

## Provision of subtitling – Channel 4

<b>Type of case</b>	Broadcast Licence Conditions
<b>Outcome</b>	In breach
<b>Service</b>	Channel 4
<b>Date &amp; time</b>	Provision for 1 January to 31 December 2021
<b>Category</b>	Access Services
<b>Summary</b>	Following a major outage of its access services provision in Autumn 2021, the broadcaster failed to meet its annual subtitling requirement for Channel 4 in respect of the Freesat platform. The broadcaster also did not adequately inform audiences about the lack of availability of access services on Channel 4 during the outage, contrary to the requirements of the Access Services Code.

A [British Sign Language summary of this Decision](#) is available.

### Introduction

In September 2021, Channel 4 Corporation’s provider of playout and access services functions, Red Bee Media, suffered a catastrophic failure at its West London Broadcast Centre following a release of fire-suppressant gas. This release caused a loud shockwave that damaged many of the servers beyond repair and required disaster recovery procedures to be activated. The incident impacted several broadcasters. In respect of Channel 4 Corporation (“C4C”), it resulted in a lengthy outage of access services provision across all platforms that began on 25 September 2021 and was not fully resolved until 19 November 2021 (“the Outage”). Ofcom received approximately 500 complaints from audience members about the Outage. The vast majority of those complainants raised concerns about the absence of subtitling and many were critical about a perceived lack of information from C4C about what was being done to resolve the issue.

This Decision relates to C4C’s compliance with the Ofcom Code on Television Access Services and Condition 19 of the Channel 4 Licence.

## Regulatory framework

Ofcom has a specific duty under Section 303 of the Communications Act 2003 (“the Act”) to draw up and from time to time review and revise a code giving guidance as to: (a) the extent to which certain broadcasting services – including Channel 4 – should promote the understanding and enjoyment of television services by people with sensory impairments; and, (b) the means by which such understanding and enjoyment should be promoted.

Section 303 of the Act prescribes the specific obligations to be included in the code in respect of subtitling, audio description and signing of relevant programmes for broadcasters, including in respect of Channel 4.

Section 303(2) of the Act provides that the code “must include provision for securing that every provider of a service ... ensures that adequate information about the assistance for disabled people that is provided in relation to that service is made available to those who are likely to want to make use of it.”

[The Ofcom Code on Television Access Services](#) (“the Access Services Code”) reflects these legal duties set out in the Act by requiring certain Ofcom-licensed television broadcasters to provide access services on a proportion of their programming. The minimum proportion of programming that C4C Corporation (“C4C”) is required to provide with access services on Channel 4 is 90% for subtitling, 10% for audio description and 5% for signing. As set out in legislation, these requirements are calculated over a 12-month period.

The Access Services Code states that it “applies regardless of the means of delivery, to every licensed public service channel, any digital television programme services (DPS) provided by the Welsh Authority (including S4C Digital), digital television programme services (DTPS), television licensable content services (TLCS), and restricted television services”.<sup>1</sup> This includes Channel 4.

Section 6 of the Access Services Code contains obligations for broadcasters to promote awareness of access services.

Condition 19 of the Channel 4 Licence, entitled “Subtitling, signing and audio-description”, provides that:

“The Corporation [C4C] shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Channel 4 Service and the Corporation shall provide subtitling, signing and audio-description in the amounts set out in paragraph 8 of Part 1 of the Annex.”

Part 1 of the Annex to the Channel 4 Licence sets out the amounts referred to above.

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<sup>1</sup> At paragraph 1.2 of the Access Services Code. Footnotes omitted.

## The provision of access services on Channel 4 in 2021

As explained in the introduction above, in September 2021, C4C's playout and access service functions suffered a catastrophic failure which resulted in a lengthy outage of access services in respect of C4C channels that was not fully resolved until 19 November 2021.

Given the unprecedented scale of the Outage, Ofcom brought forward publication of the access services report for Channel 4, which sets out data provided by C4C on its provision of access services in 2021. As detailed in the report,<sup>2</sup> C4C met its legal requirements for audio description and signing on Channel 4 despite the Outage. This was because outside the period of the Outage, it delivered these services above the legal minimum.

In relation to subtitling, we asked C4C to provide data about the amount of programming provided on Channel 4 with subtitling on each of its platforms. This is because subtitles were restored to the Freesat platform later than other platforms. The provision of subtitles on C4C channels was restored on the Sky, Freeview, Youview and Virgin platforms on 22 October 2021. Subtitles on the Freesat platform were not restored until 19 November 2021.

