

Sanction Decision

To be imposed on International Television Channel Europe Limited (“ITCE”)

For a failure to comply between April 2013 and September 2014¹.

**Ofcom’s decision
of sanction against:**

International Television Channel Europe Limited (the “Licensee” or “ITCE”) in respect of its service NTV (TLCS 1624).

For:

Breach of ITCE’s Television Licensable Content Service Licence (TLCS 1624) in respect of:

Condition 17(2): “The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Licensed Service for the purposes of ensuring that programmes included in the Licensed Service comply in all respects with the provisions of this Licence, the 1990 Act, the 1996 Act, the Communications Act 2003, relevant international obligations and all relevant codes and guidance. The Licensee shall, without prejudice to the generality of the foregoing, ensure that:

(a) there are sufficient persons involved in providing the Licensed Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act, the Communications Act, relevant international obligations and all relevant codes and guidance and that such persons are able to ensure compliance with such requirements on a day to day basis;

(b) adequate arrangements exist for the immediate implementation of such general and specific directions as may from time to time be given to the Licensee by Ofcom;

(c) the requirements of the Audiovisual Media Services Directive [Directive 2010/13/EU] are complied with where practicable, having regard to the provisions set out in Articles 16, 17 and 18 of the Directive and any guidance issues and from time to time revised by

¹ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>

Ofcom for the purpose of giving effect to those provisions;

(d) adequate arrangements exist for the advance clearance of advertisements of such types and for such products as Ofcom shall determine;

(e) that in each department of the Licensee where any of the procedures referred to in this Condition are to be implemented the member of staff responsible is of sufficient seniority to ensure immediate action and that issues relating to compliance may be brought where necessary directly before senior management for consideration”.

On:

From April 2013 - September 2014
Ofcom published 20 breaches of the Broadcasting Code (“the Code”) against ITCE, recorded in 16 separate cases and relating to material broadcast on NTV in the period May 2012 to June 2014²

Decision:

To impose a financial penalty (payable to HM Paymaster General) of **£20,000**.

² See Page 19 of this Decision for a list of the individual Findings relating to the 20 separate Code breaches published in the Broadcast Bulletin during the period April 2013 and September 2014

Executive Summary

1. NTV is a general entertainment and news service broadcast on the digital satellite platform. The channel is aimed at the Bangladeshi community in the UK and other parts of Europe. The licence for the service is held by International Television Channel Europe Limited ("ITCE" or "the Licensee"). Ofcom granted this Television Licensable Content Service ("TLCS") licence (TLCS 1624) on 31 January 2012. ITCE holds no other Ofcom broadcasting licences.
2. In the Ofcom Finding ("the Finding"), published on 30 March 2015 in Broadcast Bulletin 276³, Ofcom found that ITCE breached Licence Condition 17(2) of its licence in respect of its service NTV. Licence Condition 17(2) requires licensees to adopt procedures to ensure their programmes comply in all respects with their licence conditions, and ensure that such procedures are observed. In particular, it obliges the licensee to ensure there are enough sufficiently qualified or trained people to ensure compliance, and that they have sufficient seniority to ensure the licensed service complies "in all respects" with the Code.
3. Ofcom concluded that ITCE had breached Licence Condition 17(2) because: (a) in the period April 2013 to September 2014, 20 breaches of the Broadcasting Code ("the Code") were recorded against the Licensee in 16 separate cases in the Broadcast Bulletin; (b) there was insufficient evidence to demonstrate that the Licensee had taken sufficient steps to put in place adequate compliance arrangements for the purposes of ensuring that all programmes broadcast complied in all respects with the provisions of its TLCS licence from the point at which it was granted a licence; and (c) the number and repeated nature of these breaches demonstrated that they resulted from the Licensee's systemic failure to implement adequate compliance procedures and satisfactory arrangements to ensure these procedures were followed.

Sanction Decision

4. The requirement in Licence Condition 17(2) to have effective arrangements in place to ensure compliance with licence obligations for the duration of the licence is fundamental to protecting UK audiences from harm. Ofcom is therefore always minded to consider a breach of Condition 17(2) to be extremely serious because the licensee has contravened a basic and a fundamental requirement of holding a television broadcasting licence under the Broadcasting Act 1990.
5. In arriving at its Decision of the appropriate type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee, including those on the Preliminary View, and has had regard to the Sanctions Procedures⁴ and to Ofcom's Penalty Guidelines⁵ in reaching its Decision.
6. Ofcom's Decision is that the appropriate sanction should be a financial penalty of **£20,000**. Ofcom also puts ITCE on notice that it will take a very serious view of any further breaches of ITCE's regulatory obligations which result from the poor or ineffective compliance arrangements that it has in place and this could lead Ofcom to consider whether revocation of the Licence would be appropriate. Therefore Ofcom will be

³ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>

⁴ See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/statutory-sanctions.pdf>

⁵ See: <http://www.ofcom.org.uk/files/2010/06/penguid.pdf> (Ofcom has referred to the Penalty Guidelines in place at the time it issued the Preliminary View in this matter.)

undertaking a period of monitoring of the Licensee's broadcast output to assess whether the content of the service is compliant with the Code. If there is evidence of poor compliance after this statutory sanction, Ofcom would have serious concerns about the Licensee's understanding and regard for its regulatory responsibilities and the importance of ensuring that viewers are adequately protected from harm. In such circumstances, we are likely to consider whether revocation of the licence would be appropriate.

