

Ofcom Content Sanctions Committee

Consideration of sanction against	Lakeland Radio Limited (“Lakeland” or “the licensee”) in respect of its service Lakeland Radio.
For	<p>Breaches of the Ofcom Broadcasting Code (“the Code”) of:</p> <p>Rule 2.11: “Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.</p> <p>In respect of the broadcast of three listener competitions called <i>Suss the Celeb</i>.</p>
Between	2 January 2008 to 1 May 2008
Decision	To impose a financial penalty (payable to HM Paymaster General) of £15,000 and, in addition, to require the licensee to broadcast a statement of Ofcom’s findings on its service Lakeland Radio, on a specified occasion, at a time, and in a form, to be determined by Ofcom.

Summary

- 1.1 For the reasons set out in full in the Decision, under powers delegated from the Ofcom Board to Ofcom's Content Sanctions Committee ("the Committee"), the Committee decided to impose statutory sanctions on Lakeland Radio in light of the serious nature of its breaches of the Ofcom Broadcasting Code ("the Code").
- 1.2 This adjudication under the Code relates to the broadcast of three listener competitions by Lakeland Radio Limited on its station, Lakeland Radio between 2 January 2008 and 1 May 2008.
- 1.3 *Suss the Celeb* was a daily competition feature in Lakeland Radio's weekday drivetime show. Each daily round of the competition began at approximately 17:20 when a clip of a mystery celebrity's voice was broadcast. Listeners were invited to enter the competition for an opportunity to have their answer (the name of the celebrity) announced on air. According to the competition's terms and conditions, one or more entrants were to be selected at random from that day's entries, and their answer(s) revealed on air at the end of that day's round. If the entrant(s) had guessed incorrectly, all other entries in that day's round were discarded and listeners were invited to re-enter in the next day's round. A clip of the same celebrity's voice was broadcast until it was identified. The cash prize, which started at £5, was increased by £5 each day until the correct answer was aired.
- 1.4 Listeners were invited to submit the name of the celebrity by telephoning an 0845 number. Calls to 0845 numbers cost up to 5 pence per minute from a landline, although mobile costs may vary. Listeners could also enter the competition by sending a text message (or "SMS") to the station. Text entry was charged at a premium rate of 25 pence, plus a standard network charge.
- 1.5 Ofcom received a complaint from a listener who had entered the second of the three *Suss the Celeb* competitions on numerous occasions with the correct answer, but had not been selected to participate. The complainant alleged that, in view of the relatively small size of the station's audience, the fact that his correct answer had never been selected was evidence that the competition had not been conducted fairly.
- 1.6 Following initial investigation of the second competition, Ofcom extended its investigation to cover all three *Suss the Celeb* competitions broadcast between 2 January 2008 and 1 May 2008 (i.e. approximately 85 daily rounds). During these three competitions, an estimated total of 671 entries were received.
- 1.7 Ofcom's investigation revealed that, in most of the approximately 85 daily rounds of the competitions, the presenter deliberately selected telephone or SMS entrants who had submitted incorrect answers, which he then broadcast. This was in contravention of the competition's terms and conditions and was a deliberate means of preventing the prize from being won in that round. This led to another round of the competition, in which the prize fund was greater, thereby increasing the competition's 'entertainment value'. The practice resulted in all listeners who paid to enter the affected rounds having no chance of winning. The three competitions were therefore conducted unfairly, in breach of Rule 2.11 of the Code. The audience overall was also deceived as to the fair conduct of the competitions. In addition,

Ofcom considered the breaches in respect of each of the competitions to be sufficiently serious and repeated to warrant the imposition of a statutory sanction and, therefore, referred the case to the Committee.

