

**Sanction: Decision by Ofcom**

**Sanction: to be imposed on 965 TV Limited**

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**For material broadcast on Studio 66 on five occasions from March to April 2021**

**Ofcom’s Sanction Decision against:** 965 TV Limited (“965 TV” or the “Licensee”) in respect of its service **Studio 66** (TLCS001084BA/3).

**For:** Breaches of:

The [UK Code of Broadcasting Advertising](#) (the “BCAP Code”)<sup>1</sup>

Rule 23.3: “Advertising for telecommunications-based sexual entertainment services must not be broadcast before 9pm or after 5.30am...”

Rule 4.2: “Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards”.

Rule 32.3: “Relevant timing restrictions must be applied to advertisements that, through their content, might harm or distress children of particular ages or that are otherwise unsuitable for them”.

**Decision:** To impose a financial penalty (payable to HM Paymaster General) of **£15,000**.

**Executive Summary**

1. Studio 66 TV is interactive chat advertising, broadcast on the service Studio 66, which is available as part of a standard satellite subscription package. The content consists of presenters inviting viewers to contact them via premium rate telephony services (“PRS”). Studio 66 is available without mandatory restricted access and is situated in the ‘adult’ section of electronic programme guides (‘EPGs’).
2. Rule 23.3 of the BCAP Code prohibits the advertising of telecommunications-based sexual entertainment services before 9pm and after 5.30am.
3. Rule 4.2 of the BCAP Code requires that advertisements do not contain material that causes serious or widespread offence.
4. Rule 32.3 of the BCAP Code requires timing restrictions to be applied to advertisements that might harm or distress children, or that are otherwise unsuitable for them.

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<sup>1</sup> [UK Code of Broadcasting Advertising](#)

**The Breach Decision – Broadcast and On Demand Bulletin 438, 8 November 2021**

5. On 1 March 2021 at 17:10, 21 March 2021 at 21:00, 4 April 2021 at 19:58, 7 April 2021 at 10:48 and 18 April 2021 at 20:16, the Licensee broadcast live interactive content on Studio 66. Each broadcast featured a live chat where viewers were invited to call a premium rate number to speak to the presenter featured on-screen.
6. Ofcom received a complaint about each of these broadcasts. In four cases, the complaints were concerned with offensive and sexual language used by the presenters. In the fifth case, the complainant raised concerns about nudity as well as offensive language.
7. Ofcom investigated the above broadcasts.
8. In Ofcom’s Decision (“the Breach Decision”) published on 8 November 2021 in issue 438 of the Broadcast and On Demand Bulletin<sup>2</sup>, Ofcom’s Executive found that the content broadcast on 1 March, 4 April, 10 April and 18 April 2021 breached Rules 4.2 and 23.3 of the BCAP Code. The Executive also found the content broadcast on 21 March 2021 to be in breach of Rules 4.2 and 32.3 of the BCAP Code.
9. The Breach Decision sets out the full reasoning why the Licensee breached the BCAP Code.
10. In the Breach Decision, Ofcom put the Licensee on notice that in view of the repeated nature of these breaches, which taken together were considered serious, it would consider the imposition of a statutory sanction.
11. In reaching this view, Ofcom also noted previous breaches of the BCAP Code in relation to Studio 66 when the service was provided by 914 TV Limited. These decisions were published in April 2019, October 2019 and February 2020.

**The Sanction Decision**

12. In accordance with Ofcom’s procedures for the consideration of statutory sanctions in breaches of broadcast licences (the “Sanctions Procedures”)<sup>3</sup>, Ofcom considered whether the breaches were serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case.
13. These breaches related to five separate broadcasts between 1 March and 18 April 2021. As five breaches occurred during a period of seven weeks, we considered they were repeated. In our assessment of seriousness, we also took into account similar breach findings under the BCAP Code, which were published in April 2019<sup>4</sup>, October 2019<sup>5</sup> and February 2020<sup>6</sup> and made against 914 TV Limited when it was the licensee providing a similar service under the name ‘Studio 66’. We explain below why we considered these breaches were relevant to our consideration of whether to impose a sanction against 965 TV Limited.
14. Accordingly, it is Ofcom’s Decision that a sanction is merited in this case since the breaches were repeated and therefore serious.