Legal Framework

Communications Act

7. Ofcom's principal duty, set out in section 3(1) of the Communications Act 2003, ("the Act") is to further the interests of citizens in relation to communication matters and the interests of consumers in relevant markets. In carrying out its functions, Ofcom is required to secure a number of other matters. In the case of all television and radio services, these include the application of standards (section 3(2)(e)).
8. Ofcom also has a specific duty in section 319 of the Act to set, and keep under review, standards for the content of television and radio programmes to secure the standards objectives specified in sections 319 to 321 of the Act.
9. In accordance with these duties, Ofcom has set standards in its Broadcasting Code ("the Code") which has been drafted in light of the Human Rights Act 1998 and the Convention. Accompanying Guidance Notes to each section of the Code are published and from time to time updated on the Ofcom website. The Guidance Notes are intended to assist broadcasters to interpret and apply the Code⁶.
10. The Act requires Ofcom to include licence conditions for securing the standards, as set out in the Code, are observed in the provision of that service. Licensees must therefore comply with the standards set by Ofcom in the Code from the point at which they are awarded their Television Licensable Content Service ("TLCS") licence.
11. It is a condition of the TLCS licence issued under the Broadcasting Act 1990 that "the Licensee shall ensure that the provisions of [the Code] are observed in the Licensed Service".⁷ The Licensee must therefore comply with the standards set by Ofcom in the Code.
12. Condition 17(2) of ITCE's licence requires amongst other things that the Licensee adopts and observes compliance procedures to ensure that its programming meets the standards set in the Code. Condition 17(2) is set out in full at the start of this Decision.

Human Rights Act 1998

13. 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 on Human Rights ("the Convention").

⁶ See: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/> (March 2013 edition of the Code) and <http://stakeholders.ofcom.org.uk/broadcasting/guidance/programme-guidance/bguidance/> for relevant extracts of the Broadcasting Code and Ofcom's Guidance Notes on the Code.

⁷ See: http://licensing.ofcom.org.uk/binaries/tv/tlcs_licence.pdf (Condition 6 of ITCE's TLCS licence).

14. Article 10 of the Convention provides for the right to freedom of expression. Applied to broadcasting, this right 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). The exercise of these rights may be subject only to conditions and restrictions which are "prescribed in law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health 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).
15. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these freedoms in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

Remedial action and penalties

16. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 includes conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a TLCS licence, if Ofcom is satisfied that a licensee has contravened a condition of the Licence, it may impose the sanctions set out below.
17. 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 238 of the Act insofar as are relevant to the case.
18. Section 236 of the Act provides Ofcom with the power to direct the holder of a TLCS licence to broadcast a correction or a statement of Ofcom's findings (or both), or not to repeat a programme which was in contravention of a licence condition.
19. Section 237 of the Act provides Ofcom with the power to impose a financial penalty on the holder of a TLCS licence. The maximum penalty which may be imposed under section 237 is whichever is the greater of £250,000 and 5 per cent of the qualifying revenue on each occasion that a breach of the licence has occurred (whether as a result of a breach of the Code or another Licence Condition). Ofcom may therefore impose a financial penalty on each occasion that a programme has breached the Code.
20. 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 direction thereunder.

Background: The Breach Finding

21. In the Finding⁸, ITCE was found in breach of Licence Condition 17(2) of its licence for NTV. Licence Condition 17(2) requires, amongst other things, that licensees adopt procedures to ensure their programmes comply in all respects with their licence conditions, and ensure that such procedures are observed. In particular, it obliges the licensee to ensure there are enough sufficiently qualified or trained people to ensure

⁸ See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>

compliance, and that they have sufficient seniority to ensure the licensed service complies “in all respects” with the Code.

22. Ofcom came to this decision in the Finding principally because, during the period between April 2013 and September 2014, 20 breaches of the Code, relating to material broadcast on NTV during the period May 2012 to June 2014, were recorded. Of the 20 breaches recorded, 15 involved Section Nine of the Code, two involved Sections Five and three involved Section Six.
23. Significantly, in Ofcom’s view, five of these breaches recorded against ITCE related to programming broadcast on NTV after Ofcom had notified the Licensee on 14 April 2014 of its investigation into ITCE’s compliance with Condition 17(2). They also occurred despite Ofcom having engaged previously and extensively with the Licensee over a number of months to secure improvements in its compliance arrangements (including having a meeting with ITCE on 20 January 2014).
24. In reaching the decision as set out in the Finding, Ofcom also took into account all other relevant circumstances, including: representations the Licensee had made in its application for the licence; the Licensee’s compliance record; Ofcom’s attempts to secure improvements in ITCE’s compliance arrangements; and. the absence of sufficient evidence of adequate improvements.

Background to the Finding and Code Breaches

25. Compliance with Licence Condition 17(2) is required as of the date the licence is granted so that licensees are ready to broadcast compliantly from the first transmission onwards. With this in mind, Ofcom requires that an applicant for a licence sets out in its application the compliance arrangements it will have in place from the point at which a licence is granted.
26. In its application for a TLCS licence, ITCE provided details about the compliance procedures it said would be in place following the grant of the licence. These referred to a compliance operation managed by a named compliance officer and supported by a compliance team consisting of the Chief Executive Officer (“CEO”) and a further individual, as well as details of how staff would be trained on Ofcom codes. The licence was issued on 31 January 2012.
27. Shortly after the NTV licence was issued, Ofcom was notified on 25 May 2012, that the individual named on their licence application form was no longer the compliance contact for the service and that his responsibilities had been passed to the CEO of ITCE.