Summary of Committee's Findings

- 1.8 The Committee considered the breaches of Rule 2.11 to be very serious. On approximately 85 occasions, competition entrants who were known to have incorrect answers were deliberately selected by Lakeland's presenter, preventing the prize from being won in that day's round of the competition. This resulted in additional daily rounds, and therefore a greater number of entries, before each prize was awarded. This was contrary to the competitions' terms and conditions and in contravention of the licensee's compliance obligations under the Code.
- 1.9 This unfair conduct caused material harm in terms of financial loss (albeit minimal) to Lakeland listeners who paid to enter the competitions in good faith, and on the basis that they had a fair and equal chance of winning. In fact, all listeners who entered the competitions during the rounds in which a wrong answer had been selected had no chance of winning. In addition, Lakeland's audience overall was deceived as to the fair conduct of the competitions. Breaches of the Code that result in audiences being misled have always been considered by Ofcom (and its predecessor regulators) to be amongst the most serious breaches that can be committed by a broadcaster. As such, these breaches represented a significant breakdown in the fundamental relationship of trust between a local radio station and its audience.
- 1.10 The licensee had relied solely on an assumption that the competitions were being conducted in accordance with their terms and conditions, without ensuring that relevant staff had received appropriate compliance training. The Committee was particularly concerned by this given the small number of staff who had responsibility for ensuring that Lakeland Radio's broadcast content complied with the Code. Moreover, it appeared to the Committee that there had been no adequate compliance procedures in place to ensure that content that was transmitted on Lakeland Radio was compliant with the Code.
- 1.11 Furthermore, the breaches in this case occurred after a significant number of high-profile and well publicised cases involving the unfair conduct of audience competitions by a number of other broadcasters. While there was evidence that senior management had made some efforts to communicate these issues to staff, no checks had been undertaken to ensure that these communications had been received and/or understood.
- 1.12 The fact this was a small local radio station with a limited audience did not detract from the seriousness of the Code breaches, nor did the Committee consider that it in any way abrogated the licensee's fundamental responsibility, under the terms of its licence, to ensure the compliance of its broadcast content.
- 1.13 Although an apology was broadcast on Lakeland Radio shortly after the unfair conduct came to light, the Committee was of the view that, while the apology had been timely, it had not explained the unfair conduct sufficiently clearly to allow listeners the opportunity to seek refunds. As such, the Committee

considered that the detriment to Lakeland's listeners had not been adequately remedied.

- 1.14 Since the licensee had become aware of the unfair conduct, it had taken steps to improve its compliance training and procedures going forwards. However, the Committee was not entirely assured that such steps were sufficient or that the improvements would be effective in ensuring future compliance.
- 1.15 The breaches of Rule 2.11 of the Code in this case represented a serious breakdown in the fundamental relationship of trust between a local radio station and its audience. Furthermore, on approximately 85 occasions, financial detriment was also caused to all Lakeland's listeners who paid to enter the competition, on the basis that it was being conducted fairly and in accordance with its terms and conditions. In addition, the seriousness was compounded by the licensee's lack of appropriate training and processes to ensure the compliance of its content. Instead, the licensee appeared to have relied on assumptions that Lakeland's staff were aware of, and were complying with, the relevant requirements of the Code.
- 1.16 Having considered the relevant facts as outlined above and all the representations made by the licensee, the Committee decided to impose a financial penalty of **£15,000** (payable to HM Paymaster General) which the Committee considered to be a proportionate and appropriate penalty in all the circumstances. In addition, the Committee directed the licensee to broadcast a statement of Ofcom's findings in relation to the case on its service Lakeland Radio, on a specified occasion, at a time, and in a form, to be determined by Ofcom.

Background

- 2.1 Lakeland Radio is a local commercial radio station broadcasting to Kendal and Windermere, in South Lakeland. When Lakeland Radio began broadcasting in 2001, CN Group Ltd. (“CN Radio”) held 39.9% of its shares, the remainder being held by a large number of individuals. CN Radio purchased the remaining 60.1% of shares in February 2005.
- 2.2 In addition to Lakeland Radio, CN Radio runs eight other local commercial radio services¹: The Bay (Morecambe Bay), City Beat 96.7 (Belfast), 107.1 Rugby FM (Rugby), Touch Radio (Warwick), Touch Radio (Coventry), Touch Radio (Staffordshire), Touch Radio (Stratford) and Touch Radio (Banbury).
- 2.3 The breaches occurred during three separate *Suss the Celeb* competitions broadcast on Lakeland Radio between 2 January 2008 and 1 May 2008. A different celebrity voice was broadcast for each competition. The relevant dates of the competitions were as follows:
 - First competition: between 2 January 2008 and 15 February 2008;
 - Second competition: between 16 February 2008 and 17 April 2008; and
 - Third competition: between 18 April 2008 and 1 May 2008.
- 2.4 The winner of the first competition received a prize of £160 and the winner of the second received £240. The third competition was suspended before a prize was awarded, due to CN Radio’s internal investigation of the breaches.
- 2.5 The operation of the competitions, and the selection of entrants, was the responsibility of Lakeland’s ‘drivetime’ show’s presenter. Telephone entries were answered by the presenter in the studio. Entrants were asked where they were calling from and for their name, contact number and answer.
- 2.6 Listeners who wished to enter by SMS were instructed to text the word “LAKES” followed by their answer to the general text number used for all listener communications with Lakeland Radio.
- 2.7 On the broadcaster’s own admission, the drivetime presenter was likely to have deliberately selected entrants who had submitted a wrong answer on most weekdays between 2 January 2008 and 1 May 2008. CN Radio admitted repeated instances of “malpractice” but stated that these had all occurred without its knowledge, and as a result of directions given to the presenter by a former Managing Director of the station, when Lakeland was under previous ownership.
- 2.8 There were an estimated 671 entries to the three *Suss the Celeb* competitions. Of these, 327 were SMS entries, raising a total revenue of £81.75, of which Lakeland Radio received £19.62. However, the actual cost to listeners who entered by SMS would have been greater due to costs charged by their own mobile phone networks in addition to the premium rate service charges and VAT. There are no data available relating to the precise number of telephone entries received but CN Radio has estimated that there were approximately four telephone entries per daily round. As telephone

¹ The Code breaches set out in this Adjudication occurred in content broadcast on Lakeland Radio only.

entries were charged at 0845 rate, the costs incurred by entrants and the revenue raised by the station would have been minimal.

