

# Ofcom Content Sanctions Committee

---

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

**Consideration of sanction  
against:**

Square 1 Management Limited (“the Licensee” or “Square 1”) in respect of its service Smile TV (“*Smile TV*” or “the Channel”) TLCS 1053;

**For:**

Breaches of Ofcom’s Broadcasting Code (“the Code”) in respect of:

Rule 1.24: “Premium subscription services and pay per view/night services may broadcast ‘adult-sex’ material between 2200 and 0530 provided that in addition to the other protections named above:

- there is a mandatory PIN protected encryption system, or other equivalent protection, that seeks satisfactorily to restrict access solely to those authorised to view; and
- there are measures in place that ensure that the subscriber is an adult;”

Rule 2.1: “Generally accepted standards must be 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 harmful and/or offensive material;” and

Rule 2.3: “In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context;”

**On:**

22 May 2007

**Decision:**

To impose a financial penalty (payable to HM Paymaster General) of **£17, 500**.

## **1. Summary**

- 1.1. For the reasons set out in section 7, under powers delegated from the Ofcom Board to Ofcom’s Content Sanctions Committee (“the Committee”), the Committee has decided to impose a statutory sanction on Square 1. This is

in light of the seriousness of the Licensee's failure to ensure compliance with the Code in its service *Smile TV*.

- 1.2. *Smile TV* began transmitting in April 2007 (and since 12 July 2007 has operated under the name *Blue Kiss TV*). It is a free-to-air TV channel operated by Square 1, broadcasts without encryption and is listed in the "adult" section of the Sky Electronic Programme Guide ("EPG"). It shows mainly live programmes using female presenters (known as "babes"), who invite viewers to contact them using premium rate services ("PRS").
- 1.3. Ofcom received a complaint on 23 May 2007 about the explicit sexual nature of the content broadcast on *Smile TV* on 22 May 2007 at around 22.25. The complainant referred to shots in which a female presenter appeared to insert her fingers into her anus several times and masturbate for a number of minutes.
- 1.4. In the material complained of the presenter wore only a thong and appeared to carry out the actions described by the complainant. There were also prolonged shots of her lying on her back, with her legs wide apart in front of the camera, apparently masturbating through the thong. She also encouraged viewers to call her by saying, for example: "*Well, I tell you what, you're not lasting a second tonight guys. Maybe it's all my oil on my shaved minge...If you'd like to hear some explicit chat tonight, while you're having a good old tommy tank...*" [rhyming slang for 'wank' – i.e. masturbation].
- 1.5. Ofcom concluded that the sexual content on the programme was so explicit and prolonged, particularly the visual images, that it was 'adult-sex' material. This meant it fell within Rule 1.24 and accordingly should have been broadcast under encryption. The programme was not protected by encryption or in line with the other requirements of Rule 1.24 and therefore the broadcaster had breached Rule 1.24 of the Code. Given that the material appeared on a free-to-air unencrypted channel, Ofcom also decided that it breached Rules 2.1 and 2.3 of the Code. These require broadcasters to protect viewers from material that is harmful or offensive and which cannot be justified by the context. In Ofcom's view the breaches were sufficiently serious that the case should be referred to the Committee for consideration of a statutory sanction.
- 1.6. Square 1 was offered the opportunity to attend an oral hearing. The Licensee did make written representations but chose not to attend or be represented at an oral hearing.
- 1.7. After considering all the evidence and all the representations made to it, Ofcom decided that the breaches by *Smile TV* of the Code were sufficiently serious to attract a financial penalty.
- 1.8. 'Babe' channels and 'adult' channels generally should be in no doubt of Ofcom's concerns about the broadcast of sexual material which is too explicit. Should such cases be considered for sanction in future, Ofcom will continue to regard them very seriously. If highly explicit sexual material is broadcast without editorial justification on a free-to-air channel on a single occasion it can be – as in this case – a very serious breach of the Code. The Committee underlines that the financial penalty imposed in this case would have been higher but for various mitigating factors.