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<sup>2</sup> [Issue 438 of Ofcom’s Broadcast and On Demand Bulletin](#)

<sup>3</sup> [Ofcom’s procedures for the consideration of statutory sanctions in breaches of broadcast licences](#)

<sup>4</sup> [Issue 376 of Ofcom’s Broadcast and On Demand Bulletin](#) (Page 12)

<sup>5</sup> [Issue 388 of Ofcom’s Broadcast and On Demand Bulletin](#) (Page 32)

<sup>6</sup> [Issue 397 of Ofcom’s Broadcast and On Demand Bulletin](#)

15. We have therefore considered the type and level of sanction that is appropriate to impose on the Licensee, taking into account all the relevant material in this case and Ofcom's Penalty Guidelines<sup>6</sup> (the "Penalty Guidelines").
16. Ofcom's Decision is that the appropriate sanction is to impose a financial penalty of **£15,000**.

### **Legal Framework**

#### **Communications Act 2003**

17. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003 ("the Act"), is to further the interests of citizens in relation to communications matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required 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)).
18. Further, in performing its duties under section 3 of the Act, Ofcom must have regard to certain considerations as it considers appropriate in the circumstances. These include the vulnerability of children and of others whose circumstances appear to OFCOM to put them in need of special protection (section 3(4)(h)) and the need to secure that the application in the case of television and radio services of standards relating to advertising is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)).
19. Ofcom has a specific duty under section 319(1) of the Act to set such standards for the content of programmes, including advertising, in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that persons under the age of eighteen are protected (section 319(2)(a)) and that the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented (section 319(2)(h)).
20. In carrying out its functions in accordance with its duties under section 3 of the Act, Ofcom is 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)).

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

21. As a public authority, Ofcom must act in accordance with its public law duties to act lawfully, rationally and fairly, and it has a duty to ensure that it does not act in a way which is incompatible with the European Convention on Human Rights (the "Convention")<sup>7</sup>. In particular, in the context of this case, Ofcom has taken account of the rights under Article 10 of the Convention.
22. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right encompasses the broadcaster's freedom to impart and the audience's freedom to receive information and ideas without interference by a public authority and regardless of frontiers (Article 10(1)). The exercise of these freedoms may be subject only to conditions and restrictions which are "prescribed by law and are 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 or morals, for the protection of the

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<sup>7</sup> See section 6 of the Human Rights Act 1998.

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)).

23. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms 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.

#### **UK Code of Broadcast Advertising**

24. The BCAP Code sets out the standards which apply to advertising broadcast in television and radio services, as required under section 319 of the Act. The BCAP Code is drawn up and published by the Broadcast Committee of Advertising Practice Limited (“BCAP”) as authorised by Ofcom under the Contracting Out (Functions Relating to Advertising) and Specification of Relevant Functions Order 2004.
25. Ofcom is responsible for the regulation under the BCAP Code of advertising of telecommunications-based sexual entertainment services and all other ‘participation TV’ (PTV).
26. Accompanying [Guidance](#)<sup>8</sup> is published and from time to time updated on the Ofcom website. The Guidance Notes, which includes guidance on chat services (‘Chat Service Guidance’)<sup>9</sup>, are non-binding but assist broadcasters to interpret and apply the BCAP Code.
27. The relevant BCAP Code rules in this case are set out in full at the beginning of this Decision.

#### **Background – The Breach Decisions**

28. In the Breach Decision, Ofcom found that advertising content broadcast by the Licensee on five separate occasions breached Rule 4.2 of the BCAP Code. On four of these occasions, the content also breached Rule 23.3 and, in the fifth, breached Rule 32.3.
29. The Breach Decisions noted that the material found in breach of Rules 4.2 and 23.3 included presenters using sexually explicit language which, on several occasions, appeared to be in response to a sex toy, not shown on screen, that had been remotely activated by viewers. This content was broadcast during the daytime between 17:10 and 20:16. The advertising that was found in breach of Rule 4.2 and 32.3 was broadcast at 21:00 and again included the use of sexually explicit language as well as the presenter exposing her breasts on three occasions before 22:00, in contravention of the Chat Service Guidance.
30. The Licensee accepted that all of the broadcasts raised issues under the BCAP Code and apologised. Four of the advertisements involved one presenter who the Licensee said had acted out of line with its own guidelines and Ofcom’s published guidance. The Licensee also said that it took the decision to ban this particular presenter from appearing in future advertisements and that it had made fundamental changes to its output to reduce the risk of breaches of the BCAP Code.