Legal Framework

The Communications Act 2003

- 3.1 Ofcom has a duty under section 319 of the Communications Act 2003 (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.
- 3.2 The standards objectives are set out in section 319(2) of the Act. These include:
 - 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) of the Act).
- 3.3 In discharging its functions, Ofcom’s principal duties are to further the interests of citizens in relation to communications matters and the interests of consumers (section 3(1) of the Act) and to secure a number of other matters including:
 - 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) of the Act).
- 3.4 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) of the Act); and where relevant, 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) of the Act).

The Human Rights Act 1998

- 3.5 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 of Human Rights (the “Convention”).
- 3.6 Article 10 of the Convention provides for the right to freedom of expression. It 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.” Such rights may only be restricted if the restrictions are “prescribed in law and 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).

- 3.7 Ofcom must exercise its duty 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

- 3.8 Standards set by Ofcom in accordance with section 319 of the Act are set out in Ofcom’s Broadcasting Code (“the Code”) which came into force on 25 July 2005².

- 3.9 Guidance Notes³ accompanying each section of the Ofcom 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 Ofcom Code.

- 3.10 Section Two of the Code deals with Harm and Offence. The relevant Code rule is Rule 2.11, which states that:

“Competitions should be conducted fairly, prizes should be described accurately and rules should be clear and appropriately made known”.

Licence Condition

- 3.11 Under section 325 of the Act, a condition is included in broadcasters’ licences requiring the broadcaster to secure observance of the standards set by Ofcom under section 319 of the Act. If Ofcom is satisfied that the holder of a licence has contravened a condition of the licence, it may impose one or more of a number of sanctions.

Remedies

- 3.12 Section 109(3) of the Broadcasting Act 1990 (as amended) (the “1990 Act”) provides Ofcom with the power to direct a sound broadcasting services licensee to broadcast a correction or statement of findings (or both) in respect of a contravention of a licence condition.

- 3.13 Sections 110(1)(a) and 110(3) of the 1990 Act provide Ofcom with the power to impose a financial penalty on a sound broadcasting services licensee of up to £250,000.

- 3.14 Section 110(1)(b) of the 1990 Act provides Ofcom with the power to reduce the licence period by a specified period not exceeding two years.

- 3.15 Section 110(1)(c) of the 1990 Act provides Ofcom with the power to suspend a sound broadcasting services licence by up to six months.

² The Code can be found at <http://www.ofcom.org.uk/tv/ifi/codes/bcode>

³ Guidance Notes can be found at <http://www.ofcom.org.uk/tv/ifi/guidance/bguidance>

- 3.16 Under section 111 of the 1990 Act, Ofcom may revoke a sound broadcasting services licence if, following due process, it is satisfied that revocation is necessary in the public interest.

Investigation

Summary

- 4.1 Ofcom carried out an investigation into three *Suss the Celeb* competitions broadcast on Lakeland Radio between 2 January and 1 May 2008. During that investigation, the licensee was given the opportunity to make written submissions on the case. In light of the evidence and the licensee's responses, Ofcom concluded that the conduct of the three *Suss the Celeb* competitions was in breach of the Code, as outlined above and explained further below.
- 4.2 In addition, Ofcom found the breaches to be sufficiently serious to warrant the referral of the case for consideration by the Committee. Throughout the consideration of the imposition of a statutory sanction, the licensee was given opportunities to make written and (at the Committee's hearing) oral representations, which are summarised below. The licensee agreed to the 'fast-track' procedure for considering the imposition of sanctions, as set out in paragraphs 24 to 29 of Ofcom's outline procedures for statutory sanctions in content and content-related cases⁴.