- 1.9. Having regard to the seriousness of the breaches and having regard to Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances to impose a financial penalty on the Licensee of **£17,500** (payable to HM Paymaster General).

## **2. Background**

- 2.1. As summarised above, *Smile TV* began transmitting in April 2007 (and since 12 July 2007 has operated under the name *Blue Kiss TV*). It is a free-to-air TV channel operated by Square 1, broadcasts without encryption and is listed in the "adult" section of the Sky Electronic Programme Guide ("EPG"). It shows mainly live programmes using female presenters (known as "babes"), who invite viewers to contact them using premium rate services ("PRS").
- 2.2. There are a number of other free-to-air channels broadcasting in the "adult" section of the EPG. In June and September 2006, Ofcom wrote to a number of broadcasters who transmitted 'babe'-style programmes without encryption because it was concerned about the degree of sexual content on the channels. Ofcom drew these broadcasters' attention to their obligations under the Code and stated that if one of these broadcasters was found in breach of the Code following the June and September letters, Ofcom would "consider imposing a statutory sanction." Copies of the letters were sent to the Licensee on 18 April 2007, after it had informed Ofcom of its intention to broadcast "adult" content. Nevertheless, on 23 May 2007, Ofcom received a complaint about the explicit sexual nature of the content broadcast on *Smile TV* on 22 May 2007 at around 22.25.

## **3. Legal Framework**

### **The Communications Act 2003**

- 3.1. Ofcom has a duty under section 319 of the Communications Act 2003 ("the Act") to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives. The standards objectives are set out in section 319(2) of the Act. They include that: persons under 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 discharging its functions, Ofcom's principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1)) and to secure a number of other matters. These include the application in the case of all television and radio services of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)).
- 3.3. In performing these duties, Ofcom is also required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory

practice (section 3(3)); and where relevant, a number of other considerations including:

- 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)); and
- The vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3(4)(h)).

3.4. Under section 325 of the Act, every programme service licensed by a Broadcasting Act licence includes conditions for securing that the standards set by Ofcom under section 319 are observed. If Ofcom is satisfied that the holder of a licence to provide a television licensable content service has contravened a condition of the licence, it may impose the following sanctions:

- issue a direction not to repeat a programme;
- issue a direction to broadcast a correction or a statement of Ofcom's finding;
- impose a financial penalty; and/or
- revoke the licence.

### **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.

### **Ofcom Broadcasting Code**

3.8. Standards set by Ofcom in accordance with section 319 of the 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.

## **Remedial action and penalties**

- 3.10. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or statement of findings (or both) or not to repeat a programme on contravention of a licence condition.
- 3.11. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence of a maximum of whichever is the greater of £250,000 and 5% of its qualifying revenue.
- 3.12. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence.

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

- 3.13. Rule 1.24: "Premium subscription services and pay per view/night services may broadcast 'adult sex' material between 2200 and 0530 provided...there is a mandatory PIN protection system, or its equivalent, in place so to restrict access solely to those authorised to view, and that there are measures in place to ensure the subscriber is an adult".
- 3.14. Rule 2.1: "Generally accepted standards must be 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 harmful and/or offensive material."
- 3.15. Rule 2.3: "In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context."

## **4. Ofcom's investigation**

- 4.1. Following the complaint on 23 May 2007 about the explicit nature of the material broadcast on the Channel, Ofcom carried out an investigation of the programming on *Smile TV* from approximately 22:15 to 22:35 on 22 May 2007. The programme included shots in which a female presenter appeared to insert her fingers into her anus several times, and engage in prolonged and vigorous masturbation, applied oil to her body in a highly sexual fashion, and invited viewers to call her by using graphic sexual language.
- 4.2. Having viewed the content, Ofcom was concerned about the explicit sexual nature of the programming. Ofcom wrote to *Smile TV* asking it to comment on the broadcast in relation to Rules 1.24 ('adult-sex' material), 2.1 (generally accepted standards) and 2.3 (offensive material must be justified by the context) of the Code. In that letter Ofcom drew *Smile TV's* attention to Ofcom's previous letters of June and September 2006 which had been sent to it in April 2007.
- 4.3. In its response to Ofcom, the Licensee commented that Rule 1.24 did not apply to the Channel because the rule relates to premium subscription channels and pay per view/night services. In relation to the definition of 'adult-sex' material, the Licensee commented that the style of the programme was entirely appropriate in context and, whilst mildly erotic, was substantially "milder" in nature than the type of content that appears regularly

on pay per view/subscription channels. The Licensee said that, while the presenter's actions were suggestive, no sexual acts had taken place.