In relation to subtitling on the Freeview, Youview, Virgin and Sky platforms, C4C reported that Channel 4 met its 2021 subtitling requirement by providing 91.3% of programmes with subtitles, against the 90% minimum requirement. This was because outside of the period of the Outage, it typically provided all programmes with subtitles. C4C reported that in respect of Channel 4 on Freesat specifically, 85.41% of programming had subtitles, against the 90% requirement.<sup>3</sup>

We considered that the provision on Channel 4 of 85.41% of programming with subtitles on the Freesat platform may have resulted in a breach of the Access Services Code and Condition 19 of the Channel 4 Licence.

In addition, and as expressed by Ofcom at the time of the incident<sup>4</sup> and reflected in many of the complaints we received, we had concerns about a lack of information being provided by C4C during the Outage. In particular, we were concerned that C4C had not, particularly during the early weeks of the Outage, provided sufficient and timely communication about its plan and the related timescales for restoring access services to its channels. Section 6 of the Access Service Code (Promoting Awareness) sets out the following requirements for broadcasters:

“Ofcom requires television service providers to promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to

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<sup>2</sup> [Television and on-demand programme services: Access Services report 2021 \(Channel 4\)](https://www.ofcom.org.uk/research-and-data/multi-sector-research/accessibility-research/television-and-on-demand-programme-services-access-services-report-2021-channel-4) (<https://www.ofcom.org.uk/research-and-data/multi-sector-research/accessibility-research/television-and-on-demand-programme-services-access-services-report-2021-channel-4>).

<sup>3</sup> C4C's other channels, such as E4 and More 4, have a lesser requirement to provide 80% of programming with subtitles. Therefore, these channels met their subtitling requirement across all platforms.

<sup>4</sup> See Ofcom's [Update on Channel 4 Subtitles, 27 October 2021](https://www.ofcom.org.uk/news-centre/2021/update-on-channel-4-subtitles) (<https://www.ofcom.org.uk/news-centre/2021/update-on-channel-4-subtitles>) and [Ofcom's tweet of 8 October 2021](https://twitter.com/Ofcom/status/1446508352192884741?) (<https://twitter.com/Ofcom/status/1446508352192884741?>)

electronic programme guide (EPG) operators listing their services, and by providing similar information on their website...”.

“Ofcom will also expect television service providers to demonstrate that they are taking effective steps to publicise awareness of their television access services through other means, including periodic on-air announcements and information in publications aimed at persons likely to benefit from television access services”.

We asked C4C for its formal comments on these matters.

## Response

### *Background*

By way of background, C4C said that “driving progress in provision of access services is central to its role as a champion of diversity and inclusion as well as its remit to innovate and inspire change”. In this context, it set out a number of ways in which it said it had innovated and progressed its access services provision, including:

- Broadcasting foreign language drama series with audio description and spoken subtitles in English;
- Delivering live audio description;
- Simulcasting the opening ceremonies at the Rio and Tokyo Paralympics with live signing and live open enhanced commentary;
- Simulcasting with live signing the *Stand Up To Cancer* Broadcast;
- Having deaf BSL interpreters live on air; and
- Delivering audio description on late delivery content such as *Gogglebox*.

In addition, C4C set out how it had: created and developed its provision of signed content on All4; worked to provide signing on almost all its coronavirus current affairs programmes; worked with the RNIB to increase awareness of audio description; and, broadcast 30 minutes weekly of sign-presented content on Film4 in addition to meeting the signing requirements for this service as set out in the Access Services Code by making a financial contribution to the British Sign Language Broadcasting Trust.

C4C considered that these measures demonstrated its commitment to the provision of access services and the importance it placed on delivering these services to its audiences. It also said that the fact that the Outage in Autumn 2021 prevented it from doing this was a matter of “profound regret” and that it was determined to mitigate against this in the future.

### *Provision of subtitling on Channel 4 in 2021*

C4C referred to the 2021 Access services report for Channel 4, highlighting that this made clear that despite the Outage, it exceeded its annual quota for Channel 4 “when all platforms are considered cumulatively” by providing 90.32% of programmes with subtitles<sup>5</sup>. C4C described the key issue as

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<sup>5</sup> C4C initially provided Ofcom with a figure of 91.3% for the percentage of programming with subtitles on Channel 4 when all platforms were considered cumulatively. However, as this figure had previously been given

being whether “the fact that subtitling for the Channel 4 Service on the Freesat platform when taken alone was 85.41% constitutes a breach of Condition 19 of Channel 4’s licence”. While C4C expressed its disappointment at this, it said it strongly believed it should not be found in breach. This was because it considered that the correct interpretation of the Access Services Code (and the one which is consistent with the Act) is that access services targets are intended to apply to the relevant programmes carried on a licensed service as a whole.