Details of the investigation

- 4.3 Following receipt of a complaint regarding the second of the *Suss the Celeb* competitions, Ofcom wrote to Lakeland requesting its comments on how the competition, as broadcast on Lakeland Radio complied with Rule 2.11 of the Code and also requested other relevant information.
- 4.4 CN Radio (which owns Lakeland) responded on behalf of Lakeland. It provided various documents to assist Ofcom in its investigation, including copies of its Presentation Policy, its Policy on Promotions and Competitions, its General Terms and Conditions for Contests and a script of an apology broadcast on Lakeland Radio. It also provided the following representations:
- 4.5 CN Radio stated that it had a clear policy in place whereby all competitions were authorised by the station Programme Controller or Director prior to being allowed on air. The 'mechanic' and on-air execution of competitions were discussed and approved, but the details of the random selection process for competition entrants had not formed part of the approval process.
- 4.6 CN Radio said that as soon as the investigation into the complaint began, it became clear that there was a major flaw in the procedures that had been used by the presenter to select entries to be read out on air each day. He had been aware of the answers given by each person who had phoned or texted and deliberately selected wrong entries until such time as he had decided the competition should be won. This had not complied with CN Radio's General Terms and Conditions for Contests.

⁴ Ofcom's outline procedures for statutory sanctions in content and content-related cases are available at: <http://www.ofcom.org.uk/radio/ifi/iffguidance/sanctions/>

- 4.7 CN Radio said that it had become clear from interviews with all Lakeland Radio programming staff that “an instruction had been issued many years ago, by the former Managing Director of the station...not to award any cash prize until the ‘cash pot’ had reached a significant amount. This led to the presenters specifically excluding any correct answers from being read out on air”. CN Radio stated that there was no suggestion that the method of prolonging the duration of each competition had been used to increase revenue; rather, the aim was to build excitement and “marketing opportunities”.
- 4.8 CN Radio also stated that the Managing Director who had issued the instruction to prolong competitions in this way had left the station in March 2007 but, in the absence of any clear instruction to the contrary by the new management team, this means of conducting competitions had become accepted practice. CN Radio added that its interviews with the new management team showed they were unaware of the practice of prolonging competitions in this way, had assumed that the station’s presenters understood the meaning of the word “random” in the context of the selection of entrants and had not therefore issued any new guidelines.
- 4.9 CN Radio confirmed that, after its receipt on Thursday 1 May 2008 of notification of the complaint by Ofcom, it took immediate action to alter the third competition’s selection procedure so that the first entry received was put to air. The final round of the third competition was broadcast on Friday 2 May 2008 and a fairly selected entrant had failed to identify the correct answer. The competition was then suspended.
- 4.10 After considering CN Radio’s initial representations, Ofcom widened its investigation to cover all three *Suss the Celeb* competitions. It asked CN Radio for full details of all three competitions and for other relevant information including the total amount of reparation paid to the competition entrants following the broadcast of the apology on Lakeland Radio.
- 4.11 CN Radio admitted that the presenter had deliberately selected entrants with incorrect answers from the outset of the first competition (on 2 January 2008).
- 4.12 CN Radio stated that no reparation had been provided to listeners as a result of the broadcast apology, as no entrants had contacted Lakeland Radio regarding the matter. However, CN Radio submitted that it had made a donation of £1,000 to a local charity as a form of reparation for the unfair conduct.
- 4.13 CN Radio acknowledged that Lakeland Radio had misled the public. It reiterated that “although there were undoubtedly repeated breaches, these were all without [CN Radio’s] knowledge”.
- 4.14 CN Radio said that it had been extremely open and honest in its responses to Ofcom and added that the scope of its investigation had covered practices across all of its stations. It stated that what had occurred at Lakeland Radio was not representative of CN Radio as a whole.
- 4.15 CN Radio said that Lakeland Radio is a small station that is operated on very limited resources by “a handful of fairly inexperienced staff”. It said that “stations of this size often have budgets that are pared to the bone, which does not allow for the level of management or training that would be desirable

in an ideal world”. While it admitted that this did not excuse what happened, CN Radio hoped it gave “a clearer understanding of how the situation could have arisen”.

Ofcom’s Finding on the Breaches

- 5.1 Ofcom took all of CN Radio’s submissions into account when reaching its conclusions on the question of Code breaches.
- 5.2 Ofcom found that the deliberate selection of entrants with incorrect answers was contrary to the competitions’ terms and conditions which stated that entrants would be selected randomly. Although the purpose of the unfair conduct appeared to have been to prevent the prize from being won too soon, for ‘entertainment value’, and not to raise revenue or profit, it was nevertheless the case that listeners who had paid to enter the affected rounds on the basis that they had a fair and equal chance of winning had no chance of winning. Moreover, the unfair conduct caused material harm in terms of financial loss (albeit relatively minimal) to those listeners. Further, Lakeland Radio’s audience overall was misled as to the fair conduct of the competitions.
- 5.3 The competitions were therefore conducted unfairly, in breach of Rule 2.11 of the Code. Ofcom considered the breaches, in respect of each of the three competitions, to be sufficiently serious and repeated to warrant the consideration of the imposition of a statutory sanction.

