

Ofcom Broadcast and On Demand Bulletin

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Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives¹. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act². Ofcom must include these standards in a code, codes or rules. These are listed below.

The Broadcast and On Demand Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes and rules below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by the ASA on the basis of their rules and guidance for advertising content on ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”) for content broadcast on television and radio services.
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in television programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility for on television and radio services. These include:
 - the prohibition on ‘political’ advertising;
 - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
 - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising³.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) Ofcom’s [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS. Ofcom considers sanctions in relation to advertising content on ODPS on referral by the Advertising Standards Authority (“ASA”), the co-regulator of ODPS for advertising or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must

¹ The relevant legislation is set out in detail in Annex 1 of the Code.

² The relevant legislation can be found at Part 4A of the Act.

³ BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

It is Ofcom's policy to describe fully the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast and On Demand Bulletin may therefore cause offence.

Broadcast Standards cases

In Breach

The Motown Hour

Coast and County Radio (Scarborough), 10 November 2016, 11:16

Introduction

Coast and County Radio is a local digital sound programme service providing a music service for adults in North Yorkshire. The licence holder for this service is Scarborough Radio DAB Ltd (“the Licensee”).

A listener alerted Ofcom to offensive language from the presenter at around 11:16. The presenter muttered “*fuck it*” when people talking outside the studio were picked up on the microphone.

Ofcom assessed whether the material raised issues warranting investigation under Rule 1.14, which states:

“The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)”.

The broadcast of this material occurred at approximately 11:16 on a Thursday during school term time, and therefore Ofcom considered that this was not a time when children would be particularly likely to be listening.

However, Ofcom did consider that the material raised issues warranting investigation under Rule 2.3 of the Code, which states:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to, offensive language...”.

Ofcom therefore requested comments from the Licensee on how the material complied with this rule.

Response

The Licensee said that all presenters and external contributors are advised of compliance responsibilities before going on air, and directed to Ofcom guidance. It considered the language on this occasion, whilst inexcusable, was due to an unintentional and unfortunate lapse of concentration by an experienced presenter, with no intent to offend.

The Licensee advised that it had since informed all presenters of the severity of this incident, and reminded them of studio etiquette. It said all presenters have also been given a copy of Ofcom’s guidance on offensive language on radio¹ with a clear warning that this type of incident will not be tolerated.

¹ Ofcom Guidance: Offensive Language on Radio, December 2011:
https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf

Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. These objectives are reflected in Section Two of the Code.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context. Ofcom therefore considered first whether the language in this programme was potentially offensive; and, if so, whether the offence was justified by the context. Context includes, for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; the likely size and composition of the potential audience; and the likely expectation of the audience.

Ofcom research² on offensive language clearly notes that the word “fuck” and variations of it are considered by audiences to be among the most offensive language. Therefore, the use of “*fuck it*” in this broadcast clearly had the potential to cause offence to the audience.

Ofcom went on to assess the context. Our guidance³ on offensive language on radio states (regarding Rule 2.3): “Ofcom’s 2010 audience research found that in general, listeners do not expect to hear strong language during the day on radio...In reaching any decision about compliance with the Code, Ofcom will take into account the likely audience expectations of a particular radio station at the time of broadcast.”

In our opinion the majority of listeners to a local radio station playing a broad range of music and speech at this time of day would not expect programmes to contain examples of the most offensive language, as broadcast here. We acknowledged the Licensee’s explanation that the language was not used intentionally, its regret, and that it has taken steps to prevent a recurrence. However, we noted there was no apology broadcast which could have helped to mitigate listeners’ offence.

As a result, Ofcom considered that the broadcast of this language was not justified by the context, and that the Licensee therefore did not apply generally accepted standards, in breach of Rule 2.3 of the Code.

Breach of Rule 2.3

² Attitudes to potentially offensive language and gestures on TV and radio, September 2016. See page 12 of the Quick Reference Guide:

https://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf

See also the main report:

https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

³ Ofcom Guidance: Offensive Language on Radio, December 2011:

https://www.ofcom.org.uk/_data/assets/pdf_file/0014/40541/offensive-language.pdf

In Breach

Victoria Derbyshire

BBC2 and BBC News Channel, 23 January 2017, 10:55

Introduction

Victoria Derbyshire is a weekday morning current affairs programme that is simulcast on BBC2 and BBC News Channel. The programme features interviews, audience debates and breaking news.

A complainant alerted Ofcom to the use of the most offensive language broadcast during the programme at a time of day when children were available to view.

The programme broadcast a segment reporting on the release of the film *T2 Trainspotting*, and played a clip from the film, during which the word “*fucking*” was broadcast.

Ofcom considered the material raised issues warranting investigation under Rule 1.14 of the Code which states:

“The most offensive language must not be broadcast before the watershed...”.

We therefore asked the BBC how the content complied with this rule.

Response

The BBC acknowledged that this was a “clear mistake” adding that following the incident the programme Editor had spoken to the members of staff responsible.

Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states the most offensive language must not be broadcast on television before the watershed. Ofcom’s 2016 research¹ on offensive language clearly indicates that the word “fuck” and variations of it are considered by audiences to be amongst the most offensive language.

Although the BBC acknowledged this “clear mistake”, the broadcast of the word “fucking” was an example of the most offensive language being broadcast before the watershed. Our Decision was therefore that this material was clearly in breach of Rule 1.14.

Breach of Rule 1.14

¹ On 30 September 2016, Ofcom published updated research in this area: *Attitudes to potentially offensive language and gestures on television and on radio*:
https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf

In Breach

Fox Extra

Fox News, 5 and 6 August 2016, various times

Introduction

Fox News is a news channel originating in the USA, broadcast on the digital satellite platform and licensed by Ofcom in the UK. The licence for this channel is held by Fox News Network Limited Liability Company (“FNN” or the “Licensee”).

A complainant alerted Ofcom to *Fox Extra* segments of around two minutes in length, routinely appearing during the *Hannity* programmes. These segments covered varied subjects, including cooking, health, technology and travel and guest interviews.

On 5 and 6 August 2016 the *Fox Extra* segments included references to three brands: ‘Masalabody.com’, ‘Sailo’ and ‘The Ultimate Treadmill Workout’.

5 August 2016, 03:33

A health segment on weight loss was broadcast. This comprised two minutes 15 seconds on ‘Masalabody.com’ (a website run by a fitness coach who uses spices to aid weight loss) and 10 seconds on “The Matcha Miracle” (a recipe book by Mariza Snyder which recommends supplementing recipes with powdered green tea to aid weight loss). The segment, voiced by Dr Manny Alvarez of Fox News, included claims of efficacy regarding the Masalabody.com weight loss programme and a reference to the masalabody.com website, for example in the introduction the following material was broadcast:

Dr Manny Alvarez: *“38 year old Nagina Abdulla has struggled with her weight since her early high school years. After two kids she thought she would never have the body she wanted...”*

“After years of yo-yo diets, Nagina turned to the spices she grew up with for inspiration. She adds flavour, not fat to make meals tasty and founded Masalabody.com [image of website including text “How would it feel to be the sexy woman on the beach this summer” and “Get my FREE e-book with the exact recipes you can lose 10 pounds”] to spread the word”.

Nagina Abdullah: *“When I started incorporating spices into my food within one month I lost 10 pounds and in less than a year I lost 40 pounds”.*

Dr Manny Alvarez: *“Nagina uses cinnamon in her breakfast smoothie to manage insulin levels and keep blood sugars low”.*

Nagina Abdullah: *“That’s really important because it decreases fat storage”.*

“If you have one teaspoon of cumin for three months, you could lose up to three times as much weight as you would have otherwise”.

The segment ended with a direction from Dr Manny Alvarez for viewers to visit *“masalabody.com for more info”*.

6 August 2016, 03:57

This health segment, also voiced by Dr Manny Alvarez, lasted approximately two minutes and provided information on Precision Running, a new fitness programme devised by David Siik (a gym instructor), for example:

Dr Manny Alvarez: *“35 year old David Siik is the creator of Precision Running, a treadmill class at Equinox that uses an unique training method he calls BITE, the Balanced, Interval, Training Experience”*.

David Siik: *“It’s a big calorie burner, but when you do the balanced version of it you also strength train your body you’ll get a tighter stomach and also I mean the cardiovascular benefits from doing interval training is tremendous”*.

Dr Manny Alvarez: *“David says the BITE method is designed to blast fat and reduce wear and tear in your body”*.

“...Over time the programme can help increase stamina, endurance and strength”.

Dr Manny Alvarez: [image of man running] *“And for those running on their own, David shares the signature formula in his new book [image of book] The Ultimate Treadmill Workout”*.

David Siik: [image of David Siik] *“It’s a lot of work, but it’s insanely effective...”*.

6 August 2016, 11:30

This one minute 50 second technology segment featured: Douglas Kennedy, a Fox News correspondent; a representative from Sailo (a company that allows users to rent boats and charter yachts); and a Sailo customer. During the segment, there were the following references to Sailo:

Douglas Kennedy: *“...So this is like Airbnb, but instead of renting apartments you’re renting sail and power boats”*.

Sailo representative: *“Yes exactly. We’re basically taking a process that used to take days and turning it into a five minute one”*.

Douglas Kennedy: *“Sailo has over 350 boats from the coast of Florida to up here in Cape Cod with prices ranging from 350 dollars a day for a pontoon boat, to over 40,000 dollars a day for a luxury yacht”*.