In support of this view, C4C referred to the specific wording within the Act and in particular, that Section 303 sets access services obligations by reference to the service and the programmes, not by reference to each delivery platform. C4C argued that the terms “service” and “platform” are not interchangeable and that the Act should be interpreted accordingly.

C4C considered the wording of the Access Services Code also supported its position. For example, Paragraph 4.3 of the Access Services Code states:

“The targets are to be interpreted as percentages of programme hours in a year, including all programmes other than advertisements and programmes that have been excluded...”.

As the above makes no reference to individual delivery platforms, C4C considered it implicit that the target is to be interpreted as a percentage of relevant programme hours in a year irrespective of delivery method.

C4C also highlighted Paragraph 8.7 of the Access Services Code which states:

“Broadcasters to whom this code applies:

- a) Are required to submit returns on their access service provision every six months covering the previous two quarters, in the form and format to be notified separately by Ofcom...”.

C4C further referred to Table 1 of the Access Services Code which sets out the targets for channels (rather than platforms) and Paragraph 5.4 which refers to exclusions being calculated by reference to a service, not the platforms on which it is delivered.

In relation to paragraph 1.2 of the Access Services Code (set out above), C4C argued that taking account of the full wording of the paragraph, the words “applies regardless of the means of delivery” serve solely to identify the services regulated by the Access Services Code, not to direct how assessment of quotas is undertaken.

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as the percentage of programming with subtitles on Channel 4 on television platforms excluding Freesat we sought further information from C4C as to the basis of its calculations. In response, C4C clarified that the 91.3% figure represented the amount of subtitling sent to its distributor platforms but, given the extended outage on Freesat, it did not accurately reflect the amount of subtitling received by audiences. C4C provided Ofcom with an updated figure of 90.32% for the percentage of programming with subtitles on Channel 4 in 2021. C4C said this had been calculated by taking an average of the subtitling played out on six broadcasting platforms. These platforms were: Freesat, Freesat from Sky, Sky UK DTH, Freeview, Youview and Virgin Media UK.

Further, C4C said Ofcom only requires it to report across all platforms cumulatively, not per platform. In C4C's view, this reinforced its position that assessment of whether annual quotas have been met is to be carried out on a cumulative basis and not by individual platform. In addition, C4C also referred to Ofcom's Access Services report for 2020 which defines "annual quota" as being "the percentage of the output on a broadcast channel, or on an on-demand service, that was provided with each access service. This is shown as a percentage of hours". C4C considered its position was supported by Ofcom not approaching assessment of compliance with the relevant quota on a per-platform basis in any previous formal investigation of under-provision of access services. In C4C's view therefore, it had a legitimate expectation that Ofcom will approach the assessment of compliance in this case "consistently with the legislation and with prior cases".

C4C acknowledged that since the Act came into force, and the Code was first drafted, broadcast technology and plurality of delivery platforms have developed significantly. However, it considered it would be wrong to seek to retrospectively impose an interpretation which goes beyond the scope of the Act in order to find a breach which was clearly never contemplated by the legislation.

C4C also said that it was important to "put the impact of the lack of subtitling on Freesat into context". In this regard, it said that there were approximately 1.3 million households in the UK with Freesat and that in 2021, Freesat constituted approximately 3% of Channel 4 service viewing. In the context of audiences increasingly watching television content on a range of services and platforms, C4C considered that there was a reasonable likelihood that a significant proportion of Freesat users would also have access to Channel 4 via All4 on smart TVs and other devices. Therefore, it was of the view that it was logical and appropriate for C4C to seek to ensure its most popular shows were available with subtitles on All4, which it did from mid-October 2021.

Although C4C considered that a breach had not occurred in this case, it said it did not seek to underplay the severity of the Outage and expressed its regret at the disruption caused to audiences. It also stressed to Ofcom "how catastrophic an event the outage at Red Bee Media was". C4C told Ofcom:

- In the first weekend of the Outage, the full extent of the damage was unclear and it was hoped and expected that services might migrate back after system restarts. The scale of the issue gradually became apparent as urgent and detailed investigations were carried out in the following weeks with Red Bee Media informing C4C on 4 October that they would not be able to restore any media management solutions.
- The acoustic/pressure shock had a catastrophic impact on C4C systems, rendering many of them unusable and unrecoverable.
- It became apparent there would be an extended period where the Broadcast Centre media management operation would not be restored which impacted on C4C's ability to produce access services and publish to video on demand platforms.
- The issues faced included not only getting channels back on air and resuming provision of access services but also wrong programmes being broadcast, disruption to media management and the additional challenge of migrating to a new broadcast system earlier than planned.