CN Radio’s written representations on the imposition of a sanction

- 6.1 CN Radio said that the former Managing Director had been “used to having full management control” and had made it clear that “input from group management was not always welcome”. However, CN Radio stated that there had been nothing to indicate that any instruction or practice which varied from compliance with the Code was in place under the management of the former Managing Director. It added that it had only become aware of the practice of prolonging competitions when investigating the complaint regarding the *Suss the Celeb* competitions.
- 6.2 CN Radio explained that when a new Managing Director was appointed in March 2007, he reviewed all sales and programming activity. He “did not find anything which would have led [CN Radio] to suspect that instructions had been issued in direct contravention of Ofcom codes”. CN Radio confirmed that neither the new Managing Director nor the Group Programme Director found any areas which indicated any change to compliance procedures, processes or training was required.
- 6.3 CN Radio said that it “fully accepted that the station had badly misled its listeners” but asked Ofcom to consider, when deciding whether to impose a financial penalty, the impact that a large financial penalty would have on Lakeland Radio which is a small station.
- 6.4 It also stated that Lakeland Radio currently broadcast very little networked programming as it tried to provide output that was tailored to the citizens of

Kendal. It argued that RAJAR figures⁵ show it had a 30% reach which it believed demonstrated it was offering a “good local service”. CN Radio stated that if it received a large financial penalty, it may have to cut costs, resulting in an increase in the use of networked programming, which would be to the detriment of the citizens of Kendal.

Referral to the Content Sanctions Committee

- 7.1 It was considered that, taking all the circumstances into account, the breaches in respect of each of the competitions, were sufficiently serious and repeated to warrant the consideration of the imposition of a statutory sanction.
- 7.2 Therefore, in accordance with Ofcom’s outline procedures for consideration of statutory sanctions in content and content-related cases, the case was referred to the Committee.

Sanctions Hearing

- 8.1 The Committee held a hearing on 21 April 2009 at which CN Radio was given the opportunity to make oral representations before the Committee decided whether the breaches warranted the imposition of a statutory sanction, and, if so, of what type(s) and at what level(s).
- 8.2 The Committee was addressed by: Robin Burgess (Chief Executive, Cumbrian Newspapers Group), Julie Fair (Managing Director, CN Radio) and Rupert Allison (Commercial Services Director, CN Radio).
- 8.3 CN Radio apologised for what had happened. It said that it was an honest, honourable company which sought to do things correctly and that it was shocked when Ofcom notified it of the complaint against Lakeland Radio because the breaches were “counter-cultural” in terms of CN Radio’s overall approach to its business. It further stated that it had a “very good compliance record”.
- 8.4 CN Radio explained that upon receipt of the complaint it undertook a “full and frank investigation” across the whole of the CN Group and that it had found that this was an isolated incident at Lakeland Radio. It explained that whilst the former Station Managing Director (who was employed until March 2007) had resisted CN Radio’s input, it had not been aware of any compliance issues resulting from his management of Lakeland Radio. It added that, with hindsight, it now considered itself to have been “naïve rather than negligent” in its oversight of the station.
- 8.5 CN Radio said that its main concern was its listeners. It quickly broadcast an apology and gave a donation to a local charity. Whilst CN Radio acknowledged that it had misled its listeners, it emphasised that it had not set out to do so and had not made a significant amount of money from the competition.
- 8.6 CN Radio acknowledged that at the time of the complaint it was not “on top of compliance in the way that [it] should have been”, but added that like many small radio stations, Lakeland could not afford to have a dedicated

⁵ The audience figures measured by Radio Joint Audience Research (RAJAR), the official body responsible for measuring radio audiences in the UK.

compliance team. However, it assured the Committee that since Ofcom had informed it of the complaint, it had put new and improved compliance procedures in place.