[Image of Sailo website] *Sailo's search engine makes all transactions easy and seamless even providing both parties with up to a million dollars in insurance. [Image of Sailo representative] Now you also rent out skippers for less experienced sailors".*

Sailo representative: *"We do. A lot of inexperienced people want to discover the lifestyle and Captains take care of planning, navigation, safety..."*

Douglas Kennedy: *"It's all great news for Laura who can rent out Storm Petrel [image of yacht] for 6,500 dollars per week. So this keeps you where you want to be at the helm of your own boat".*

Laura (Sailo User): *"That's right by chartering the boat I can make my lifestyle part of my living".*

Douglas Kennedy: *"Making her living and lifestyle on the water with Sailo. From Buzzards Bay, Douglas Kennedy, Fox News".*

Ofcom requested information from the Licensee about whether there were any commercial arrangements associated with the references to the brands. In response, Fox News told us that there were no such commercial arrangements. Based on this information, we considered the material raised issues warranting investigation under the following Code rules:

Rule 9.4 "Products, services and trade marks must not be promoted in programming".

Rule 9.5 "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming".

We sought the Licensee's comments on how the material complied with these rules.

Response

Fox News stated that it did not "contract in any way with any organization or connected person for coverage of a particular product or service. Coverage of a product or service in programming is solely an editorial decision of Fox News and no other entity; no financial or commercial incentives dictate such decisions". It continued that the Fox Extra segments are "non-commercial programme interstitials that air in the United Kingdom in place of the commercial advertisements that run at the same time in the United States...". FNN said the content including references to Masalabody.com and Precision Running constituted "health segments" and the segment on Sailo, was a "technology segment".

Rule 9.4

FNN argued that the aim of the content was not the promotion of a product, service or trade mark, but instead to report on new “methods and techniques” which viewers may wish to learn or use. FNN said the health segment on weight loss showed how viewers may use spiced food as a way to lose weight; the “Technology” segment focused on ways that viewers may make an expensive recreational sport more affordable and accessible; and the health segment on exercise focused on ways that runners can maximize the weight loss potential of their workouts.

The Licensee said the references to Masalabody.com, Sailo and David Siik’s book were used for “reporting and illustration purposes only [and] motivated by the news and information prerogatives of ... Fox News”.

Rule 9.5

FNN said the references to the three brands had clear editorial justification and that “no financial incentives dictate what stories Fox News chooses to cover in its programmes”. It argued that the references “were used for illustration” and that it would make “little journalistic sense to introduce a technique or method and not offer an illustrative example or specialist on the subject”. It argued that because the Fox Extra segments are interstitial programmes embedded within longer programmes, they are by their very nature short and brief. Given these constraints, there was simply no time to “present a variety of illustrative examples and still provide viewers with enough information to make watching a *Fox Extra* segment a worthwhile and valuable experience”.

The Licensee said that the aim of the programmes was to provide viewers with “helpful consumer information”. FNN conceived and produced the programmes with the intention of reporting on health and technology matters to “help viewers prepare for their August activities”. It added that its viewers “appreciate and welcome reports that may help them lose weight or conveniently indulge a favourite hobby”. Furthermore, the content did not contain any direct exhortations to viewers to purchase products or services.

The Licensee submitted that Article 10 of the European Convention on Human Rights (“ECHR”) creates a legal context in which there is a presumption of freedom of expression and ensures broadcasters have a right to transmit – and their audiences a right to receive – information and ideas, which should only be “restricted where it is necessary and proportionate to do so”. It added “conveying such information to viewers corresponds with the rights granted by the ECHR and in accordance with the broadcast privileges Ofcom licenses to Fox News”.

In response to Ofcom’s Preliminary View that the content was in breach of Rule 9.5, the Licensee argued that “efficacy claims, favourable treatment, neutral descriptions and case examples offered in the Programmes do not correspond to promotion” and submitted specific representations on each segment:

Health segment – Masalabody.com

FNN said the weight loss segment did not promote one weight loss approach over the other. It submitted that claims of efficacy, “without challenge” did not, in its view, “correspond to promotion”. Further, it believed that “the Code places no obligation on licensees to challenge every claim presented in a programme”. FNN said that “it is considered standard journalistic practice to provide viewers with a way to find further

information should a given segment pique their interest” and the programme did not reference the content of the third party website.

Health segment – Precision Running

The Licensee argued that the presentation of the Precision Running technique and health and weight loss claims in conjunction with the reference to the book did “not constitute promotion”. It said the claims “speak to general qualities of the exercise technique Siik has developed, without endorsement or challenge. It was a descriptive presentation”. It continued that the book was cited at the end of the segment to provide viewers with an additional resource.

Technology segment – Sailo

FNN submitted that “[f]avourable treatment of a subject does not necessarily constitute promotion”. It argued that because the presenter found the Sailo service “easy”, “seamless”, and “cost effective” did not mean that the segment was “...touting the service as an act of promotion. The position conveyed in the segment is the opinion of Fox News, not a promotional announcement” and “[t]he references to pricing and availability are descriptive and informational”. Finally, the Licensee argued that the fact that the technology segment focused on one company did not in itself support the conclusion that it was promotional.

Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive. The AVMS Directive places limits on the amount of advertising that broadcasters can show and requires that a distinction is maintained between advertising and editorial content.

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code. The rules in this section serve to prevent programmes becoming vehicles for advertising and help to protect viewers from surreptitious advertising.

Section Nine does not prohibit all references to products and services in programmes. However, Rule 9.4 requires that products, services and trade marks must not be promoted in programming and Rule 9.5 requires that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark, where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to.