#### **Powers to impose a sanction**

31. Under Section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the Licensee. In the case of a television licensable content service (“TLCS”) licence, Condition 6 of the licence requires the Licensee to ensure that

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<sup>8</sup> [Guidance related to broadcast content and standards](#)

<sup>9</sup> [Ofcom guidance on the advertising of telecommunications-based sexual entertainment services and PRS daytime chat services](#)

provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.

32. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the Act insofar as relevant to the case.
33. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or to not repeat a programme which was in contravention of a licence condition.
34. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and five per cent of the qualifying revenue from the licensed service for the Licensee's last complete accounting period falling within the period for which its licence has been in force.
35. Section 238 gives Ofcom a duty to revoke a TLCS licence if the Licensee is in contravention of a condition of the licence or is failing to comply with a direction and Ofcom is satisfied that the contravention or failure, if not remedied, would justify the revocation of the licence.

#### **Ofcom's Decision to impose a Statutory Sanction**

36. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
37. Ofcom issued a Preliminary View that it was minded to impose a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Preliminary View to the Licensee on 23 March 2022 and gave 965 TV the opportunity to provide written and oral representations on it. 965 TV Limited provided its written representations on 5 May 2022 and oral representations at a hearing on 24 June 2022.

#### **The Licensee's representations on Ofcom's Preliminary View**

38. In its written representations, the Licensee reiterated its acceptance that all the material being considered for sanction was in breach of the BCAP Code but said that a penalty was not warranted for them. It said that there was no intent behind the breaches and that the repetition of the breaches reflected that there was a period when its compliance fell below the relevant standard.
39. The Licensee said that Ofcom should not take account of the breaches recorded against 914 TV Limited in its consideration of a sanction against 965 TV Limited. It stated that "it is 965 TV Ltd that is the licensee being considered for sanction. No other licensee is subject to this consideration of sanction. No other material for which a different licensee is responsible can be included in this consideration of sanction." The Licensee said that it was "neither here nor there" that the same individual was an officer and the compliance contact for both companies. The Licensee said that Ofcom should not rely on breaches recorded against 914 TV Limited in its consideration of sanction against 965 TV Limited and should not seek to revive an abandoned sanction procedure against 914 TV Limited "by the back door".
40. In respect of the seriousness of the breaches, the Licensee said the prospect of harm or widespread offence as a result of the breaches was "highly doubtful". In particular, it said that there was a very low likelihood of a child having seen the content in issue, because: Studio 66 TV is not promoted to children and is unlikely to be of interest to them; Studio 66 TV is located within the Adult section of the EPG; the channel must be manually added to Sky set-top boxes; and all Sky set-top boxes offer "robust parental control features".

41. The Licensee said that its track record showed its willingness to comply with the BCAP Code and it also took further steps to ensure compliance following the breaches. It said that there was other action that Ofcom could take to promote compliance which fell short of a financial penalty, such as compliance updates, explanation and dialogue. It also queried the need to set a penalty for deterrence, given its compliance record, the action it had taken since the breaches and the fact that there was only one other licensee providing similar services, which it said was already aware of the rules.
42. The Licensee said that if a penalty were to be imposed, it should be “very far below” the amount proposed by Ofcom. In its oral representations, it explained that 914 TV Limited had been shut down because of the decline in TV advertising revenues. It said that it was trying to keep its own business going but that it would go into liquidation if Ofcom levied the fine proposed in the Preliminary View.
43. The Licensee said in its oral representations that it was frustrating because the breaches should not have occurred. It said that following the breaches “We totally changed our daytime TV output, restricted the people, the presenters and the type of advertising that we used to allow during the daytime”. It said it had not had a compliance failing of any description since then. The Licensee said “I’m pro-compliance, I’m pro-regulation and I’m passionate about protecting young people from harm”.

