

Sanction: Decision by Ofcom

Sanction: to be imposed on JML Media Limited

For non-compliance with ownership restrictions¹.

Ofcom's decision

of sanction against:

JML Media Limited ("JML" or "the Licensee") in respect of its Television Licensable Content Service licence ("the Licence") for the service JML Direct (TLCS000223BA/1) ("the Licensed Service").

For:

A breach of the Licence Condition 15(3) which states:

"The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee's obligations imposed on him by or under Schedule 2 to the 1990 Act ... immediately upon becoming aware of such circumstances or events".

Decision:

To impose a financial penalty (payable to HM Paymaster General) of £7,500

¹ Ofcom's Breach Decision which was published in Broadcast and On Demand Bulletin 356 on 18 June 2018:
https://www.ofcom.org.uk/_data/assets/pdf_file/0017/115046/issue-356-broadcast-on-demand-bulletin.pdf

Executive summary

1. JML Media Limited holds a Television Licensable Content Service (“TLCS”) licence to broadcast the teleshopping service JML Direct on satellite and electronic communications networks such as cable networks. The Licensee has held this licence since 13 March 1998.
2. Part 2 of Schedule 2 of the Broadcasting Act 1990 (“the 1990 Act”) sets out a number of restrictions on who may hold a broadcasting licence. A body whose objects are “wholly or mainly of a political nature” is disqualified from holding a broadcasting licence. So are certain persons who are linked with such a body in any of the ways set out in that Schedule.
3. Condition 15(3) of the licence requires the Licensee to inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee’s obligations imposed on him by or under Schedule 2 to the 1990 Act immediately upon becoming aware of such circumstances or events.
4. The Licensee failed to inform Ofcom of changes in the circumstances of the major shareholder and director of both it and its parent company John Mills Limited which resulted in the Licensee becoming disqualified from holding the licence.
5. Upon becoming aware of the situation, Ofcom notified the Licensee that it intended to revoke the licence on 2 July 2018 unless either the licensee ceased to be disqualified or the Licence was transferred to a person who is not disqualified. Mr Mills ended his involvement with the political bodies concerned.

Ofcom’s Breach Decision

6. In Ofcom’s Breach Decision (“the Breach Decision”) published on 18 June 2018 in issue 356 of the Broadcast and On Demand Bulletin², Ofcom’s Executive found that the Licensee had breached Licence Condition 15(3).
7. In summary, Ofcom found that the Licensee had failed to inform Ofcom of changes in the circumstances of the major shareholder and director of both it and its parent company John Mills Limited. This resulted in the Licensee becoming disqualified from holding the licence. The Licensee was in breach of Licence Condition 15(3) from 15 February 2013, when Mr Mills became a director and the only subscriber of the first of five companies with wholly or mainly political objects, until 26 May 2018.
8. Ofcom put the Licensee on notice in the Breach Decision that it considered this breach to be serious, and that it would consider the imposition of a statutory sanction.

The Sanction Decision

9. In accordance with Ofcom’s *Procedures for the consideration of statutory sanctions in breaches of broadcast licences* (the “Sanctions Procedures”)³, Ofcom considered whether the breach was serious, deliberate, repeated or reckless so as to warrant the imposition of a sanction on the Licensee in this case. It reached the decision that a sanction is merited in this case since the breach was serious for the reasons set out in paragraphs 34 to 38 below.

² See: https://www.ofcom.org.uk/data/assets/pdf_file/0013/101227/Issue-327-of-Ofcoms-Broadcast-and-On-Demand-Bulletin.pdf.

³ https://www.ofcom.org.uk/data/assets/pdf_file/0030/71967/Procedures_for_consideration.pdf. These procedures took effect on 3 April 2017.

10. Ofcom's Decision is that the appropriate sanction is a financial penalty of £7,500 (seven thousand five hundred pounds).