Ofcom recognises a broadcaster’s right to transmit, and its audience’s right to receive, information and ideas: these rights are reflected in the Code. The Code does not prevent broadcasters promoting, or offering for sale, goods and services that may be of interest to viewers. However, in line with the requirements of the AVMS Directive, such activity should be reserved to advertising and not be a feature of editorial content.

We considered each of the programmes in turn under Rules 9.4 and 9.5.

5 August 2016, 03:33 – Health segment (Masalabody.com)

The Licensee argued that the segment focused on suggesting ways that viewers may use spiced food as a way to lose weight and did not promote one weight loss approach over another.

Ofcom disagreed. We noted that in the two minute 25 second segment only ten seconds were dedicated to one weight loss technique (i.e. The Matcha Miracle), with the remainder of the segment focused on Nagina Abdulla and her company, Masalabody.com. Although we acknowledged the segment did not contain any explicit reference to the availability of the products or services offered by this company, it contained several claims for the efficacy of the recipes which were available from the website. Further, on the two occasions the website was referenced during this segment, a screen shot from the website was shown which included the text: *“How would it feel to be the sexy woman on the beach this summer”* and *“Get my FREE e-book with the exact recipes you can lose 10 pounds”*. Our concern in this case was not the accuracy of the featured claims but that this content was more akin to advertising than editorial content. Further, the segment explicitly directed viewers to the website for more information on where they could sign up to receive a recipe pamphlet or pay to receive one-to-one exercise coaching with the company founder.

Ofcom therefore considered that this segment promoted the website and the founder’s business. Further, we did not consider that an item ostensibly about the use of spices in cookery to aid weight loss justified the reference to the website, Nagina Abdullah’s weight loss programme or coaching services. As a result, these references were also given undue prominence. This programme was therefore in breach of Rules 9.4 and 9.5 of the Code.

6 August 2016, 03:57 – Health segment (Precision Running)

The segment focused on a new training programme offered by gym instructor, David Siik. It contained several claims about the “unique training technique” which could improve cardio vascular performance and muscle tone and increase weight loss. We took into consideration FNN’s comments that the reference to David Siik’s book was for “reporting and illustration purposes only...” and an “additional resource” for viewers.

However, we considered the reference to the book (*“for those running on their own David shares the signature formula in his new book”*) in conjunction with the health and weight loss claims (e.g. *“Over time the programme can help increase stamina, endurance and strength”*) made the segment promotional in nature. The Code does not require every claim to be challenged by the broadcaster, however we considered that given the programme focused solely on David Siik and his Precision Running programme at Equinox gym, the level of prominence given to the book and exercise programme was not editorially justifiable. The references were therefore in breach of Rules 9.4 and 9.5 of the Code.

6 August 2016, 11.30 – Technology segment (Sailo)

Again, we noted the Licensee’s arguments that the item was a technology segment which included reference to Sailo for reporting and illustration purposes only and its view that featuring a sole company in a programme of this nature is not necessarily at odds with Rules 9.4 and 9.5. We also took into account the Licensee’s argument that the “references to pricing and availability are descriptive and informational”.

Although content may include material about a particular company or its activities, this does not necessarily preclude it from also being promotional in nature. The guidance to Rule 9.4 also states “[i]n general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed”. We considered the references to the brand were favourable and information on prices and availability were included in this two minute segment. In our view these references were clearly promotional. Further, we considered that the segment was not about hiring vessels for recreational purposes in general but instead was dedicated to the services of one company. We therefore considered that the segment promoted Sailo, in breach of Rule 9.4 of the Code.

In addition, we considered there was insufficient editorial justification for the inclusion of the numerous references to the Sailo company and its products and services. Therefore, these references were unduly prominent, in breach of Rule 9.5 of the Code.

Breaches of Rules 9.4 and 9.5

Broadcast Licence Conditions cases

In Breach

Providing a service in accordance with ‘Key Commitments’

CAM FM (Cambridge), 9 to 12 September 2016

Introduction

CAM FM is a community radio station licensed to provide a service for the educational community of Cambridge. The licence is held by Cambridge and Anglia Ruskin Student Radio Limited (“CAM FM” or “the Licensee”).

Like other community radio stations, CAM FM is required to deliver the ‘Key Commitments’ which form part of its licence¹. These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that CAM FM was not compliant with the following Key Commitment in its licence:

“The service provides original output for a minimum of ... four hours per day during the holiday periods”.

“Original output” is defined in CAM FM’s licence as “output that is first produced and transmitted by the service, and excludes output that was transmitted elsewhere before. Original output can be live or voice-tracked. Repeat broadcasts of original output do not count towards the minimum requirement.” We do not consider an automated playout of continuous music, with no speech content, to constitute “original output”.

We requested recordings of three days of CAM FM’s output, covering Thursday 8, Friday 9 and Monday 12 September 2016. The Licensee considered that these dates fell within the “holiday” period, which, as stated above require a minimum of four hours per day of original output. We also asked the Licensee to highlight the original output on its schedule for the three monitoring days.

