

**Sanction: Decision by Ofcom  
Imposed on CSC Media Group Limited**

---

**For material broadcast on Scuzz TV on 19 August 2012 at 20:40<sup>1</sup>**

**Ofcom's Consideration  
of Sanction against:**

CSC Media Group Limited ("CSC Media" or the "Licensee") in respect of its service **Scuzz TV** (TLCS-608)<sup>2</sup>.

**For:**

Breaches of the February 2011 version of the Ofcom Broadcasting Code (the "Code")<sup>3</sup> in respect of:

Rule 1.3: Children must also be protected by appropriate scheduling from material that is unsuitable for them.

Meaning of "children": Children are people under the age of 15 years.

Meaning of "appropriate scheduling": Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

Rule 1.10: The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must generally be avoided and in any case must not be condoned, encouraged or glamorised in

---

<sup>1</sup> For material on Scuzz TV, found in breach of Ofcom's Broadcasting Code as detailed in Broadcast Bulletin 220, dated 17 December 2012 (known as "the Breach Decision"), see: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb220/obb220.pdf>

<sup>2</sup> CSC Media Group Limited currently holds 16 Television Licensable Content Service licences, of which Scuzz TV is one. Ofcom understands that the compliance function for Scuzz TV is managed centrally by CSC Media Group Limited

<sup>3</sup> The applicable version of the Code in this case is the version published on 28 February 2011. All references to the Code in this Preliminary View are therefore references to that version of the Code which can be found at: <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

other programmes broadcast before the watershed (in the case of television)...unless there is editorial justification.

Rule 1.14: The most offensive language must not be broadcast before the watershed (in the case of television)...

Rule 1.16: Offensive language must not be broadcast before the watershed (in the case of television)... unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed.

Rule 1.21: Nudity before the watershed must be justified by the context.

Meaning of “the watershed”: The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

Rule 2.3: 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, violence, sex, sexual violence... [and] violation of human dignity...

Meaning of “context”: Context includes (but is not limited to):

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast;
- what other programmes are scheduled before and after the programme or programmes concerned;
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on the viewers or listeners who may come across it unawares.

## Sanction 90(13) CSC Media Group Limited

### Sanction Decision:

To impose a financial penalty (payable to HM Paymaster General) of **£10,000** and;

to issue a direction to the Licensee, directing it to broadcast a statement of Ofcom's findings on a date and in a form to be determined by Ofcom.

## Case Summary

1. Scuzz TV is a UK digital satellite television channel that broadcasts rock and 'pop-punk' music videos and related programming. The licence is held by CSC Media Group Limited ("CSC Media" or "the Licensee")<sup>4</sup>. CSC Media holds Ofcom licences in respect of 16 services in total. The Licensee also controls the centralised team responsible for compliance at all these 16 services, including Scuzz TV.
2. In Ofcom's Breach Decision ("the Breach Decision") published on 17 December 2012 in Broadcast Bulletin 220<sup>5</sup>, Ofcom's Executive found that material broadcast by the Licensee on the Scuzz TV service breached the following Code Rules:
  - 1.3 (appropriate scheduling of content unsuitable for children);
  - 1.10 (avoidance of drugs and alcohol in programming before the watershed);
  - 1.14 (most offensive language before the watershed);
  - 1.16 (offensive language before the watershed);
  - 1.21 (nudity before the watershed); and
  - 2.3 (must ensure material which may cause offence is justified by content).
3. The material broadcast comprised a music video by the American 'rap rock' band Hollywood Undead entitled *Undead* which was broadcast at 20:40 on 19 August 2012 ("the Video").
4. In the Breach Decision Ofcom stated that the contraventions of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3 of the Code were sufficiently serious as to warrant consideration of a sanction.
5. In relation to Rule 1.3, in Ofcom's view the content of the Video was extremely unsuitable for children. For example, the Video contained: frequently repeated use of the most offensive language; a significant quantity of close-up images of naked or near naked breasts and buttocks; images of semi-naked female performers dancing provocatively, while simulating sex acts; and depictions of what appeared to be illegal drug paraphernalia and illegal drug consumption.
6. Ofcom concluded that the Licensee had not taken adequate steps to protect children from this unsuitable material by appropriate scheduling. Ofcom took into consideration the representations by the Licensee including that BARB's sample of households indicated that no children were watching the broadcast of the Video. However, the Video was broadcast during the school summer holidays at 20:40 hours, and Ofcom was of the view that there was a likelihood of children being available to view the material at this time. Consequently Ofcom found that the material had been inappropriately scheduled, in breach of Rule 1.3.
7. With regard to Rule 1.10, Ofcom noted for example that the Video contained representations of illegal drug use, and included a sequence in which a female performer inhaled what appeared to be an illegal drug. Ofcom acknowledged that to a limited extent the material was within a niche context, however this did not amount to sufficient editorial justification for the inclusion of these images in the Video as broadcast before the watershed. The material in the Video was consequently in breach of Rule 1.10.