Legal framework

11. Under section 5 of the 1990 Act, which applies to TLCS licences by virtue of section 235(1) of the Communications Act 2003 ("the 2003 Act"), Ofcom must do all we can to secure that a person does not become or "**remain**" the holder of a licence if he is a disqualified person as detailed in Part 2 Schedule 2 of that Act.
12. Paragraph 1(1)(g) of Part II of Schedule 2 of the 1990 Act considers that a person is a disqualified person in relation to a Broadcasting Act licence if it is "a body corporate which is an associate of a body corporate falling within paragraph (d), i.e. of a body whose objects are wholly or mainly of a political nature."
13. For the purposes of Schedule 2 of the 1990 Act, a person "controls" a body corporate if he holds or is beneficially entitled to more than 50% of the equity share capital in the body, or possesses more than 50% of the voting power in it.
14. Under paragraph 1(1)(g) of Part II of Schedule 2 of the 1990 Act, a person is a disqualified person in relation to a Broadcasting Act licence if it is "a body corporate which is an associate of a body corporate falling within paragraph (d), i.e. of a body whose objects are wholly or mainly of a political nature."
15. Under paragraph 1(1)(i) of Part II of Schedule 2 of the 1990 Act, a person is a disqualified person in relation to a Broadcasting Act licence if it is "a body which is controlled by a person falling within any of paragraphs (c) to (g)".

Licence condition 15(3)

16. Condition 15(3) of the licence requires the Licensee to inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee's obligations imposed on him by or under Schedule 2 to the 1990 Act immediately upon becoming aware of such circumstances or events.
17. Specifically, the condition states: "The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee's obligations imposed on him by or under Schedule 2 to the 1990 Act ... immediately upon becoming aware of such circumstances or events".

Remedial action and penalties

18. Where Ofcom has identified that a condition of a TLCS licence has been contravened, its powers to take action are set out in sections 236 to 239 of the 2003 Act insofar as relevant to the case.
19. Section 236 of the 2003 Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a statement of Ofcom's findings.
20. Section 237 of the 2003 Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed in respect of each contravention of a licence condition is whichever is the greater of £250,000 and 5 per cent of

the qualifying revenue⁴ from the licensed service for the licensee's last complete accounting period falling within the period for which its licence has been in force.

21. Section 238 of the 2003 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 which Ofcom has given to them, and the contravention, if not remedied, would justify the revocation of the licence.

Representations from the Licensee prior to receiving Ofcom's Sanction Preliminary View

22. JML made representations to Ofcom on the imposition of a statutory sanction prior to Ofcom sending its Sanction Preliminary View to the Licensee.
23. JML noted that it holds a teleshopping licence and is "solely concerned with transmitting direct response television marketing and as such will never espouse any kind of political views or statements due to the nature of the service" and that "there is no political influence on the channel".
24. JML said that it stated John Mills' political affiliations when it applied for a Digital Television Programme Service licence in March 2018, which "illustrates that as a business [it has] been transparent in regards this matter and did not intentionally avoid declaring [Mr Mills'] political activities".
25. The Licensee stated that it did not receive any benefit, financial or otherwise, from the breach.
26. JML explained that the breach was not deliberate, rather it was a "clerical oversight...caused by the significant amount of time that elapsed between acquiring [the] broadcast licence and the date of the formation of the political organisations John Mills later became involved in". Further, the Licensee explained that the "clear separation between JML Media and John Mills and the fact he has no involvement in the running of JML Media or content on the JML Direct service meant notifying Ofcom of his new political activities was overlooked".
27. The Licensee stated that when it became aware of the breach, John Mills immediately resigned from all the political organisations he was involved with. It will ensure that going forwards, none of its shareholders will have "political connections in any form", and it now has a compliance officer to oversee all company regulatory processes.

Ofcom's decision to impose a statutory sanction

28. As set out in paragraph 1.13 of the Sanctions Procedures, the imposition of a sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement.
29. In this case, Ofcom issued JML Media Limited with a preliminary view ("the Preliminary View") that we were minded to impose on it a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Preliminary View to the Licensee on 8 October 2018 and gave the Licensee the opportunity to provide written and oral representations on it. The Licensee provided its written representations to Ofcom on 12 October 2018, which are summarised in paragraphs 31 to 33 below. The Licensee chose not to make oral representations.
30. In reaching its decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the

⁴ Qualifying revenue consists of all payments received, or due to be received, either by the licensee or by any person "connected" to that licensee, for the inclusion of advertisements or programmes in the licensed service, or in respect of charges made for the reception of programmes included in that service. It also includes any sponsorship monies received in relation to the inclusion of programmes in the licensed service.

evidence and representations made by the Licensee, and had regard to the Sanctions Procedures and to Ofcom's Penalty Guidelines ("the Penalty Guidelines")⁶ in reaching this Decision.

Licensee's representations on Ofcom's Sanction Preliminary View

31. The Licensee apologised for the "oversight" resulting in JML failing to notify Ofcom of the political activities of John Mills which contravened Part 2 of Schedule 2 of the Broadcasting Act 1990.
32. The Licensee reiterated that the service did not benefit from the breach and pointed out that it has "cooperated fully" with Ofcom's investigation.
33. Although disappointed that Ofcom was minded to impose a financial penalty, the Licensee accepted the decision and said that it had taken immediate steps to prevent future breaches.