Responding to our request, the Licensee stated that there was no original output broadcast on 9 and 12 September 2016 and 5 hours of original output broadcast on 8 September 2016.

Ofcom also noted that there was a general lack of speech content on the station, bringing into question its compliance with another Key Commitment:

“Speech. The main types of speech output broadcast over the course of each week are: local and community news, current affairs, discussion, advice and information”.

¹ The Key Commitments are contained in an annex to CAM FM’s licence. They can be viewed in full at:

<http://static.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000193.pdf>

Ofcom considered that these issues warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to CAM FM's licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore requested CAM FM's comments on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

Response

The Licensee stated that the shortfall in original output was caused by two main problems.

Firstly, it experienced a significant drop in the number of volunteers, as CAM FM “went from having over 200 members to around 60 by the beginning of the Michaelmas [autumn] Term”.

Secondly, the equipment in one of its two studios had failed and had to be uninstalled and sent to Germany for repair. It was reinstalled on 20 September 2016. The Licensee noted that this problem was its main focus at the time, and it had overlooked the fact that its (original) broadcast hours had fallen.

CAM FM suggested that the monitoring period was therefore “anomalous” in terms of the amount of speech content broadcast. To support this claim, it provided examples of previous and upcoming examples of speech content, and attached a term time schedule of speech content.

Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

On two of the three days we assessed, CAM FM failed to provide the original output for the four hours per day required by its licence. On two of the three days, there was no speech content broadcast at all.

Our Decision therefore is that CAM FM breached its licence. While we are cognisant of the reasons for this particular situation arising, we are putting the Licensee on notice that, should similar issues arise in future, we may consider taking further regulatory action.

Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Cambridge and Anglia Ruskin Student Radio Limited (licence number CR000193BA/2)

In Breach

Retention and production of recordings

Radio Sangam, 27 November to 24 December 2016

Introduction

Radio Sangam is a community radio station serving the Indian, Pakistani and Bangladeshi communities of Huddersfield. The licence for the service is held by Communities Together (or “the Licensee”).

Ofcom received a complaint regarding the Licensee’s compliance with Section Ten of the Code (commercial communications on radio). We therefore asked Communities Together for a recording of the relevant output – broadcast on 6 December 2016 – so we could assess the complaint.

Communities Together said that, on trying to comply with our request, it had found that part of the relevant disk was damaged and the Licensee had not therefore retained recordings of Radio Sangam’s output from 27 November to 24 December 2016.

Ofcom considered that this raised issues warranting investigation under Conditions 8(2)(a) and (b) of Communities Together’s licence, which require the Licensee to:

- “(a) make and retain, for a period of 42 days from the date of its inclusion, a recording of every programme included in the Licensed Service...
- (b) at the request of Ofcom forthwith produce to Ofcom any ... recording for examination or reproduction...”.

We therefore sought the Licensee’s comments on its compliance with these conditions.

Response

The Licensee said it recorded its output on various disks, which were “changed periodically”. It added that it believed it had retained the material requested by Ofcom, but had found that, “on removal of the disk to obtain the recording, a partition of the disk [had] been damaged”. Communities Together added that “the period of recordings on that partition [was] from the 27th November to the 24th December 2016”. The Licensee said that, “upon discovering this, [it] sent the disk to a computer specialist to see if the information could be recovered”, which had not been possible.

Communities Together said that, “to help mitigate this sort of loss in the future, [it had] installed a further and new server to back up the back up, in essence creating two recordings of [its] output”. The Licensee said it took compliance seriously and, even though it had been unable to provide the recording requested in this instance, it would be “forthcoming and honest in [its] responses to any questions posed”, adding that it had “retained recordings from all other periods from the day [it] launched [its] service”, which it hoped Ofcom accepted as evidence of its intention to keep recordings of all its output.

Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that in each broadcaster's licence there are conditions requiring the Licensee to retain recordings of each programme broadcast, in a specified form and for a specific period after broadcast, and to comply with any request to produce such recordings issued by Ofcom. Community Radio licences reflect these obligations in Licence Conditions 8(2)(a) and (b) and licensees are required to retain recordings of their output for a period of 42 days from the date of broadcast.

In this case, the Licensee admitted to Ofcom that it had not retained the recording requested by Ofcom, and was therefore unable to provide it to us. Further, it had not retained recordings of its output for 27 days. Our Preliminary View was therefore that the Licensee breached Licence Conditions (8)(2)(a) and (b).

Breaches of Licence Condition 8 are significant because they can impede Ofcom's ability to assess whether a particular broadcast raises potential issues under the relevant codes. This can therefore affect Ofcom's ability to carry out its statutory duties in regulating broadcast content. In this instance, however, the complainant had provided Ofcom with a recording, which the Licensee confirmed was material that had been broadcast on Radio Sangam. Ofcom had therefore been able to assess and investigate the matter.¹

Nevertheless, the Licensee failed to retain and was therefore unable to provide the recordings. Ofcom welcomed the action taken by Communities Together to ensure no recurrence.

