

Sanction: Decision by Ofcom
To be imposed on Majestic TV Limited

For the broadcast of three pieces of psychic advertising content between 6 May 2012 and 20 June 2012.

Consideration of sanction against:

Majestic TV Limited (“Majestic TV” or “the Licensee”) in respect of its service Psychic Today (TLCS-788) broadcast on Sky Channel 886.

For:

Breaches of the UK Code of Broadcast Advertising (“the BCAP Code”) in respect of:

Rule 15.5.2: “Advertisements for personalised and live services that rely on belief in astrology, horoscopes, tarot and derivative practices are acceptable only on channels that are licensed for the purpose of the promotion of such services and are appropriately labelled: both the advertisement and the product or service itself must state the product or service is for entertainment purposes only.”

Rule 15.5.3: “Advertising permitted under Rule 15.5 may not:

- Make claims for efficacy or accuracy;
- Predict negative experiences or specific events;
- Offer life-changing advice directed at individuals – including advice related to health (including pregnancy) or financial situation;
- Appeal particularly to children;
- Encourage excessive use.”

On:

Psychic Today, 6 May 2012, 23:21
Psychic Today, 2 June 2012, 23:00 to 23:15
Psychic Today, 20 June 2012, 22:30 to 22:45

Decision:

To impose a financial penalty (payable to HM Paymaster General) of **£12,500**; and

To direct the Licensee to broadcast a statement of Ofcom’s findings on one occasion, on a date and in a form to be determined by Ofcom.

Executive Summary

1. The Psychic Today service¹ consists of advertising content offering psychic readings to callers. This free to air channel is broadcast 24 hours a day on the Sky digital satellite platform (on Sky Channel 886).² It consists of promotions for premium rate telephone services (“PRS”), both voice and text, by which viewers can obtain psychic readings, and it provides a facility for viewers to pay for these by credit card. Callers can select to be connected to a psychic off air, or to the presenter in the studio – in which case the reading is broadcast live, subject to the psychic’s availability. The channel Psychic Today gives different names to segments of its psychic reading advertising content broadcast at various times, and the name of the programming broadcast in the cases to which this sanction relates was also *Psychic Today*.
2. The TLCS³ licence for the Psychic Today service is held by Majestic TV Limited (“Majestic TV”). Peripatos Limited (“Peripatos”) (a third party entity) deals with any compliance issues in relation to the Psychic Today content output on behalf of the Licensee.
3. On 1 September 2010 new Ofcom rules came into force with the effect that channels and content predicated on the promotion of PRS (“participation television” or “PTV”) from then on were treated as advertising and subject to the BCAP Code. At the same time, the revised BCAP Code allowed PRS-based live and personalised psychic services to be broadcast on channels licensed for that purpose (previously the BCAP Code had prohibited such services).
4. In December 2011, Ofcom published guidance⁴ to broadcasters in respect of psychic television services predicated on PRS (“the Guidance”). The Guidance states that such services must not contain explicit and implicit claims of efficacy or accuracy. Additionally, it provides that broadcasters should not solely rely on an onscreen message stating the psychic material is for entertainment purposes but that this principle should be reflected in the content as a whole.
5. In the findings published on 18 February 2013 in Broadcast Bulletin 224⁵ (“the Findings”), Ofcom found that three pieces of psychic advertising content broadcast on Psychic Today on 6 May 2012, 2 June 2012 and 20 June 2012 breached BCAP Rules 15.5.3 and 15.5.2.⁶

All three pieces of advertising content – breach of BCAP Rule 15.5.3

6. See <http://www.cap.org.uk/Advertising-Codes/Broadcast-HTML.aspx> for relevant extracts in full of Section 15 of the BCAP Code.

¹ The name of the service was changed from Psychic TV to Psychic Today in 2011.

² The live broadcast runs every day from 9am to 3am.

³ Television licensable content service.

⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/psychic-tv-guidance.pdf>.

⁵ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb224/obb224.pdf>.

⁶ This advertising content was also simultaneously broadcast on three other services: Big Deal, Sumo TV and Fitness TV. Big Deal is broadcast on the Digital terrestrial platform Freeview on Channel 32 and is owned and operated by the licensee Square 1 Management Limited (“Square 1”). Sumo TV broadcasts on the Sky digital satellite platform (on Sky Channel 198), and the licence for this service is held by Sumo TV Limited. Fitness TV broadcasts on the Sky digital satellite platform (on Sky Channel 282) and the licence for this service is held by TV Worx Limited. In the Findings, Ofcom explained that it intended to consider sanctions only against Majestic TV concerning Psychic Today and against Square 1 concerning Big Deal. As regards Square 1, see the Sanction Decision available at <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/square1.pdf>

7. Rule 15.5.3 states among other things that: “Advertising permitted under Rule 15.5 may not:
 - Make claims for efficacy or accuracy”.
8. Ofcom decided in the Findings that all three broadcast pieces contained explicit and/or implicit claims of efficacy and accuracy and were therefore in breach of BCAP Rule 15.5.3. In particular:
 - The broadcast on 6 May 2012 on Psychic Today included an onscreen graphic which stated that a particular psychic (“Mollie”) could give “*accurate and precise*” readings.
 - The broadcast on 2 June 2012 on Psychic Today included a psychic who referred to a previous reading given many years earlier. By referring to that reading she purported to have correctly predicted a number of events that had since occurred. The psychic also referred to evidence to confirm that her predictions had come true.
 - During the broadcast on 20 June 2012 on Psychic Today, the host and psychic referred to the psychic’s direct involvement with various police investigations, including the investigation into the abduction and murder of Milly Dowler. To suggest on air through various remarks that UK police forces had employed the psychic in this way was meant to show that the psychic could provide reliable and substantiated readings as demonstrated by her experience of working closely with various UK police forces to help them solve ‘cold cases’.