ITCE’s compliance record to September 2014 and compliance arrangements

28. Following publication in the Broadcast Bulletin of the first breaches against ITCE recorded during the period April 2013 and December 2013⁹, Ofcom requested that the Licensee attend a meeting to discuss its compliance arrangements. This meeting, which took place on 20 January 2014, was attended by ITCE’s Chief Executive Officer (“the CEO”) and an NTV contributor. During this meeting, ITCE informed Ofcom that the majority of the content broadcast on NTV was checked for compliance by the CEO. At this meeting, ITCE agreed that it would provide Ofcom with a detailed document setting out the compliance measures it had implemented since the breaches occurred.

⁹ See Page 19

29. ITCE subsequently informed Ofcom on 22 January 2014 that the CEO had reminded the team of the importance of the Code and that an external compliance consultant had been approached with a view to obtaining compliance guidance. The Licensee then, in February 2014, supplied Ofcom with a copy of a document titled “NTV Compliance Procedures”. This document consisted of a short summary of the main principles in Section Nine of the Code, as well as a list of the rules in Section Nine transcribed from the Code. No other documents concerning compliance were supplied.
30. Following the publication of further Code breaches recorded by Ofcom against the NTV service during the period April 2013 to 17 March 2014¹⁰, Ofcom notified ITCE on 14 April 2014 that it was now opening an investigation and requested formal representations on how ITCE had complied with Licence Condition 17(2). ITCE provided representations on 6 May 2014 (“the May 2014 Representations”).
31. The Licensee explained in the May 2014 Representations that the CEO was responsible for day-to-day compliance decisions for NTV. However, ITCE confirmed that a new member of staff with compliance experience (“the Bureau Chief”) had been appointed on 1 May 2014 and compliance decisions would now follow “a two-fold procedure” with the Bureau Chief making compliance decisions with the CEO. The Licensee further explained that there were now, as a result of these changes, a total of six members of staff responsible for the compliance of NTV, including the CEO and the Bureau Chief.
32. ITCE confirmed that all the compliance staff had read the licence conditions, relevant codes and guidance and that they reviewed the Ofcom website “at least once a week” as “a compulsory internal procedure”. The Licensee also provided a document titled “NTV Compliance Procedures”. This was the same document supplied to Ofcom in February 2014 which consisted only of a short summary of the main principles as set out in Section Nine of the Code, as well as a list of the rules in Section Nine as transcribed from the Code. The document did not refer to any actual compliance processes or steps.
33. The Licensee also explained that, as NTV was “a small television station”, it tended to keep its operation “simple” and confirmed that there were no written compliance procedures and, as at 6 May 2014, the Licensee said its compliance procedures were implemented through “internal verbal communications”. ITCE stated that it had “prepared a guideline for the staff to follow” but “it is yet to develop”. ITCE undertook to provide a copy of this to Ofcom once it was “fully updated”.
34. During the course of this Licence Condition 17(2) investigation, Ofcom found further material in breach of the Code which resulted in a further ten breaches being recorded in the period between 6 May 2014 and 8 September 2014¹¹.
35. On 16 October 2014, Ofcom informed the Licensee that it regarded all of the 20 breaches collectively as evidence of non-compliance with Condition 17(2) and provided a further opportunity for ITCE to provide representations on its compliance with Condition 17(2).
36. In response ITCE provided the October 2014 Representations. The Licensee did not make any representations on any of the recent breaches recorded against TLCS 1624, nor did it not provide evidence of any internal compliance guidelines, procedures or arrangements.

¹⁰ See Page 19

¹¹ See Page 19

The Finding

37. Ofcom therefore prepared a Preliminary View in February 2015 proposing a breach of Licence Condition 17(2) against ITCE concerning TLCS 1624 and invited ITCE to comment.
38. ITCE responded with its third set of comments, the Preliminary View Representations, on 4 March 2015. In these March 2015 submissions the Licensee stated that it understood Ofcom's dissatisfaction with its compliance arrangements and procedures. In his response, the Bureau Chief explained: "I accept that in the past, there had been systemic problems with compliance procedures at the NTV office". He went on to say, however, that these had been identified and would be "resolved in a timely manner." The response went on to request: "to allow us some time before imposing any sanction so that we can make things better."
39. ITCE also stated that it had been "taking some initiatives to conduct several workshops to enlighten our staff in relation to the compliance procedure." ITCE highlighted that after the new compliance team was set up on 1 May 2014, "it can be claimed that things are gradually developing". In response to Ofcom's observation that the last three breaches had been in respect of material broadcast on 6 May and 3 June 2014, soon after the establishment of this new compliance team, ITCE explained this was because the team were "just settling down with every single issue relating to compliance" at this time.
40. ITCE also explained that it had appointed a consultant to "prepare a detailed guideline" but the person "missed several deadlines" and this was why the document was not prepared on time. The Licensee said that a new consultant had then been appointed and ITCE stated it was "expecting that the detailed guideline will be prepared at the end of the month [i.e. March 2015] and we will be able to send it to you accordingly." This document was not sent to Ofcom by this date.
41. In deciding that ITCE had breached the requirements of Condition 17(2) Ofcom considered the number and repeated nature of the Code breaches recorded against the Licensee and the information and evidence provided by it about its compliance procedures. Ofcom concluded that ITCE's compliance arrangements and procedures were manifestly inadequate based on all the information available to it.
42. Despite repeated requests from the regulator, there was a lack of evidence that the Licensee had taken sufficient steps to put in place adequate compliance arrangements for the purposes of ensuring that all programmes broadcast complied in all respects with the provisions of its TLCS licence.
43. In the Finding, Ofcom set out why it considered that there continued to be "a systemic problem with compliance procedures at the NTV service" and there was material risk that there would further breaches of the Code unless its compliance failings were addressed. As a result, Ofcom stated that it was considering the breach of Licence Condition 17(2) for the imposition of a statutory sanction, and put ITCE on notice that "revocation of the licence may be recommended as an appropriate sanction."