Serious nature of the breaches

34. As set out in paragraph 28 above, the imposition of a sanction against a broadcaster is serious matter, and Ofcom may, following due process, impose a sanction if it considers that a broadcaster has seriously, deliberately, repeatedly or recklessly breached a relevant requirement. Ofcom considered, for the reasons set out below that the breach of Licence Condition 15(3) was serious to therefore warrant the imposition of a statutory sanction.
35. Ofcom has a statutory duty by virtue of the 2003 Act to ensure that a person does not become or "remain" the holder of a licence if he is a disqualified person as detailed in Part 2 Schedule 2 of that Act. Therefore, licensees are required in accordance with Licence Condition 15(3) to inform Ofcom of any changes to its directors or shareholders which would disqualify it from holding a licence as soon as the licensee becomes aware of the changes. It is unlawful to hold a TLCS licence if the licence holder is a "disqualified person". It is therefore a serious breach of the licence not to inform Ofcom of any such changes.
36. In this case, the breaches were serious because the Licensee failed to notify Ofcom of changes in the circumstances of the major shareholder and director of both it and its parent company John Mills Limited.
37. The seriousness was exacerbated because Mr Mills became a director and the only subscriber of five companies with wholly or mainly political objects between 15 February 2013 and 8 November 2016 and the Licensee failed to inform Ofcom at any of these points. The issue only emerged when Ofcom assessed an application for a new licence from the Licensee's parent company John Mills Limited and noted that the Licensee appeared to meet the definition of a "disqualified person" due to John Mills being a director and the only subscriber of these five companies.
38. Following contact from Ofcom, the Licensee confirmed that it was a disqualified person on 26 May 2018. The Licensee had therefore been in breach of Licence Condition 15(3) for five years and three months.

Imposition of sanction

39. As mentioned in paragraphs 18 to 21 above, Ofcom's powers to take action are set out in sections 236 to 239 of the 2003 Act insofar as relevant to the present case.
40. In view of the factors set out above, Ofcom considered that the breaches were serious and so warranted the imposition of a statutory sanction. The following paragraphs set out the enforcement action we considered and the sanction imposed.

Imposition of sanctions other than a financial penalty

Considerations in relation to directing the Licensee to broadcast a statement of Ofcom's findings

41. Section 236 of the 2003 Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a statement of Ofcom's findings.
42. This type of sanction is useful in bringing breaches and Ofcom's action in relation to those breaches, to the audience's attention in cases involving breaches of the Broadcasting Code. In this case, we did not consider it appropriate to direct the Licensee to broadcast a statement of Ofcom's findings as the matter did not involve the broadcast of content which contravened the Broadcasting Code, nor is it a matter where we had any evidence that any harm was caused to the audience through the non-broadcast activity.
43. Ofcom therefore considered that this sanction should not be imposed in this case.

Imposition of a financial penalty

44. Under section 237 of the 2003 Act, the maximum level of financial penalty that can be imposed on the holder of a TLCS licence in respect of each contravention of a TLCS licence condition is £250,000 or five per cent of the licensee's qualifying revenue relating to its last complete accounting period falling within the period for which its licence has been in force, whichever is greater.
45. The Licensee reported that it had no qualifying revenue for the last complete accounting period because it did not broadcast advertising or sponsored programmes. Therefore, in this case, the maximum financial penalty that Ofcom could impose is £250,000 in respect of the contravention of its licence conditions committed by the Licensee in this case.
46. Ofcom's Penalty Guidelines state (in paragraph 11) that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement. Ofcom will have regard to the size and turnover of the regulated body when considering the deterrent effect of any penalty". In reaching its decision on the imposition of a sanction in this case, Ofcom took full account of the need to ensure that any penalty acts as a deterrent and also took account of the specific factors set out at paragraph 12 of the Penalty Guidelines.
47. In this case, Ofcom considered that a financial penalty was necessary to reflect the serious nature of the breach recorded against the Licensee, and to act as an effective incentive to comply with the ownership restrictions, both for the Licensee and other licensees.

Factors taken into account in determining the amount of a penalty

48. In considering the appropriate amount of a financial penalty for the licence condition breach in this case, Ofcom took account of relevant factors set out in the Penalty Guidelines, as set out below:

The seriousness and duration of the contravention

49. Ofcom regarded the breach to be serious for the reasons set out in paragraphs 34 to 38 above. We were particularly concerned that the Licensee did not inform us of the ongoing matter for five years and three months.