C4C said that many questions around the incident, including those relating to cause and liability, remain open.

C4C explained that when the Outage first occurred, its first priority had been to get its linear channels back on air and restore a media management solution with its next priority being the restoration of access services. C4C said that although its Disaster Recovery systems had been designed to seamlessly continue providing subtitles, and despite previous testing, it was found “non-performant”. Following investigation, C4C identified that there was a “technical misalignment between Channel 4’s systems and the distribution chain...which, when corrected, enabled Channel 4 to resolve subtitles for all platforms except Freesat”. Live subtitling was restored after 19 days with full restoration of subtitles after 27 days. This occurred on all broadcast platforms except for Freesat. It was only after the return of C4C’s playout operation to Red Bee Media on 17 November 2021 that subtitles could be broadcast in full on the Freesat platform.

C4C also told Ofcom that prior to the Outage it had already identified a need to improve its playout structure and had initiated a ‘Broadcast Systems Migration’ project in 2020. It said it had identified a particular need for improved resilience based on a “dual-sited playout chain”. This would involve two duplicate playout sites that would allow it to provide broadcast continuity without the need for an independent disaster recovery site. C4C said that this transition was now in the final stages of testing and implementation and it was confident that when delivered, the new system would meet its resilience needs, including for access services.

Despite this however, C4C said it had engaged PWC to conduct a “comprehensive and independent review” into its operational response to the Outage. It said this review will “identify any further areas for improvement, ensure that lessons are learned, and protections put in place to minimise insofar as reasonably possible disruption to services (including access services) should such an incident occur again”.

#### *Requirement to promote awareness of the availability of television access services on Channel 4*

C4C also provided representations on how it had promoted awareness of the availability of access services during the period of the Outage. It accepted, and said it profoundly regretted, that it was “unable to give viewers more detailed information at an earlier stage and that this caused significant frustration for some of [its] audience”.

It said that the problems with access services were one element of much wider issues and were communicated as such, but as the situation progressed and some issues were resolved “accessibility became the primary concern and communications focus”.

Due to the complexity of the issues involved and the range of potential solutions being explored, C4C said this “created very unique communications challenges which Channel 4’s teams worked hard to resolve”. It described how it had used a range of methods to “reach the widest possible audience with updates” including: Twitter; Channel 4’s website, on-air, its Viewer Enquiries system; direct emails to All4 Users; message boards; and films using a sign-language interpreter on Twitter. C4C also said that its press office “briefed media against specific programme or schedule-related incidents relating to both linear channels and All4”.

In terms of its overall approach, C4C said that in the initial stages of the Outage it tried to keep communications relatively simple given the complexity involved and the ongoing investigations into the incident. At this time, its Press Office provided confirmation that services had been adversely affected by the Outage and advised the media to contact Red Bee Media for the specific details of the incident. As the situation progressed, C4C said it sought to provide an increasing level of detail about the nature and severity of the incident, the steps being taken to resolve it and the availability of access services on different platforms.

C4C said its communications about access services specifically were impacted by a lack of clarity about a likely timeframe for the resumption of those services. It said this was because it was “technically unclear exactly where the issues preventing the playout of subtitles stemmed from and, given the need to avoid further outages, technicians could only carry out testing at night”. In order to try and resolve the issues as quickly as possible, C4C said it was simultaneously pursuing several solutions with very different time implications and it was therefore not possible to inform audiences with any certainty how long the access services issues may take to resolve. As the situation progressed, and in light of audience feedback and conversations with the RNID and other key stakeholders, C4C said it took the decision to communicate the emerging November timeframe and did so on 19 October 2021.

C4C went on to summarise the various forms of communications it had with audiences at the time of the Outage as follows:

#### *Media Briefings*

C4C told Ofcom that throughout the period of the Outage its Corporate Press team and Communications Director were in frequent contact with journalists, briefing them on the situation with key developments. C4C said in the first two weeks of the Outage these statements were kept short and simple with the briefings becoming more detailed and providing greater clarity around timeframes during the period 7 to 22 October 2021. It said this was possible as more concrete information became available and was also informed by feedback from audience members, relevant charities and Ofcom.

#### *EPG Information*

In relation to information about the availability of access services on the Electronic Programme Guide (“EPG”), C4C said that programme information is sent to press two weeks before transmission. It said this presented challenges given the lack of clarity about whether access services would be restored by the point at which a particular programme was broadcast. As the situation and timeframes for restoration of services became clearer, C4C said its Content Management team took the following steps:

- On 14 October 2021, the team asked Red Bee to remove the access services flags<sup>6</sup> at source so that C4C could re-send the EPGs without these.
- On the same day, the team removed all the access services flags from all its channels on the listings site (which is used by the press as the source for listings information)

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<sup>6</sup> Access services flags are information provided as part of the Electronic Programme Guide that inform views of the availability of access services on each programme.