---

<sup>4</sup> See footnote 2

<sup>5</sup> See footnote 1

8. With regard to Rule 1.14, Ofcom found that the Video contained multiple instances of the most offensive language such as “fuck”, and “motherfucker”, broadcast before the watershed. Ofcom therefore found the Video to be in breach of this Rule.
9. In relation to Rule 1.16, Ofcom found that the Video contained, for example, a number of uses of offensive language including the word “faggots” broadcast before the watershed, and did not consider that there was sufficient justification for the broadcast of these words. There was therefore a breach of Rule 1.16.
10. In relation to Rule 1.21, Ofcom noted that the Video contained, for example, over 35 brief but close-up shots of naked or near naked breasts, all presented in a sexualised context, broadcast before the watershed. Again, the specialist genre did not of itself provide sufficient context to justify the broadcast of such frequent images of nudity, in this case, and consequently the Video was in breach of Rule 1.21.
11. Broadcasting the Video also breached Rule 2.3. Ofcom found that the use in the Video of words such as “fuck”, “fag” and “faggot” taken together with, for example, the images of sexual activity and drug taking, clearly had the potential to be highly offensive. Ofcom considered that this offence was not justified by the context.
12. The broadcast of the Video on 19 August 2012 occurred following previous breach decisions in respect of the Licensee (recorded in Broadcast Bulletins 102<sup>6</sup>, 127<sup>7</sup> and 199<sup>8</sup> respectively), and the subsequent compliance steps reportedly taken by the Licensee. In Ofcom’s view, this demonstrated that the Licensee’s compliance procedures, at the time of the 19 August 2012 breach, were insufficient to ensure compliance.

### **Summary of Ofcom’s Sanctions Decision**

13. In accordance with Ofcom’s Procedures for the consideration of statutory sanctions in breaches of broadcast licences (“the Sanctions Procedures”)<sup>9</sup>, Ofcom has considered whether these Code breaches were sufficiently serious to warrant the imposition of a statutory sanction on the Licensee. It has decided, for the reasons set out below, that they were serious.
14. This paper sets out Ofcom’s Sanctions Decision on the type and level of sanction to be imposed on the Licensee, having taken into account the serious nature of the Code breaches, all the evidence and the representations provided to it on behalf of the Licensee and with reference to Ofcom’s Penalty Guidelines (“the Penalty Guidelines”)<sup>10</sup>.
15. Ofcom decided, for the reasons set out below, it was appropriate and proportionate in the circumstances to impose a financial penalty of **£10,000** on the Licensee in respect of the Code Breaches (payable to HM Paymaster General) and to direct the Licensee to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom.

---

<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb102/issue102.pdf>

<sup>7</sup> <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/obb127/>

<sup>8</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb199/obb199.pdf>

<sup>9</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/procedures-statutory-sanctions/>

<sup>10</sup> <http://www.ofcom.org.uk/about/policies-and-guidelines/penalty-guidelines/>

## Legal Framework

### **Communications Act 2003**

16. In discharging its functions, Ofcom's principal duties set out in section 3(1) of the Communications Act 2003 ("the Act") are to further the interests of citizens in relation to communications matters and the interests of consumers and to secure a number of other matters. These include the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public from the inclusion of offensive and harmful material in such services (section 3(2)(e)). In performing those duties Ofcom must have regard to "the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection" (section 3(4)(h)).
17. Ofcom has a specific duty under section 319 of the Act to set standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that: persons under the age of eighteen are protected (section 319(2)(a)) and that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)).
18. In performing these duties, Ofcom is required to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles representing best regulatory practice (section 3(3)); and, where relevant, to have regard to a number of other considerations including:
  - the need to secure that the application in the case of television and radio services of standards relating to harm and offence is in the manner that best guarantees an appropriate level of freedom of expression (section 3(4)(g)); and
  - the vulnerability of children and of others whose circumstances appear to Ofcom to put them in need of special protection (section 3 (4)(h)).

### **Human Rights Act 1998**

19. 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").
20. 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).
21. Ofcom must exercise its duties in light of these rights and not interfere with the exercise of these rights in broadcast services unless it is satisfied that the restrictions it seeks to apply are required by law and necessary to achieve a legitimate aim.

### Ofcom Broadcasting Code

22. Standards set by Ofcom in accordance with sections 319 of the Act are set out in the Code<sup>11</sup>.
23. 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 non-binding but assist broadcasters to interpret and apply the Code<sup>12</sup>.

The relevant Code rules in this case are set out in full at the beginning of Decision.

### Remedial action and penalties

24. Under section 325 of the Act, a licence for a programme service issued by Ofcom under the Broadcasting Act 1990 or 1996 must include conditions for securing that the standards set under section 319 are observed by the licensee. In the case of a television licensable content service (“TLCS”) licence, Condition 6 of the licence requires the licensee to ensure that the provisions of any Code made under section 319 are complied with. The Licensee holds a TLCS licence.
25. Ofcom’s powers to take action for contravention of a TLCS licence condition are set out in sections 236 to 238 of the Act.
26. 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.
27. 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 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).
28. 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 Decision**

29. CSC Media holds Ofcom licences in respect of 16 services in total. The Licensee also controls the centralised team responsible for compliance at all these 16 services, including Scuzz TV.
30. In the Breach Decision, the Executive found that material broadcast by the Licensee on the Scuzz TV service breached Rules 1.3, 1.10, 1.14, 1.16, 1.21, and 2.3 of the Code. The Breach Decision set out the reasons why Ofcom considered that the material was unsuitable for children to view and the reasons why the material was not appropriately scheduled. Ofcom noted that the Licensee had “not tried to justify the content on editorial grounds” and stated that the contravention was as a result of “an unfortunate collision of technical and human error”.
31. The Breach Decision noted that the Video was broadcast at 20:40 in a block of music video programming called *Rock All Stars* and featured the American ‘rock rap’ band Hollywood Undead performing a song called *Undead* to camera in a motel room. In the Video, footage of the band performing to camera was intercut with images of band members ‘partying’ with female performers in various locations including a motel

---

<sup>11</sup> see footnote 3

<sup>12</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>, and <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section2.pdf>

bedroom, a bathroom and by a swimming pool. The Video was just over three minutes and 30 seconds in duration.

