

## Drive Time with James Levett

<b>Type of case</b>	Broadcast Standards
<b>Outcome</b>	In Breach
<b>Service</b>	WCR FM
<b>Date &amp; time</b>	9 November 2022, 16:35
<b>Category</b>	Offensive language
<b>Summary</b>	The most offensive language was broadcast at a time when children were likely to be listening, and was not justified by the context. In breach of Rules 1.14 and 2.3 of the Broadcasting Code.

### Introduction

Wolverhampton Community Radio (“WCR FM”) is a community radio station broadcasting to Wolverhampton and South Staffordshire. Its output is primarily music, news, public service information and entertainment. The licence for WCR FM is held by Wolverhampton Community Radio Training (“WCR FM” or “the Licensee”).

*Drive Time with James Levett* is a radio programme broadcast on WCR FM from 15:00 on weekdays.

Ofcom received a complaint about the use of offensive language in the above programme during the music track “Best Day of My Life” by Tom Odell, broadcast at around 16:35. The track contained one use of the word “fuck”.

We considered this raised potential issues under the following rules of the Ofcom Broadcasting Code (“the Code”):

- Rule 1.14: “The most offensive language must not be broadcast...when children are particularly likely to be listening (in the case of radio)...”.
- 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...”

Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

## Response

Ofcom did not consider it necessary to request comments from the Licensee before reaching its Preliminary View. However, when providing Ofcom with background information about the programme, WCR FM explained that this song “slipped through the net” of its rigorous checking procedures but that it did “not believe there was any potential for offence to the listeners generally”. It added that its target audience is primarily over-30s, but that its “content is still chosen and managed with regard to the potential for a child listening at any time”. It further added that, upon being notified of the complaint, it “listened to the broadcast several times and was unable to perceive the word” and that even after reading the lyrics, the word was “still obscure”. Nevertheless, it added that it “will always comply in line with our regulator’s requirements”, and the version was “censored” immediately when it became aware of the complaint. The Licensee also said that the content of the song did not comply with its “considerations with regard to decency” and that it would only have been played on a couple of occasions before being flagged, given that it was “included as a spot play for one week”. WCR FM concluded that the complainant “must have been aware of the record from another context and noticed [the Licensee] had played an uncensored version”.

Ofcom prepared a Preliminary View finding the programme in breach of Rules 1.14 and 2.3 and provided it to WCR FM for its comments. In response, the Licensee said that the presenter involved was “no longer a part of the station” and that it was aware that the fact that the programme was not presented live compounded the issue, as it was not possible for an apology to be issued immediately. WCR FM also said that it recognised its error that its strict vetting process had failed in this instance.

## Decision

Reflecting our duties under the Communications Act 2003, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes. Section Two of the Code requires that generally accepted standards are applied to content so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material in programmes.

Ofcom takes account of the audience’s and the broadcaster’s right to freedom of expression as set out in Article 10 of the European Convention on Human Rights when considering a broadcaster’s compliance with the Code.

### Rule 1.14

Rule 1.14 of the Code prohibits the broadcast of the most offensive language on radio when children are particularly likely to be listening.

When considering this case, Ofcom took into account our research into [Public attitudes towards offensive language on TV and radio](#), which was published in September 2021. This research found that the word “fuck” was considered by audiences to be among the most offensive language and required clear and strong contextual justification. It also found that audiences consider that, in order to protect children, this word should not be aired on television before the watershed or on radio at times when children are particularly likely to be listening.

According to Ofcom's [Guidance on offensive language on radio](#), radio broadcasters should have particular regard to broadcasting content at the following times: between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term time; and between 06:00 and 19:00 at weekends all year around, and in addition, during the same times from Monday to Fridays during school holidays.

We took into account the Licensee's comments that the station and its music profile is not aimed at children. However, in this case, the broadcast of the word "fuck" at 16:35 on a weekday during term time was a clear example of the most offensive language being broadcast at a time when children were particularly likely to be listening.

Ofcom also had regard to WCR FM's argument that it had been unable to identify offensive language on listening to the track and that the offensive language was "obscure". However, in Ofcom's view, the word "fuck" was clearly audible and likely to be identified by listeners, including children. We also took into account that there was no apology after this broadcast of the most offensive language.

We took into account that the Licensee accepted that it had made an error in broadcasting the most offensive language at this time of day and that it said the version was "censored" immediately when it was notified of the complaint. However, Ofcom's Decision is that the programme was in breach of Rule 1.14.

### Rule 2.3

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive content is justified by the context. Context includes, for example: the editorial content of the programme; the service on which it is broadcast; the time of broadcast; and the likely expectations of the audience.

In Ofcom's view, the broadcast of the most offensive language at 16:35 on a weekday during term time, a time when children were particularly likely to be listening, was clearly capable of causing offence to listeners. Ofcom then considered whether the broadcast of this offensive language was justified by the context.

With regard to the editorial content of the programme, we took into account that the offensive language occurred in a music track which the Licensee had the opportunity to check prior to broadcast and that there was no apology following the broadcast of the offensive language. Ofcom also took into account that the service WCR FM does not typically feature potentially offensive content, and that the offensive language was broadcast at a time of day when children were particularly likely to be listening. We also took into consideration the Licensee's representations that it did not believe that there would have been any potential offence to listeners generally. However, as a result of the above factors, we considered that the majority of listeners to this station at this time of day, and in particular parents and carers, would not have expected to hear this level of offensive language.

As above, Ofcom took into account WCR FM's recognition of the error and its explanation of the circumstances that resulted in the broadcast, as well as the steps the Licensee said it had taken after being made aware of the complaint.

However, in taking into account all the above, Ofcom's Decision is that the broadcast of the most offensive language in this programme was not justified by the context and, therefore, the broadcast was also in breach of Rule 2.3 of the Code.

## **Breaches of Rules 1.14 and 2.3**