All three pieces of advertising content – breach of BCAP Rule 15.5.2

9. BCAP Rule 15.5.2 states: “Advertisements for personalised and live services that rely on belief in astrology, horoscopes, tarot and derivative practices are acceptable only on channels that are licensed for the purpose of the promotion of such services and are appropriately labelled: both the advertisement and the product or service itself must state the product or service is for entertainment purposes only”.
10. Ofcom decided in the Findings that all three broadcast pieces did not make clear that the advertising content was for entertainment purposes only; they were therefore in breach of BCAP Rule 15.5.2.
11. In each case, Ofcom examined 30 minutes of material⁷ broadcast and found that it did not contain any explicit reference (either verbally or in on screen text) to the service being for entertainment purposes only. Nor did the PRS-based psychic content itself reflect the principle that the service must be for entertainment purposes only.
12. In view of the fact that Ofcom had previously found Psychic Today in breach of the BCAP Rules and there is a risk of consumer harm in cases such as these, Ofcom considered that the broadcast of this material raised serious compliance issues. Therefore, when Ofcom recorded the breaches in Broadcast Bulletin 224 against Majestic TV, Ofcom put the Licensee on notice that Ofcom would consider the imposition of a statutory sanction.

Summary of Ofcom’s Sanction Decision

⁷ The content found in breach of BCAP Rules 15.5.2 and 15.5.3 in each case occurred within the 30-minute segments examined by Ofcom.

13. Ofcom considered that the breaches, as set out in the Findings, were sufficiently serious and repeated as to warrant the imposition of a sanction on Majestic TV.
14. In accordance with Ofcom's Procedures for the consideration of statutory sanctions in breaches of broadcast licences⁸ ("the Sanctions Procedures") and having considered all the evidence and representations made to it by the Licensee, Ofcom decided, for the reasons set out in paragraphs 65 to 74 below, that it would be appropriate to impose a financial penalty and to direct the Licensee to broadcast a statement of Ofcom's findings on one occasion, on a date and in a form to be determined by Ofcom.
15. As regards the financial penalty, having regard to Ofcom's Penalty Guidelines⁹, Ofcom decided that it was appropriate and proportionate in the circumstances to impose a financial penalty of £12,500 (payable to HM Paymaster General).

Legal Framework

General

16. In discharging its functions, Ofcom's principal duties set out in section 3(1) of the Communications Act 2003 ("the Act") are to further the interests of citizens in relation to communications matters, and the interests of consumers, 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)).
17. Ofcom has a specific duty under section 319 of 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 set out in section 319(2). One of those objectives is that "the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented" (section 319(2)(h)).
18. Ofcom is also under a duty created by section 319(7) of the Act to "take account of such of the international obligations of the United Kingdom as the Secretary of State may notify to them for the purposes of this section." Article 19 of the Audiovisual Media Services Directive¹⁰ requires, among other things, that "television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content."
19. 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, to have regard to 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)).

Human Rights Act 1998

20. 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").

⁸ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>.

⁹ <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>.

¹⁰ Directive 2010/13/EU.

21. 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" (Article 10(1) of the Convention). 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).
22. Ofcom must exercise its duties 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.

UK Code of Broadcast Advertising

23. Standards set by Ofcom in accordance with section 319(2)(h) of the Act relating to advertising are set out in the BCAP Code. The BCAP Code is drawn up and published by the Broadcast Committee of Advertising Practice Limited ("BCAP") pursuant to contracting out arrangements entered into between Ofcom and BCAP¹¹.
24. However, Ofcom remains responsible for the regulation of long-form PTV advertising. This class of advertising content includes premium rate telecommunications-based psychic, chat and advice services.
25. As mentioned above, Ofcom has published Guidance to assist licensees who carry PRS-based psychic material to understand the likely interpretation of the BCAP Code that Ofcom will apply. The Guidance includes references for example to the type of material that should not be broadcast during such advertising content.
26. The relevant BCAP Code rules in this case are set out in full on the first page of this Decision.

Remedial action and penalties

27. Under section 325 of the Act, every programme service licensed 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 the provisions of any Code made under section 319 are complied with. Where Ofcom has identified that a condition of a TLCS licence has been contravened, it may impose sanctions as set out below.
28. 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 findings (or both) in the licensed service, in such form and at such time or times as determined by Ofcom, or not to repeat a programme on contravention of a licence condition.
29. 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

¹¹ http://stakeholders.ofcom.org.uk/binaries/consultations/reg_broad_ad/statement/mou.pdf (May 2004).

and five per cent of its qualifying revenue for the licence holder's last accounting period on contravention of a licence condition.

30. Section 238 of the Act provides Ofcom with the power to revoke a TLCS licence where a licensee is in contravention of a condition of a TLCS licence or a direction thereunder.

Background – the Findings

31. In the Findings, Ofcom decided that three pieces of advertising content broadcast on 6 May 2012, 2 June 2012 and 20 June 2012 by the Licensee on its Psychic Today channel breached BCAP Rules 15.5.2 and 15.5.3.
32. In each case Ofcom first considered whether the service had contained claims of efficacy and accuracy (as prohibited by Rule 15.5.3) and then assessed whether it had been “appropriately labelled” to make clear that it was intended for entertainment purposes only (as required by Rule 15.5.2).

BCAP Rule 15.5.3

6 May 2012 broadcast

33. The text of onscreen advertising content promoting psychic readings with “Mollie” (to be contacted by means of the PRS number shown on screen at the same time) included the descriptions of her readings as “very accurate” and “precise”. The use of these words to describe this psychic's abilities would, in Ofcom's view, have been widely and reasonably interpreted as a claim of accuracy and efficacy.
34. Further, despite an assurance given to Ofcom on 25 October 2012 in response to Ofcom's preliminary view concerning the breaches of the BCAP Code (the “Standards Preliminary View”) that “[a]ll advertising [for the Psychic Today output] has been reviewed to ensure that there is no repetition” of this compliance issue, Ofcom examined material broadcast on Psychic Today on 31 October 2012 at 13:53 and 7 December 2012 at 16:22 and noted similar problematic content was subsequently broadcast. Ofcom was particularly concerned that Peripatos, the third party carrying out compliance work on the Licensee's behalf, did not appear to have carried out a thorough compliance investigation before giving Ofcom the above assurances.