32. Ofcom was concerned by the imagery in the Video, which included over 35 brief<sup>13</sup> but close-up shots of naked or near naked breasts; around 20 close-up shots of women's buttocks in bikinis or underwear; frequent close-up shots of women climbing onto or simulating sexual activity with men or other women; scenes in which male band members fondled the breasts of female performers; footage in which two semi-naked female performers simulated sex acts together in a shower cubicle while a male band member vomited into a toilet; and representations of illegal drug use. The Video concluded with shots of the band members smashing up the contents of the motel room, and then throwing the broken items into the swimming pool. In relation to each breach of the Code, the Breach Decision set out specific examples of broadcast material that was in breach, along with reasoning as to why in particular the material had breached a particular rule.
33. In relation to Rule 1.3, Ofcom first considered whether the material was suitable for children. In Ofcom's opinion the content of the material was extremely unsuitable for children. The Video contained frequently repeated use of the words "fuck", "motherfucker", "fucking" and "faggots"; a significant quantity of close-up images of naked or near naked breasts and buttocks; and images of semi-naked female performers dancing provocatively, while simulating sex acts by themselves, on each other and with members of the band. In addition to depictions of what appeared to be illegal drug consumption, Ofcom also noted the offensive hand gestures of the band members, and acts of destruction of property.
34. Ofcom then went on to consider whether the material was appropriately scheduled. Ofcom took into consideration that given the 'hard living' image commonly projected by artists performing within the genres featured on Scuzz TV, the channel was not likely to appeal to children. Ofcom also took into account the Licensee's comments that BARB viewing figures indicated that no children were watching the broadcast. However, given the broadcast occurred during the school summer holidays before 21:00 hours, Ofcom considered that there was a likelihood of children being available to watch, and consequently that the material had been inappropriately scheduled, in breach of Rule 1.3.
35. With regard to Rule 1.10, Ofcom noted that the Video contained close-up shots of representations of illegal drug paraphernalia and a prominent sequence in which a female performer inhaled what appeared to be an illegal drug, before subsequently performing sex acts on herself and other male and female performers. Ofcom did not find that the fact that Scuzz TV was a niche channel, whose viewers might expect content featuring the 'hard living' lifestyle they might associate with the 'rap rock' genre, offered sufficient editorial justification for the inclusion of these images in a broadcast before the watershed. The material in the Video was consequently in breach of Rule 1.10.
36. With regard to Rule 1.14, Ofcom found that the Video contained multiple instances of the most offensive language such as "fuck" and "motherfucker", broadcast before the watershed. In view of Ofcom's research findings<sup>14</sup> that audiences find "fuck" and its derivatives to be amongst the most offensive language, Ofcom found the Video to be in breach of Rule 1.14.

---

<sup>13</sup> While reference has been made in the Breach Decision and in this document to the number of shots of a particular image, it should be noted that Ofcom considers all the circumstances of each case in the round and assesses each on its merits.

<sup>14</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

37. In relation to Rule 1.16, Ofcom found that the Video contained a number of uses of the word “faggots” and its derivative “fag”, which Ofcom’s research<sup>15</sup> finds to be offensive to gay and bi-sexual men, broadcast before the watershed. As detailed above, Ofcom did not consider that the ‘hard living’ ‘rap rock’ lifestyle that audiences might associate with the performers featured on Scuzz TV offered sufficient editorial justification for the broadcast of the words, and noted further that the Licensee offered no editorial justification for the broadcast of the words. Ofcom found the Video to be in breach of Rule 1.16.
38. In relation to Rule 1.21, Ofcom found that the Video contained over 35 brief but close-up shots of naked or near naked breasts and around 20 close-up shots of women’s buttocks in bikinis or underwear, all presented in a highly sexualised context, broadcast before the watershed. Ofcom found that while the specialised genre of music featured on Scuzz TV was unlikely to appeal to children, the specialist nature of the genre did not, of itself, provide sufficient context to justify the broadcast of nudity in this case, and consequently the Video was in breach of Rule 1.21.
39. With regard to Rule 2.3, Ofcom first considered whether the material in the Video was potentially offensive. Ofcom found that the broadcast of words such as “fuck”, and its derivatives, which viewers find most offensive<sup>16</sup>, and words such as “fag” and “faggot”, which are considered by audiences<sup>17</sup> to be insulting to gay and bi-sexual men, taken together with images of sexual activity, drug taking and violence, resulted in content that was potentially highly offensive.
40. Ofcom then considered whether the offence was justified by context. Ofcom took into account that the Video was broadcast on a specialist music channel that viewers might expect to feature depictions of the ‘hard living’ and ‘partying’ lifestyle associated with the bands whose music videos were played on the channel, and that the BARB sample of households indicated that no children were watching at the time of the broadcast. However, Ofcom concluded that the audience for this were unlikely to expect the broadcast of numerous examples of highly sexualised imagery and instances of the most offensive language at this time before the watershed. In view of the above and the fact that the Licensee admitted the Video had been broadcast in error, Ofcom found that the context was insufficient to justify the broadcast of the offensive content, and that the Licensee had not applied generally accepted standards, in breach of Rule 2.3.
41. In the Breach Decision, Ofcom also noted that it had recorded eight separate breaches of its codes against the Licensee, across all 16 of its channels over the last four years. Ofcom’s records show that in total the Licensee has incurred three breaches for broadcasting inappropriate material before the watershed in Broadcast Bulletins 199<sup>18</sup>, 102<sup>19</sup> and 127<sup>20</sup>. In the most recent of these previous decisions “To the Stage: Eminem” (*Flava*, 7 December 2011, 18:00) published on 6 February 2012 in Ofcom Broadcast Bulletin 199<sup>21</sup>, in which the broadcaster was found to be in breach of the Code for broadcasting the most offensive language before the watershed, Ofcom specifically drew the Licensee’s attention to its published guidance on material broadcast before the

---

<sup>15</sup> See footnote 14 above

<sup>16</sup> See footnote 14 above

<sup>17</sup> See footnote 14 above

<sup>18</sup> See footnote 8 above

<sup>19</sup> See footnote 6 above

<sup>20</sup> See footnote 7 above

<sup>21</sup> See footnote 8 above

watershed (“the Pre-Watershed Guidance”),<sup>22</sup> stating “broadcasters are under a clear duty to ensure that robust procedures are in place to ensure compliance with the Code. Ofcom does not expect any recurrence of these issues on services whose licences are held by CSC.”

