

Local TV decision: That's Solent Limited change request

That's Solent Limited ("That's Solent") is the holder of the local digital television programme service licence ("the Licence") for Southampton. The service provided by this licence holder must meet specific content obligations set out in the Licence known as programming commitments.

On 30 August 2016, That's Solent made a request to Ofcom for a variation to the programming commitments in the Licence. The details are set out here (changes in **red font**):

| Programming Commitments for That's Solent | | | |
|---|---|---|---|
| Programming output | The service will include: <ul style="list-style-type: none"> dedicated local news provision for each of Southampton, Portsmouth and the Isle of Wight; substantial weekly current affairs programming content; strong elements of consumer affairs with at least one programme per week covering consumer issues normally covered weekly; substantial weekly coverage of the local voluntary sector; programming featuring local sport in the Licensed Area; a showcase for local student programming content; programming featuring local people / places; What's On programming content and general coverage of the arts; and Documentary / factual specials, and lifestyle / advice programming content. | | |
| Hours of local programming per week | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3 onwards</u> |
| First Run | 51 hours per week | 35 hours per week | 35 hours per week |
| Repeats | 57 hours maximum per week | 16 hours per week Nil | 16 hours per week Nil |
| Hours of local programming per week in peak-time (18.00-22.30) | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3 onwards</u> |
| First run: | 18 hours per week | 14 hours per week | 14 hours per week |
| Repeats: | 10.5 hours maximum-per week | 2 hours per week Nil | 2 hours per week Nil |
| Hours of local news and current affairs programming | <u>Year 1</u> | <u>Year 2</u> | <u>Year 3 onwards</u> |
| First run: | 20 hours per week (inc. 2 hours at weekends) of which at least 5 hours in peak | 20 hours per week (inc. 2 hours at weekends) of which at least 5 hours per week in peak | 20 hours per week (inc. 2 hours at weekends) of which at least 5 hours per week in peak |
| Repeats: | 6 hours per week | 6 hours per week Nil | 6 hours per week Nil |

Statutory framework

Under the Broadcasting Act 1996 (“1996 Act”) licences for local digital television programme services (“L-DTPS”) must include such conditions as appear to Ofcom to be appropriate for securing, amongst other things, that the character of the licensed service, as proposed by the licence holder when making the application, is maintained for the duration of the licence.¹ This requirement is reflected in Condition 5(1) of the Licence and the programming commitments set out in the Licence. Ofcom has power to vary the conditions of a licence by notice.²

The statutory framework provides that conditions included in an L-DTPS licence may authorise Ofcom to consent to a departure from the character of the service if four statutory grounds are met, and sets out a procedural requirement for a public consultation before Ofcom can decide to consent to a departure from the character of the service.³ These requirements only apply where the change requested is a departure from the character of the service.

Ofcom decision

The Ofcom Board has delegated the discharge of some of its broadcasting service functions to a number of senior Ofcom executives in the Content and Media Policy Group and Legal Group. Those individuals, on their own or together, have responsibility for deciding on the award of, and proposals for variations to, L-DTPS licences.

On 4 October 2016, Ofcom’s Director of Content Standards, Licensing and Enforcement considered the variation request (the “Decision-maker”). It was noted that the proposed variation would not affect the significant volume of hours of first-run local programming (including in peak time) which That’s Solent is currently required to provide, but that there would be a reduction in the total volume of repeat local programming. The Decision-maker also considered the descriptive changes to the programming output, which it concluded were of a minor nature.

After careful deliberation, the Decision-maker considered that the character of the service overall would still be maintained following the requested variation, even when taking into account previous variations to the Licence. In particular, a significant overall volume of first-run local programming, including first run local news and current affairs programming, would continue to be provided by That’s Solent, including during peak hours. Additionally, the requirement to provide local news for each of Southampton, Portsmouth and the Isle of Wight would be retained and a commitment not to use the flexibility in peak-time hours for teleshopping windows (including gambling and betting) was received from the licensee.

Accordingly, on 4 October 2016, the Decision-maker decided that the requested variation would not constitute a departure from the character of the service, and that it should be allowed. This decision was reached on the basis that the licensee is prohibited from scheduling teleshopping windows in peak-time and that this prohibition would be reflected in the licence.

The resulting new programming commitments are therefore as follows:

¹ Section 19(3A)(c) of the 1996 Act as modified by the Local Television Programme Services Order 2012

² Section 4(4) of the 1996 Act

³ Section 19 of the 1996 Act as modified by the Local Television Programme Services Order 2012

Programming Commitments for That's Solent

| | | | |
|--|--|---|---|
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Addendum to annex to licence: This addendum forms part of the Annex to the licence.

The licensee is not permitted in peak time to schedule teleshopping windows defined as television broadcast direct offers (with a minimum uninterrupted duration of 15 minutes) for the supply of goods and services, including immovable property rights and obligations, in return for payment. For the avoidance of doubt, teleshopping windows also include direct offers, in return for payment, for gaming and betting (as defined in the Gambling Act 2005) and spread betting