Ofcom's Decision to Impose a Statutory Sanction

44. 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, repeatedly¹² or recklessly breached a relevant requirement.

45. Ofcom considered that the breach of Condition 17(2) in this case was serious, repeated and reckless and so warranted the imposition of a statutory sanction. Accordingly, Ofcom issued a Preliminary View (“Preliminary View”) that it was minded to impose a statutory sanction in the form of a financial penalty. Ofcom sent a copy of the Preliminary View to the Licensee on 22 October 2015 at the same time giving the Licensee the opportunity to provide written and oral representations (“the Representations”) on the Preliminary View. The Licensee provided its written representations to Ofcom on 9 November 2015 and gave its oral representations at a sanctions hearing at Ofcom on 19 November 2015. The Representations are summarised in paragraphs 47 to 56, below.
46. In reaching its final Decision on whether to impose a statutory sanction and, if so, of what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the representations made by the Licensee and has had regard to the Sanctions Procedures and to Ofcom’s Penalty Guidelines in reaching its Decision.

Licensee Representations

47. In its Representations the Licensee identified the reasons for its poor compliance. It explained that when it first started broadcasting it was in a business arrangement with a third party who was responsible for running the service on a day-to-day basis, including compliance. This arrangement was terminated following problems with the service. The result of this was twofold: firstly, the focus of the CEO was taken away from the day-to-day running of the NTV service to stabilising the financial side of the business so it could keep running; and, secondly, there was a knowledge gap which meant key areas of compliance were neglected. It was at this time that the breaches of the Code began to be recorded.
48. In addition, the Licensee explained that originally the service took 90 per cent of its programming from NTV Bangladesh¹³. This programme material was supplied directly from Bangladesh, where there is no separation of advertising and sponsorship in broadcast programming and no broadcasting regulatory body, so it was difficult to make it compliant for broadcast in the UK.
49. Further, ensuring compliance was compounded by problems in recruiting and retaining staff with the right level of understanding of both English and Bengali. In the first months of broadcasting, the CEO explained it did not have a licence to sponsor staff from Bangladesh and had to rely on students with limited broadcast experience. There was also a high turnover of staff. The Licensee explained that at this time the CEO tried to manage compliance as best she could.
50. The Licensee then explained that following notification of the Licence Condition 17(2) investigation in April 2014 it strengthened its compliance team increasing the number of staff to six in May 2014. It had also retained the services of a compliance consultant since May 2015 to advise the Licensee on how best to manage compliance. ITCE said

¹² A repeated breach of a relevant requirement, would include for example: a repeat of the breach of the same requirement as had already been recorded; repetition of the same or similar conduct as that which earlier contravened a requirement; or multiple breaches of other requirements.

¹³ NTV Bangladesh is not a “parent” company. NTV Europe is not directly funded by NTV Bangladesh but does take its programming for re-broadcast in the UK. NTV Europe uses the NTV brand to create a footprint in the UK.

that it now had a system in place, with trained staff, to ensure compliance with broadcasting rules and regulations.

51. Firstly, ITCE stated it has reduced the amount of programming taken from NTV Bangladesh from 90 per cent to 50 per cent and had replaced some of this material with its own original programming, produced in its own studio. The content of this local programming was under the Licensee's control and its compliance processes and as a result complaints about the licensed service had gone down. The Licensee was now looking to acquire an encoder/decoder system to "clean" the Bangladeshi feed at source so that the content was ready for broadcast in the UK. In the meantime, this remaining material was being complied in the UK and, where necessary, black stickers were used over sponsorship messages to avoid issues under the Code.
52. Secondly, the Licensee explained that monthly compliance training sessions had been introduced for all staff, ongoing advice was being provided by the compliance consultant, and a compliance guide for staff had also been produced. All material was now subject to a clear compliance process which included: a traffic light system to flag the potential level of compliance required; a Programme Transmission Form to be completed for all programming which identified any potential compliance issues and enabled such matters to be escalated to a senior member of staff; and a time delay system so that the majority of programming could be stored on a server, viewed and assessed before transmission.
53. Thirdly, the Licensee set out the line of command in terms of who was responsible for compliance decisions, how and when any necessary editing was undertaken and by whom. In summary, the Licensee explained that programme content from NTV Bangladesh arrived in the UK as a live stream and there was a five hours' time delay between the two countries. This material was then stored on a server, reviewed by a member of the transmission team and then flagged according to the potential level of compliance required. A Programme Transmission Form was also completed at this stage. As the same transmission team were now reviewing content and completing these forms regularly, they knew what compliance issues to look out for and the type of material requiring further escalation. Material requiring further escalation was reviewed by the Head of Transmission and then if necessary referred to the CEO. The material was then edited by this team where necessary and made ready for broadcast.
54. The Licensee also explained its compliance process for live material and original programme material produced in its studios. Live material was either viewed as broadcast and, if necessary, immediate interventions implemented or it was broadcast with a ten minute delay. Original and local programme material was viewed as it was being recorded and, as these programmes were generic in format, few compliance issues were likely to arise. However, if necessary, instructions could be given in real time to re-take any material if it was likely to be problematic under the Code.
55. The Licensee added that all of the completed compliance forms for each programme were stored by programme and this process ensured that the compliance staff was now more confident in terms of the potential compliance problems likely in each individual programme.
56. During its representations, the Licensee expressed its regret that it had accumulated so many breaches and stressed this was a result of a lack of experience and resources. It said that no financial harm had been caused by the breaches and that there had been no financial benefit or gain for the channel. The Licensee had taken steps to come into compliance. The service NTV Europe served a very important role in the community: it was a popular service; had won several awards; and it had a separate training company