42. In the Breach Decision, Ofcom therefore stated that the contraventions of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3 of the Code were serious and were being considered for statutory sanction.

### **Ofcom’s Decision to Impose a Statutory Sanction**

43. As set out in paragraph 1.10 of the Sanctions Procedures<sup>23</sup>, 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.
44. Ofcom considered that the breaches in this case were sufficiently serious to warrant the imposition of a statutory sanction for the reasons set out below.
45. In this case, Ofcom issued a preliminary view (“Preliminary View”), that the Licensee had seriously breached the Code and that Ofcom was minded to impose a statutory sanction in the form of a financial penalty of £10,000. In addition, Ofcom proposed that the Licensee should be directed to broadcast a statement of Ofcom’s findings, on a date and in a form to be determined by Ofcom. Ofcom sent a copy of the Preliminary View to the Licensee on 22 April 2013 at the same time giving the Licensee the opportunity to provide written and oral representations on the Preliminary View. The Licensee responded by letter dated 12 June 2013 stating that it “did not have any further submissions over and above those contained in [its previous correspondence]”, and that “we still firmly believe that the size of the fine is excessive given that this was a single broadcast error”. The Licensee also stated that it did not consider that “an oral representation would be beneficial as we feel our submission is as full as we could wish to make”. Ofcom has summarised the Licensee’s representations in paragraphs 59 to 61.
46. In reaching its final Decision on whether to impose a statutory sanction and if so, what type and level of sanction, Ofcom was not bound by the Preliminary View. Ofcom took account of all the evidence and representations made on behalf of the Licensee, and has had regard to the Sanctions Procedures and to Ofcom’s Penalty Guidelines in reaching its Sanctions Decision (see further below).

### **Serious nature of breaches**

47. Ofcom considered the breach of Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3 were sufficiently serious to warrant the imposition of a statutory sanction for the reasons set out below.
48. Section 319 of the Act requires Ofcom to set such standards for the content of programmes in television and radio services as appears to it best calculated to secure the standards objectives set out in section 319(2). These objectives include that children under the age of eighteen are protected (section 319(2)(a)). This requirement is

---

<sup>22</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

<sup>23</sup> See footnote 9 above

reflected in Section One of the Code, which contains various specific rules to fulfil this objective, one of which is to ensure that material that is not suitable for children to view is scheduled appropriately.

49. The standards objectives also require that generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material (section 319(2)(f)). This requirement is reflected in Section Two of the Code, and in particular Rule 2.3.
50. The breaches in the present case were serious because of the highly unsuitable content of the Video broadcast before the watershed. This resulted in the Decision finding that the Video breached Rules 1.3, 1.10, 1.14, 1.16, 1.21 and 2.3. The Video contained for example simulated sex acts, nudity, as well as repeated and sustained examples of offensive language including the most offensive language, and depictions of illegal drug taking and violence: all extremely unsuitable for broadcast pre-watershed. As set out in the Decision, Ofcom noted:
  - 25 uses of language such as “fuck”, “fucking” and “faggots”;
  - 35 brief but close-up shots of naked or near naked breasts;
  - around 20 close-up shots of women’s buttocks in bikinis or underwear;
  - frequent close-up shots of women climbing onto or simulating sexual acts with men or other women;
  - a scene in which male band members fondled the breasts of female performers;
  - footage in which two semi-naked female performers simulated sex acts together in a shower cubicle;
  - shots of illegal drug paraphernalia; and a sequence in which a female performer appeared to take illegal drugs and then perform sex acts on herself and with others; and
  - the Video concluded with shots of the band members smashing up the contents of a motel room, and then throwing the broken items into a swimming pool.
51. In Ofcom’s view, the Licensee failed to ensure it sufficiently applied the Code and recent guidance by Ofcom regarding the importance of ensuring that material highly unsuitable for children is not broadcast before the watershed. Given the importance of protecting children from unsuitable material, Ofcom published the Pre-Watershed Guidance for broadcasters on 30 September 2011<sup>24</sup>. This additional guidance advised broadcasters to take particular care, if they chose to show before the watershed content originally produced for a post-watershed audience, “to ensure adult themes of a more sexualised nature are suitable for broadcast pre-watershed.” With regard to music videos in particular, the Pre-Watershed Guidance highlighted how the cumulative effect of the combination of certain images could result in them being offensive or inappropriate. It also advised broadcasters that “any violent images included in videos should be carefully presented so that they are not explicit, gratuitous or easily imitable”. The Pre-Watershed Guidance to Licensees was published well in advance of the scheduling and transmission of the Video on 19 August 2012.
52. Ofcom notes that it specifically drew the Licensee’s attention to the Pre-Watershed Guidance in a previous breach decision against the Licensee in December 2011 for broadcasting inappropriate material before the watershed on its service Flava<sup>25</sup> and that

---

<sup>24</sup> See footnote 22 above

<sup>25</sup> See footnote 8 above

this December 2011 decision had ended with the guidance: “Ofcom does not expect any recurrence of these issues on services whose licences are held by CSC” (i.e. the Licensee).