**Ofcom’s Decision to impose a Statutory Sanction**

44. Having taken into account all relevant material, including the Licensee’s representations and Ofcom’s Penalty Guidelines, Ofcom has reached a Decision that a sanction is warranted for the breaches recorded against 965 TV Limited for the reasons set out in paragraphs 47 to 49 below.
45. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
46. Ofcom considered that the Licensee’s breaches of Rules 4.2, 23.3 and 32.3 of the BCAP Code warranted the imposition of a statutory sanction because they were repeated and therefore serious. The Licensee explained that four of the breaches occurred as a result of a single presenter failing to comply with its guidelines. However, it is the Licensee that is responsible for ensuring compliance with the BCAP Code and it failed to do so on five separate occasions over a period of seven weeks.
47. In making our assessment of the seriousness of these repeated breaches, we were satisfied that it was appropriate to take into account the similar breach findings under Rules 4.2 and 32.3 of the BCAP Code that were published in April 2019, October 2019 and February 2020 in relation to advertising that was broadcast on a service called Studio 66. At the time, the service was provided by 914 TV Limited. This company was dissolved in October 2020 with 965 TV Limited effectively continuing to broadcast the same service under its own existing TLCS licence.
48. The sole director of 914 TV Limited when it breached the BCAP Code is also the sole director of 965 TV Limited. At the time of the breaches by 965 TV Limited, this individual was recorded at Companies House as a person with the significant control of the Licensee. According to Companies House, he was also a person with significant control of 914 TV Limited when it breached the BCAP Code in 2019. He is the named compliance contact for the Licensee and was also a named compliance contact for 914 TV Limited.
49. We disagreed with the Licensee that these common features were irrelevant to our consideration of sanction against the Licensee. We considered that they demonstrated first that the Licensee was closely connected with 914 TV Limited in terms of ownership and control; and

second that the person with control of the Licensee at the time it committed multiple breaches of the BCAP Code had been in control of a closely connected company broadcasting a similar service when it breached, on multiple occasions, the same provisions of the BCAP Code. Like the breaches recorded against 965 TV Limited, the relevant breaches of Rules 4.2 and 32.3 which were recorded against 914 TV Limited resulted from the broadcast of sexualised content before the watershed and strong sexual content without mandatory access restrictions. These breaches occurred less than two years before the breaches recorded against 965 TV Limited.

50. In making our assessment of whether a sanction was warranted in this case, we did not aggregate the breaches recorded against the Licensee with those recorded against 914 TV Limited. However, in view of the common ownership and control of the two companies, the similarities between the breaches recorded against both and their proximity in time, we considered that the breaches recorded against 914 TV Limited had a bearing on our assessment of the seriousness of the Licensee's repeated failures to comply with the BCAP Code and we took them into account accordingly.
51. For these reasons, it is Ofcom's Decision that a sanction is merited in this case since the breaches were repeated and therefore serious.

#### **Imposition of sanction**

52. Having come to the Decision that the imposition of a sanction was merited, Ofcom therefore considered which of the sanctions available to it were appropriate in this case.

#### **Revocation of the licence**

53. Section 238 of the 2003 Act provides Ofcom with the power to revoke a TLCS licence where a licensee is failing to comply with a condition of such a licence or a direction thereunder and the failure, if not remedied, is such as to justify revocation of the licence.
54. Revocation of a licence is the ultimate enforcement action available to Ofcom. A decision to revoke a licence may only be taken if Ofcom is satisfied that it is a proportionate response to the Licensee's failure to comply with its licence conditions. A relevant factor for Ofcom to consider in this regard is whether any sanction short of revocation could ensure that the Licensee would, in future, comply with the Code. We have also taken into account that the breaches have come to an end and Ofcom has no evidence of ongoing non-compliance by the Licensee.
55. Taking account of all the relevant factors, it is Ofcom's Decision that, in circumstances where the sanction discussed below is sufficient to act as a deterrent against future breaches, revocation would be disproportionate.

#### **Directing the Licensee to broadcast a statement of Ofcom's findings and/or not to repeat the programme**

56. The purpose of directing a licensee to broadcast a statement of Ofcom's findings is to inform audiences of Ofcom's findings and ensure they are aware of the specific way in which the programme breached the Code.
57. The Studio 66 service is advertising content that consists of presenters inviting viewers to contact them via premium rate telephony services. Much of its content is adult in nature and its audience is likely to be self-selecting. Taking account of this context, we considered that a direction requiring the Licensee to broadcast a statement of Ofcom's findings would not be appropriate nor effective in informing audiences generally about Ofcom's finding. Ofcom's Decision is therefore not to direct the Licensee to broadcast a statement of its findings in this case.