which worked with the local authority to provide opportunities for young people to get broadcasting experience by using their studios and equipment. The Licensee requested that any fine would not be detrimental on the channel's ability to provide its service to the community.

Serious Nature of the Breach

57. 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, repeatedly or recklessly breached a relevant requirement.
58. Ofcom considered that the breach of Licence Condition 17(2) was serious, reckless and repeated and therefore warranted the imposition of a statutory sanction.
59. First, the requirement to have appropriate procedures and arrangements in place to ensure compliance with licence obligations is fundamental to protect UK audiences from broadcast content which may cause harm and offence. These need to be in place from the date the licence is granted, and therefore before the first broadcast. Ofcom, and more importantly viewers, rely on licensees having suitable compliance arrangements so that broadcasts are effectively regulated at all times. Licence Condition 17(2) is so integral to broadcasting compliance that Ofcom may refuse an application for a TLCS licence if it has concerns that were a licence to be granted, the provision of the service would be likely to involve contraventions of the broadcasting standards¹⁴. Accordingly, a breach of the requirement set out in Condition 17(2) is, by its nature, very serious.
60. Second, a breach of Condition 17(2) is a serious matter since, as in this case, it is likely to follow breaches of Code requirements and is indicative of the fact that the Licensee has failed to understand the regulatory responsibilities and obligations that come with being a licensee.
61. Third, many of the 20 Code breaches recorded between April 2013 and September 2014, related to the same Code rule. Ofcom considered this pattern of similar Code rule breaches, in particular the frequency and degree of repetition over that two year period of time, highlighted the seriousness of the compliance failings. These were not isolated incidents. The Licensee continued to breach, in most cases the same Code rule, for a period of over two years and even after they were expressly drawn to the Licensee's attention by Ofcom through meetings and published Findings. Taking account of the duration of the compliance failings and the similar nature of the Code breaches that resulted, Ofcom considered that the breach was repeated.
62. Ofcom noted the representations that the Licensee made about the steps it had taken recently to improve its compliance processes. However, from April 2013 to September 2014, the Licensee was on notice that it had serious compliance problems in need of urgent attention but repeatedly failed to implement adequate compliance procedures or have satisfactory arrangements in place at this time. In Ofcom's view this was reckless because, notwithstanding that it was aware of the problem, the Licensee failed during the relevant period to take effective action to address the issue.

Imposition of sanctions

63. For the reasons set out above, Ofcom considered that the breach was serious, repeated and reckless and so warranted the imposition of a statutory sanction.

¹⁴ See: Section 235 of the Act

Level of Sanction

Imposition of sanctions other than a financial penalty

Revocation

64. 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.

The sanction of revocation is available in the most serious cases, where a licensee has failed to take steps specified by Ofcom to remedy a breach and Ofcom is satisfied that it is necessary in the public interest to do so because the risk of harm outweighs the benefits of the service.

65. As set out earlier, Ofcom considers that a breach of Condition 17(2) is a serious matter. The Licensee's regulatory obligations are intended in part to ensure that there is adequate protection for members of the public from harmful material and the requirement for compliance procedures is designed to provide an additional safety net by ensuring those obligations are met. Ofcom takes a serious view of a failure to implement effective compliance processes since it means that viewers are placed at an increased and unnecessary risk of serious harm. Further, it demonstrates on the part of the licensee a disregard for the importance of its regulatory obligations and the public purpose which they serve. Accordingly, in the Finding, Ofcom stated that "revocation of the licence may be recommended as an appropriate sanction."

66. In assessing whether the breach of Licence Condition 17(2) warranted revocation of TLCS 1624, Ofcom weighed the benefits of the service against the harm the service has caused and the potential for further harm in the future as a result of the breach.

67. In relation to the benefits of the service, Ofcom took into account matters including the broadcaster's and audience's rights under Article 10 of the Convention when applied to broadcasting¹⁵ and the Licensee's submission that NTV had, in a short period of time, "created a positive impact on British-Bangladeshi diaspora and their social lives." Further, Ofcom noted that the Licensee highlighted in its Representations the popularity of the channel within its community, the awards it had won since launching the service and the original programming it was now producing. Ofcom acknowledged that such a service was therefore likely to offer benefits in so far as it provides a further range of viewpoints, catering for different interests of different ethnic communities in the UK.

68. In assessing the harm caused, Ofcom considered the Code breaches which resulted from the compliance failings, noting the number and the considerable length of time over which they took place. We also, however, took into account the fact that none of these Code breaches attracted a sanction individually (in and of themselves).

69. When considering the risk that the service could cause further harm, Ofcom noted that the Licensee did take some steps to improve its compliance arrangements by appointing a new compliance head together with six new compliance staff members from 1 May 2014¹⁶. In addition, in its Representations, the Licensee also explained the further steps

¹⁵ This right 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".