- Also on 14 October 2021, notifications were sent to all of the Content Management team’s press contacts informing them that C4C programmes should not be listed as having access services until it was confirmed these services had resumed.
- The team also had ongoing email communications with the Radio Times and the Press Association (which publish most publications’ listings), responding to their queries about the access services situation.

#### *Statements published on C4C corporate website, Twitter accounts and pinned to social media*

C4C said that through the period of the Outage, statements issued by C4C were also posted on its corporate website. It also told Ofcom that the Outage and its legacy were discussed extensively on Twitter and that this platform was identified as one of the key means of communicating with the access service-using audience. C4C also said that all statements and/or links to these statements were posted both on the main Channel 4 and Channel 4 Press Twitter accounts. From 15 October 2021, statements were also provided in British Sign Language (“BSL”) on social media.

#### *On air messaging*

C4C explained that immediately following the Outage it was technically unable to deliver normal continuity services (i.e. bespoke continuity announcements over idents and end credits, on-screen navigational graphics, vital promotional campaigns) from its disaster recovery site. C4C said that this meant its ability to provide on-air announcements was initially very restricted.

C4C told Ofcom that from 16 October 2021 it was able to offer some continuity services and subsequently transmitted an on-air slide from 19 October 2021 which was broadcast prior to *The Great British Bake-off* and informed audiences that the programme was available with subtitles on the All4 app. Similar slides were used until 16 November 2021.

#### *Direct communication*

In light of the severity of the issues, C4C said additional information relevant to the Outage was added to the top of the Viewer Enquiries contact form on the Channel 4 website. It also told Ofcom that Viewer Enquiries call handlers were provided with up-to-date information on the situation. Between 26 September and 31 October 2021, C4C said it received just under 3,000 contacts about access services.

#### *Updates to key charities*

During the period of the Outage, C4C said it communicated with a number of key stakeholders, particularly those representing access services users such as the RNID, RNIB and Deaf and Disabled People in TV (DDPTV). C4C said that senior staff attended meetings with the RNID on 14, 19, 29 October and 10 November 2021 during which C4C updated RNID and RNID shared its concerns with C4C. In light of RNID’s concerns, C4C said it worked closely with them to create a “positive communications loop with the D/deaf audience”, which included giving RNID the opportunity to review and share feedback on C4C’s communications about the availability of subtitled content. C4C said communication was still ongoing with RNID regarding rebuilding trust with audiences.

#### *Providing information through MPs and other stakeholders*

C4C said it responded quickly to MPs and other stakeholders to ensure they could direct their constituents and other interested parties to up-to-date information.

C4C also asked Ofcom to take into consideration what could reasonably be expected in the “incredibly challenging circumstances in which C4C was operating from the end of September to November 2021, and in the first three weeks following the outage in particular”. It described how it was “doing all it could to maintain playout of the Channel 4 service) whilst also trying to identify the causes of and resolve a multiplicity of issues (including subtitling). C4C said that the lack of information provided in the first weeks following the outage was not through a disregard for the audience but because “it was endeavouring to find solutions and assessing the extent to which [it] could provide meaningful and accurate information”. It said it was also keenly aware that providing speculative information about what it hoped could be achieved without being confident that it was in fact achievable “would risk misleading Channel 4 viewers, for which [it] could (rightly) have been criticised”.

In light of the above, C4C considered it had complied with the obligations to promote awareness as set out in Section 6 of the Access Services code.

### *Conclusion and commitments*

In conclusion C4C said that it was “deeply committed to rebuilding trust with access service users and demonstrating its continued commitment to improving accessibility, overdelivering against its statutory obligations, and pushing boundaries in its provision”. These commitments included bringing the level of subtitling back up to 100% across the linear portfolio and achieving 100% subtitles on All4 by the end of 2022. C4C also said that it intended to increase its voluntary commitments around audio description from 35-40% to 45% and signing from 5% to 10% as well as increasing audio description and signing on boxsets on All4. For all the reasons set out above C4C considered “there is no other reason why a breach should be upheld”.

## **Decision**

### *Provision of Subtitling on Channel 4 in 2021*

The Communications Act 2003<sup>7</sup> sets out the responsibilities of broadcasters for the accessibility of broadcast content. Under the terms of its licence for the Channel 4 service, C4C must ensure that the terms of the Access Services Code are observed. In turn these requirements reflect the obligations specified in the Act. In relation to the provision of subtitling, the Act requires that at least 90% of so much of Channel 4 as consists of programmes (that are not excluded programmes)<sup>8</sup> must be accompanied by subtitling.

