

Ofcom Content Sanctions Committee

Consideration of	Life TV Media Ltd in respect of its service Life TV
For	Breaches of sections 3.3 (Programme Content: ‘Major Matters’ - requirement for due impartiality on major matters of political controversy) and 4.3 (Programmes at the Time of Elections – requirement to ensure and maintain due impartiality during elections) of Ofcom’s (ex-ITC) Programme Code in the repeated transmission of two programmes first broadcast on 5 April 2004 and 26 April 2004 respectively.
On	5 April 2004 and 26 April 2004 onwards
Decision to Fine	£12,000

Summary of Decision

For the reasons set out in full in the Decision below, the Ofcom Content Sanctions Committee, (“the Committee”) found as follows:

1. Life TV Media Ltd (“Life TV Media”) is licensed by Ofcom to run the satellite service Life TV. It transmits a variety of material aimed at family viewing (including light entertainment).
2. Life TV Media broadcast the programme, *European Union: Shock Waves*, on 36 occasions between 5 April 2004 and 25 May 2004. *European Union: Shock Waves* was a highly partial critique of the European Union with no alternative viewpoints either in the programme or in the service as a whole. It was presented by Trevor Colman who is an active member of the UK Independence Party (“UKIP”) and was, at the time of broadcast, contesting a seat in the South West (Teignbridge) as a UKIP candidate in the European Parliamentary Elections held on 10 June 2004. It was transmitted during the election period for the European Election. The transmission of this programme was therefore in breach of section 3.3 (Programme Content: ‘Major Matters’ and requirement for due impartiality on major matters of political controversy) and section 4.3 (Programmes at the Time of Elections and the requirement to ensure and maintain due impartiality during elections) in that the programme was presented by a UK Independence Party (UKIP) candidate and broadcast on days within the ‘election period’ for the European Parliamentary Elections (the period began on 5 May 2004).
3. Life TV Media broadcast the programme *The Real Face of the European Union* on 25 occasions between 26 April 2004 and 4 May 2004. The programme was a highly partial critique of the UK’s role in the EU and was argued from a separatist perspective. There were no alternate viewpoints either in the programme or in the service as a whole. *The Real*

Face of the European Union was produced by the organisation: The Campaign for Truth in Europe. The transmission of *The Real Face of the European Union* throughout this period was a breach of section 3.3 (Programme Content: Major Matters) of the Code in that due impartiality was not maintained by the licensee.

4. Life TV Media appeared to have accepted both the above breaches and the matter was referred to the Content Sanctions Committee (“the Committee”) for the consideration of a statutory sanction. The Committee heard representations from the licensee.
5. There was no doubt in the view of the Committee that these were highly political and partial programmes produced from a totally partisan position. While the licensee appeared to accept the breaches, it was noted by the Committee that Life TV Media continued to argue at times during the hearing that the programmes “could...be interpreted as a documentary with no intent of creating political bias”. The Committee’s gravest concern is the extent of the breaches which were repeated over a sustained period and in the case of one of the programmes during an election period. The material shown was very clearly in breach of the relevant provisions of the Code. The licensee appeared to misunderstand and misapply the ‘due impartiality’ requirements, took too much on trust from the suppliers of these programmes and did not satisfactorily discharge its own compliance function.
6. However, the Committee took into account that this appeared not to be a deliberate breach by the channel or motivated by malice aforethought or any particular political agenda but appeared to have been a genuinely inadvertent mistake which they felt the channel was very unlikely to repeat. The Committee also noted the measures that Life TV Media had since taken to ensure that appropriate procedures were now in place.
7. Taking all these matters into account, the Committee determined that the Code breaches were so serious that a sanction by way of a financial penalty was necessary. It concluded that in view of the seriousness of the breach and taking into account all the circumstances, an appropriate fine was £12,000 payable to Ofcom for forwarding to The Treasury.

Decision

1. The Ofcom Content Sanctions Committee met to hear the submissions of Life TV Media Ltd (“Life TV Media”) before considering whether to impose sanctions on it for breaching the relevant Programme Code (formerly the Programme Code of the Independent Television Commission) (“the Code”) by transmitting material in breach of sections 3.3 and 4.3 of the Code in relation to two programmes first shown on 5 April 2004 and 26 April 2004 respectively and subsequently transmitted on multiple further occasions.