2 June 2012 broadcast

35. During this broadcast the psychic referred to a previous reading she claimed to have given many years earlier to a friend, i.e. that the friend would meet and become “quite close friends” “for many years” with a very famous pop star, Michael Jackson, stay at his house, write two books about him, and that the friendship would end suddenly for some reason. By referring to that reading the psychic purported to have correctly predicted a number of events that had since occurred, and referred to her friend producing evidence (such as photographs of the friend with Michael Jackson in private locations like his recording studio) to confirm that her predictions had come true. These remarks by the psychic would, in Ofcom's view, have been widely and reasonably interpreted as an implied claim of accuracy and efficacy for her predictions.
36. Further, Ofcom had made clear in a previous finding relating to another licensee that references in PTV psychic advertising content to previous readings may constitute an

implied claim of accuracy or efficacy for current readings¹². Ofcom considered that these comments made by the psychic in advertising content clearly implied her predictions were accurate and efficacious.

20 June 2012 broadcast

37. Both the host and the psychic (Crystal) referred to Crystal's direct involvement with various police investigations, including the investigation into the abduction and murder of Milly Dowler.
38. In particular Ofcom noted the following various references made by the host: *"You actually use your remote viewing professionally, for, um, the Police"* and *"[T]hey [the police] actually, um, employ you [Crystal] now on several different cases that have gone cold don't they?"* Crystal responded: *"One of the cases that's actually um, signed, sealed and delivered and got the seal on it. Um. Was the um, oh crikey, uh the Milly Dowler case...I was the one that dealt with that one. Yeah."* The host later added: *"So Crystal works very closely with uh, with several police constabularies, don't you know and what they actually do is when a case has gone cold, when they have no where to look to turn to find out information, they actually consult psychics and they consult Crystal. She has worked on many, many different things; she's remote viewed lots of different cases."*
39. In Ofcom's view the remarks made by the host and Crystal implied in summary that the psychic had been employed by various UK police forces to assist them to solve 'cold' cases, including the Milly Dowler case. The investigation of all unsolved criminal cases by the police, and especially murder cases, is a very serious matter. The clear implication of these comments was that various UK police forces had employed Crystal to assist them and that the police would only employ Crystal if they believed that the information she might provide as a psychic would be accurate and efficacious. To suggest on air through various remarks that UK police forces had employed Crystal in this way constituted making claims of accuracy and efficacy for the psychic's predictions.
40. Ofcom considered that this material meant to show that the psychic could provide reliable and substantiated readings as demonstrated by her experience of working closely with various UK police forces to help them solve 'cold' cases.

BCAP Rule 15.5.2

41. Ofcom then considered the material broadcast by Psychic Today on all three dates against the requirements of Rule 15.5.2. As required by Rule 15.5.2, Ofcom noted that the channel was licensed for the promotion of psychic services. However, Rule 15.5.2 goes on to state that "the advertisement and the product or service itself must state that the product or service is for entertainment purposes only".
42. In each case Ofcom examined a 30-minute segment of the advertising content. In all three instances Ofcom found no explicit reference, either verbally or in onscreen text, to the service being for entertainment purposes only. Further, the content, taken in context, did not suggest that it was for entertainment purposes. Previous published findings regarding Rule 15.5.2 and the Guidance clearly state that, for the avoidance of doubt, it should be noted that the audiovisual output taken as a whole should reflect the principle that the service is for entertainment purposes only, in addition to the advertisement being appropriately labelled.

¹² Psychic Line, Good Morning Psychic, 12 April 2012:
<http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb212/>.

43. Ofcom set out in the Findings that the contraventions of BCAP Rules 15.5.2 and 15.5.3 in these cases by Majestic TV were particularly serious, and repeated, and that they therefore warranted consideration of a statutory sanction.

Ofcom's decision to impose a statutory sanction

44. As set out above, Ofcom's powers to impose a sanction are contained in sections 236 to 238 of the Act insofar as relevant to the present case.
45. In this case, Ofcom issued a preliminary view (the "Sanctions Preliminary View") that Ofcom was minded to impose a statutory sanction in the form of a financial penalty. In addition, Ofcom proposed that the Licensee should be directed to broadcast a statement of Ofcom's findings on a date or dates and in a form to be determined by Ofcom. Ofcom sent the Sanctions Preliminary View to the Licensee on 4 April 2013, giving the Licensee an opportunity to provide written and oral representations in response. The Licensee provided written representations to Ofcom on 24 April 2013 and attended a hearing at Ofcom on 14 May 2013 to provide oral representations (together, "the Representations"). The Representations are summarised below.
46. In reaching its final Decision on whether to impose a statutory sanction, and if so, what type and level of sanction, Ofcom was not bound by the Sanctions Preliminary View. Ofcom took account of all the evidence and the Licensee's Representations in response to the Sanctions Preliminary View in reaching its Decision, and also had regard to the Sanctions Procedures and Ofcom's Penalty Guidelines.

Licensee's Representations

47. The Licensee considered that in the circumstances the proposed level of financial penalty was unjustified and disproportionate. The Licensee provided a number of reasons for this as set out below.

Licensee's compliance procedures

48. Majestic TV stated that it shared Ofcom's concerns regarding the need to protect potentially vulnerable viewers and that this is an important factor in how they operate the service. In its oral Representations the Licensee set out its approach to ensuring compliance with the requirements of the BCAP Code and Guidance, which includes:
- regular meetings between the director of Majestic TV and an individual at Peripatos to discuss pertinent compliance issues;
 - a one hour intensive training session for all prospective employees/psychics conducted by an experienced psychic TV training and compliance consultant, followed by close monitoring of all initial calls and ongoing training;
 - compilation of a report after each broadcast segment which includes a section on compliance. This report is distributed to the Head of Broadcasting and all Producers who in turn are responsible for disseminating to relevant staff;
 - the maintenance of a manual which was created following the service being reclassified as advertising in September 2010. This manual includes the relevant Ofcom rules, Guidance and precedent findings. Every employee has a copy of this manual, and it is updated regularly;
 - procedures to help the Majestic TV customer services representatives and psychics identify vulnerable callers and ensure the service is suitable for their needs (callers are given contact details of a more suitable body or organisation if a psychic reading is considered inappropriate);

- training for the customer services representatives and psychics which ensure callers to the service are over 18 years of age, have the bill payers' permission and are not kept on the line longer than necessary; and
- a dedicated member of staff who has responsibility for monitoring the on screen content.

