penalty in light of the steps taken by the BBC to prevent the use of offensive language before the watershed. It submitted that, despite the repeated nature of the use of offensive language by different artists during the event, a financial penalty imposed for punitive purposes was not warranted in this case.
- 7.3 The BBC believed that it had considered the lessons learned from *Live8* very seriously in making arrangements to broadcast *Live Earth*, and had taken steps which directly addressed the relevant concerns
- 7.4 Although it had been decided not to use a time delay on this occasion, the BBC contended that this was not because of any failure on its part to consider Ofcom’s previous observations on the matter. It maintained that the possibility of a time delay had been considered at great length. However (for the reasons summarised above) it had decided not to operate one on this occasion.
- 7.5 The BBC submitted that it had acted reasonably and responsibly in its efforts to ensure compliance. In its view, viewers of a relay of an event entitled *Live Earth*, which was being broadcast live by other media, would have expected the BBC’s coverage to be, literally, live, and there would therefore have been a risk of misleading the audience.
- 7.6 The BBC said that it had not been obvious to it beforehand that Ofcom regarded the precedents cited as directly relevant to an event of, in their view, such a different nature as *Live Earth*. However, it assured Ofcom that it would take such precedents into account on any future occasion should an event similar to *Live8* or *Live Earth* be broadcast.
- 7.7 In the BBC’s opinion, it was not a matter of it just relying on the assurances of the organiser, but of both the BBC and the organiser relying on the artists themselves to comply with the briefings. It believed that the reasonableness of its judgement of the extent to which particular event organisers could be relied on, while not diminishing the broadcaster’s duty to ensure compliance, should be a consideration for Ofcom in assessing whether the broadcaster had fulfilled that duty in a responsible fashion.
- 7.8 With regard to foreseeability, the BBC cited *Concert for Diana*, another large-scale live concert event with a pre-watershed start, broadcast the previous week. This concert, featuring similar types of artists, had been broadcast without problems, demonstrating that, whilst offensive language is a possibility in events of this nature, it was in no sense inevitable. Five of the incidents in *Live Earth* involving strong or most offensive language had appeared as part of song lyrics, which had been unexpected.

7.9 The BBC concluded by saying that it had put in place extensive measures which it believed in good faith to have been reasonable in order to address the possibility of offensive language. It submitted that the failures of compliance on the day did not of themselves mean that it had acted less than responsibly. Nevertheless, it recognised that, in the light of the previous breaches in *Live 8* and Ofcom's comments on them, the breaches on this occasion were such as to make consideration of a sanction appropriate. The BBC pointed out that it had reassessed the precautions necessary for live, pre-watershed coverage of pop events in the light of the experience of *Live Earth* and Ofcom's comments to date. The BBC argued that it has every interest in avoiding the reputational damage consequent on a repetition of such Code breaches and resulting censure by Ofcom (to say nothing, it contended, of the cost to licence-payers of the financial penalty which Ofcom would inevitably consider in the event of further repetition). It submitted that a lesser sanction than a fine would be sufficient and proportionate on this occasion.

## 8. Sanctions Decision

8.1 The Committee considered carefully the serious and repeated nature of the BBC's breaches of the Code together with the submissions provided by the BBC. For the reasons set out below, the Committee decided that it was appropriate in all circumstances of the case for the breaches to attract a sanction, and that the sanction should be a Direction for the BBC to broadcast a statement of Ofcom's findings on each of BBC1 and BBC2 in a form to be determined by Ofcom and on a specified occasion.

### The seriousness of the breaches

8.2 The Committee took note that Parliament gave Ofcom a specific duty in the Act to: set standards to protect persons under the age of eighteen (Section 319(2)(a)); and apply generally accepted standards to the contents of television services so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material (Section 319(2)(f)).

8.3 Specifically, in this case, offence was caused to viewers by the broadcast of strong and the most offensive language on both BBC1 and BBC 2 in *Live Earth* on 7 July 2007. This was evidenced by the complaints to Ofcom regarding the nature of the material. The material resulted in Ofcom recording breaches of Rules 1.14 and 2.3 of the Code.

8.4 The Committee considered that the breaches of Code Rules 1.14 and 2.3 were serious because

- they involved the repeated use of offensive and the most offensive language both before the watershed, when the audience was likely to contain a significant proportion of children who were likely to be available to view, and in programmes where the audience's likely expectations were that it would have been protected from such language on the two flagship services of BBC Television, namely BBC1 and BBC2;
- there was in some cases a considerable delay (in one case 26 minutes and another 17 minutes) before the BBC took action to mitigate the broadcast of the offensive language by making apologies;
- the BBC had previously been made aware that Ofcom had serious concerns over compliance failures with regard to the broadcast of the *Live8* event – which it consider to be very similar in nature;

- in Ofcom's view the BBC also failed to take into account sufficiently guidance on offensive language during 'live' broadcasts contained in Ofcom's previous findings on comparable events, such as, in this case, *The Brits* and *Big Brother 7*; and
- overall, the BBC's compliance procedures were inadequate, as shown for example by its over reliance on the assurances of a third party (the event organisers) and its failure to deploy effective and appropriate procedures to prevent the broadcast of the most offensive language in a 'live' pop event.