- 4.4. Regarding the likelihood of the material causing harm and or offence, the Licensee maintained that, given the Channel's position in the EPG and the timing of the programme "well past the established threshold", there was nothing within the content which, for the vast majority of its satisfied viewers, would be regarded as representing harmful or offensive material. The Licensee stated that it held statistics that demonstrated the programme was popular.
- 4.5. The Licensee did not refer specifically to Rule 2.3 of the Code but claimed that the material was justified by the context, forming part of an interactive service.

## **5. Ofcom's Decision that Square 1 was in breach of the Code**

- 5.1. Having carefully considered the representations made by Square 1, Ofcom nonetheless found that the programming broadcast on 22 May 2007 was in breach of the following Rules of the Code:
  - Rule 1.24 ('adult-sex' material only permitted under encryption);
  - Rule 2.1 (generally accepted standards); and
  - Rule 2.3 (material which may cause offence must be justified by the context).
- 5.2. This decision that there was a breach of Rule 1.24 was based on the Executive's view that the content of the programme was sexually explicit and that its primary purpose was to arouse the audience sexually: the presenter was dressed provocatively, wearing only a thong, and behaved in an extremely sexual manner. This included shots in which, positioned on all fours, she placed her rear directly in front of the camera, and pulled her thong to one side, apparently inserting her fingers into her anus. There were also prolonged shots of the presenter lying on her back, with her legs wide apart in front of the camera, apparently masturbating vigorously. She also bunched and tightened the gusset of the thong. She encouraged viewers to call her by saying, for example: *"Well, I tell you what, you're not lasting a second tonight guys. Maybe it's all my oil on my shaved minge – don't know, but – or maybe it's what I'm saying to you – I dunno. I am a bit saucy on the phone – sound sweet and light but rather filthy on the phone – If you'd like to hear some explicit chat tonight, while you're having a good old tommy tank..."* [rhyming slang for "wank"]. Additionally, the presenter applied oil to her body in a highly sexual fashion. The sustained sexual activity was partly shown in close up and shot in an explicit manner. The presenter appeared to insert her fingers in her anus a number of times. Ofcom therefore considered the material was 'adult-sex' material and unsuitable for broadcast unencrypted on a free-to-air channel.
- 5.3. The decision that there were breaches of Rules 2.1 and 2.3 was based on the Executive's view that the material breached generally accepted standards and had the potential to cause offence, and that this offence was not sufficiently justified by the context in which the content was broadcast.

## **6. Referral to the Content Sanctions Committee**

- 6.1. Ofcom considered that, taking all the circumstances into account, the breaches of Rules 1.24, 2.1 and 2.3 were sufficiently serious to warrant the consideration of the imposition of a statutory sanction. This was because of the graphic explicitness of the material broadcast, the potential offence to viewers in general and because the Channel had been notified specifically of Ofcom's concerns about explicit material on "babe" channels (see paragraph 2.2 above).