53. Prior to the 19 August 2012 contravention, Ofcom had found the Licensee in breach of Section One of the Code in respect of the matters set out below. Following these findings, the Licensee indicated certain actions it had taken, or intended to take, so as to prevent similar errors happening again:
- In its decision **Top Minx, video for ‘Smack My Bitch Up’ by The Prodigy** (*Chart Show TV, 30 December 2007, 13:45: Broadcast Bulletin 102*)<sup>26</sup>, Ofcom found the Licensee to be in breach of Rules 1.3, 1.10 and 1.17. Ofcom found that “with scenes of alcohol abuse, nudity and simulated sexual activity” the video “was clearly unsuitable to be broadcast at lunchtime on a pop music video channel when it is likely that a number of children could be watching”. In response, the Licensee stated that the video had been broadcast by mistake because of a software error and that in addition to updating the software in question “the entire library of post-watershed material was subsequently re-checked and additional procedures put in place to increase the level of security around the scheduling of post-watershed videos to ensure compliance with the Code at all times”.
  - In its decision **‘Minx Girl’ Promotion** (*Chart Show TV, 20 October 2008, 17:50: Broadcast Bulletin 127*)<sup>27</sup>, Ofcom found the Licensee to be in breach of Rule 1.3. Ofcom noted that the “teasing script” and visual material “which was mildly sexually provocative” “was clearly unsuitable to be broadcast in the early evening when it was likely that a number of children would be watching”. In response the Licensee stated that “the error occurred after the promotion was mistakenly marked for ‘daytime’ rather than ‘post-watershed’ broadcast”, but stated that it has “a rigorous policy for ensuring under-eighteens are protected and regretted this error”.
  - In its decision **To the Stage: Eminem** (*Flava, 7 December 2011, 18:00 Broadcast Bulletin 199*)<sup>28</sup> Ofcom found the Licensee to be in breach of Rule 1.14. In addition to drawing the Licensee’s attention to Ofcom’s Pre-Watershed Guidance<sup>29</sup>, Ofcom found that “broadcasters are under a clear duty to ensure that robust procedures are in place to ensure compliance with the Code”, before concluding, “Ofcom does not expect any recurrence of these issues on services whose licences are held by CSC”. The Licensee stated that the video had been “compiled by our in-house team a number of years ago [and] should have been flagged and the offensive lyrics edited out.” It added, that as a safeguard it “immediately pulled back the videos compiled in this same batch as well as videos by the same artist and re-compiled them.”
54. Therefore, the broadcast of the Video on 19 August 2012 occurred following:
- a) previous breach decisions in respect of the Licensee, and the subsequent compliance steps reportedly taken by the Licensee; and
  - b) the publication of Ofcom’s Pre-Watershed Guidance to broadcasters.

In Ofcom’s view, this demonstrates that the Licensee’s compliance procedures were insufficient to ensure compliance and that it needs to put in place additional measures to prevent any future occurrence of the serious compliance issues in this case.

---

<sup>26</sup> See footnote 6 above

<sup>27</sup> See footnote 7 above

<sup>28</sup> See footnote 8 above

<sup>29</sup> See footnote 22 above

55. Ofcom acknowledges that the Licensee accepted that the Video had not been appropriately scheduled, stating that the broadcast was a “frustrating lapse in our usually robust compliance procedures”<sup>30</sup>. Ofcom also notes that the Video was broadcast at approximately 20:40, relatively close to the watershed when it was likely that fewer children were available to view, and the short duration of the Video (i.e. it was only three minutes and thirty seconds in length). Ofcom considers that these factors, to a limited extent, mitigate the potential seriousness of the breaches.
56. Ofcom has assessed the material in detail in considering the seriousness of the breaches and the proportionality of any proposed sanction. Ofcom considered that the rapid sequencing of the imagery in this particular Video made it unlikely that any one individual member of the audience would have observed *all* the offending material to the same extent as Ofcom carrying out a prolonged examination. However, individuals watching the Video would have been subjected to the cumulative effect of the offensive and inappropriate imagery and in Ofcom’s view, a child viewing the Video would be likely to observe enough of the offending material so as to be exposed to harm.
57. In assessing the seriousness of these breaches, Ofcom took into account the representations put forward by the Licensee in response to Ofcom’s Preliminary View of the Decision including its submission that these contraventions of the Code did not warrant consideration for the imposition of a statutory sanction. These are set out in the Decision.
58. In view of the factors set out above, Ofcom considers that the breaches are sufficiently serious to warrant the imposition of a statutory sanction.

### Licensee’s representations

59. The Licensee made representations on 24 September 2012 in response to Ofcom’s request for comments following the complaints Ofcom received about the broadcast of the *Undead* video of Scuzz TV on 19 August 2012. The Licensee’s representations included:
- “This was a very frustrating lapse in our usually robust compliance procedures”;
  - “Frustratingly ... it is possible in some unusual circumstances for the scheduling software’s automatic safety check to pass over them [fail]”;
  - “As soon as we were informed by Ofcom of this breach the video was reviewed and obsoleted so it will never be played again across our channels”;
  - “We also identified the failure in the scheduling system and are implementing a change to the system to close this loophole immediately”; and
  - “We have also run a report on all our 24,000+ music videos to identify those incorrectly marked ... and have manually amended those that were”;
- “[This] is a very frustrating breach and we apologise for any offense caused and are confident we have rectified this loophole to avoid future breaches”.
60. In further representations, dated 14 November 2012, the Licensee argued that:
- Ofcom should have placed greater weight on the good compliance record of Scuzz TV when viewed in isolation, and of CSC Media overall, over the previous four years;