The broadcasts

49. With regard to the material broadcast on 6 May 2012, the Licensee accepted that the broadcast of the reference to the psychic Mollie being “accurate” and “precise” did not comply with the Code and was the result of “human error”¹³.
50. As regards the broadcasts on 2 and 20 June 2012, the Licensee disagreed with Ofcom’s view that the material amounted to claims of efficacy and accuracy. It argued that in both cases the claims were “statements of fact”, and although the subject matter in the 20 June 2012 broadcast (the Milly Dowler case) was “unfortunate”, the psychic was obviously uncomfortable and was aware that the subject was potentially problematic and therefore kept her comments, which were made only in response to the host’s questions, to a minimum. Nevertheless, Majestic TV argued that the material considered to be problematic by Ofcom would in its view generally be perceived by the audience as “a matter of interest” rather than a claim of efficacy or accuracy.

Code interpretation and the Guidance

51. The Licensee submitted that it was very concerned that Ofcom is construing BCAP Rule 15.5.3 in a disproportionately restrictive manner, and that the Guidance is contrary to the express wording of the BCAP Code. In particular it claims that by including the word “implied” in “claims of efficacy and accuracy”, the Guidance goes beyond the literal wording of the rule – which does not contain the word “implied” – and in effect has created “a new tier of regulation” based on subjectivity. It argued that the word “implied” is being used “in such a broad way as to effectively stifle the ability to express oneself”. The Licensee referred to a House of Lords Debate¹⁴ in which the English language definition of ‘guidance’ was raised, specifically that guidance is “intended to advise and inform rather than to direct” and can therefore not override regulations. Further, Majestic TV argued that there was no consultation on the Guidance prior to its publication and it had understood, following the meeting on 3 August 2011 with Ofcom, that Ofcom would consider its concerns and “consult further with Majestic TV prior to issuing any formal guidelines”. Further the Licensee argued that the Guidance is not clear and unambiguous, “hence the [Licensee’s] desire to engage in consultation and inform the development of any guidelines and changes to the relevant BCAP rules” going forward.
52. The Licensee stated that at the time of the PTV consultation¹⁵, Ofcom recognised that in “reclassifying and permitting the broadcast of Psychic-only content as teleshopping, all parties were entering hitherto new and uncharted territory and that matters would be kept under review in light of experience”. Further Majestic TV argued “it has been patently obvious¹⁶ that there has been a need for further dialogue...and there is a need to revise the rule as well, and not based upon guidance, because guidance has been used to revise the rule”.

¹³ The Licensee helpfully accepted that “candidly, there have been errors on our part”.

¹⁴ The Licensee referred to a House of Lords Debate on 8 May 2003; however Ofcom was unable to locate this reference.

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>.

¹⁶ From the history of interaction between Majestic TV and Ofcom over Ofcom’s regulation of psychic TV advertising content.

Research on psychic TV

53. Majestic TV further stated that Ofcom had, in a selective manner, relied on “those sections of the Essential report [produced as background for Ofcom’s PTV consultation] which appear to help build a case against Majestic. Not all of the Essential report is critical of Psychic content”. The Licensee explained that it would “welcome Ofcom commissioning more up to date research than that afforded by the 2007 Essential research summary”, and “any new research could usefully focus detail on present day viewer perceptions of efficacy and accuracy...” Otherwise, any picture on the issue of vulnerability would be distorted.

Harm

54. With regard to the potential for harm, Majestic TV stated that it had no evidence of harm to users of its service, although it was aware of the examples referred to in the 2007 Essential research. The Licensee highlighted the procedures it has in place to monitor those users of its service that are potentially using the service excessively and contact those consumers directly to alert them to the potential costs involved and to direct them to another service, if appropriate (see paragraph 48 above).

Cooperation

55. The Licensee submitted that it had fully cooperated with Ofcom and had not set out to frustrate or unduly delay Ofcom’s investigation. Majestic TV argued that it had received a confusing number of requests from Ofcom and many different individuals needed to be consulted before it was in a position to respond to Ofcom’s query regarding the nature of the simulcast material.

Imposition of sanctions

56. Ofcom’s powers to impose a sanction are set out in sections 236 to 238 of the Act insofar as relevant to the present case.
57. In view of the factors set out in paragraphs 65 to 74 below, which include Ofcom’s views on the Licensee’s Representations in response to the Sanctions Preliminary View, where relevant, Ofcom considered that the breaches were sufficiently serious to warrant the imposition of a statutory sanction. The following paragraphs set out the enforcement action we have considered and the sanctions to be imposed in this case.

Consideration of the imposition of sanctions other than a financial penalty

58. Ofcom has the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom’s findings (or both) in the licensed service, in such form and at such time or times as determined by Ofcom, or not to repeat a programme (or advertisement) which was in contravention of a licence condition.
59. In this particular case, it is Ofcom’s view that a direction not to repeat the advertising content would not be an appropriate sanction in the circumstances. This is because the advertising content was broadcast live, and the psychic readings were personal and specific to the relevant callers.
60. Ofcom does believe however that a direction to broadcast a statement of Ofcom’s findings is appropriate. In broadcasting a statement, in a form determined by Ofcom, the contravention by the Licensee of the BCAP Code (and the relevant licence condition) would be appropriately remedied in that a range of viewers would be

informed that a breach had taken place because the service as a whole was not permitted to make claims of efficacy or accuracy and needed to make clear that it was for entertainment purposes only – these being underpinning requirements of the broadcast of the service. This would also provide viewers with adequate information which they can take into account before deciding to make PRS contact with the channel in future. As stated above, Ofcom decided it was appropriate to direct the Licensee to broadcast a statement, on one occasion, in such form and at such time as determined by Ofcom, in accordance with section 236 of the Act.