¹⁶ ITCE's new compliance team was not in place until 1 May 2014. By this time ten Code breaches against ITCE had been recorded in the Broadcast Bulletin. A further ten breaches were recorded in the period after this from 6 May 2014 to 8 September 2014. However, only five of these recorded breaches related to material broadcast after the new compliance team were in place. This material found in breach was broadcast on NTV on 6 May 2014 and 3 June 2014 respectively which was only a short time after the entirely new compliance team was created.

it had now taken, in terms of appointing an external compliance consultant in May 2015, reducing the amount of material from Bangladesh and introducing new compliance processes and training for staff.

70. Further, Ofcom reviewed ITCE's recent compliance history. It noted that the last Code breach by ITCE (which formed part of the evidence in the Licence Condition 17(2) breach), was recorded in Broadcast Bulletin 261 in September 2014. Since this breach only one further breach of Section Nine of the Code has been recorded¹⁷ which related to material broadcast on 29 December 2014 and was published in Broadcast Bulletin 278 on 5 May 2015. More recently, in June 2015, Ofcom monitored the NTV service for a 24 hour period and over this time no further breaches of the Code were identified.
71. Any statutory sanction should be proportionate and Ofcom therefore took into account whether any sanction short of revocation could ensure that the Licensee would comply with the terms of its licence (see paragraphs 74 to 77).
72. Further, following the Licensee's Representations, Ofcom was of the view that the Licensee had now recognised its previous compliance failures and had taken steps to improve its compliance procedures, including putting in place training for its staff and the introduction of meaningful compliance procedures for the effective daily oversight of its programming, as required by Licence Condition 17(2).
73. To satisfy Ofcom that the Licensee is meeting the requirements of Condition 17(2) however, Ofcom will be undertaking a period of structured monitoring of the Licensee's broadcast output. Should there be any further compliance failings by the Licensee, our judgment as to where the balance lies may change and this could lead us to consider again whether the licence should be revoked.

Financial Penalty

74. 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 TLCS licence 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.
75. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription.
76. The Penalty Guidelines state (in paragraph 3) 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 for compliance, having regard to the seriousness of the infringement." In reaching its Decision in this case, 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 Guidelines¹⁸.

¹⁷ See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb278/>

¹⁸ See: <http://www.ofcom.org.uk/files/2010/06/penguid.pdf>

77. Having decided that, on balance, revocation was inappropriate in this case, Ofcom's view was that a financial penalty was necessary. It is Ofcom's view that a financial penalty would provide an appropriate incentive to ensure ITCE brought itself urgently into compliance with Licence Condition 17(2) as regards its service NTV and provide a sufficient deterrent for it not to contravene this licence condition again. Further, a financial penalty would indicate to other licensees the importance of maintaining robust compliance procedures and arrangements.

Factors taken into account in determining the amount of a penalty

78. In considering the appropriate amount of a financial penalty for the Code breaches in this case, Ofcom took account of relevant factors set out in the Penalty Guidelines as set out below:

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

79. The requirement to have appropriate arrangements in place to ensure compliance with licence obligations from the point at which a broadcasting licence is granted is absolutely fundamental to protect UK audiences from harm. In assessing the degree of harm which resulted from the Licensee's failure to have effective compliance arrangements in place, Ofcom considered the extent to which this resulted in Code breaches and what harm, if any, resulted from these breaches.

80. Accordingly, it was noted that there were 20 Code breaches recorded against ITCE between April 2013 and September 2014. This was on average, over one Code breach per month. The majority of these Code breaches related to Section Nine of the Code which concerns commercial references in television programming.

81. Section Nine is aimed at ensuring, amongst other things, that audiences are protected from surreptitious advertising; that there is a clear distinction between advertising and editorial content; and to ensure that unsuitable sponsorship is prevented. The reason this section is in place is to ensure that audiences are protected from the risk of harm, including financial harm.

82. In this case, there has been no evidence provided to Ofcom of actual harm. However, there was a potential for harm arising from these Code breaches. For example, financial harm may have been caused to some viewers because of the Licensee's failure to distinguish between editorial content and advertising. Further, poor compliance over such an extended period of time as in this case may have potentially caused harm by undermining viewers' trust in the regulatory system.

The duration of the contravention

83. The contravention took place during an 18 month period between April 2013 and September 2014.

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

84. There is no evidence that the Licensee made any financial gain from the breach of Condition 17(2) or from the Code breaches which resulted.

Any steps taken for remedying the consequences of the contravention

85. Ofcom noted in the Finding that the Licensee had taken some steps to improve its compliance arrangements from 1 May 2014 by creating a new compliance team of six, including a new Bureau Chief, and introducing workshops for staff training. However, initially these steps were insufficient to bring the Licensee back into compliance, as evidenced by the fact that there further Code breaches after that time relating to material broadcast on NTV on 6 May 2014 and 3 June 2014. In addition, since September 2014, Ofcom had recorded a further breach of Section Nine of the Code against the Licensee which related to material broadcast on 29 December 2014 on NTV¹⁹. Accordingly, it is Ofcom's view that although some steps were taken during the relevant period, they were not sufficient to establish adequate compliance procedures.
86. The Licensee's Representations, however, have indicated to Ofcom that ITCE has now taken considerable steps to remedy the contravention and meet the requirements of its Licence Condition 17(2). The Licensee has provided to Ofcom evidence of its compliance procedures, namely: a compliance manual; a Programme Transmission Form; a flagging system; and a system for storing and reviewing material. The Licensee has set out in its Representations a clear structure for referring compliance decisions upwards; and Ofcom noted that the services of a compliance consultant have been retained to advise the Licensee.