---

<sup>30</sup> See footnote 1 above

- when considering the Licensee's overall compliance record, Ofcom should have distinguished between breaches of technical or advertising requirements, and breaches of the Code that relate to harm and offence;
  - Ofcom should have given greater weight to the fact that the BARB audience figures indicated that no children had watched the Video;
  - Ofcom's decision to consider the Video for statutory sanctions was inconsistent with an earlier decision, "*Blinded by the Lights*" by the Streets (Broadcast Bulletin 24); and;
  - Ofcom had not given due weight to the speed and cooperative manner with which the Licensee had responded, once it had been informed that Ofcom had received complaints about the Video.
61. Ofcom took into account the Licensee's representations made on 24 September 2012 and 14 November 2012 in its Breach Decision (published on 17 December 2012) and has taken account of all the evidence and representations on behalf of the Licensee, including those made on 24 September 2012, 14 November 2012 and 12 June 2013 in this Sanctions Decision

### **Imposition of sanctions other than a financial penalty**

62. 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), if Ofcom is satisfied that the contravention can be appropriately remedied by such a direction. This may include a direction not to repeat the programme. This section applies if Ofcom is satisfied that: (a) the TLCS licensee has contravened a condition of the licence; and (b) that the contravention can be appropriately remedied by the inclusion in the licensed service of a correction or a statement of findings (or both).
63. In this case, the Licensee, as set out in the Decision, had already removed the Video from its library so that it will "never be played again across our channels", either before or after the watershed and it is therefore Ofcom's view that a direction not to repeat the programmes found in breach would not be an appropriate or sufficient sanction in all the circumstances.
64. Ofcom considers that the breach can be appropriately remedied by a direction to broadcast a statement of Ofcom's findings because such a statement would provide reassurance to viewers that robust steps had been taken by Ofcom to enforce the Code in order to protect them from harm or offence and thereby redress the complaints that Ofcom received from viewers and help mitigate any offence caused by the contravention of the Code.
65. Ofcom considers, however, that directing the broadcast of a statement of Ofcom's findings may not, by itself, be sufficient given the seriousness of the Code breaches. We therefore discuss below whether the imposition of a financial penalty would also be appropriate and proportionate in the circumstances of the case.
66. In light of the above, and taking into account the broadcaster's right to freedom of expression and the information currently available, Ofcom's Sanctions Decision in this case is that it would not be proportionate to recommend revocation of the Licence as an appropriate statutory sanction in respect of the current breaches under consideration.

### **Imposition of a financial penalty**

67. 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.

68. Qualifying revenue is calculated by adding together revenue gained from advertising, sponsorship and subscription.
69. Under the Penalty Guidelines, in determining the extent to which a level of any penalty is proportionate, Ofcom must, amongst other things, take into account the size and turnover of the regulated body<sup>31</sup>.
70. The Penalty Guidelines state that: "Ofcom will consider all the circumstances of the case in the round in order to determine the appropriate and proportionate amount of any penalty. The central objective of imposing a penalty is deterrence. The amount of any penalty must be sufficient to ensure that it will act as an effective incentive to compliance, having regard to the seriousness of the infringement." In reaching its Decision on sanction 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 Guidelines.

### **Factors taken into account in determining the amount of a penalty**

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

#### Deterrence

72. Ofcom believes that a financial penalty is necessary to reflect the serious nature of the Code breaches recorded against the Licensee, and to act as an effective incentive to ensure that adequate arrangements are in place at all times to ensure compliance with the Code, both for the Licensee and other licensees.

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

73. It is not possible to point to any specific and actual harm to child or adult viewers caused by these contraventions of Section One and Two as recorded in the Breach Decision. However, the purpose of the rules contained within Section One of the Code in particular is to protect children from potential as well as actual harm and to ensure they are not exposed to material that is unsuitable for them to view, and to provide reassurance to their parents and carers that this is the case. Material which is in breach of the rules in Section One has the potential to cause harm, even if that harm cannot be quantified.

#### The duration of the contravention

74. The Breach Decision related to material included in a one-off broadcast of the Video, which was three minutes and thirty seconds in duration, at 20:40 (that is twenty minutes before the 21:00 watershed)<sup>32</sup>.

---

<sup>31</sup> See footnote 10 above

<sup>32</sup> Ofcom also notes that in its representations the Licensee stated that the Video had been scheduled in response to a viewer request previously, but that this earlier scheduled broadcast had been spotted by compliance staff and the Video removed from that earlier slot (this incident occurred on the same day as the breach).

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

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

Any steps taken for remedying the consequences of the contravention

76. As acknowledged in the Breach Decision the Licensee has apologised for any offence caused by the broadcast and has given assurances to Ofcom that it is confident it has now rectified the “loophole” in its scheduling system. Ofcom also acknowledges that the removal of the Video by the Licensee from its catalogue so that it would not be played again on the service was a step which would provide reassurance to viewers that this particular broadcaster would endeavour to protect children watching the Scuzz TV channel from the unsuitable content in this Video.

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

77. Over all 16 of its channels the Licensee has been in breach of its Code obligations to Ofcom a total of thirteen times during the period January 2006 to December 2012. Three of these breaches related to broadcasting inappropriate material before the watershed. These findings were published in Broadcast Bulletins 102<sup>33</sup>, 127<sup>34</sup> and 199<sup>35</sup> respectively:

- In its decision **Top Minx, video for ‘Smack My Bitch Up’ by Prodigy** (*Chart Show TV, 30 December 2007, 13:45*: Broadcast Bulletin 102<sup>36</sup>) Ofcom found that the Licensee had broadcast scenes of alcohol abuse, nudity and simulated sexual activity that were “clearly unsuitable to be broadcast at lunchtime on a pop music video channel when it was likely that a number of children could be watching” and was in breach of Rules 1.3, 1.10 and 1.17.
- In its decision **‘Minx Girl’ Promotion** (*Chart Show TV, 20 October 2008, 17:50*: Broadcast Bulletin 127)<sup>37</sup> Ofcom noted that a “teasing script” and “mildly sexually provocative” visual material made the promotion “clearly unsuitable to be broadcast in the early evening when it was likely that a number of children would be watching” and consequently the broadcast was in breach of Rule 1.3.
- In its decision **To the Stage: Eminem** (*Flava, 7 December 2011, 18:00*: Broadcast Bulletin 199)<sup>38</sup> Ofcom noted that the video had contained four instances of the *most offensive language*, as identified by Ofcom’s research<sup>39</sup>, and was consequently in breach of Rule 1.14. In this decision Ofcom specifically drew the Licensee’s attention to the Pre-Watershed Guidance<sup>40</sup> and warned “broadcasters are under a clear duty to ensure that robust procedures are in place to ensure compliance with the Code.