The need to consider sanctions

2. Life TV Media Ltd (“Life TV Media”) is licensed by Ofcom to run Life TV (TLCS 361), a light entertainment channel for general family viewing that broadcasts on the Sky platform (EPG 160).
3. On 5 April 2004, Life TV Media broadcast for the first time the programme *European Union: Shock Waves*. Ofcom received one complaint about this programme. It was 34 minutes long. It was subsequently broadcast on 35 further occasions up to and including 25 May 2004. On two days it was broadcast twice and on one day three times. On 26 April 2004, Life TV Media broadcast for the first time the programme *The Real Face of the European Union*. It was 41 minutes long. It was subsequently broadcast on 24 further occasions up to and including 4 May 2004, on all but two occasions three times per day. Both programmes contained highly partial criticisms of the European Union in content and tone.
4. *European Union: Shock Waves* was introduced as having been “independently researched and produced as a public service to the people of the UK”. It was presented by Trevor Colman who was captioned as an “independent researcher - Sanity Group”. This is an anti-EU lobby group, taking its name from Subjects Against the Nice Treaty. Trevor Colman is, however, an active member of the UKIP and was contesting a seat in the South West (Teignbridge) as a UKIP candidate in the European Parliamentary Elections held on 10 June 2004. A disclaimer at the beginning of the programme told viewers that “the views expressed in this programme are not necessarily representative of the views of the broadcaster or its employees”.
5. The focus of *The Real Face of the European Union*, produced by The Campaign for Truth in Europe, was the UK’s role in Europe, which it considered from a totally partial position and a separatist perspective. Ofcom received two complaints about this programme. The emphasis was on the UK’s loss of sovereignty over taxation, law making and defence as well as EU corruption. There was a disclaimer at the end of the programme that the makers of the film were “not affiliated with any political party”. However, Nigel Farage, MEP for the UKIP, featured prominently, as well as other well known critics of the EU such as Norris

McWhirter. There were no MPs or MEPs from any other party involved, nor any other pro-EU voice included.

6. Both *European Union: Shock Waves* and *The Real Face of the European Union* were in breach of section 3.3 of the Programme Code. This states that:

“In dealing with major matters of controversy, licensees must ensure that justice is done to a full range of significant views and perspectives”.

In fact, the Code specifically cites the UK’s role in the European Union as an example of a major matter. These programmes were presented from one point of view and did not acknowledge other viewpoints at any time. If a licensee does not maintain due impartiality within a programme on a matter of controversy, then it must ensure that it is maintained on the service through other programmes (in this case broadcast during the election period) to ensure that impartiality over time is maintained. This was not achieved in the case of either of these two programmes.

7. In addition, *European Union: Shock Waves* was in breach of section 4.3 of the Code. This states that:

“Appearances by candidates in UK elections as...presenters of any type of programme should cease for the election period”.

European Union: Shock Waves was broadcast during the election period of the 2004 European elections and was presented by Trevor Colman. Trevor Colman was a candidate for the UKIP standing for election in the seat of the South West (Teighbridge).

8. In correspondence, John Hammond, Director of Life TV Media told Ofcom that he had not personally seen the programme *The Real Face of the European Union* because “it came with an assurance of the producers that every claim made [could] be proved as factual and that it [was] not a political broadcast”. Mr Hammond had regarded the programme as a “documentary – the subject being the history of the UK’s involvement in the EU and the effect of the EU on certain aspects of our lives”. In respect of the programme *European Union: Shock Waves* John Hammond said that it was “regrettable that the company was not made aware of Trevor Colman’s position with the [UKIP] party by the producers of the programme. With this information, the scheduling department would not have repeated the programme as part of the normal scheduling procedure”.
9. As to the question of whether any payment had been received for broadcasting the programmes, Life TV Media stated that an amount of technical work had been needed to both programmes before they met broadcast standards. A total of £3,000 was charged for the work on the programmes but no other revenues were collected.
10. Several months after Ofcom opened its investigation, Life TV Media confirmed to Ofcom that it had replaced its compliance officer and dismissed the Director of Programming who was dealing with the programmes for gross misconduct. The Director of Programming had acted outside her area of responsibility, by-passing programme procedures, scheduling measures and the previous Ofcom compliance

officer. Life TV Media said that it had taken these matters very seriously and, following the new appointment of a compliance officer, had reviewed its procedures regarding programme acquisition, scheduling and broadcast to prevent this type of incident from happening again. Ofcom was concerned that the Director of Programmes had been able to act in isolation for such a long period and that it had taken Life TV Media until November 2004 to take action.