- 8.7 The Committee questioned CN Radio about the compliance structure of Lakeland Radio at the time that CN Radio acquired full ownership of it in 2005. CN Radio said that the former Station Managing Director was in post, along with four presenters and four sales staff. There was also a Group Managing Director based at Lakeland. A Programme Controller was appointed whose duties were split between Lakeland Radio and another CN radio station, The Bay. When the former Station Managing Director resigned in March 2007, his replacement's duties were also split between the two stations. CN Radio said that both the new Station Managing Director and Programme Controller were based at The Bay and that they only made "flying visits" to Lakeland Radio. CN Radio added that it was the Programme Controller's responsibility for clearing the mechanic of competitions.
- 8.8 In response to questioning from the Committee about what compliance training had been undertaken between 2001 and 2007 (before the complaint about the *Suss the Celeb* competitions), CN Radio said that, although it held shares in Lakeland during that period, the station was run independently at a local level. CN Radio had only provided support services in areas such as HR and accounts. It explained that it was therefore uncertain whether any compliance training had been undertaken during that period. It also explained that it knew that the former Station Managing Director who was in post at the time, had previously managed a radio station, but was unsure whether his level of compliance training had ever been checked. CN Radio submitted that from December 2006 it was aware that the Group Programme Director had carried out some compliance training. It pointed to copies of emails sent to staff by both the Group Programme Director and the new Station Managing Director in 2007, as evidence of this. These emails were sent at a time of widespread media attention on the issue of the conduct of audience competitions. One of the emails attached the Code and the other asked staff to review procedures to ensure that listener competitions were conducted fairly.
- 8.9 The Committee enquired as to whether CN Radio had ever undertaken any checks to confirm whether Lakeland's staff had received and understood its compliance procedures and policies. CN Radio said that its Presentation Policy had been in place since 2006. It explained that after it had become aware of the complaint about the *Suss the Celeb* competitions, it added a page to this policy which required an employee signature to confirm that the document had been received and understood. This amendment had also been made to its Policy on Promotions and Competitions. It confirmed that signed policy documents were now added to each employee's HR file.
- 8.10 CN Radio said that, in the course of its investigation it uncovered that, due to the resistance of the former Station Managing Director to its input, documents issued to the whole CN Group by the Group Programme Director had not always reached staff at Lakeland Radio. CN Radio had assumed that when it issued documents to the Station Managing Director, he had passed them on to staff at Lakeland Radio. It also admitted that, in hindsight, staff had been given insufficient compliance training.

- 8.11 The Committee questioned CN Radio as to whether it considered that the apology broadcast on Lakeland had been sufficiently clear about the nature of the unfair conduct for listeners to determine how their entries may have been affected, or to understand that financial reparation was being offered, CN Radio said that the apology had been broadcast at the time of day that the competition had been broadcast. It added that at the time it had thought that the apology was clear, but that in hindsight, and taking into account that no listeners had contacted the station for reparation, it now accepted that the apology could have been clearer.

Sanctions Decision

- 9.1 In reaching its decision, the Committee considered carefully all the written and oral submissions made by the licensee, The Committee decided, for the reasons set out below, to impose a financial penalty of **£15,000** and to issue a direction requiring Lakeland Radio to broadcast a statement of Ofcom's findings in relation to the case, on a specified occasion, at a time, and in a form, to be determined by Ofcom. In deciding on an appropriate and proportionate level of financial penalty in this case, the Committee had regard to Ofcom's Penalty Guidelines⁶.

The seriousness of the breaches

- 9.2 Having considered all the evidence and the licensee's representations, the Committee found that the breaches in this case were serious, repeated and deliberate, as set out at paragraphs 9.3 to 9.6, below.
- 9.3 The Committee considered the breaches of Rule 2.11 to be very serious. On approximately 85 occasions, competition entrants who were known to have incorrect answers were deliberately selected by Lakeland's presenter, preventing the prize from being won in that day's round of the competition. This resulted in additional daily rounds, and therefore a greater number of entries, before each prize was awarded. This was contrary to the competitions' terms and conditions and in contravention of the licensee's compliance obligations under the Code.
- 9.4 This unfair conduct caused material harm in terms of financial loss (albeit minimal) to Lakeland listeners who paid to enter the competitions in good faith, and on the basis that they had a fair and equal chance of winning. In fact, all listeners who entered the competitions during the rounds in which a wrong answer had been selected had no chance of winning. In addition, Lakeland's audience overall was deceived as to the fair conduct of the competitions. Breaches of the Code that result in audiences being misled have always been considered by Ofcom (and its predecessor regulators) to be amongst the most serious breaches that can be committed by a broadcaster. As such, these breaches represented a significant breakdown in the fundamental relationship of trust between a local radio station and its audience.
- 9.5 The Committee found that, while the licensee submitted that the breaches had occurred without its knowledge, the unfair conduct was nevertheless

⁶ Ofcom's Penalty Guidelines are available at: <http://www.ofcom.org.uk/about/account/pg/>. Section 392 of the Act requires Ofcom to prepare and publish a statement containing guidelines it proposes to follow in determining the amount of any penalties imposed by Ofcom, which Ofcom must have regard to in setting any penalty.

undertaken deliberately by a member of Lakeland's staff, regardless of whether or not the individual in question understood the implications of the unfair conduct. It was the Committee's view that the licensee had relied solely on an assumption that the competitions were being conducted in accordance with their terms and conditions, without ensuring that relevant staff had received appropriate training. The Committee was particularly concerned by this given the small number of staff who had responsibility for ensuring that Lakeland Radio's broadcast content complied with the Code. Moreover, it appeared to the Committee that there had been no adequate compliance procedures in place to ensure that content that was transmitted on Lakeland Radio was compliant with the Code,