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

50. We considered that the degree of potential harm caused to viewers was limited. The Licensed Service is a teleshopping service. Therefore, it does not broadcast any editorial content such as news and current affairs which could have the potential to be subject to political influence of a Licensee with political objects. However, Parliament has determined that persons who are disqualified should not hold broadcasting licences.

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

51. We had no evidence to suggest that the Licensee made any financial or other gain from this breach of its licence.

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

52. It appeared that the Licensee failed to take any steps to prevent the contravention. It failed to inform Ofcom of five changes to its directors or shareholders over a period of five years and three months which would disqualify it from holding a licence.

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

53. We had no evidence that suggests the breaches occurred deliberately.
54. We noted the Licensee's explanation that the breach was a "clerical oversight...caused by the significant amount of time that elapsed between acquiring [the] broadcast licence and the date of the formation of the political organisations John Mills later became involved in". Further, the Licensee explained that the "clear separation between JML Media and John Mills and the fact he has no involvement in the running of JML Media or content on the JML Direct service meant notifying Ofcom of his new political activities was overlooked".
55. In our view, the Licensee ought to have been aware of that it was required to notify Ofcom of the changes. However, we did not consider that this failure amounted to recklessness.

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

56. The Licensee only became aware of the potentially serious issue when Ofcom contacted it to seek clarification following receipt of an application for a new broadcasting licence submitted by the Licensee's parent company John Mills Limited.
57. The Licensee told us that it now has a compliance officer to oversee all company regulatory processes.

Any steps taken for remedying the consequences of the contravention

58. This factor was not relevant to the case, since the consequence of the breach was that a disqualified person held a broadcast licence. Mr Mills, (and not the Licensee), took steps to make sure the Licensee ceased to be disqualified.

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

59. Ofcom noted that the Licensee has held the Licence since October 2009 and does not have a history of contraventions of its licence conditions or the Broadcasting Code, prior to the breach now being considered for statutory sanction.

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

60. In Ofcom's view, the Licensee was cooperative. The Licensee engaged fully with Ofcom during our investigation.

Precedent

61. In accordance with Ofcom's Penalty Guidelines, Ofcom must have regard to relevant precedents set by previous cases.

62. The only precedent in this case related to Brighton & Hove Radio Limited ("Brighton & Hove") which holds a digital radio licence. At the time of the events leading up to the licence breach, it also held an analogue commercial radio licence which has since been transferred to another company. In September 2017, one of the directors of Brighton & Hove who was also the majority shareholder and held the majority of voting rights at the time, received a conviction leading to imprisonment due to gross negligence. We found Brighton & Hove in breach of its licence conditions for failing to notify us of the conviction and imprisonment of this individual who subsequently resigned from the company. We did not consider the imposition of a statutory sanction in this case.

63. We considered the present case to be more serious because it involved five breaches of the licence which continued over a period of five years and three months which was significantly longer than in the case of Brighton and Hove, meaning the Licensee had a significantly longer opportunity to identify the issue and to notify Ofcom.

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

64. As set out in our penalty guidelines, the central objective of imposing a penalty is deterrence.

65. 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.

66. As set out in paragraph 45, the Licensee did not have any qualifying revenue for this period. In reaching its decision on the imposition and level of a sanction in this case, Ofcom took account of the Licensee's turnover for the year ending 31 December 2017.

Decision

67. In order to achieve Ofcom's central objective of deterrence, we carefully considered the nature and level of statutory sanction that should be imposed in this case. In doing so, we took account of the particular seriousness of the breach, the Licensee's representations, the Licensee's size and financial position, and relevant precedent cases. We also had regard to our legal duties, as set out above, including the need to ensure that any sanction we impose is proportionate, consistent and targeted only at cases where action is needed.

68. Having regard to all the circumstances referred to above, we considered that the most appropriate and proportionate sanction would be a financial penalty of £7,500 (seven thousand and five hundred pounds) on JML Media Limited (payable to HM Paymaster General).

69. Ofcom considered this level of penalty to be appropriate as this was the first sanction we have imposed for failure to notify Ofcom of changes which caused the licensee to become disqualified from holding a licence.

70. In Ofcom's view, this sanction should send a clear message of deterrence, both to the Licensee and also to other licensees. However, licensees should be aware that if this sanction does not have a sufficient deterrent effect, Ofcom will consider the imposition of higher financial penalties and/or other types of sanction in any future cases.

Ofcom

12 November 2018