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FIVE'S COMPLIANCE PROCEDURES

INTRODUCTION

Five relies on its independent producers to apply the highest standards when making programmes. A failure in this regard could lead to legal action or regulatory intervention. Compliance with the Broadcasting Code and other regulatory rules is a term of Five's Ofcom licences and any breach could lead to a significant fine, a reduction in the length of the licence and even loss of the relevant licence.

Five expects everyone involved in the production and broadcasting of programmes to have an understanding of the compliance process – this includes the Director of Programmes, commissioning editors, Scheduling and Planning, Creative Services and Marketing and Legal and Business Affairs. It is the responsibility of producers to ensure that anyone working on a programme for Five is aware of the importance of legal and regulatory compliance and that they understand these rules and the processes at Five.

The role of 'editorial' and 'legal' – a collaborative process

Programme making and dealing with any repercussions before or after transmission is a collaborative process. However, within that team approach people have different areas of responsibility:

- Commissioning editors 'own' the programmes they commission or purchase and are responsible for the editorial content of the programmes broadcast or repeated. They are responsible for ensuring programmes in their area are suitable for transmission at the time scheduled. This includes programmes commissioned or purchased by their predecessors. Ultimate editorial responsibility rests with the Director of Programmes (or their alternate). Where an editorial decision is of particular significance to the channel a decision may need to be referred up.

- Legal and compliance advisers provide advice and guidance on any legal or regulatory matters. While the primary obligation is to Five and its executives, advice and support will also be provided to producers of our programmes as part of the collaborative approach. Any decision on the content of programmes rests with the commissioning editors and ultimately the Director of Programmes as the most senior programming executive.

For this approach to work it is vital that controllers and producers seek input from legal and compliance at the earliest possible stage of any project requiring advice; the lawyers will not automatically know that advice is needed. **The lawyers do not view every programme transmitted and it is the commissioning editor's responsibility to refer specific concerns to the legal and compliance team.**

VIEWER TRUST

Five takes the relationship with its viewers very seriously as reflected in its Viewer Trust Guidelines. These Guidelines must be read and adhered to by all commissioning editors and producers making programmes for Five. The Guidelines deal both with trust in editorial content and where there is a commercial relationship with the viewer as a customer. There are separate and detailed guidelines for any programme which includes a revenue generating element.

Where a commissioning editor or producer believes there is a possibility of a breach of viewer trust or they have a concern in this area they must raise it during the production process so that the issue can be properly considered and addressed. Five will support this approach by a producer; what is unacceptable is for an issue not to be raised or for Five to be misled in any manner.

A programme is commissioned or purchased – first steps

When a programme is commissioned or purchased (or when an idea is being developed if it is potentially contentious, novel or complicated) it is the responsibility of the commissioning editor concerned to:

- Ensure that the production team involved has the appropriate experience and ability to undertake the project and it understands the legal and regulatory issues which may be involved in a particular programme; and
- Ensure that the relevant lawyer is consulted. Commissioning editors should notify the producers of the identity of the lawyer who will be advising and require them to make contact.

Referral up

The collaborative process also means that difficult or borderline decisions on editorial and compliance issues must be referred up to more senior programming executives and ultimately, where appropriate, the Director of Programmes.

On compliance issues involving editorial discretion, the ultimate decision will be taken by the commissioning editor or, if necessary, the Director of Programmes.

Legal advice must always be followed. If a controller disagrees with the advice on a legal matter it must be referred up to the Head of Content Legal Advice and ultimately to the Director of Programmes.

Particular programme matters

Secret filming or recording – factual programmes

Commissioning editors and producers must ensure that they have read Five's procedures relating to covert filming or recording (see Appendix 8C) and Section 8.13 of the Code – this applies to all recording where the subject is unaware that they are being filmed or where they

believe they are being filmed for a different purpose. The following principles must be adhered to:

- Other than in exceptional circumstances, producers must give commissioning editors and the appropriate lawyer reasonable notice of an intention to secretly film/record. In most cases this should not be less than 48 hours.
- Other than in exceptional circumstances, secret filming should be requested and sanctioned by the Director of Programmes (or another senior programming executive) in writing.
- If it is intended to broadcast secretly recorded material written permission should be requested and given in writing by the Director of Programmes (or another senior programming executive).

Deceptions and set-ups

Programmes which involve set-up situations or where contributors are deceived for the purpose of entertainment should comply with Section 7.14 of the Code. Early advice must be sought from a lawyer and any filming sanctioned by the controller before it takes place and again before broadcast.

Live programmes

Five has a set of guidance notes on how to deal with live programming which producers must read and to which they must adhere (see Appendix 8B).

Live programmes raise different issues and potential risks depending on their content. It is vital that legal advice is sought at the earliest stage of the commissioning of a live programme to ensure that the risks are properly assessed and the appropriate compliance procedure implemented. Where necessary, the programme lawyer will provide briefings for all those involved with a live broadcast.

Commissioning editors must satisfy themselves that production teams and presenters have the appropriate experience to deal with the particular demands of live broadcasting.

Factual programmes

Producers are responsible for ensuring that factual programmes are accurate and do not mislead viewers. They may be required to provide evidence in support of particular assertions in a programme and it is vital that producers collate and maintain evidence in support of their programmes in the event of legal or regulatory dispute after broadcast.

