

# Ofcom Broadcast and On Demand Bulletin

Issue 481  
11 September 2023

## Tuesday Night Request Show

|                        |   |
|------------------------|---|
| <b>Type of case</b>    | Broadcast Standards   |
| <b>Outcome</b>         | In Breach   |
| <b>Service</b>         | Stoke Mandeville Hospital Radio   |
| <b>Date &amp; time</b> | 18 April 2023, 21:25  |
| <b>Category</b>        | Offensive language  |
| <b>Summary</b>         | The broadcast of potentially offensive racially discriminatory language was not justified by the context. In breach of Rule 2.3 of the Broadcasting Code. |

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

### Introduction

Stoke Mandeville Hospital Radio is a restricted radio service broadcasting to the Stoke Mandeville Hospital in Buckinghamshire. The licence for Stoke Mandeville Hospital Radio is held by Stoke Mandeville Hospital NHS Trust (“SMHNT” or “the Licensee”).

Ofcom received complaints about the use of racially discriminatory language during the programme *Tuesday Night Request Show*, which is broadcast on Tuesdays between 20:00 and 22:00. During the programme, one presenter (“Presenter 1”) revealed the answers to questions that had been asked to listeners earlier in the show. One of the questions was “Which song writer, or song writing team, has written the song *Dynamite by Mud?*”, to which a second presenter (“Presenter 2”) suggested the answer was “ching chong chinaman”. It was subsequently revealed that the answer was Nicky Chinn and Mike Chapman.

Towards the end of the show, approximately 30 minutes later, Presenter 2 said: “I hope I haven’t offended anybody”. Presenter 1 then said, “Hopefully not”, to which Presenter 2 replied “Hope I have” and laughed.

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

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...discriminatory treatment or language (for example on the grounds of...race...)...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

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

### **Response**

SMHNT said that it “regret[ted] any upset caused to our listeners” and described this incident as a “mistake”. It said that, when the complaint was brought to its attention, it had removed Presenter 2, who had used the offensive language, off “all presenting duties” whilst Ofcom and the Licensee carried out their respective investigations. It added that Presenter 2 would not be back on air until Ofcom’s investigation process is complete.

SMHNT said that Presenter 2: had acknowledged that “what he said was wrong” but felt that it “was not said with any malice”; “deeply regrets” what was said; and understood that this language “does not meet the required standard for broadcasting”.

The Licensee said that Presenter 2 was being provided with additional training and guidance on “the required standards” and that it is “ensuring that all our on-air teams fully understand the required standards”. It said that this was an ongoing process, but that “additional effort” was being put in since being notified of the complaint.

#### *Representations from the Licensee on Ofcom’s Preliminary View*

Ofcom prepared a Preliminary View finding the programme in breach of Rule 2.3 and provided it to SMHNT for its comments. In response, the Licensee apologised again for the incident, adding that it “deeply regrets any offence caused by the language... and accepts that this was wrong”, noting that its “standards fell below what should have been broadcast”. The Licensee said that the presenter was “very sorry for the upset he may have caused” and “has taken time to reflect on his actions”. SMHNT said it “took immediate action following the broadcast”, including removing the presenter from broadcasting duties and providing him and all other presenters with “additional guidance and training about standards and broadcast content”. The Licensee said it had “learnt lessons” from this incident and that it is “working to ensure that inappropriate content never goes out again”.

#### *Representations from the presenter on Ofcom’s Preliminary View*

Ofcom recognises that there may be a person or organisation who may be directly affected by the outcome of an investigation by Ofcom. Our procedures encourage broadcasters to seek to take account of and include such representations. In this case, Ofcom considered it was appropriate to ask the Licensee to invite Presenter 2 to make representations on the Preliminary View if he wished to.

The presenter provided his representations via a letter, which was sent to Ofcom by the Licensee. The presenter apologised and said that he “deeply regret[s] the language [he] used on the programme”, noting that it was “a moment of lapse in judgement” and that he would “never intend to cause upset or use the wrong type of language on air”. He said that, since the incident, SMHNT has given him and “all other presenters additional training and guidance on content and language and reminded [them] all of the standards required”. The presenter described the incident as a mistake and said that he “will ensure that this does not happen again”.

## Decision

Reflecting our duties under the Communications Act 2003, 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 Section Two of the Code. Broadcasters have the editorial freedom to include potentially offensive language in their programming, as long as they comply with the Code.

Ofcom also has due regard in the exercise of its functions to the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between those who share a relevant protected characteristic, such as race, and those who do not.

Rule 2.3 requires that broadcasters must 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.

Ofcom first considered whether the use of the phrase “*ching chong chinaman*” in the programme had the potential to cause offence.

Ofcom took into account our 2021 research on [Public attitudes towards offensive language on TV and radio](#), which recognised the significant levels of offence that words related to race, ethnicity and nationality could cause. This research classified the phrase “*ching chong*” as ‘strong’ language, considered by audiences to be highly offensive and requiring clear and strong contextual justification. This research also classified the word “*chinaman*” as ‘moderate’ language, considered by audiences to have greater potential for offence than mild words and requiring a higher level of context. Further, our 2020 [research on Audience Expectations in a Digital World](#) also found that audiences considered that Ofcom should prioritise addressing discriminatory content over other types of offensive content.

In Ofcom’s view, the broadcast of potentially offensive racially discriminatory language was clearly capable of causing offence to listeners. Ofcom then went on to consider whether the broadcast of this offensive language was justified by the context.

Ofcom took into account that this language was broadcast later in the evening at approximately 21:25. However, we considered that listeners would have been unlikely to expect to hear this level of potentially offensive racially discriminatory language on a hospital radio station at any time of day. We considered that the use of discriminatory language in this case was likely to have been interpreted by listeners as Presenter 2 using that language as a play-on-words on the name “Nicky Chinn”, which had

been part of an answer to a question asked earlier in the programme. However, we considered this would have provided limited, if any, context to justify the offence caused by this use of discriminatory language.

Ofcom also considered that there were no additional contextual factors which would have alerted the audience to the potentially offensive nature of the content, such as a warning before the offensive language was used or the language being used in a discussion about experiences of racism or raising awareness of discrimination.

Ofcom acknowledged that Presenter 2 had said *“I hope I haven’t offended anybody”* at the end of the programme. However, Ofcom considered that this did not amount to an apology and was unlikely to have lessened the potential offence to listeners, given the same presenter immediately commented *“Hope I have”*, thereby, in our view, undermining the potential mitigatory effect of his initial statement.

As a result of these factors, Ofcom considered that there was insufficient contextual justification for the use of this offensive language during the programme.

Ofcom took into account that the Licensee and Presenter 2 had apologised to Ofcom for the incident and the steps that the Licensee said it has taken as a result of this incident, including providing additional training and guidance to all of its presenters. However, Ofcom’s Decision is that the broadcast of potentially offensive racially discriminatory language in this programme was not justified by the context and was in breach of Rule 2.3.

### **Breach of Rule 2.3**