Breaches of Licence Conditions 8(2)(a) and (b), in Part 2 of the Schedule to the community radio licence held by Communities Together (licence number CR100136BA/1).

¹ See *News*, Radio Sangam, 28 October to 9 December 2016, various times, in Broadcast and on-demand bulletin issue 323, published on 20 February 2017, at: https://www.ofcom.org.uk/_data/assets/pdf_file/0026/97640/Issue-323-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf

Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 13 and 26 February 2017 because they did not raise issues warranting investigation.

Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Place to Eat	&TV	30/01/2017	Promotion of products/services	1
Emerald City	5Star	15/02/2017	Advertising minutage	1
Nightmare Tenants, Slum Landlords	5Star	16/02/2017	Offensive language	1
Sex Pod (trailer)	5Star	09/02/2017	Scheduling	1
BBC News	BBC 1	14/02/2017	Religious/Beliefs discrimination/offence	1
Call The Midwife	BBC 1	05/02/2017	Drugs, smoking, solvents or alcohol	1
Doctors	BBC 1	13/02/2017	Sexual material	2
EastEnders	BBC 1	06/02/2017	Violence	3
EastEnders	BBC 1	09/02/2017	Generally accepted standards	1
The Andrew Marr Show	BBC 1	12/02/2017	Generally accepted standards	1
The Big Questions	BBC 1	12/02/2017	Generally accepted standards	1
The Moorside	BBC 1	31/01/2017	Fairness	1
The Moorside	BBC 1	07/02/2017	Fairness	1
The Moorside	BBC 1	14/02/2017	Flashing images/risk to viewers who have PSE	1
The Moorside	BBC 1	14/02/2017	Fairness	1
Tracey Ullman's Show	BBC 1	03/02/2017	Religious/Beliefs discrimination/offence	2
Look North	BBC 1 North	06/02/2017	Flashing images/risk to viewers who have PSE	1
Six Nations: Wales v England (trailer)	BBC 1 Wales	08/02/2017	Race discrimination/offence	4
A Place to Call Home	BBC 2	09/01/2017	Sexual material	1
A Place to Call Home	BBC 2	10/02/2017	Sexual material	1
Catch Me If You Can	BBC 2	12/02/2017	Offensive language	1
Programming	BBC News Channel	05/02/2017	Outside of remit	1
The Papers	BBC News Channel	12/02/2017	Generally accepted standards	1
Dance Anthems	BBC Radio 1	11/02/2017	Offensive language	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Book at Bedtime	BBC Radio 4	15/02/2017	Generally accepted standards	1
Jeffrey Bernard is Unwell	BBC Radio 4	18/02/2017	Offensive language	3
What Does the K Stand For?	BBC Radio 4	15/02/2017	Religious/Beliefs discrimination/offence	1
Afternoon Live	BBC Radio 5 Live	07/02/2017	Generally accepted standards	1
UEFA Europe League (trailer)	BT Sport 1	31/01/2017	Materially misleading	1
Channel 4 News	Channel 4	23/01/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	31/01/2017	Due impartiality/bias	2
Channel 4 News	Channel 4	01/02/2017	Materially misleading	1
Channel 4 News	Channel 4	01/02/2017	Privacy	2
Channel 4 News	Channel 4	02/02/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	03/02/2017	Due impartiality/bias	2
Channel 4 News	Channel 4	04/02/2017	Religious/Beliefs discrimination/offence	1
Channel 4 News	Channel 4	06/02/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	08/02/2017	Race discrimination/offence	14
Channel 4 News	Channel 4	09/02/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	10/02/2017	Due impartiality/bias	2
Channel 4 News	Channel 4	13/02/2017	Under 18s in programmes	2
Channel 4 News	Channel 4	14/02/2017	Due impartiality/bias	1
Channel 4 News	Channel 4	15/02/2017	Due impartiality/bias	1
Lexus' sponsorship of Drama on 4	Channel 4	15/02/2017	Sponsorship credits	1
Naked Attraction	Channel 4	22/08/2016	Nudity	1
Supermarkets: Brexit and Your Shrinking Shop	Channel 4	20/02/2017	Due impartiality/bias	1
The Great British Skinny Dip (trailer)	Channel 4	08/02/2017	Nudity	1
The Last Leg	Channel 4	03/02/2017	Due impartiality/bias	1
The Last Leg	Channel 4	03/02/2017	Religious/Beliefs discrimination/offence	2
The Problem with Dad	Channel 4	20/02/2017	Dangerous behaviour	1
Autopsy: The Last Hours of Amy Winehouse	Channel 5	15/02/2017	Suicide and self harm	2
Benefit House: Me and My 26 Kids	Channel 5	10/02/2017	Offensive language	1
Celebrity Big Brother	Channel 5	28/01/2017	Generally accepted standards	1
Celebrity Big Brother	Channel 5	01/02/2017	Drugs, smoking, solvents or alcohol	15
Celebrity Big Brother	Channel 5	01/02/2017	Generally accepted standards	6
Celebrity Big Brother	Channel 5	02/02/2017	Generally accepted standards	10
Celebrity Big Brother	Channel 5	03/02/2017	Generally accepted standards	36
Celebrity Big Brother	Channel 5	03/02/2017	Voting	3