11. According to Life TV Media, the compliance failures were inadvertent and the result of human error following a decision to broaden the content of the channel by extending its range of programming and increasing the amount of factual programming. However, the Committee was concerned that Life TV Media, having decided to move into new areas of programming, had not put in place adequate training and operational procedures. Furthermore, no one within the broadcaster, including its compliance officer and Director of Programmes, had checked or had had the sense to check whether there might be any problem with the content of the programmes.
12. Ofcom considered these breaches of sections 3.3 and 4.3 of the Code to be significant and serious breaches. These obligations existed to ensure due impartiality is maintained in matters of political controversy and, in particular, at times of elections as required by the Communications Act 2003 (and its predecessor the Broadcasting Act 1990). The Committee considered that sections 3.3 and 4.3 of the Code could not be clearer. In particular, section 3.3 specifically refers to the UK's role in the European Union as being a matter which in most circumstances would be considered as a major matter of political controversy and therefore requiring that licensees achieve "due impartiality" and ensure that "justice is done to a full range of significant views and perspectives". Life TV Media was in clear breach of those obligations. Furthermore, not only were the breaches serious, but they were repeated. What was of particular concern was that no one (including the senior management) at the licensee appeared to be aware that material in very clear breach of the Code was being broadcast over a period of up to six weeks.
13. Ofcom accordingly found Life TV Media in breach of the Code and referred the matter for consideration of sanctions to the Ofcom Content Sanctions Committee ("the Committee"). Ofcom's Outline Procedures for Statutory Sanctions in Content Cases (a copy of which was sent to Life TV Media before the hearing), clearly states that Ofcom will impose a statutory sanction not only if it believes that a broadcaster has deliberately or seriously breached the terms of its licence conditions or Ofcom's statutory Codes, but also if Ofcom believes that it has done so repeatedly.
14. The Committee met to hear the submissions of Life TV Media before considering whether to impose sanctions on it for breaching the relevant Programme Code.

Relevant considerations

15. The Committee regards the breaches of the Code as serious. Its gravest concern is the extent of the breaches which were repeated over a sustained period and during an election period. The material shown was very clearly in breach of the relevant provisions of the Code. The licensee

appeared to misunderstand and misapply the 'due impartiality' requirements, took too much on trust from the suppliers of these programmes and did not satisfactorily discharge its own compliance function.

16. The Committee noted Life TV Media's representations that the transmission of these programmes was inadvertent rather than a deliberate act motivated by malice aforethought or political agenda. The Committee was nevertheless concerned that the licensee had originally claimed that the programmes were simply factual documentaries. While Life TV Media appeared to accept the breaches, the Committee was particularly concerned to hear the licensee again argue at the hearing that the programme could be interpreted as a documentary with no intent of creating a political bias. There was no doubt in the Committee's mind that these programmes were *not* impartial documentaries. In fact, *European Union: Shock Waves* was in the Committee's view a long political broadcast by a UKIP candidate standing in the 2004 European Elections. Furthermore the broadcaster continued to make representations to Ofcom that no complainant had given specific details about factual inaccuracy. The Committee was concerned that the licensee appeared to be unable to distinguish the important difference between accuracy and impartiality.
17. The Committee also noted that the compliance failures were, according to the licensee, the result of human error. However, having heard Life TV Media's submissions, the Committee is concerned that the broadcaster, having made a positive decision to move into new areas of programming outside of what they know, did not consider that different considerations might apply and therefore ensure that adequate training and operational procedures were in place to deal with them. The Committee is also concerned that no one within the company, including its compliance officer and Director of Programmes, who had seen the programmes in full knowledge of the Code, had checked or had had the sense to check whether there might be any problem with the content of the programmes. Furthermore, it had been a long period during which the Director of Programmes had been able to act in isolation and another long period had elapsed after the matter had been brought to the company's attention by Ofcom before appropriate action was finally taken. In this sense, the licensee had been negligent in carrying out its compliance.
18. The Committee accepts and also takes into account the contrition expressed on behalf of Life TV Media and its representation as to the measures it has been taking to improve its compliance systems and ensure that appropriate procedures are now in place. The Committee also accepts that, having been found in breach of the Code for these compliance failures, the channel is very unlikely to repeat such breaches.

Appropriate sanction

19. Taking all of the above considerations into account the Committee determines that a sanction by way of a fine is necessary.
20. By the Communications Act 2003, section 237(3), a financial penalty for Life TV Media in this case may not exceed the greater of £250,000 or 5 per cent of Life TV Media's qualifying revenue for the relevant period

(year ending 2003). Once received by Ofcom, any fine is forwarded to The Treasury.

21. On the view the Committee took of the seriousness of the Code breaches that had occurred and of all the other considerations mentioned above, the Committee considered a financial penalty of £12,000 was appropriate. The amount reflects Ofcom's concern that a licensee breached the clear requirement for "due impartiality" in a "major matter" and the fact that a candidate standing in a UK election appeared as a programme presenter in an election period. The breaches were exacerbated by the repeated transmission of the material over a sustained period.

Conclusion

22. **The licensee clearly and seriously breached the Code's requirements for due impartiality on major matters of political controversy and for ensuring due impartiality during elections. Taking into account the seriousness and sustained nature of the breaches, Life TV Media, in respect of its service Life TV, is fined £12,000.**

Content Sanctions Committee

Richard Hooper
Rosemary Kelly
Tim Suter

21 June 2005