### **The repeated nature of the breaches**

- 8.5 The Committee considered that the breaches were also repeated. This was because Ofcom had previously found (in 2005) that the BBC had contravened the regulatory code in effect at the time by broadcasting the most offensive language before the watershed in a similar 'live' event, namely *Live8*. Further, the most offensive language had been broadcast on six occasions over a period of around twelve hours in *Live Earth*, resulting in repeated breaches of the Code during this time.
- 8.6 The Committee considered that the breaches were sufficiently serious and repeated that it concluded that it was appropriate to impose a statutory sanction on the BBC. It noted that the BBC did not oppose this view, but had made representations, as indicated at 7.9 above, that a financial penalty would in its opinion not be appropriate. In considering what sanction would be suitable, the Committee took account of all the BBC's representations and all the circumstances of the case, including precedent, relevant BBC compliance history and mitigating factors.

### **Precedent and recent compliance history**

- 8.7 This is the second occasion on which Ofcom has had to consider whether to impose a statutory sanction on the BBC. The Committee noted that there has been a previous and very serious breach of the Code on BBC1. In the case of *Blue Peter*, in a Content Sanctions Committee adjudication of 9 July 2007, it was decided to impose financial penalties of £45,000 and £5,000 on the BBC. In that case, however, the breaches of the Code concerned very different Rules and circumstances to those in the *Live Earth* case.

### **Mitigating factors**

- 8.8 The Committee took into account, amongst other things, that the BBC had put in place some measures intended to address the possibility of offensive language being broadcast in *Live Earth*. The Committee also noted that the BBC had further reassessed the precautions necessary for live, pre-watershed coverage of pop events in the light of the experience of *Live Earth* and comments made by Ofcom to the BBC in the course of preparing the present sanction proceedings.
- 8.9 The Committee also noted the BBC's acknowledgement that, in the light of the previous breaches in *Live 8*, the breaches of the Code relating to *Live Earth* were appropriate for consideration of a sanction. Ofcom believes that the BBC genuinely has every interest in future in avoiding the reputational damage created by another repeated breach and subsequent censure by Ofcom (including a possible financial penalty).
- 8.10 The BBC had co-operated fully and promptly with Ofcom throughout the investigation and sanctions process.

## Sanction

- 8.11 The Committee considered that a direction to broadcast a statement of Ofcom's findings on each of BBC1 and BBC2 in a form to be determined by Ofcom and on a specified occasion is a sufficient, and the most appropriate and proportionate sanction in this case. Such a statement would alert viewers to Ofcom's decisions and the BBC's repeated failure to comply with the Code, and through the adverse publicity created, act as an effective disincentive for the BBC not to repeat the sanctionable conduct.
- 8.12 The Committee considered that it would not be necessary or appropriate to impose a financial penalty in this case in addition. The breaches were serious for the reasons explained above but not so serious (for example through abusing the trust of viewers) that they warranted a fine. Although repeated, the breaches were not deliberate or reckless. The BBC had admitted that the broadcast of the most offensive language in *Live Earth* breached the Code, and during the programme various apologies were transmitted (albeit some a considerable period afterwards). Further, the BBC cooperated fully and promptly with the sanctions process. It also reviewed its compliance procedures for live, pre-watershed pop events as a result of this case.

## Conclusion

- 8.13 The Committee decided in particular that:
- the repeated instances of breach during the broadcast;
  - the relatively belated apologies given for some of them on air by the BBC;
  - the fact that a very large number of younger viewers must have been expected to be in the television audience;
  - the fact that the breaches involved significant parallels to an earlier case in which the BBC was also found to be in breach; and
  - the evident failure of the BBC to have put in place adequate precautions to minimize the chances of the same thing happening again, resulted in the need to impose a statutory sanction.
- 8.14 In coming to this decision, the Committee noted that the BBC had decided against applying a time delay to the broadcast, or putting in place any similarly reliable and effective system to avoid such language being broadcast before the watershed. The BBC in the Committee's opinion had also not taken sufficient account of Ofcom's previous *Live8* Finding. The Committee did not accept the BBC's argument that the fact that the event was 'live' meant it would not be appropriate or practicable for the BBC to apply some kind of masking system or delay. In the circumstances of this case the desire to broadcast the event 'live' did not outweigh the need to take appropriate measures before the watershed to protect viewers, and in particular children, from offensive language.
- 8.15 Having considered all the relevant facts as outlined above, and all the representations made by the BBC, in light of the serious and repeated nature of the breaches, and Clauses 93 and 94 of the BBC Agreement, the Committee decided that it was appropriate and proportionate in the circumstances to direct the BBC to broadcast a statement of Ofcom's findings on each of BBC1 and BBC2 in a form to be determined by Ofcom and on a specified occasion.

## **Content Sanctions Committee**

Philip Graf  
Richard Ayre  
Chris Banatvala

9 April 2008