#### **Imposition of a financial penalty**

58. Under section 237 of the Act, the maximum level of a financial penalty that can be imposed on the holder of a TLCS licence in respect of each contravention of a TLCS licence condition is £250,000 or five per cent of the Licensee's qualifying revenue relating to its last complete accounting period for which its licence has been in force, whichever is greater.
59. The Licensee has confirmed to Ofcom that its qualifying revenue for the relevant period is [CONFIDENTIAL - <del> </del>].
60. Ofcom's Penalty Guidelines<sup>10</sup> state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement".
61. Ofcom's Decision is that a financial penalty is appropriate in this case to reflect the serious and repeated nature of the breaches recorded against the Licensee. We acknowledged the steps taken by the Licensee since these breaches in order to ensure compliance. However, taking account of our findings in respect of the particular circumstances in which the breaches occurred and our assessment in respect of the Licensee's compliance history, we considered that a proportionate financial penalty was appropriate to act as a deterrent to the Licensee from engaging in similar conduct, as well as an incentive for other broadcast licensees to ensure that their advertising is compliant with the BCAP Code.

**Factors taken into account in determining the amount of a penalty**

62. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom has made its assessment in accordance with its Penalty Guidelines, taking account of the specific relevant factors set out at paragraph 12 of the Guidelines as set out below and making its assessment in the round to propose an appropriate and proportionate amount.

*The seriousness and duration of the contravention*

63. As noted, the five breaches of the BCAP rules under consideration were repeated, taking place between 1 March and 18 April 2021. In four cases, the material was broadcast before the watershed. In all cases, very strong sexually explicit language was used by the presenter and, on two occasions, this was combined with the presenter appearing to respond to sexual stimulation triggered by viewers via the use of a remote activated sex toy. The fifth breach, which was broadcast immediately after the watershed, also included explicit language and apparent sexual activity as well as the presenter exposing one or both of her breasts on three occasions.

*The degree of harm*

64. Ofcom has no evidence of actual harm to child or adult viewers caused by these contraventions. Nonetheless, four of the five breaches took place during the daytime and early evening, increasing the risk of children viewing this content, with the potential for harm or distress because of its highly sexualised content. We acknowledged the Licensee's submission that this risk is very low given that Studio 66 TV is not promoted to children nor notorious so as to provoke their interest. We also recognised that the service is hidden on Sky's EPG unless manually added and that Sky's set-top box includes robust parental control features. Nevertheless, we considered that even if low, there was a risk of children being exposed to the content because of the time it was broadcast and without mandatory restricted access. We take a serious view of breaches which pose a risk of harm to children, given their vulnerability and that their protection is a key objective of the BCAP Code.

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<sup>10</sup> [Ofcom Penalty Guidelines](#)

Any gain (financial or otherwise) made by the regulated body in breach (or any connected body) as a result of the contravention

65. We have seen no evidence to show that the Licensee made any direct financial gain from the repeated breaches of the BCAP Code.

Whether in all the circumstances appropriate steps had been taken by the regulated body to prevent the contravention

66. The Licensee said in its representations that three of the five breaches were recorded in its compliance diary and that a warning was given to the presenter on one occasion and that it took action to prevent the same presenter appearing in any further advertisements on the service after the fifth breach. The Licensee also said that it had not identified the first two breaches because of reduced staffing numbers due to the Coronavirus pandemic.
67. Notwithstanding the action that the Licensee said it had taken, there were five similar breaches over a period of seven weeks. As noted below, the Licensee has a history of breaching the BCAP Code as a result of broadcasting sexualised advertising without access restrictions and before the watershed. It should therefore have been aware of the importance of having effective compliance procedures in place, including monitoring and training for its presenters, in order to minimise the risk of breach. In all the circumstances, Ofcom considered that the repeated nature of the breaches demonstrated that the Licensee had failed to take appropriate steps to put in place adequate compliance procedures to prevent the broadcast of material in breach of the BCAP Code.