---

<sup>33</sup> See footnote 6 above

<sup>34</sup> See footnote 7 above

<sup>35</sup> See footnote 8 above

<sup>36</sup> See footnote 6 above

<sup>37</sup> See footnote 7 above

<sup>38</sup> See footnote 8 above

<sup>39</sup> See footnote 14 above

<sup>40</sup> See footnote 22 above

Ofcom does not expect any recurrence of these issues on services whose licences are held by CSC.”

In its representations, CSC Media submitted that Ofcom should place greater weight on the compliance record of the Scuzz TV channel when viewed in isolation and on what the Licensee viewed as CSC Media’s good compliance record overall. Ofcom has placed appropriate weight on the compliance record of both the Scuzz TV channel by itself, and of CSC Media overall. In considering sanctions, Ofcom has a policy of having regard to any relevant breaches of its codes, where licences are all ultimately held by the same person. This is the case here, CSC Media controls 16 channels and also has a centralised compliance department for all 16 services. As pointed out above, over all 16 of its channels the Licensee has been in breach of its Code obligations to Ofcom a total of thirteen times during the period January 2006 to December 2012. Three of these breaches related to broadcasting inappropriate material before the watershed.

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

78. Ofcom’s view is that the Licensee did not have effective compliance arrangements in place and, as a result, failed to take appropriate steps to prevent the contravention. We consider that the compliance failure on 19 August 2012 would have become apparent to the Licensee had it had effective compliance arrangements which monitored and assessed ongoing compliance.
79. Ofcom is of the view that, although compliance processes may have been put in place following Ofcom’s previous breach decisions (outlined at paragraph 77), these were insufficiently robust to prevent the contravention which occurred on 19 August 2012.
80. In its 24 September representations in respect of the Breach Decision, the Licensee stated that it was “possible in some unusual circumstances for the scheduling software’s safety check to pass (some post water-shed videos) by”. It further submitted that the Video was scheduled for broadcast in response to viewer’s requests, twice, on 19 August 2012 but that the earlier scheduled broadcast had been prevented by compliance staff by removal of the Video from the earlier scheduled slot.
81. Ofcom notes that the Licensee was aware that the Video was in its catalogue because it had taken action to stop the earlier transmission that day and that the system was not always reliable. Therefore the Licensee could have removed the Video from the system altogether, particularly as it was aware that the system was not always 100% reliable.
82. Ofcom considers that a further check, in addition to the scheduling software safety check, appears to be required in order to eliminate this possibility of compliance failure.

*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*

83. It appears to Ofcom that the Licensee did not have effective compliance procedures in place which would have ensured that potential or actual contraventions would be brought to the attention of the Licensee’s senior management.
84. Senior management ought to be aware of the provisions of the Code and should ensure that procedures are in place to ensure compliance.

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

85. The Video was only broadcast on one occasion. CSC Media took action to remove the Video from its catalogue once the complaints and Ofcom’s investigation were brought to

their attention by Ofcom. However, as mentioned above, the Licensee was aware that the Video was in its catalogue and that the system was not always reliable and therefore it could have taken action to remove the Video from circulation before the breach occurred.

86. As noted in the Breach Decision, the Licensee submitted in its representations that it had:
- removed the Video from its catalogue, “so that it will never be played again across our channels”;
  - implemented changes to its software having “identified the failure in the scheduling system”; and
  - started checking the way in which all of its 24,000 plus music videos were marked up for compliance purposes.
87. Further steps were then taken by the Licensee to re-comply its video catalogue.

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

88. 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 (2011) in order to decide upon a proportionate penalty. Based on these figures, Ofcom considered that a penalty of **£10,000** would be proportionate taking into account all the relevant circumstances, including the need to achieve an appropriate level of deterrence, and it is unlikely to place the Licensee in a financially precarious position.

**Relevant precedents set by previous cases**

89. Ofcom’s Penalty Guidelines published on 13 June 2011 also indicate that Ofcom will, in determining a penalty, have regard to any relevant precedents set by previous cases, but may depart from them depending on the facts and context of each case.
90. Pursuant to the Communications Act 2003, the Broadcasting Acts 1990 and 1996, and the Broadcasting Code<sup>41</sup>, Ofcom has previously imposed penalties for breaches of the Broadcasting Code. However, these are of limited assistance in the determination of this case for the following reasons:
- a) previous cases concerned a different range and/or number of breaches of the Broadcasting Code to the present case and/or were determined on the basis of penalty guidelines which have now been superseded by the current Penalty Guidelines published on 13 June 2011; and
  - b) the penalty in each case was assessed against the circumstances of that particular case in the round.
91. The following sanctions cases included some similar breaches of the Broadcasting Code. They can however be distinguished from the present case in that they included breaches which were cumulative over a period of time rather than several breaches resulting from a single broadcast as in this case.