61. Ofcom further considers that, for the reasons set out in paragraph 65 and following below, the breaches were sufficiently serious and repeated to warrant the imposition of a financial penalty. In Ofcom's view, this would act as an effective deterrent to discourage the Licensee, and other licensees, from breaching the BCAP Code in a similar manner in the future.
62. In light of the above, and taking into account the broadcaster's right to freedom of expression and the information currently available, Ofcom does not consider that it would be necessary or proportionate to revoke the licence as an appropriate statutory sanction in respect of the current breaches under consideration.

Imposition of a financial penalty

63. Under section 237 of the Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence in respect of each breach of a licence is a maximum of £250,000 or five per cent (5%) of the Licensee's qualifying revenue relating to its last complete accounting period, falling within the period for which the licence has been in force ("the relevant period"), whichever is greater.
64. Ofcom's Penalty Guidelines state 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." In reaching its Decision, Ofcom has taken full account of the need to ensure that any penalty acts as a deterrent and has also taken account of the specific factors set out at paragraph 4 of the Penalty Guidelines.

Seriousness and repeated nature of breaches

65. As set out in paragraph 1.10 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, repeatedly¹⁷, or recklessly breached a relevant requirement.
66. Ofcom considers that the breaches of BCAP Code Rules 15.5.2 and 15.5.3 in this case were sufficiently serious and repeated to warrant the imposition of a statutory sanction, for the following reasons.
67. First, in Ofcom's view, the breaches by Majestic TV raise significant issues of consumer protection. These issues are prevalent in this case because they concern the protection of potentially vulnerable viewers who might believe that paying for a PRS contact with a psychic via this service will provide them with accurate information about

¹⁷ A repeated breach of a relevant requirement includes, for example: a repeat of the breach of the same requirement as has already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other similar requirements.

the future or influence them in making life-changing decisions. The rules seek to ensure that these practices are not presented, whether expressly or by implication, as in any way dependable or based on any reliable evidence. As Ofcom found that the material in each case featured an implied claim of efficacy and accuracy in breach of Rule 15.5.3, and there was a failure to label the advertising content as being for entertainment purposes only in breach of Rule 15.5.2, this means that potentially vulnerable viewers were not protected in these instances and potentially exposed to the risk of financial harm (i.e. the cost of the PRS calls).

68. In this context, Ofcom notes in particular the Licensee's argument (see paragraph 51 above) that the word "implied", while included in the Guidance, is not contained in the wording of Rule 15.5.3 which merely refers to "claims for efficacy or accuracy", with the effect that Ofcom's interpretation of the Rule is unduly restrictive. Ofcom does not believe that this is the case and does not agree that the Guidance has been used to revise the Rule; on the contrary, it is appropriate and reasonable to construe Rule 15.5.3 in this way (and the Guidance explains how the Rule is construed and interpreted by Ofcom) for the following principal reasons:

- The overarching principle of the regulation of advertising is that advertisements should not mislead or cause harm, especially to the vulnerable (see Section 1 of the BCAP Code). It seems clear that viewers, in particular vulnerable viewers, can be misled merely by implication, taking account of the context in which a claim is made.¹⁸ This is also supported by Section 3 of the BCAP Code which, in requiring that advertisements must not mislead consumers, states among other things that:

"3.2 Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.

Material information is information that consumers need in context to make informed decisions about whether or how to buy a product or service. Whether the omission or presentation of material information is likely to mislead consumers depends on the context, the medium and, if the medium of the advertisement is constrained by time or space, the measures that the advertiser takes to make that information available to consumers by other means".

- Broadcasters must ensure that advertisements they transmit comply with both the spirit and the letter of the Code (see Section 1 of the BCAP Code); as noted above, the spirit of the Code is to avoid misleading or causing harm to viewers, and thus the rules of the Code should be read purposefully to have regard to this principle. Such reading is also consistent with the requirement in Rule 15.5.2 that the advertisement must state that the product or service is for entertainment purposes only.

69. By way of background to the issue of the protection of vulnerable viewers, Ofcom notes that while its 2007 research conducted by Essential Research Limited¹⁹ found that regular female viewers of psychic TV felt "trustworthy and supportive" of such content, there were other respondents who found the product "visibly harmful, especially as it was considered to be a product that would largely be used by those in need of professional support". The report also stated that:

¹⁸ For example, the purpose of making a claim may be to establish credentials to increase the likelihood of consumers calling the service; which goes beyond merely informing the public as a matter of interest.

¹⁹ <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv/annexes/report1.pdf> (published 24 July 2007), page 22.

“Some respondents hinted that their judgement, or that of other callers, may sometimes be impaired at the time of participation [in the psychic service]. Reasons for this perceived vulnerability included insomnia and heavy alcohol consumption before or during viewing. However, when talking to Psychic TV viewers, it became clear that they were particularly concerned about the emotional vulnerability of callers to TV ‘psychics’. The ‘psychic’ is believed to provide guidance or reassurance when callers are depressed or dealing with difficult personal events. While most regular viewers of Psychic TV could happily watch for long periods without feeling compelled to call in, the decision to call in was normally triggered by a specific incident or feeling of depression, hence callers were often in an emotionally fragile state of mind. Some respondents recognised that they have been or could be emotionally vulnerable when calling in”.