As set out above, only 85.41% of programming on Channel 4 in 2021 was provided with subtitles on the Freesat platform. This was because, following the Outage, subtitling was restored to Freesat approximately four weeks after other platforms. However, C4C considered that it had complied with its annual subtitling quota on the basis that it provided 90.32% of programming with subtitles when all platforms were considered cumulatively. In coming to this figure, C4C took the average subtitling provision on Channel 4 across six of its delivery platforms (i.e. Freesat, Freesat from Sky, Sky UK DTH, Freeview, Youview and Virgin Media UK). Neither C4C, nor any other broadcaster, has previously queried with Ofcom how the provision of access services on a service should be calculated by taking

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<sup>7</sup> [Communications Act 2003 \(section 303\)](https://www.legislation.gov.uk/ukpga/2003/21/section/303) (<https://www.legislation.gov.uk/ukpga/2003/21/section/303>).

<sup>8</sup> This requirement is subject to certain exclusions and exceptions that are not relevant for the purposes of this Decision.

account of differing levels of access services provision across the different platforms on which that service is broadcast.

Ofcom noted C4C's representations that the Access Services Code does not make explicit reference to individual delivery platforms and that Ofcom does not require linear broadcasters to provide details of their access services provision on a "per platform" basis when submitting their access services returns. In light of these factors, as well as Ofcom's approach to previous investigations into potential breaches of the Access Services Code, C4C considered it had a "legitimate expectation" that Ofcom would assess C4C's access services provision on the basis of the service overall. However, this is the first case that Ofcom is aware of where a significant outage has occurred on one particular broadcast platform resulting in a substantive difference between the levels of provision across key delivery platforms. Ofcom's reporting process has, prior to this incident, been undertaken on the basis that a broadcaster's output, and the access services they deliver, are consistent across relevant platforms.

Ofcom carefully considered C4C's submissions as to the correct interpretation of section 303 of the Communications Act 2003 and consequently the requirements of the Access Services Code and its licence. It is correct that those provisions do not – in terms – specify obligations "by platform". Rather, section 303 requires Ofcom to draw up a code which is to include requirements for the fulfilment of specific obligations on subtitling by various services, including the Channel 4 service. That obligation, stated above, is that at least 90% of so much of Channel 4 as consists of programmes (that are not excluded programmes) must be accompanied by subtitling. The Access Services Code, paragraph 1.2, confirms that its obligations apply to Channel 4 as a licensed public service channel "regardless of the means of delivery". The Channel 4 service is provided by several means of delivery or broadcast platform. One of those means of delivery is the Freesat platform. C4C has confirmed that in the case of Freesat 85.41% of the relevant programming on the Channel 4 service was provided with subtitles in the reporting period against the requirement of at least 90%.

In Ofcom's view, C4C's submission that the under provision of subtitling on Channel 4 on Freesat could be made up by the provision of subtitling above the minimum requirement on other platforms – such that a "cumulative" or averaged figure is provided – is not supported by the terms of the Access Services Code or Communications Act. Such an approach requires counting programming on Channel 4 multiple times to allow an average to be taken across all delivery platforms, rather than treating Channel 4 as a single service to which access obligations apply, regardless of the means of delivery. This approach risks bringing about negative outcomes for people with disabilities, the interests of whom the Act and Code are designed to promote and secure. C4C's interpretation of the rules would, for example, permit broadcasters to provide a very high amount of audio description on only one platform, and still meet the legislative minimum of 10% overall. This could mean that audiences who had access to only one delivery platform may receive few or no access services when they access the service on that platform. In the case of subtitling, it would, for example, potentially permit 100% delivery of subtitling on several platforms to compensate for material under delivery on the service on one or more others thereby depriving viewers of the service access to subtitled programming on those other platforms. C4C in its submissions recognised this as a "practical concern in today's media landscape".

In Ofcom's view, and as stated in the Access Services Code, C4C is required to ensure the minimum level of access services for programming on Channel 4 regardless of the means of delivery. In practice, this means that, where exemptions do not apply, the Channel 4 service must meet its access services requirements on each of the delivery platforms.

In coming to our Decision in this case, we recognised that the Outage occurred as a result of a technology failure at a third-party provider that was outside of C4C's direct control. However, we also considered that C4C's ability to respond to such a failure was not sufficiently resilient, as seemingly recognised by C4C in its decision in 2020 to initiate a currently uncompleted project to improve its playout structure. As set out in C4C's representations, although its disaster recovery system had been designed to be able to provide subtitles, it was found that this function was "non-performant". It was not until Channel 4's primary playout operation was restored that subtitles returned to the Freesat platform.