---

<sup>41</sup> There have been a number of versions of the Broadcasting Code (see <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/> ). In the present case, the applicable version of the Broadcasting Code is the 28 February 2011 (referred to in this document as the Code). Programmes broadcast on or up to 24 July 2005, were dealt with under the ITC Programme Code (see <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/legacy/itc-programme-code/>).

92. **27 December 2011 at 10:00 to 13:00 and 16:00 to 21:00 E Entertainment UK Limited in respect of its service E! Entertainment (“E!”) (TLCS-524)**<sup>42</sup>. Sanction of £40,000 for serious and repeated breaches of Rule 1.3 (Children must also be protected by appropriate scheduling from material that is unsuitable for them) during the broadcast of episodes of the reality television series *Girls in the Playboy Mansion*. Ofcom found that material of a highly sexualised nature had been shown repeatedly throughout the day on a Bank Holiday during the Christmas holidays. Ofcom found that the numerous shots of naked breasts, genitals and buttocks, although blurred, considered together with the sexualised editorial content, and the repeatedly bleeped and masked offensive words, demonstrated that this material was not suitable for children and had not, given the times at which it was repeatedly broadcast, been suitably scheduled. Ofcom noted that the Licensee had recently been found in breach of Section One of the Code on two previous occasions. Following the second of these two previous breaches, Ofcom had put the Licensee on notice “that it is particularly concerned about the Licensee’s compliance procedures and will proceed to consider further regulatory action should any similar incident occur”.
93. **4 June 2008, MTV Networks Europe in respect of its channels TMF, MTV France, MTV UK and MTV Hits**<sup>43</sup>. Sanction of £255,000 (in aggregate) for numerous serious breaches of Rules 1.3, 1.4, 1.14, 2.3 and Licence Condition 11. This sanction concerned serious, repeated and persistent compliance failures on four separate channels owned and operated by MTV over an extended period of time from June 2006 to August 2007. In addition, the breaches took place after formal warnings and guidance from Ofcom which was consistently ignored by MTV. These compliance failures resulted in the most offensive language and inappropriate content being broadcast, some pre-watershed. With reference to Rule 1.3 (inappropriate scheduling), this case concerned the following services: TMF – repeated use of the most offensive language pre-watershed during a music video and a trailer; MTV UK – repeated use of the most offensive and offensive language pre-watershed during a reality programme and a film review programme; and MTV Hits – offensive texts transmitted pre-watershed on a text messaging board and repeated use of the most offensive language during a factual entertainment programme broadcast pre-watershed.
94. In the present case, as in the above cases, Ofcom was of the view that the contraventions were serious.
95. As set out in the Breach Decision, the Licensee submitted that it was being treated inconsistently compared to other licensees and referred to a 2004 Ofcom breach decision which concerned a music video by The Streets entitled “Blinded by the Lights” (Broadcast Bulletin 24)<sup>44</sup> (the “Blinded by the Lights case”). This case was not considered for sanction. The Blinded by the Lights case related to contraventions in respect of a version of the Broadcasting Code, the ITC Programme Code<sup>45</sup> which applied to broadcasts made in or up to 24 July 2005. The version of the Broadcasting Code applicable to the present case is the Ofcom Broadcasting Code, published in February 2011.
96. The Video being considered for sanction in the present case can be contrasted with the Blinded by the Lights case. The content in the Video was overtly sexual and potentially

<sup>42</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/E\\_Entertainment\\_UK\\_Ltd.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/E_Entertainment_UK_Ltd.pdf)

<sup>43</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/mtv.pdf>

<sup>44</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb\\_24/bull.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/pcb_24/bull.pdf)

<sup>45</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/legacy/itc-programme-code/?a=0>

offensive throughout its duration, in that it contained a high proportion of frequently repeated images of semi-naked female performers dancing provocatively or engaged in simulated sexual activity, portrayed in a manner that Ofcom considered to be degrading to women. In addition, Ofcom found that the Video's lyrics contained references to violence and a significant number of examples of offensive language, the Video also contained depictions of drug taking, which when considered as a whole resulted in the Licensee being found in breach of six separate Code rules. In contrast, the Blinded by the Lights case found the licensee in question to have breached only one of the rules of the ITC Programme Code<sup>46</sup>.

97. Ofcom considers each case on its merits.

### **Cooperation**

98. In accordance with the Penalty Guidelines, Ofcom may increase the penalty where a licensee has failed to cooperate with Ofcom's investigation.
99. The Licensee in this case acknowledged the breach. In Ofcom's view, the Licensee has been cooperative. For example, it has: provided prompt responses to Ofcom's requests for information relating to the material broadcast and the service in general.
100. Accordingly, Ofcom does not therefore consider it appropriate to increase the amount of any penalty we may impose on account of a failure to cooperate in this case.

### **Conclusion on the level of financial penalty**

101. Any penalty Ofcom imposes on the Licensee must be appropriate and proportionate to the contravention in respect of which it is imposed. Ofcom's central objective in setting a penalty is deterrence. An appropriate penalty would be one that secures this objective (doing so in a proportionate way).
102. As regards the weighting of the factors considered above, it is Ofcom's view that the following factors are of particular importance in the circumstances of this case, and in the consideration of a penalty amount:
- (a) The contraventions were serious; and
  - (b) The Licensee's failure to take all appropriate steps to prevent the contravention, particularly given the previous opportunities afforded to it by Ofcom.
103. Having regard to all the factors referred to above and all the representations to date from the Licensee, Ofcom's Sanctions Decision is that an appropriate and proportionate sanction would be a financial penalty of **£10,000**. In addition, Ofcom considers it appropriate and proportionate to issue a direction to the Licensee to broadcast a statement of Ofcom's findings in this case, on a date and in a form to be determined by Ofcom.

**28 June 2013**

---

<sup>46</sup> See footnote 45