The extent to which the contravention occurred deliberately or recklessly, including the extent to which senior management knew, or ought to have known, that a contravention was occurring or would occur

68. As noted above, the Licensee has said it was unaware of the first two breaches and took action following the fourth and fifth breach with a view to preventing further contraventions. Nonetheless, we noted that the breaches occurred less than two years after similar breaches on the Studio 66 service when it was provided by the Licensee's sister company, 914 TV Limited. As set out above, the same individual who ran the Licensee at the time of its breaches and is the named compliance contact for the company, also controlled 914 TV Limited and was its named compliance contact at the time that it was found in breach of the BCAP Code in 2019 and 2020. In all the circumstances, we considered that the Licensee's senior management would have been fully aware of the type of broadcast content that would give rise to breaches of the BCAP Code in the absence of mandatory restricted access and so should have been in a position to implement effective compliance procedures. The repeated breaches recorded against the Licensee for broadcasts of a similar nature demonstrated that they failed to do so.

Whether the contravention in question continued, or timely and effective steps were taken to end it, once the regulated body became aware of it

69. As noted above, in relation to the advertisements broadcast on 1 and 21 March 2021, the Licensee said that as a result of reduced staffing numbers as a result of the Coronavirus pandemic, the staff member responsible for monitoring had an increased workload and, as a result, monitoring on these days was not completed as normal. The Licensee was therefore unaware of the problematic content broadcast on these days until informed of the complaints by Ofcom.
70. With respect to the advertisements broadcast on 4, 7 and 18 April 2021, the Licensee said that the incidents had been noted during its own monitoring. Following the 4 April 2021 advertisement, the Licensee said it reminded the presenter in question that the language and acts in the advertisement were not acceptable for broadcast. After the 18 April broadcast,

which featured the same presenter, the Licensee said that the presenter was “banned from appearing in any further advertisements”.

71. The Licensee also said that following this series of incidents it had made fundamental changes to its output to reduce the risk of non-compliance including having a full-time producer responsible for monitoring.
72. Ofcom was concerned that this series of five breaches took place over a period of seven weeks. Although the Licensee said it was aware of the issues raised by the broadcast of 4 April 2021 and had taken various steps in response, these were insufficient to prevent further breaches occurring on 7 and 18 April 2021, although we took account of the Licensee’s representation that the presenter had acted in breach of its own guidance. We were concerned that the Licensee said it was unaware of the content broadcast on 1 and 21 March 2021 and appeared to have insufficient safeguards in place in the event of staff absence to ensure its compliance with the BCAP rules.
73. We welcomed the Licensee’s stated commitment to compliance and protecting children from harm. We also acknowledged the action that the Licensee has subsequently taken to ensure future compliance and we have not identified any further issues on the service since the last of these breaches occurred on 18 April 2021.

Any steps taken for remedying the consequences of the contravention

74. As noted above, the Licensee has taken action following the breach to ensure compliance, including removing the presenter, changing its daytime output and having a full-time producer to monitor the broadcasts.

Whether the regulated body in breach has a history of contraventions (repeated contraventions may lead to significantly increased penalties)

75. We have recorded multiple breaches of the BCAP Code against the Licensee since 2012, although we acknowledge that prior to this case, the last of these was in 2014. During this time, we have recorded four breaches of Rule 32.2, three breaches of Rule 4.2 and three breaches of Rule 30.3 against the Licensee, in relation to services broadcasting under the names Studio 66 TV2, Studio 66 TV3 and Studio 66 TV4.
76. These breach findings, which were published in our Broadcast and On Demand Bulletin are as follows:
  - **Elite Nights** (Studio 66 TV 2, 15 July 2012, 03:00 to 03:55), breaches of BCAP Code Rules 4.2 and 30.3. The broadcast included promotional references to pornographic material where there were no appropriate protections to protect children from accessing this material and relevant scheduling restrictions were not followed.
  - **Studio 66 Nights** (Studio 66 TV 4, 10 October 2012, 21:00 to 21:30), breach of BCAP Code Rule 30.3. Ofcom found that the broadcast content included promotional references to pornographic material.
  - **Studio 66 Nights** (Studio 66 TV 2, 25 October 2012, 21:00 to 21:30), breaches of Rules 30.3 and 32.3 after it found that the material broadcast at this time included promotional references to pornographic material and that relevant scheduling restrictions were not applied.
  - **Studio 66 TV Nights** (Studio 66 TV 3, 5 March 2013, 00:20 to 00:30), **Studio 66 TV Days** (Studio 66 TV 3, 17 April 2013, 10:30 to 11:45) and **Studio 66 TV Nights** (Studio 66 TV 2, 17 April 2013, 21:04 to 21:08) breach of BCAP Rule 4.2 for the content broadcast on 5 March 2013 which included material of a sexual nature not permitted in “adult chat”

advertisements; and breaches of BCAP Rule 32.3 for the content broadcast on 17 April 2013, which was of a sexualised nature and not scheduled so as to protect children.