#### **Square 1's written representations on the decision to refer**

- 6.2. The Licensee made a series of written submissions to Ofcom through its solicitors, Charles Russell, in relation to the proposed decision to refer the breaches by *Smile TV* to the Committee. In these it argued that the breaches of Rules 1.24, 2.1 and 2.3: (a) should not even be considered for sanction by the Committee; and (b) (if they were so considered) were not serious enough to warrant the imposition of a sanction by the Committee. In summary these arguments were as follows.
- 6.3. The Licensee claimed that neither the Code nor the accompanying guidance to the Code defines 'adult-sex' material as "works whose primary purpose is sexual arousal or stimulation." Further, the Licensee had not been given sufficient guidance on the meaning of 'adult-sex' material, nor any specific warnings by Ofcom before 22 May 2007 that broadcasting the sort of material complained of would breach the Code. The Licensee disputed the recorded breach of Rule 1.24, as it claimed it could not have known that the material broadcast was 'adult-sex' material on the basis of information provided by Ofcom prior to 22 May 2007.
- 6.4. The sexual activities broadcast on the Channel were not "sexually explicit" as Ofcom suggested because in particular at no time was the presenter engaged in any activity with any other individual (male or female), all the activity was simulated only and there was no full nudity.
- 6.5. Regarding Rules 2.1 and 2.3, the material complained of was justified by the context and in line with generally accepted standards because of various factors, including its broadcast in the adult section of the EPG, the fact that the adult programming on Smile TV commenced only at 22.00 one hour after the watershed, and the likely size and composition of the potential audience and the likely expectations of the audience for the Channel.
- 6.6. The Licensee also alleged that Ofcom had failed to address certain representations or requests for information it had made. For example, the Licensee referred to a viewer research summary prepared by a research agency for Ofcom in the course of other work on telephony-based channels. Square 1 suggested that this research provided a "clear editorial justification" for broadcasting 'babe-style' content, and referred to evidence in this report that "most respondents" believed these channels provided "a dual benefit through telephone interaction with girls and through engaging on-screen content." The Licensee also commented on earlier (2005) research Ofcom had conducted. The Licensee referred for example to observations in that research that the prevalence of sexual imagery was regarded as a sign of a more open and tolerant society, and sexual imagery was less of a concern to participants than offensive language.

- 6.7. Ofcom was told by the Licensee that other 'babe' channels were broadcasting 'adult-sex' material or similar content. It would be inconsistent for Ofcom to impose a sanction on the Licensee when other channels were showing this content. Also to impose a sanction against Smile TV for broadcasting the material it did on 22 May 2007 would be inconsistent with certain previous decisions of Ofcom which it cited.
- 6.8. The Licensee provided a signed statement from the 'babe' presenter whose behaviour on screen led to this case. In this document, the presenter denied that she in fact inserted her fingers into her anus, took personal responsibility for her actions and apologised. The Licensee stated that she has "since resigned" as a result of her actions.
- 6.9. Following Ofcom recording the breaches of the Code on 18 September 2007, Smile TV moderated its content and had "taken steps to ensure against future breaches". The Licensee also asked Ofcom to note that these were the first breaches of the Code recorded against the Licensee.
- 6.10. In March 2008, Square 1 acknowledged that the content aired was inappropriate for unencrypted free-to-air broadcast. Nevertheless, the Licensee did not formally acknowledge a breach of either Rule 2.1 or Rule 2.3 of the Code.

#### **Decision to refer to the Committee**

- 6.11. Having taken account of all the representations made by Square 1, the Ofcom Executive concluded that the breaches were sufficiently serious to refer the case to the Committee for a statutory sanction to be considered.
- 6.12. The Committee having reviewed Ofcom's decision to refer the breaches, accepted that the case was sufficiently serious that it should be considered for sanction. Accordingly, Square 1 was invited to attend an oral hearing before the Committee.

#### **7. Decision by the Committee**

- 7.1. Square 1 provided written representations in the form of a letter to the Committee but declined the invitation to attend an oral hearing.
- 7.2. The Committee may impose a sanction which may be a financial penalty and/or revocation of the licence. In this case, having viewed the material and having considered all the other evidence and the representations before it, the Committee decided for the reasons set out below, that it was appropriate to impose by way of statutory sanction a financial penalty of £17,500.
- 7.3. In deciding on the level of financial penalty the Committee had regard to Ofcom's Penalty Guidelines.<sup>1</sup>

#### **The seriousness of the breaches**

---

<sup>1</sup> Ofcom's Penalty Guidelines are available at <http://www.ofcom.org.uk/about/accoun/pg/>. Section 392 of the Communications Act 2003 requires Ofcom to prepare and publish a statement containing guidelines it proposes to follow in determining the amount of any penalties imposed by Ofcom, which Ofcom must have regard to in setting any penalty.