70. Further, according to this research there is a notable risk of potential addiction to or dependency on such services²⁰. Ofcom is also aware of evidence of the potential for considerable financial harm suffered by consumers of PRS-based psychic services, as highlighted by the 2007 Essential research²¹.
71. Ofcom accepts the argument raised by the Licensee that the Essential research is somewhat outdated and that we should be cautious in drawing definitive conclusions from it. However, Ofcom does not rely on the research to make its Decision in this case but refers to it merely as background. Despite the potential limitations, Ofcom nevertheless believes that it is reasonable to infer from the research that there are some viewers who are vulnerable and who need to be protected; this does not mean that Ofcom is using the research selectively.
72. The breaches in this case also evidence repeated non-compliance issues by the Licensee over three separate broadcasts between 6 May 2012 and 20 June 2012. The seriousness of these breaches is compounded by the fact that between 20 April 2011 and 29 February 2012 Ofcom published findings in this area which highlighted its concerns and gave the sector and the Licensee guidance about its interpretation of the rules concerning this type of advertising content. In particular:
- two relevant findings were published in Broadcast Bulletin 180 on 20 April 2011 (*Psychic Interactive*, Psychic TV, 25 January 2011, 10:30-11:15)²² and Broadcast Bulletin 184 on 20 June 2011 (*Psychic TV*, Big Deal, 11 March 2011, 21:30-22:00)²³. In both cases Ofcom found that the material featured a number of customer testimonials which clearly amounted to claims of accuracy and efficacy prohibited in such content. Those claims were further emphasised by the presenter’s reference to and comments on the testimonials. Ofcom noted that the Psychic TV service was licensed for the promotion of psychic services and the advertising content was labelled on air as being for entertainment purposes. However, in view of the fact that the material featured repeated claims of efficacy and accuracy in breach of Rule 15.5.3, Ofcom decided that these claims contradicted the purpose of the mandatory labelling of this material as being merely entertainment. Therefore Ofcom also found the advertising content in breach of Rule 15.5.2;

²⁰ Paragraph 6.4.1:

<http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv/annexes/report1.pdf>.

²¹ Paragraph 6.4 ‘Possibility of addiction and dependency’.

<http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv/annexes/report1.pdf>

²² <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf> (20 April 2011).

²³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb184/obb184.pdf> (20 June 2011).

- on 12 July 2011 Ofcom sent a letter to all licensees who broadcast PRS-based psychic content which set out Ofcom's likely interpretation of the relevant BCAP Code rules. The issues explored in that letter arose from the two findings referred to above;
- on 3 August 2011 Ofcom met with Peripatos representing the Licensee to discuss Ofcom's interpretation of the relevant BCAP Code rules and the proposed Ofcom Guidance which was subsequently published on 20 December 2011²⁴. At that meeting Ofcom made clear, as set out in the PTV statement published on 3 June 2010²⁵, that this genre of advertising is acceptable only as entertainment and this must be stated in the advertising content;
- on 4 August 2011 Ofcom contacted Peripatos to advise it that the onscreen text on Psychic Today should be amended to reflect the fact that the content was now classified as advertising and not programming;
- on 20 December 2011 Ofcom published its Guidance. The Guidance is clear and unambiguous with regard to making claims for efficacy and accuracy in, and appropriate labelling of, psychic reading PTV advertising content; and
- on 29 February 2012 Ofcom responded to a query Peripatos raised regarding spot advertisements for psychic services on other television channels.

73. In view of the above, in particular the first bullet point, Ofcom believes that the likely interpretation by Ofcom of the Rules and the meaning of the Guidance was clear, and Majestic TV should therefore have been in no doubt as to the requirements of Rules 15.5.2 and 15.5.3 at the time the material was broadcast. Ofcom was therefore particularly concerned that Majestic TV again broadcast between 6 May 2012 and 20 June 2012 psychic advertising content that breached Rules 15.5.2 and 15.5.3 of the BCAP Code.
74. In assessing the seriousness of the breaches, Ofcom notes that the Licensee (compared to other Ofcom licensees who simulcast Majestic TV's output) conceived and produced the advertising content found in breach of the BCAP Code.

Conclusion

75. In assessing the seriousness of the breaches Ofcom took careful account of the various points put forward by the Licensee in its Representations (see paragraphs 47 to 55 above). Ofcom concluded that, bearing in mind the purpose of the regulation of psychic TV and its classification as advertising with more stringent rules to protect viewers, the breaches between 6 May 2012 and 20 June 2012 were sufficiently serious and repeated such that they should be considered for a statutory sanction. It is relevant to note however that in this Decision Ofcom reduced the sanctions as proposed in the Sanctions Preliminary View following the Licensee's Representations. Ofcom in particular took into account the explanation of the procedures that the Licensee has in place to ensure compliance with the BCAP Code and was satisfied by the assurance that the Licensee wants to move forward in a cooperative way with Ofcom.

Factors taken into account in determining the amount of a penalty

²⁴ <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/psychic-tv-guidance.pdf>

²⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf> (paragraph 3.15).

76. In considering the appropriate amount of a financial penalty for the breaches, Ofcom has taken account of relevant factors in accordance with Ofcom's Penalty Guidelines, as set out below.

Deterrence

77. In Ofcom's view a financial penalty is necessary to ensure not only that the Licensee fully understands the serious nature of the BCAP Code breaches recorded against it, but implements all necessary steps to ensure compliance with the BCAP Code in future. Ofcom also considers that the financial penalty is necessary to emphasise to other licensees underlining the need to adhere to the BCAP Code, and in particular the rules on PRS-based psychic content.