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Grand Theft Auto UK	Channel 5	14/02/2017	Race discrimination/offence	1
Loch Lomond: A Year in the Wild	Channel 5	07/02/2017	Materially misleading	1
TV's 50 Greatest Magic Tricks	Channel 5	20/02/2017	Transgender discrimination/offence	1
When Live TV Goes Horribly Wrong	Channel 5	05/02/2017	Generally accepted standards	1
Alaskan Bush People	Discovery HD	26/01/2017	Other	1
Advertisements	Drama	09/01/2017	Advertising minutage	1
Hungryhouse's sponsorship credits	E4	Various	Sponsorship credits	1
Marvel's Agents of Shield (trailer)	E4	10/02/2017	Generally accepted standards	1
Men in Black	E4	12/02/2017	Offensive language	1
Timeless	E4	15/02/2017	Other	1
Competitions	Heart Radio	18/02/2017	Competitions	1
Ronnie O'Sullivan's American Hustle	History	09/02/2017	Materially misleading	1
2Awesome: Freakish (trailer)	ITV	05/02/2017	Scheduling	1
Britain's Busiest Motorway	ITV	21/02/2017	Generally accepted standards	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	15/02/2017	Sponsorship credits	1
Coronation Street	ITV	09/01/2017	Scheduling	1
Coronation Street	ITV	10/02/2017	Sexual material	1
Coronation Street	ITV	13/02/2017	Sexual material	4
Coronation Street	ITV	15/02/2017	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	15/02/2017	Race discrimination/offence	1
Coronation Street	ITV	23/02/2017	Sexual material	1
Emmerdale	ITV	13/02/2017	Sexual material	1
Emmerdale	ITV	16/02/2017	Generally accepted standards	1
Emmerdale	ITV	23/02/2017	Other	1
Emmerdale	ITV	23/02/2017	Sexual material	1
Good Morning Britain	ITV	21/01/2017	Generally accepted standards	2
Heart of House's sponsorship of Loose Women	ITV	09/02/2017	Sponsorship credits	1
ITV News	ITV	30/01/2017	Offensive language	1
ITV News	ITV	06/02/2017	Due impartiality/bias	1
ITV News	ITV	16/02/2017	Due impartiality/bias	1
ITV News	ITV	17/02/2017	Privacy	1
Jeremy Kyle's Emergency Room	ITV	02/02/2017	Materially misleading	8
Loose Women	ITV	24/06/2015	Materially misleading	11