- 7.4. Having viewed this material, and taken account of all the evidence and the representations of the Licensee, the Committee considered that the breaches of Code Rules 1.24, 2.1 and 2.3 were particularly serious. This was for the following reasons.
- 7.5. First, the nature of the content. Details are set out in paragraph 5.2. In this case, the material broadcast was of a high level of sexual explicitness. There were for example intrusive, close shots of the presenter's crotch and rear and she appeared to insert her fingers into her anus on several occasions. There was no doubt in the Committee's opinion that a reasonable person would conclude that the material shown on 22 May 2007 was unacceptable for broadcast on a free-to-air channel unencrypted. The content was 'adult-sex' material to which Rule 1.24 of the Code applied. The channel's position within the 'adult' sector of the EPG could not justify broadcasting material of this nature unencrypted.
- 7.6. Second, the Committee was concerned about the significant harm and offence which such graphic sexual material could cause to viewers, and in particular children, when shown unencrypted. Viewers could have come across this content unawares and it was important to protect them from it, and especially children, through encryption and the other restrictions set out in Rule 1.24.
- 7.7. The Committee also considered it serious that this content was broadcast only one month after it had received copies of two separate letters from Ofcom explaining the regulator's concerns about the explicitness of material being transmitted by 'babe' channels. Further, the second of these letters specifically warned licensees that "Under the Code it is prohibited to broadcast content where the visuals or audio or the overall tone is tantamount to adult sex material" and that breach of the Code in this respect could result in the consideration of the imposition of a statutory sanction.

## **Precedent**

- 7.8. The Committee noted the representations made by the Licensee that it was not appropriate to impose a sanction on Square 1 in respect of *Smile TV* because either (a) the present case was no more serious than others which were not referred by Ofcom to the Committee for consideration of a statutory sanction; or (b) was less serious than a comparable case involving 'babe-style' material which was referred to the Committee. As regards (a) the Licensee referred in particular to a published Finding of a breach of the Code – but not a sanction – against a programme called *The Extreme Truth*, broadcast on Men & Motors<sup>2</sup>. As regards (b), Square 1 referred to the *Babeworld* sanctions case, when 'babe' programming in breach of the Code resulted in a fine of £25,000 imposed by the Committee on 30 November 2007<sup>3</sup>.
- 7.9. The Committee viewed material related to the other cases referred to by the Licensee which were not referred to the Committee, and took account of all the circumstances and context surrounding these cases and the representations made by Square 1. In the Committee's opinion, compared to those cases, the breaches in the present case are more serious and warrant

---

<sup>2</sup> Broadcast Bulletin 81, 26 March 2007, [http://www.ofcom.org.uk/tv/obb/prog\\_cb/obb81/](http://www.ofcom.org.uk/tv/obb/prog_cb/obb81/)

<sup>3</sup> [http://www.ofcom.org.uk/tv/obb/ocsc\\_adjud/babeworld.pdf](http://www.ofcom.org.uk/tv/obb/ocsc_adjud/babeworld.pdf)

a sanction for the reasons set out in this adjudication. As regards for example *The Extreme Truth*, there were various objective reasons why it was not appropriate for this case to be referred to the Committee for consideration of a sanction. These included for example that *The Extreme Truth* was a different type of programme to that in the current case, the licensee in that case had not been specifically warned in advance about showing such content and other points of mitigation not found in the case of *Smile TV*.

- 7.10. As regards the comparison with *Babeworld*, the Committee decided that both this case and the present one merited the imposition of a sanction. For example, although *Babeworld* had a poorer compliance record than *Smile TV*, the Committee considered that the nature and visual impact of the *Smile TV* content (and notably what appeared to be repeated anal penetration) was more explicit than that of the material in *Babeworld*.
- 7.11. The Committee decided that the imposition of a financial penalty in the current case was appropriate and consistent with previous practice at Ofcom.