The degree of harm, whether actual or potential, caused by the contravention, including any increased cost incurred by consumers or other market participants

78. The purpose of Rules 15.5.2 and 15.5.3 is to help protect those viewers who are potentially vulnerable and who might believe that paying for a PRS contact with a psychic will provide them with accurate information about the future or influence them in making life-changing decisions.
79. Ofcom found that the broadcast of the advertising content on the three dates raised serious compliance issues; however we were particularly concerned by the advertising content broadcast on 2 and 20 June 2012.
- As regards the 2 June broadcast, Ofcom was concerned that the psychic made claims about the accuracy of psychic readings she allegedly made to an acquaintance of hers involving a world famous pop celebrity (Michael Jackson). In Ofcom's view, the psychic referred to Michael Jackson as a form of promotional "name dropping" to enhance her image and to show the credibility and accuracy of her readings.
 - As regards the 20 June broadcast, in our view the implication that the psychic ("Crystal") could provide reliable and substantiated readings as demonstrated by her experience of working "very closely withseveral police constabularies" and that she was "the one that dealt with the [Milly Dowler case]" was clearly problematic. The investigation of all unsolved criminal case by the police and especially murder cases is a very serious matter. Ofcom considered the comments by Crystal and the host implied that various UK police forces had employed Crystal to assist them and that the police would only employ Crystal if they believed that the information she might provide as a psychic would be accurate and efficacious.
80. Ofcom noted the Licensee's submission that the claims made in both cases were "factually correct", and with regard to the broadcast on 20 June 2012, that the subject matter was "unfortunate". However, even if it were the case that the statements were "factually correct", of which Ofcom has no evidence, Ofcom's view is that such statements would not comply with the requirements of the BCAP Code, specifically the prohibition on any claims of efficacy or accuracy, for the reasons set out in paragraph 68 above. Further we were concerned that despite the Licensee's submission that producers were in contact with the presenters at all times during the live broadcasts via an earpiece, the broadcasts in both cases continued for several minutes each, without being challenged or stopped by the producers.
81. Ofcom noted and supported the procedures the Licensee has in place with regard to callers who are potentially unaware of the increasing costs incurred by repeated calls to the premium rate number and the training undertaken by customer services

representatives and psychics to identify those callers who are potentially vulnerable or require assistance from another organisation which can offer professional help.

82. Ofcom noted the Licensee's submissions that it had no evidence of harm to users of its service. However, in Ofcom's opinion, aside from the potential personal consequences (see paragraph 67), in this case the potential harm that might result from the broadcast of this advertising content is the financial detriment that viewers may incur as a result of making PRS contact with the service on the basis of the implied and explicit claims that were made, portraying the psychic readings as being accurate and efficacious, while not making clear that the service is merely for entertainment.

The duration of the contravention

83. Ofcom noted that the recorded breaches were in relation to three pieces broadcast on 6 May 2012, 2 June 2012 and 20 June 2012 and lasted several minutes each.

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

84. We have no evidence to show whether or not the Licensee made any financial gain from these breaches of the BCAP Code.

Any steps taken for remedying the consequences of the contravention

85. As highlighted in the Findings regarding the broadcast of 6 May 2012, Ofcom was concerned that despite assurances from Peripatos that it had reviewed its output to ensure there was no repetition of onscreen references to psychics being "accurate", we subsequently noted two examples of such content being broadcast (see paragraph 90 below). Ofcom is concerned that the Licensee and its compliance officer had apparently not conducted a thorough internal investigation before making such assurances.
86. The Licensee confirmed to Ofcom that following the publication of any relevant Ofcom findings, any pertinent information is usually forwarded to all producers who are responsible for disseminating it to relevant staff. Majestic TV also stated that following every live broadcast the relevant producer debriefs the presenter and the psychic to explore any problems that may have occurred during the broadcast, and this was also the case on 20 June 2012.
87. The Licensee advised Ofcom that it wants to actively engage with the regulator regarding any content perceived to be problematic and would welcome a full and frank dialogue regarding the Guidance and relevant sections of the BCAP Code.

Whether the regulated body in breach has a history of contraventions

88. On 20 April 2011 Ofcom recorded one breach regarding advertising content broadcast on Psychic TV²⁶. That content breached Rules 15.5.2 and 15.5.3 of the BCAP Code. Ofcom found that the material included claims for efficacy and accuracy and did not comply with the mandatory labelling requirement in PRS-based psychic advertising content. See *Psychic TV*, 25 January 2011, 10:30 to 11:15.

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

²⁶ Psychic TV was renamed Psychic Today in November 2011.

89. The Licensee's submissions in response to Ofcom's Standards Preliminary View regarding the broadcast on 6 May 2012 stated that: "*All advertising has been reviewed to ensure that there is no repetition and continuing compliance training will re-emphasise the need to avoid the use of this word or language to the same effect*" (i.e. the use of "accurate" and "precise").
90. The Licensee also stated that a "specialist" who had responsibility for compliance and training at Psychic Today had purportedly "reviewed and corrected descriptions for every on screen psychic following the 'Mollie the Psychic' accuracy incident", i.e. the broadcast of 6 May 2012. However, Ofcom noted two further examples of similar problematic content on 31 October 2012 and 7 December 2012 as set out in the Findings. Ofcom noted the Licensee's submission that this was a "result of human error".
91. Ofcom noted the training and compliance measures the Licensee had in place prior to the contraventions (as explained during the oral Representations) and the Licensee's submissions that in its view there were some uncertainties and misunderstandings about the meaning of the relevant BCAP Code rules and the Guidance. Ofcom however considered that it should have been clear from a combination of the relevant BCAP Code rules, previous published findings and the Guidance that:
- PRS-based psychic advertising content must be appropriately licensed and labelled as entertainment;
 - explicit references (for example in onscreen text) to a psychic's ability to give accurate readings are prohibited; and
 - references to previous readings or experiences may constitute a claim of implied accuracy and efficacy and are therefore unlikely to be acceptable.
92. This suggests that the Licensee did not take the necessary and appropriate steps to prevent the contraventions.