We have also been mindful of the impact of this unprecedented outage and considered this to be a material factor which distinguished this case from previous incidents of the underprovision of access services. In this case, the absence of subtitling on C4C for eight weeks on the Freesat platform (and four weeks across its other platforms) meant that those who rely on subtitles were all but excluded from content being broadcast on C4C services. This included its most popular programmes, news and current affairs content, and continuing series that were made available with subtitles prior to the Outage but audiences were then subsequently denied access to.

Taking all of the above into account, Ofcom's Decision is that C4C did not meet the requirement that at least 90% of so much of Channel 4 as consists of programmes (that are not excluded programmes) must be accompanied by subtitling in respect of its delivery on Freesat. This was contrary to the requirements of the Access Services Code and accordingly amounted to a breach of Condition 19 of the Channel 4 licence.

#### *Requirement to promote awareness of the availability of television access services on Channel 4*

The Access Services Code requires providers of access services to "promote awareness of the availability of their television access services to potential users of the services by making available accurate and timely information to electronic programme guide (EPG) operators listing their services, and by providing similar information on their website...". It also sets out an expectation that broadcasters "demonstrate that they are taking effective steps to publicise awareness of their television access services through other means...".

As explained above, the Outage occurred on 25 September 2021. On 28 September 2021, C4C publicly acknowledged that access services specifically had been impacted. This was done by way of a tweet apologising for the ongoing issues. However, it was not until 7 October 2021 (12 days after the start of the Outage) that a substantively more detailed statement was published on the Channel 4 Press Site, its Twitter accounts and issued to the Press Association. This statement set out some of the background relating to the cause of the disruption to C4C services, as well as the scale of the impact on audiences. The statement also said that C4C would "return to a normal service as quickly as possible".

On 8 October 2021, Ofcom wrote to C4C, reflecting our own concerns as well as those of complainants who had contacted us expressing frustration regarding a lack of concrete information about when access services provision would be re-established. The letter asked that C4C respond as soon as possible and set out the steps being taken to restore the provision of access services and the timescales involved. The letter also reminded C4C of the requirement in its licence to provide access services. C4C responded to this letter on 12 October and, on 13 October 2021, published an update on its access services provision on its website. The update was also provided on the same date through the Press Association and on Twitter. This statement apologised to access services users and made clear that steps were being taken to resolve the problem but did not provide any timeframe for when issues might be resolved.

C4C put out a further statement on 19 October 2021, explaining that it was starting to provide subtitles on some programmes on All4 but stated that “full access services might not be available until the middle of November”. On 22 October 2021, C4C released a statement telling viewers that subtitles had been restored to most television platforms.

In this case, audiences who are reliant on access services were almost totally excluded from C4C programming for up to two months. For the first 12 days of the Outage, audiences were provided with almost no information whatsoever about the cause of the issues and whether steps were being taken to restore access services. It was a further 12 days until audiences were given any sense of when access services may return. We recognise that C4C expressed its regret at the frustration caused to impacted audiences by its inability to give more detailed information at an earlier stage. However, in the context of a total outage of its accessibility services we consider that C4C’s communications about the Outage with audiences were not acceptable. We recognised that, having found that its disaster recovery system’s ability to broadcast subtitles was “non-performant”, C4C was in a very difficult position as it was reliant on information being provided by a third party, in circumstances where a technical solution was taking longer than it anticipated. However, even in these circumstances, we considered that it should not have taken C4C nearly two weeks from the start of the Outage to explain to audiences the issues it was facing, and given them assurances that it was working hard to rectify these issues and restore access services as soon as possible. It appeared to Ofcom that C4C did not properly communicate with its audiences until a timeline for restoring access services was finally established, leaving them without adequate information for a period of time which we considered to be unacceptable.

We also had particular concerns about the extent to which C4C communicated with affected audiences directly through its television services as we were unable to identify any attempt by C4C to acknowledge the issues affecting access services until 15 October 2021. This was nearly three weeks after the Outage began. Therefore, during this period, audiences who did not have access to the statements made available about the Outage online would have had no understanding about the scale of the issues or that C4C was working to rectify them. We considered providing information through its broadcast output would have been particularly important for older, blind, or partially sighted access services users whose use and access to information provided solely online may be more limited.