### **Deterrent**

- 7.12. In deciding on the appropriate size of a financial penalty in this case, the Committee considered it should be sufficiently significant to act as a deterrent against a repeat of these or similar breaches by the Licensee or any other Licensees.
- 7.13. The Committee was concerned that Licensees, especially those who choose to operate in the 'adult' market, should understand that even single breaches of the Code of a serious nature – as in the present case – can have the most significant repercussions. The Committee considered a financial penalty to be merited in this case, even though this was the Licensee's first recorded breach of the Code.
- 7.14. The Committee also notes that *Smile TV* is what is known as a 'babe' channel. Its income is derived from the PRS revenue generated by viewers who call in for 'adult' chat or text the numbers shown on-screen. It is not funded by subscription, sponsorship income or advertising revenue. The Committee considers there to be a direct link between the nature of content on PRS-driven free-to-air 'adult' channels and the revenue attracted – the more explicit the material the more likely it is in a competitive market between 'babe' services that a channel showing more explicit material will attract more callers and texts. This is a material factor in the consideration of sanctions in such cases.

### **Factors tending to increase the level of penalty**

- 7.15. The Committee then considered whether there were any factors which aggravated or tended to increase the level of any financial penalty it might impose.
- 7.16. The Committee took account of the fact that:
- the breaches occurred following Ofcom letters of June and September 2006, copies of which were sent to the Licensee on 18 April 2007, warning it against broadcasting explicit sexual content after it had informed Ofcom of its intention to broadcast 'adult' content; and

- the broadcaster acknowledged only in March 2008 that the material shown on 22 May 2007 was inappropriate to be shown on free-to-air television, and as of the date of this adjudication had not formally admitted the breaches of the Code.

### **Mitigating Factors**

- 7.17. The Committee then considered whether there were any factors which in its view might limit or decrease the level of financial penalty.
- 7.18. The Committee noted all the submissions as to mitigation made by the Licensee. In particular the Committee took account of the following:
- the channel reprimanded the female ‘babe’ presenter featured in the broadcast (who later resigned);
  - the Code was not repeatedly breached by *Smile TV* in the current case;
  - prior to 22 May 2007, no breaches of the Code had been recorded against the Licensee; and
  - subsequent monitoring of the Channel’s output by Ofcom provided evidence that the Channel’s compliance has improved.

### **Conclusion**

- 7.19. The broadcast on an unencrypted channel of content showing a presenter engaged in explicit sexual activity, such as masturbation, and that contains insufficient editorial justification for the inclusion of such images, is totally unacceptable. It has the potential to cause offence to the audience and harm to under-eighteens, and children in particular.
- 7.20. The Committee notes that Ofcom has recently recorded various breaches of the Code against a number of ‘babe’ channels for over explicit content, and that Ofcom considered referring some of these cases to the Committee for consideration of a statutory sanction. Mindful of those cases, of the *Babeworld* sanction referred to above, and the decision to impose a fine in this case, ‘babe’ channels and ‘adult’ channels generally should be in no doubt of Ofcom’s concerns about the need for robust compliance in this area. Should such cases be referred to the Committee in future, the Committee will continue to regard them very seriously.
- 7.21. The Committee wishes to make clear that if highly explicit sexual material is broadcast without editorial justification on a free-to-air channel on a single occasion it can be – as in this case – a very serious breach of the Code. The Committee underlines that the financial penalty imposed in this case would have been higher but for various mitigating factors.
- 7.22. Having considered the relevant facts as outlined above, and especially the seriousness of the breaches and all the representations made by Square 1, the Committee decided to impose a financial penalty on the Licensee of **£17,500** (payable to HM Paymaster General) which it considered to be a proportionate and appropriate penalty in all the circumstances.

### **Content Sanctions Committee**

Philip Graf  
Kath Worrall  
Anthony Lilley

10 July 2008