- 9.6 The Committee considered that the fact this was a small local radio station with a limited audience did not detract from the seriousness of the Code breaches, nor did it in any way abrogate the licensee's fundamental responsibility, under the terms of its licence, to ensure the compliance of its broadcast content. Furthermore, the Committee noted that, in the circumstances of this case, the nature of the unfair conduct was such that this was not a matter which would have required any significant resources other than appropriate supervision and checks, either to prevent the breaches from occurring in the first instance, or to uncover the unfair conduct once it had occurred. As such, it should have been well within the control of the licensee to prevent and/or limit the breaches and their impact.
- 9.7 It was the view of the Committee that due to the deliberate and repeated nature of the breaches, the resulting financial harm caused to Lakeland listeners who paid to enter the competitions in the affected rounds, and the breach of the Lakeland audience's trust, this was a serious case. Further, the seriousness was compounded by the licensee's lack of appropriate training and processes by which to ensure the compliance of its content. The Committee therefore considered that the imposition of a financial penalty was warranted.

Precedent

- 9.8 In considering an appropriate and proportionate level of financial penalty, the Committee took account of its previous decisions in those cases in which audience paid to enter competitions that had been conducted unfairly. The Committee also took account of the specific representations made by CN Radio, on behalf of Lakeland Radio. The Committee was satisfied that its decision as to an appropriate and proportionate starting figure for the financial penalty to be imposed in this case was consistent with the most relevant precedent cases, and reflected the particular circumstances in this case.

Incentive

- 9.9 In setting the level of financial penalty, the Committee took into account CN Radio's assurances that it had now taken steps to improve Lakeland's compliance and staff training procedures. Notwithstanding these assurances, it remained a matter of concern to the Committee that there appeared to be some areas lacking focus and clarity, for instance, the extent of compliance training at Lakeland. The Committee noted that the purpose of the imposition of a financial penalty was both to deter the party involved and third parties from future breaches. In this case, the Committee considered that a financial

penalty would represent an appropriate incentive to ensure compliance in the future.

Other specific criteria

- 9.10 The Committee considered that the following specific criteria, as set out in Ofcom's Penalty Guidelines, were relevant to adjust the starting figure of any financial penalty:
- 9.11 The Committee noted that, taking into account the two prizes paid out during the competitions, and the negligible revenue raised by the competitions, neither Lakeland Radio or CN Radio had made financial gains.
- 9.12 The Committee noted that there were 671 entries in total. While the costs to enter by telephone or SMS were minimal, the Committee was of the view that the unfair conduct of the competitions nevertheless caused material harm, in terms of financial loss, to Lakeland listeners who had entered the competitions. The Committee also considered that the breaches caused significant harm to the fundamental relationship of trust between a local radio station and its audience.
- 9.13 The Committee noted CN Radio's submission that Lakeland is a small local radio station operating on limited resources, and took this into account in its consideration of the case. A significant drop in the licensee's turnover for the year 2007-2008 was also noted by the Committee. However, the Committee had regard to the fact that a licensee's responsibility to ensure the compliance of its broadcast content is a condition of its licence, irrespective of its size and resources.
- 9.14 The Committee considered that, despite the licensee's submissions that the presenter in question was merely following instructions given by the former Managing Director, it could not be argued that the breaches were caused by a third party. This was because the unfair conduct was carried out deliberately by a member of Lakeland's staff. While CN Radio submitted that the breaches had occurred without its knowledge, it was the view of the Committee that it was the responsibility of the licensee to have appropriate checks and procedures in place to ensure it was able, wherever possible, to uncover any such potential unfair conduct, in advance of the content being broadcast.
- 9.15 The Committee noted that the competitions had been conducted for a relatively long period – on each week day over a four month period.
- 9.16 The Committee further noted that no penalty in respect of the same conduct by this licensee had been imposed already by Ofcom or another body on the licensee.
- 9.17 The Committee had regard to audiences' high expectations of trust with their local radio stations. As such, the Committee was of the view that the unfair conduct of the competitions in question represented a significant breach of the Lakeland Radio audience's trust.
- 9.18 The Committee also took into account the scheduling of the broadcast of the competitions (at or around 17:20 each week day). The Committee considered that this 'drivetime' slot represented a popular timeslot with audiences and

was therefore likely to have attracted a relatively high audience, compared to to other timeslots in the Lakeland schedule.

Level of Penalty

- 9.19 Taking all these factors into account, the Committee considered that the starting figure of any financial penalty should be significant. In considering the level of penalty, the Committee took into account that the maximum financial penalty that could be imposed on the licensee was £250,000.