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

93. Ofcom published a finding in Broadcast Bulletin 180²⁷ against Majestic TV regarding material on Psychic Today, recording breaches of Rules 15.5.2 and 15.5.3. In that finding, Ofcom formally put Psychic Today on notice: "*that should compliance issues of this type arise in future, [Ofcom] will be likely to consider the imposition of statutory sanctions*". This finding was in turn referenced in the Guidance. The Guidance explicitly states that: "*Such [psychic reading advertising] material must not include claims for efficacy or accuracy – this covers both explicit and implicit claims...PTV advertising content [must] be presented only as entertainment. To be clear, it is not sufficient to rely on onscreen text to fulfil this requirement of Rule 15.5.3. The advertising as a whole must reflect this principle.*"
94. According to Ofcom's records, the individual at Peripatos responsible on a day to day basis for compliance of Psychic Today on behalf of Majestic TV was Ofcom's contact for all licence, billing and compliance queries. As an experienced compliance officer and the representative of the Licensee which submitted a detailed response to Ofcom's consultation on the proposed regulation of this sector in 2009²⁸ – in particular the rules

²⁷ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb180/obb180.pdf> (published 20 April 2011).

²⁸ <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/responses/MajesticTV.pdf>.

that would regulate such advertising content – we believe that the individual should have been well aware of the requirements of the BCAP Code in relation to PRS-based psychic TV content.

95. We therefore consider that the management of Majestic TV ought to have known that contraventions were likely to occur, and to the extent it (or on its behalf, Peripatos) did not take action to prevent the contraventions the management acted recklessly.

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

96. Ofcom considers that, as the person in charge of Peripatos is the licence, billing and compliance contact for Majestic TV, the Licensee ought to have been aware that the conduct in question amounted to a breach of the BCAP Code. Ofcom noted the Licensee's submission that "considerable resource" has always been and continues to be applied to compliance; for example there are regular compliance training sessions for presenters and psychics, and a comprehensive internal compliance manual and advisory notes are circulated to all relevant staff. Further Ofcom noted that following the live broadcasts producers discuss any compliance concerns and note these on the "show report" which is circulated to senior staff members. Ofcom was impressed by these representations and the Licensee's evident commitment to compliance (see paragraph 48 above). However Ofcom has not been provided with evidence that the Licensee put in place any additional measures to prevent further breaches occurring once it was aware of these latest BCAP Code breaches.

The extent to which the level of penalty is proportionate, taking into account the size and turnover of the regulated body

97. Ofcom considered that a penalty of £12,500 would be proportionate taking into account all the relevant circumstances, and in particular, the Licensee's oral Representations which Ofcom found persuasive. These circumstances include: the need to achieve an appropriate level of deterrence, the serious and repeated nature of the BCAP Code breaches in this case, the fact that this is the first sanction imposed by Ofcom on Majestic TV and the fact that the Licensee conceived, produced and broadcast the material which breached the BCAP Code.

Precedents

98. In accordance with the Penalty Guidelines, Ofcom has also had regard to relevant sanction precedents set by previous cases.

Previous sanction decisions

99. There are no direct precedents for the present case. Those cases summarised below are relevant to the extent they concern financial penalties applied to advertising content found in breach of television advertising rules in Section 15 of the BCAP Code (Faith, Religion and Equivalent Systems if Belief). The rules breached by DM Digital and Venus TV were however different to those in the case of Majestic TV.
100. **20 July 2010, DM Digital**²⁹ – Sanction of £17,500 and a direction to broadcast a statement of Ofcom's findings for breaches of the BCAP Code. This case concerned the broadcast of an advertisement offering advice to individuals based on faith-based

²⁹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/dmdigitaltd.pdf>.

practices for personal problems which was likely to exploit vulnerable viewers. The advertisement caused financial harm of £1,150 to one viewer and potential harm to viewers in general.

101. **4 December 2008, Venus TV**³⁰ – Sanction of £35,000 and a direction to broadcast a statement of Ofcom’s findings for breaches of the BCAP Code. This case involved the broadcast of five advertisements for various products and services, such as capsules, an astrology service, and a face cream. These advertisements raised issues of harm to viewers. For example, some of the advertisements promoted products which claimed to offer remedies for various medical conditions but no evidence was presented to support the claims made.
102. Ofcom noted the Licensee’s argument in its oral Representations that in the precedent cases the potential and actual harm to the individuals concerned was of a more serious nature than in the present case. Ofcom noted that each sanction decision is one taken in light of the particular circumstances of that case. Although Ofcom noted both the sanctions cases above, in its opinion both were sufficiently different from the present case so as not to set any particularly useful precedent as to the appropriate level of fine in the current case. Ofcom is satisfied however that the financial penalty in the current case is consistent with these cases, taking due account of the factors outlined in the Penalty Guidelines.

Cooperation

103. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom’s investigation.
104. Ofcom’s investigation into the three broadcasts took a longer amount of time than is usually the case for Standards investigations, partly because Ofcom did not know and had not been told³¹ that the Licensee was simulcasting its *Psychic Today* content on other channels. During the course of the investigations Ofcom repeatedly asked on a number of occasions for clarification regarding the nature of the simulcasts; however, Peripatos did not respond to Ofcom’s enquires in a timely manner, but only did so once in receipt of the Standards Preliminary View. It then became clear that the investigation involved four different licensees, and it was necessary to establish the facts in each case (while the issues were similar, the factual background was not). Ofcom noted the Licensee’s Representations that the delay in responding to Ofcom’s queries was due to the number of staff that had to be consulted and there was no intention in any respect to delay or mislead Ofcom. Ofcom therefore considered that the Licensee had reasonably cooperated in the investigation, and it was therefore not appropriate to increase the penalty.

Conclusion

105. Ofcom concluded that the BCAP Code breaches by the Licensee were serious and repeated for the reasons set out earlier in this Decision.

³⁰ <http://www.ofcom.org.uk/files/2010/07/venustv.pdf>.

³¹ As required by Ofcom’s licensing guidance: <http://licensing.ofcom.org.uk/binaries/tv/service-provider.pdf> published on 21 May 2012.

Sanction 86(13) Majestic TV Limited

106. Having regard to all the factors referred to above and the Representations from the Licensee, Ofcom's Decision was that an appropriate and proportionate sanction was a financial penalty of £12,500 (payable by the Licensee to HM Paymaster General). In addition, Ofcom directs that the Licensee broadcast a statement of Ofcom's findings in this case, on one occasion, on a date and in a form to be determined by Ofcom.

21 June 2013