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sainsbury's sponsorship of ITV Showcase Drama	ITV	05/02/2017	Sponsorship credits	1
Sainsbury's sponsorship of ITV Showcase Drama	ITV	20/02/2017	Sponsorship credits	1
Six Nations	ITV	04/02/2017	Competitions	1
Six Nations (trailer)	ITV	03/02/2017	Materially misleading	1
The Brit Awards 2017	ITV	22/02/1994	Due impartiality/bias	1
The Brit Awards 2017	ITV	22/02/2017	Generally accepted standards	1
The Brit Awards 2017	ITV	22/02/2017	Nudity	3
The Brit Awards 2017	ITV	22/02/2017	Other	3
The Chase: Celebrity Special	ITV	15/01/2017	Offensive language	2
The Good Karma Hospital	ITV	19/02/2017	Gender discrimination/offence	1
The Good Karma Hospital	ITV	19/02/2017	Generally accepted standards	1
The Good Karma Hospital	ITV	19/02/2017	Nudity	1
The Jeremy Kyle Show	ITV	13/02/2017	Race discrimination/offence	1
The Voice UK	ITV	18/02/2017	Other	1
The Wine Show	ITV	17/02/2017	Race discrimination/offence	1
This Morning	ITV	03/02/2017	Offensive language	1
This Morning	ITV	06/02/2017	Generally accepted standards	23
This Morning	ITV	17/02/2017	Generally accepted standards	1
This Morning	ITV	17/02/2017	Harm	1
ITV News London	ITV London	02/02/2017	Due impartiality/bias	1
Family Guy	ITV2	16/02/2017	Race discrimination/offence	1
Ibiza Weekender XXL	ITV2	05/02/2017	Sexual material	1
Release the Hounds	ITV2	09/02/2017	Animal welfare	1
Aviva Equity Release's sponsorship of Afternoons on ITV3	ITV3	04/02/2017	Sponsorship credits	1
Aviva Equity Release's sponsorship of Afternoons on ITV3	ITV3	13/02/2017	Sponsorship credits	1
Specsavers audiologists' sponsorship of ITV3 Mornings	ITV3	01/02/2017	Sponsorship credits	1
Specsavers audiologists' sponsorship of ITV3 Mornings	ITV3	15/02/2017	Sponsorship credits	1
Specsavers audiologists' sponsorship of ITV3 Mornings	ITV3	Various	Sponsorship credits	3
Diet Coke's sponsorship of Dinner Date	ITVBe	01/02/2017	Sponsorship credits	1
KTV Live Launch	KTV	22/01/2017	Crime and disorder	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
James O'Brien	LBC 97.3 FM	30/01/2017	Due impartiality/bias	1
James O'Brien	LBC 97.3 FM	10/02/2017	Generally accepted standards	1
James O'Brien	LBC 97.3 FM	13/02/2017	Race discrimination/offence	1
Matt Frei	LBC 97.3 FM	28/01/2017	Due accuracy	1
Matt Frei	LBC 97.3 FM	04/02/2017	Race discrimination/offence	1
Nigel Farage	LBC 97.3 FM	23/02/2017	Race discrimination/offence	1
Sex and Relationships	LBC 97.3 FM	11/02/2017	Sexual material	2
Sheila Fogarty	LBC 97.3 FM	14/02/2016	Crime and disorder	1
Steve Allen	LBC 97.3 FM	20/01/2017	Generally accepted standards	1
Steve and Karen Breakfast Show	Metro Radio	08/02/2017	Generally accepted standards	1
Absolute Zero	Movies 4 Men	17/02/2017	Outside of remit	1
PSL T20 Highlights	Prime TV	27/01/2017	Sponsorship credits	1
Chris Moyles	Radio X	01/02/2017	Generally accepted standards	1
Born to Kill (trailer)	Really	03/02/2017	Generally accepted standards	1
Press Preview	Sky News	06/02/2017	Generally accepted standards	3
Sky News	Sky News	04/02/2017	Due impartiality/bias	2
Sky News	Sky News	09/02/2017	Due accuracy	1
Sky News	Sky News	13/02/2017	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	14/04/2017	Due impartiality/bias	1
Sky News with Colin Brazier	Sky News	15/02/2017	Due impartiality/bias	1
Sky Sports News	Sky News	13/02/2017	Generally accepted standards	1
Sunrise	Sky News	09/02/2017	Generally accepted standards	3
Royal London's sponsorship	Sky Sports News HQ	04/02/2017	Sponsorship	1
Sky TV promotion	Sky1	29/01/2017	Materially misleading	1
Supergirl	Sky1	04/02/2017	Sexual material	1
STV News at Six	STV	13/02/2017	Due impartiality/bias	1
Adnan Sami Competition	Sunrise Radio	19/02/2017	Competitions	1
Latin Hot	Swindon 105.5 FM	28/01/2017	Generally accepted standards	1
Latin Hot	Swindon 105.5 FM	28/01/2017	Offensive language	1
Latin Hot	Swindon 105.5 FM	11/02/2017	Offensive language	1
News Eye	Takbeer TV	29/12/2016	Due impartiality/bias	1
Late Nights with Iain Lee	Talk Radio	22/12/2016	Offensive language	1
Conspiracy Theory with Jesse Ventura: Is Global Warming a Hoax?	TCM	10/01/2017	Materially misleading	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Händig Man Sökes (Handy Man Wanted)	TV3 (Sweden)	06/02/2017	Gender discrimination/offence	1
Händig Man Sökes (Handy Man Wanted)	TV3 (Sweden)	07/02/2017	Gender discrimination/offence	1
Gupshup with Mehboob Khan	TV99	09/01/2017	Promotion of products/services	1
Charity Show	Ummah Channel	07/01/2017	Charity appeals	1

Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts, accuracy in BBC programmes or an on demand service does not fall within the scope of regulation.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to:

https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
EastEnders	BBC 1	10/01/2017	Outside of remit	1
BBC Wales Today	BBC 1 Wales	20/02/2017	Due impartiality/bias	1
Advertisement	CBS Reality	22/02/2017	Advertising content	1
Trainspotting T2 competition	Channel 4	21/01/2017	Competitions	1
Latin Hot	Swindon 105.5 FM	18/02/2010	Outside of remit	1

Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.

Here are alphabetical lists of new investigations launched between 13 and 26 February 2017.

Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
The Lobby	Al Jazeera UK	Various
East Midlands Today	BBC	30/01/2017
ITV News	ITV	28/01/2017
Grace to You	Premier Christian Radio	25/01/2017
Sky News Tonight	Sky	20/02/2017

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf

Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints

Programme	Broadcaster	Transmission date
Watchdog	BBC 1	16 and 30 November 2016
The Lobby	Al Jazeera UK	12 January 2017

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to: https://www.ofcom.org.uk/data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf

Investigations launched under the General Procedures for investigating breaches of broadcast licences

Licensee	Licensed Service
Tamworth Radio Broadcasting CIC	TCR FM

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:
https://www.ofcom.org.uk/_data/assets/pdf_file/0019/31942/general-procedures.pdf

Investigations launched under the Procedures for investigating breaches of rules for On Demand programme services

Programme	Service provider
Various	The Sikh Channel

For more information about how Ofcom assesses complaints and conducts investigations about on demand services, go to:
https://www.ofcom.org.uk/_data/assets/pdf_file/0033/74499/procedures-investigating-breaches.pdf