Factors tending to increase the level of penalty

- 9.20 The Committee then considered whether any of the factors set out in the Penalty Guidelines (or any other relevant factors) aggravated or tended to increase the level of any financial penalty it might impose.
- 9.21 The Committee noted that the breaches in this case occurred repeatedly during the three competitions on an estimated 85 occasions. However, it was not possible to determine precisely how many daily rounds of the three competitions were affected due to a lack of evidence.
- 9.22 The Committee took into account that CN Radio had submitted that senior management had had no knowledge of the breaches at the time they occurred. However, it was the view of the Committee that, given the nature of the breaches involving the basic process of selecting entrants in accordance with the competitions' terms and conditions, it should have been entirely within the control of senior management to have identified the breaches in advance and prevented them from occurring.
- 9.23 In particular, the Committee noted that the breaches in this case occurred after a significant number of high-profile and well publicised cases involving the unfair conduct of audience competitions by a number of other broadcasters. While there was evidence that senior management had made some efforts to communicate these issues to staff, no checks had been undertaken to ensure that these communications had been received and/or understood.
- 9.24 As such, the Committee considered that there had been a clear absence of training procedures to ensure that Lakeland Radio's content was compliant with the Code. Furthermore, it was also the Committee's view that any checks, processes or procedures in place to prevent breaches from occurring were clearly ineffective in this case. Instead, the licensee appeared to have relied solely on assumptions that Lakeland's staff were aware of, and were complying with, the relevant requirements of the Code. The Committee wished to make clear that it was inadequate for the licensee simply to have relied on any such assumptions to fulfil its compliance obligations.

Factors tending to decrease the level of penalty

- 9.25 The Committee then considered whether any factors set out in the Penalty Guidelines (or any other relevant factors) in its view might limit or decrease the level of any financial penalty it might impose.
- 9.26 The Committee took into account that, shortly after CN Radio's investigation of the breaches, an apology was broadcast on Lakeland Radio and a

donation of £1,000 was made to a local charity, by way of reparation. However, it was the view of the Committee that the wording of the apology did not make the nature of the unfair conduct or Lakeland's offer of reparation sufficiently clear, as evidenced by the absence of any listener requests for refunds.

- 9.27 The Committee also had regard to the licensee's submissions on the improvements it had made, since becoming aware of the breaches, to its compliance and training procedures. In particular, it noted that new staff had been recruited to ensure better supervision of programming, and new processes had now put in place to ensure employees confirmed they had received and read policy documents.
- 9.28 Finally, the Committee noted that the CN Radio, on behalf of Lakeland, had co-operated in a full and frank manner with Ofcom's investigation.

Conclusion

- 9.29 Cases where a broadcaster has misled its audience, whether knowingly or not, have always been considered to be amongst the most serious breaches of the Code by Ofcom (and its predecessor regulators).
- 9.30 The Committee considered that these breaches of Rule 2.11 of the Code represented a serious breakdown in the fundamental relationship of trust between a local radio station and its audience. On approximately 85 occasions, Lakeland misled its audience, who were listening in good faith that the *Suss the Celeb* competition was being conducted fairly. Furthermore, on each of those occasions, by prolonging the competition to prevent the prize from being won too soon, financial detriment was also caused to all Lakeland's listeners who paid to enter the competition, on the basis that it was being conducted fairly and in accordance with its terms and conditions.
- 9.31 In the Committee's view, the breaches in this case resulted from insufficient compliance training of the staff responsible for Lakeland's broadcast content. In addition, there was an absence of appropriate checks or procedures to ensure compliance of Lakeland's broadcast content with the Code. Instead, the licensee appeared to have relied solely on assumptions that its existing compliance procedures, and the Code itself, would be understood and adhered to by its staff. The fact this was a small local radio station with a limited audience did not detract from the seriousness of the Code breaches, nor did the Committee consider that it in any way abrogated the licensee's fundamental responsibility, under the terms of its licence, to ensure the compliance of its broadcast content.
- 9.32 Although an apology was broadcast on Lakeland shortly after the unfair conduct came to light, the Committee was of the view that, while the apology had been timely, it had not explained the unfair conduct sufficiently clearly to allow listeners the opportunity to seek refunds. As such, the Committee considered that the detriment to Lakeland's listeners had not been adequately remedied.
- 9.33 Since the licensee had become aware of the unfair conduct, it had taken steps to improve its compliance training and procedures going forwards. However, the Committee was not entirely assured that such steps were

sufficient or that the improvements would be effective in ensuring future compliance.

- 9.34 Having considered the relevant facts as outlined above and all the representations made by the licensee, the Committee decided to impose a financial penalty of **£15,000** (payable to HM Paymaster General) which the Committee considered to be a proportionate and appropriate penalty in all the circumstances. In addition, the Committee directed the licensee to broadcast a statement of Ofcom's findings in relation to the case on its service Lakeland Radio, on a specified occasion, at a time, and in a form, to be determined by Ofcom.

Content Sanctions Committee

Stewart Purvis
Joyce Taylor
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29 May 2009