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

87. The Licensee was granted its licence (TLCS 1624) on 31 January 2012 and between April 2013 and September 2014 Ofcom recorded 20 separate breaches of the Code in the Broadcast Bulletin. In addition, since September 2014 Ofcom has recorded one further breach of Section Nine of the Code against the Licensee, which related to material broadcast on 29 December 2014 on NTV²⁰. Therefore the Licensee, in a relatively short period of holding a licence, has a history of a considerable volume of contraventions, the majority of which were repeated breaches of the same section of the Code.
88. Since the breach, which related to material broadcast on 29 December 2014 on NTV, Ofcom has not recorded any further breaches of the Code against the Licensee. In addition, the 24-hour monitoring of the NTV service undertaken by Ofcom in June 2015 did not identify any further breaches of the Code.

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

89. Ofcom considered that ITCE did not take appropriate steps during the relevant period to prevent the Licence Condition 17(2) breach. Notwithstanding the fact that the Licensee's senior management was aware for several months that the Licensee's compliance arrangements and procedures were inadequate (see paragraphs 91 to 92 below), it failed to take effective action to address the weaknesses that had been drawn to its attention.
90. However, the Licensee explained in its Representations the steps it has taken this year which should assist in ensuring that it meets the requirements of Licence Condition 17(2) going forward.

¹⁹ See: http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb278/BB_278

²⁰ See: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb278/>

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

91. As noted above, the senior management of the Licensee were aware over an extended period of time (April 2013 to September 2014, when Ofcom published 20 Code breaches against NTV) that the NTV service was repeatedly breaching the Code.
92. Further, following publication of nine Code breaches from April 2013 to December 2013 and a meeting with Ofcom on 20 January 2014, the Licensee was aware of Ofcom's concerns about its weak compliance procedures and arrangements (see paragraphs 28 to 36 above). Ofcom also noted that the Licensee expressly conceded in its Preliminary View Representations of March 2015 that "in the past, there had been systemic problems with compliance procedures at the NTV office." Ofcom therefore considered that the breach occurred recklessly because of the failure of ITCE's senior management to take effective action during the relevant period to address the compliance weaknesses that had been drawn to its attention previously.

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

93. In Ofcom's view the Licensee failed to take timely and effective steps to end the compliance failures even when it became aware of Ofcom's concerns as highlighted by the number of Code breaches recorded against the Licensee from April 2013 and following the meeting with Ofcom on 20 January 2014 to discuss compliance procedures. Even after Ofcom notified the Licensee that it was going to commence an investigation in April 2014, further Code breaches continued to be recorded against ITCE and no documentation setting out the Licensee's compliance arrangements and procedures was produced or sent to Ofcom at that time
94. Although Ofcom acknowledged that some steps were taken, such as the appointment on 1 May 2014 of a new compliance head and compliance team, on balance, Ofcom did not consider that this action was either timely or effective. The steps were taken over a year after the Licensee was made aware by Ofcom of its poor compliance²¹ and were not particularly effective as Ofcom recorded further breaches after the team were in place, resulting in a total of ten further breaches being published in the period between 6 May 2014 and 8 September 2014. Ofcom acknowledges that not all of these ten breaches related to material broadcast when the team was in place. However, five of these ten breaches related to material broadcast following the team being set up and after Ofcom launched its Licence Condition 17(2) investigation on 14 April 2014.
95. As noted in paragraphs 47 and 56 above, the Licensee's latest Representations have indicated to Ofcom that the Licensee has taken significant steps to improve its compliance arrangements to secure observance of the requirements of Licence Condition 17(2).

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

96. In accordance with section 237(4) of the Act, Ofcom obtained financial data setting out the Licensee's qualifying revenue for the last accounting period (2014) to decide upon a proportionate penalty. Ofcom considered that a penalty of **£20,000** would be proportionate taking into account all the relevant circumstances, including the need to

²¹ The first breach Finding published in the Broadcast Bulletin was in April 2013 and a total of nine breaches were published up to December 2013 after which ITCE were invited to meet Ofcom to discuss its compliance procedures. This meeting took place on 20 January 2014.

achieve an appropriate level of deterrence, the serious nature of the Code breaches in this case and the Licensee's Representations that the fine should not be set at a level which might compromise ITCE's ability to provide a service to the Bengali community.

Cooperation

97. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom's investigation.
98. In Ofcom's view, the Licensee has been cooperative. For example, it has: provided full Representations in response to Ofcom's formal requests; it has provided further financial information as requested; and it has explained the steps it has not taken to remedy its compliance weaknesses. Ofcom does not therefore consider it appropriate to increase the penalty on account of a failure to cooperate in this case.

Relevant precedents set by previous cases

99. Ofcom will have regard to any relevant precedents set by previous cases in determining whether a statutory sanction is appropriate but may depart from them depending on the facts and context of each case.
100. There have been no other cases where a licensee has been sanctioned for a breach of Licence Condition 17(2) alone and therefore this is the first case of its kind. Consequently, there are no directly relevant precedents to assist in reaching a view on the appropriate statutory sanction in this case.