We also took account of any information about the Outage that was provided by C4C in BSL. Given that Deaf viewers were likely to be amongst those most impacted by the Outage, we considered there

was a particular importance in providing information to BSL users in their first language. Consistent with the delay in providing information through its broadcast services, Channel 4 did not provide any information to viewers in BSL until 15 October 2021, nearly three weeks after the start of the Outage. This was by way of a tweet with an accompanying video in BSL. Although we recognise that C4C was experiencing significant technical difficulties during this time, we did not consider that these would have impacted on its ability to provide content in BSL through its social media channels. In Ofcom's view, C4C could, and should, have made information available in BSL about the Outage before it did.

We next considered the extent to which C4C met the specific requirement for broadcasters to make available "accurate and timely information to electronic programme guide (EPG) operators listing their services". C4C said it has restricted control over access services flags in the EPG (these allow access services users to identify which particular programmes are available with which access services). However, it was not until 14 October 2021 that it asked Red Bee Media to remove the flags so they could be resent to EPGs without these. On the same day, all access services flags were removed from the Channel 4 press listings site. This meant that from the start of the Outage until 14 October 2021, audiences were being informed via the EPG that access services were being provided as normal, when they were not. This was clearly inaccurate and we considered it was an unacceptable delay for C4C to have not taken action to ensure the flags were updated until nearly three weeks after the start of the outage. This failing was made worse by the lack of information provided through Channel 4's broadcast output during the same period.

Taking account of all the above, we considered that C4C did not reflect the requirements set out in Section 6 of the Access Services Code and that this amounted to a breach of Condition 19 of the Channel 4 licence.

#### *Ofcom's review of the Red Bee Media incident*

In its representations, C4C made a number of references to the scale of the Outage caused by the incident at Red Bee Media and the difficulties this caused in restoring access services and effectively communicating accurate information about the steps being taken to restore these services to its audiences. While we recognise the disruption to C4C services was initially caused by an incident that took place at a third-party provider, C4C is ultimately responsible for its broadcaster operations, the robustness of its disaster recovery systems and its compliance with the obligations contained in the Access Services Code. We had significant concerns about the adequacy of C4C's disaster recovery facility to deal with an incident like this. In particular, this facility was not designed to provide audio description and signing and its ability to provide subtitling failed. We welcome that C4C has begun work to improve its resilience by moving to a dual site playout chain that would ensure continuity of its service (including access services) should there be need for a disaster recovery function in the future.

In order to explore this and related issues in more detail, alongside this investigation, Ofcom has also conducted a review of the transmission arrangements that C4C and other affected broadcasters had in place at the time of the Outage. This review considers what action is required to ensure a reliable access services provision for audiences in the future. The [findings of this review are available](#) here.

## Conclusion

For the reasons set out above, Ofcom's Decision is that both the subtitling outage on Channel 4 on Freesat and C4C's failings in communicating with affected audiences resulted in a breach of the Access Services Code and therefore Condition 19 of the Channel 4 licence. We had serious concerns about the impact these failings had on users of access services. The lack of subtitling for Channel 4 programming on the Freesat platform left those audiences without access to Channel 4 programming for almost two months, while at the same time, C4C failed to effectively communicate in a timely way with its audience about the availability of access services. This also included providing inaccurate information on the EPG for a prolonged period.

In coming to our Decision in this case, we have measured our serious concerns about C4C's failings against its very strong track record in the provision of access services prior to the Outage and that the broadcaster has typically far exceeded the minimum legislative quotas for subtitling, audio description and signing. We also acknowledged that C4C has led the way in taking innovative approaches to make a diverse range of content accessible. In particular, the Paralympics, foreign language drama and live content such as *Stand Up To Cancer*. C4C has expressed its "profound regret" over this incident and also made a number of commitments about how it will further improve the accessibility of its services, including providing subtitles on all content on All4 by the end of 2022 and extending its commitments around audio description and signing to 45% and 10% respectively.

In light of these factors we have decided that this breach does not warrant consideration of the imposition of a statutory sanction. Nonetheless, Ofcom may consider further regulatory action should any similar issues regarding C4C's provision of access services occur in the future. At the end of 2022 we will also be requiring C4C to report to us about the steps it has taken to ensure the robustness of its access services provision going forwards and the extent to which it has met its commitments in continuing to improve the accessibility of its programming on both its broadcast and on demand services.

Although we have found C4C in breach in this case, we acknowledge that this is the first incident we have investigated where a technical issue has resulted in a substantive difference in access services provision for the same channel across different regulated platforms. This case now acts as an important precedent and has highlighted that it is vital that users of access services can rely on receiving the amount of subtitled, signed and audio described content required by legislation, irrespective of which regulated television platform they choose to use. We also intend to introduce new guidance setting out how we consider broadcasters can communicate most effectively with audiences should the availability of access services be impacted by unforeseen circumstances.

### **Breach of Condition 19 of the Channel 4 licence.**