- **Studio 66 TV Days** (Studio 66 TV 2, 1 January 2014, 05:30 to 05:38), breach of BCAP Rule 32.3. This was because the broadcast material, that was sexual in nature, was unsuitable for children and had not had relevant timing or scheduling restrictions placed on it.
- **Studio 66 3 Nights** (Studio 66 TV 3, 4 June 2014, 22:15), breach of Rule 4.2 for broadcasting material of a strong sexual nature not permitted in “adult chat” advertisements.

77. We have also taken account of the most recent breaches of the BCAP Code recorded against 914 TV Ltd, given the close links between the two companies, the similar nature of the services provided by each and the similar nature of the breaches in question, as set out above. A summary of these findings is as follows:

- **Studio 66 TV** (Studio 66, 27 November 2018, 10:00 to 11:55), breach of Rule 32.3 of the BCAP Code for the pre-watershed broadcast of content featuring presenters who were not wearing appropriate clothing that adequately covered their bodies and were touching or stroking their bodies in a suggestive manner.
- **Studio 66 TV** (Studio 66, 15 April 2019, 10:00, 28 April 2019, 18:30, 8 May 2019, 11:10, 20 May 2019, 10:00, 23 May 2019, 10:00), Ofcom found each of these pre-watershed broadcasts in breach of Rule 32.3 as, in each case, a presenter was not wearing clothing that adequately covered their body and behaved in a sexualised manner and there was no mandatory restricted access.
- **Studio 66 TV** (Studio 66, 13 August 2019, 21:15, 27 August 2019, 10:43, 17 September 2019, 08:48, 22 September 2019, 08:51, 7 October 2019, 13:56, 15 September 2019, 23:00, 13 October 2019, 11:30, 15 October 2019, 10:15), Ofcom found that seven of the eight broadcasts were in breach of Rule 32.3. This was because the broadcasts contained numerous instances of sexual material unsuitable for the time of broadcast and without mandatory restricted access. The eighth broadcast concerned the broadcast without mandatory restricted access of content involving a presenter simulating sex acts in breach of Rule 4.2 of the BCAP Code.

*The extent to which the regulated body in breach has cooperated with our investigation.*

78. The Licensee has met its licence obligations in responding to Ofcom’s formal requests for information relating to each of the broadcasts, but did not volunteer additional co-operation to facilitate Ofcom’s investigation or enable it to reach a swifter conclusion.

**Precedent cases**

79. In accordance with the Penalty Guidelines, in coming to this Decision, Ofcom has had regard to relevant precedents set by previous cases. However, each case is decided on its own facts. In reaching our view in this instance, Ofcom has considered two previous cases<sup>11 12</sup> and to the extent that we consider them relevant (taking account of the Licensee’s submissions in this regard), have taken them into account. The precedents are sanction decisions taken in 2011. Penalties of £130,000 and £60,000 were imposed on Satellite Entertainment Limited (‘SEL’) and Just4Us TV Limited respectively for breaches of Rules 32.3 and 4.2 of the BCAP Code and, in the case of SEL, a breach of Condition 11 of its licence.

**The size and turnover of the regulated body when considering the deterrent effect of any penalty**

<sup>11</sup> [Decision by Ofcom to impose a sanction on Satellite Entertainment Limited](#)

<sup>12</sup> [Decision by Ofcom to impose a sanction on Just4Us TV Limited and Playboy TV UK/Benelux Limited](#)

80. As set out in our penalty guidelines, the central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement.
81. The Licensee's qualifying revenue is [CONFIDENTIAL - ✂]. The maximum penalty that can be imposed on the Licensee for each breach is therefore £250,000.

**Decision**

82. Having regard to all the circumstances referred to above, including the need to achieve an appropriate level of deterrence and the repeated, and therefore serious, nature of the breaches in this case, Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of **£15,000** (payable to HM Paymaster General).

**Ofcom**