Conclusion

101. In the Finding, Ofcom set out that it considered that there was an ongoing "systemic problem with compliance procedures at the NTV service" and there was a material risk that there would be further breaches of the Code unless this issue was addressed. As a result, Ofcom put the Licensee on notice that it would consider the imposition of a statutory sanction, and that the breach was so serious that "revocation of the licence may be recommended as an appropriate sanction."
102. Ofcom noted that there have been no further breaches of the Code being recorded against the Licensee since 29 December 2014. It also noted the latest steps taken by the Licensee to improve its compliance procedures and to ensure there are sufficient persons in place to ensure compliance on a day to day basis.
103. Ofcom has reached the decision that the breach of Condition 17(2)²² was serious, repeated and reckless and a sanction is merited in this case. However, taking account of the Licensee's Representations, Ofcom has decided that revocation would not be an appropriate sanction in this case.

Decision

104. Having regard to all the factors referred to above and all the Representations to date from the Licensee, Ofcom's Decision is that an appropriate and proportionate sanction would be a financial penalty of **£20,000**.

²² This Condition 17(2) breach followed from 20 breaches of the Code published in the Broadcast Bulletin between April 2013 and September 2014. See Page 19.

105. Ofcom is also giving notice to ITCE by means of this sanctions decision that it will be undertaking a period of monitoring of the Licensee's broadcast output to assess whether the content of the service is compliant with the Code. If there are further compliance failings after the imposition of this statutory sanction, Ofcom is likely to have serious concerns about the Licensee's understanding and regard for its regulatory responsibilities and the importance of ensuring that viewers are adequately protected from harm. In such circumstances, where the Licensee has failed to respond adequately to other regulatory action, we may have cause to reconsider whether revocation of the licence would be appropriate.

Ofcom
17 December 2015

List of Findings Relating to the Licence Condition 17(2) Breach Decision

During the period April 2013 and September 2014, Ofcom published the following 20 breaches of the Broadcasting Code (“the Code”) against ITCE, recorded in 16 separate cases. This list details the date of broadcast on NTV of the separate breach(es) and footnotes the relevant Broadcast Bulletin in which the breach(es) were published:

- 1) Sponsorship credits, NTV, 20 May 2012: breaches of Rule 9.22(a) of the Code for inclusion of advertising messages in sponsorship credits.²³
- 2) Bangladesh Nationalist Party item, NTV, 19 January 2013, 21:00: breach of Rules 5.5, 9.1 and 9.2 of the Code for broadcasting a message from the Bangladeshi Nationalist Party.²⁴
- 3) Sponsorship of Metro Life, NTV, 20 April 2013, 21:00: breach of Rule 9.22(a) of the Code relating to advertising claims in a Lycamobile sponsorship credit.²⁵
- 4) *Maya Nigom*, NTV, 14 April 2013, 21:00 and *News*, NTV, 14 April 2013, 21:30: breach of Rule 9.2 of the Code for failure to ensure distinction between editorial and advertising.²⁶
- 5) *Accountancy with Mahbub Murshed*, NTV, 29 April 2013, 15:30: breach of Rule 9.12 of the Code for product placement in a consumer advice programme.²⁷
- 6) Sponsorship of *Adhan-e-Isha*, NTV, 6 August 2013, 22:05: breach of Rule 9.23 of the Code from a sponsorship credit appearing during a religious programme.²⁸
- 7) Charity Appeal, NTV, 9 July 2013, 19:00: breach of Rule 9.33 of the Code for failing to establish the charitable status of the recipient of charitable donations.²⁹
- 8) *Shomoyer Sathe*, NTV, 28 October 2013, 23:00: breach of Rule 5.5 of the Code for broadcasting material without due impartiality.³⁰
- 9) Sponsorship of *Tobuo Jibon*, NTV, 21 December 2013, 20:30: breach of 9.22(a) of the Code for inclusion of an advertising message in a sponsorship credit.³¹
- 10) *Aine O Adhikar*, NTV, 14 December 2013, 12:30 – breach of 9.12(b) of the Code for product placement in a consumer advice programme.³²
- 11) *Accountancy with Mahbub Murshed*, NTV, 5 January 2014, 15:00: breach of 9.12(b) of the Code for product placement in a consumer advice programme.³³
- 12) *Education Consultancy with Kazi*, NTV, 7 January 2014, 20:00: breach of Rule 9.12(b) of the Code for product placement in a consumer advice programme.³⁴
- 13) *Aey Shomoy*, NTV, 8 April 2014, 23:00 - breach of Rule 9.12 of the Code for product placement in a current affairs programme.³⁵
- 14) *Europor Shangbad*, NTV, 6 May 2014, 22:15: breaches of Rules 6.8, 6.9 and 6.11 of the Code for failing to observe reporting rules during an election period.³⁶
- 15) *Icche Ghuri*, NTV, 6 May 2014, 22:30: breach of Rule 9.22 of the Code for inclusion of an advertising message in a sponsorship credit.³⁷
- 16) *Nil Ronger Golpo*, NTV, 3 June 2014, 21:00: breach of Rule 9.22 of the Code for inclusion of an advertising message in a sponsorship credit.³⁸

²³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

²⁴ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb227/obb227.pdf>

²⁵ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb235/obb235.pdf>

²⁶ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb236/obb236.pdf>

²⁷ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2361/obb237.pdf>

²⁸ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/2431/obb244.pdf>

²⁹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/2431/obb244.pdf>

³⁰ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb250/obb250.pdf>

³¹ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>

³² <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>

³³ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>

³⁴ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>

³⁵ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2601/obb261.pdf>

³⁶ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2601/obb261.pdf>

³⁷ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2601/obb261.pdf>

³⁸ <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2601/obb261.pdf>