Swearing and offensive language

The inclusion of offensive language (including “fuck” and any of its derivatives) in any commissioned programme must be approved by the commissioning editor responsible.

Where the context of the language could cause particular offence (for example, racist language or the swearing is aggressive or repetitive) or the word “cunt” is used, this should usually be referred to the Director of Programmes.

On-air warnings and viewer information

The Ofcom Broadcasting Code stresses the importance of warnings and information so viewers can make informed viewing decisions. Whether a programme requires a warning/viewer information will normally be considered by the compliance viewers. Any warning/viewer information should be agreed by the commissioning editor and the appropriate lawyer.

It should be noted that warnings and viewer information are not restricted to post watershed programmes. Pre-watershed programmes may contain content which is not to everyone’s taste or which parents may feel unsuitable for very young children.

Commercial involvement in programme making

Producers must not enter into any commercial relationship with third parties where their products or services are featured in a programme or where they meet some or all of the costs of making a programme or they provide goods and services for the production for no payment or less than market rates without first discussing this with the commissioning editor and the legal and compliance team. This type of activity could give rise to a serious breach of the Code and complete transparency between producer and Five is required in this area.

**PROGRAMMES
CONTAINING
ANY REVENUE
GENERATING
ELEMENT**

Any programme containing a revenue generating element requires specialist and detailed advice to ensure that it complies with the law as it relates to competitions. Further, the Broadcasting Code and the PhonepayPlus Codes will apply to issues around the provision of charging information and the fairness of any competition or voting mechanism. This is also a key area where viewer trust is paramount and as such it is vital that commissioning editors and producers are aware of and understand both the Checklist on The Use of Telephony Services (Chapter 6G) and Five’s Viewer Trust Guidelines (Appendix 8A).

**DIGITAL CHANNELS,
ON-LINE, ON DEMAND
SERVICES AND
NEW MEDIA**

Programmes may be broadcast or made available not only on Five but also on other channels owned or controlled by Five or via the internet or mobile platforms. When producing programmes careful

consideration needs to be given to issues such as the following:

- Is the subject matter of the programme time sensitive which means that showing the programme over a period of many months or years could lead to legal problems (for example, defamation or contempt of court) or regulatory issues (for example fairness)? Potential problems in relation to the content of programmes shown repeatedly over long periods of time need to be addressed during the production process.
- Do contributors understand how a programme could be exploited through multi-channel broadcasts and on other platforms?

**PROMOS AND
MARKETING
ACTIVITY**

Promos for programmes often take material out of context and seek to market the programme in order to attract as many viewers as possible. Where programmes are particularly sensitive the Creative Services Department need to be given as much information as possible by the commissioning editor or the producer in relation to any particular concerns about the content of promos or when they are scheduled. These considerations may also apply to any off-air marketing activity which commissioning editors and producers should address.

PRESS

Programmes may generate considerable positive or adverse press interest. Commissioning editors and producers should ensure that the Press Office is made aware of any particular issues which may impact on any press activity around a programme. Where necessary, the Legal and Compliance Department should also

be involved in any press activity where legal advice may be required either before information is issued to the press or following publication of any article.

SPONSORSHIP

Five is responsible for the sponsorship of programmes. The commissioning editor must be made aware of any sponsorship of a programme. The content of programmes can affect the sponsor permitted to be associated with a particular programme.

**VIEWER ENQUIRIES
AND COMPLAINTS**

Viewer enquiries received by Customer Services

Five’s Customer Services will refer to the Legal and Compliance Department any enquiries received on which advice is required in order to reply or where a complaint appears to be serious. Where a significant number of complaints are received the commissioning editor and the appropriate lawyer should provide a response before any reply is sent out.

Viewer enquiries received by producers

If a producer receives any viewer enquiry they should draft a response and copy this to the commissioning editor responsible and the programme lawyer for approval.

More serious complaints or threats of legal or regulatory action

These types of contact received by Customer Services will always be referred to the Legal and Compliance Department and the relevant commissioning editor. If a producer receives a complaint from a contributor or other person involved in the programme or any allegation of infringement of a person’s rights or a threat of legal or regulatory action this must be referred immediately to the Legal and Compliance Department and the relevant commissioning editor. Who will be responsible for responding

will then be agreed between the producer and Five.

issue or the Head of Content Legal Advice if it is a legal or compliance matter.

CONTACT WITH OFCOM OR ANY OTHER REGULATORY BODY

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Commissioning editors and producers must not contact Ofcom about a programme content matter without first seeking advice from the Legal and Compliance Department.

In the event that Ofcom investigates a programme the producer and the commissioning editor may be required to provide detailed justification for a particular programme. The first draft of any response to Ofcom will usually be prepared by the appropriate lawyer for review by the producer and approval by the commissioning editor.

OUT OF OFFICE HOURS LEGAL ASSISTANCE

The lawyer assigned to a particular programme will be responsible for providing any legal advice or assistance out of office hours. 24 hour contact details may be provided where appropriate. In the event that a particular lawyer is unavailable commissioning editors and producers can contact one of the other lawyers.

WORKING WITH FIVE

Programme making for Five should be a positive and collaborative process for all concerned. Producers should feel that they have the appropriate support and guidance from the channel to be able to undertake their role to the highest standard. In the event that a producer has any concerns about the working relationship with Five they should refer this to the Director of Programmes if it relates to an editorial