

# OFCOM BROADCAST AND ON DEMAND BULLETIN

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## Introduction

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content to secure the standards objectives<sup>1</sup>. Ofcom also has a duty to ensure that On Demand Programme Services ("ODPS") comply with certain standards requirements set out in the Act<sup>2</sup>.

Ofcom reflects these requirements in its codes and rules. The Broadcast and On Demand Bulletin reports on the outcome of Ofcom's investigations into alleged breaches of its codes and rules, as well as conditions with which broadcasters licensed by Ofcom are required to comply. The codes and rules include:

- a) [Ofcom's Broadcasting Code](#) ("the Code") for content broadcast on television and radio services licensed by Ofcom, and for content on the BBC's licence fee funded television, radio and on demand services.
- b) the [Code on the Scheduling of Television Advertising](#) ("COSTA"), containing rules on how much advertising and teleshopping may be scheduled on commercial television, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), for which Ofcom retains regulatory responsibility for television and radio services. These include:
  - the prohibition on 'political' advertising;
  - 'participation TV' advertising, e.g. long-form advertising predicated on premium rate telephone services – notably chat (including 'adult' chat), 'psychic' readings and dedicated quiz TV (Call TV quiz services); and
  - gambling, dating and 'message board' material where these are broadcast as advertising<sup>3</sup>.
- d) other conditions with which Ofcom licensed services must comply, such as requirements to pay fees and submit information required for Ofcom to carry out its statutory duties. Further information can be found on Ofcom's website for [television](#) and [radio](#) licences.
- e) Ofcom's [Statutory Rules and Non-Binding Guidance for Providers of On-Demand Programme Services](#) for editorial content on ODPS (apart from BBC ODPS). Ofcom considers sanctions for advertising content on ODPS referred to it by the Advertising Standards Authority ("ASA"), the co-regulator of ODPS for advertising, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters, depending on their circumstances. These include the requirements in the BBC Agreement, the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

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<sup>1</sup> The relevant legislation is set out in detail in Annex 1 of the Code.

<sup>2</sup> The relevant legislation can be found at Part 4A of the Act.

<sup>3</sup> BCAP and ASA continue to regulate conventional teleshopping content and spot advertising for these types of services where it is permitted. Ofcom remains responsible for statutory sanctions in all advertising cases.

## Note to Broadcasters and On Demand Service Providers

### Introduction of:

- **the amended Broadcasting Code;**
- **procedures for handling BBC content standards complaints, investigations and sanctions; and**
- **amended investigation and sanction procedures for other broadcasters and notified on demand programme service (“ODPS”) providers**

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Ofcom is today taking on responsibility as the BBC's new external regulator. Following several public consultations, on 29 March 2017 we published our Statements setting out our decisions relating to:

- **Amendments to the Broadcasting Code<sup>1</sup>:** We have today published<sup>2</sup> an amended version of the Code to make clear: the areas where Ofcom has new responsibility to regulate content standards for BBC licence-fee funded services; and that the BBC iPlayer will be regulated under the Code, as relevant. We also have added the existing statutory rules for ODPS as a separate part alongside the Broadcasting Code. The full Ofcom Broadcasting Code (with the Cross-promotion Code and the ODPS rules) is available on Ofcom's website: See <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code>
- **Procedures for handling BBC content standards complaints, investigations and sanctions<sup>3</sup>:** We have today published new procedures that reflect key aspects of the new BBC Charter and Agreement. These are the procedures that Ofcom will normally follow for BBC's UK broadcasting and ODPS funded by the licence fee when:
  - considering and investigating content standards issues under the Code;
  - considering and adjudicating Fairness and Privacy complaints under the Code; and
  - considering the imposition of sanctions for breaches of the Code.

These new procedures aim to inform consumers and other relevant stakeholders clearly and effectively how Ofcom will consider complaints on a 'BBC First' basis, where the BBC will handle complaints in the first instance before a complainant can refer their issue to Ofcom.

- **Amendments to investigation and sanction procedures for other broadcasters and notified on demand service providers<sup>4</sup>:** We have also today published amended versions of our current

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0032/99518/BroadcastingCodeReview.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0032/99518/BroadcastingCodeReview.pdf)

<sup>2</sup> On 9 March 2017 we also published a Statement ([https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/98148/Due-impartiality-and-elections-statement.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/98148/Due-impartiality-and-elections-statement.pdf)) setting out:

- our decision to remove the concept of the list of larger parties from Section Six of the Code and the rules on party political and referendum broadcasts (“PPRB Rules”); and
- changes to apply Section Five (due impartiality and due accuracy) and Section Six of the Code, to the BBC

<sup>3</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0030/99570/BBCprogrammes.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0030/99570/BBCprogrammes.pdf)

<sup>4</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0037/99568/Procedurescontentstandards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0037/99568/Procedurescontentstandards.pdf)

procedures which apply to all other Ofcom television and radio licensees and notified ODPS providers. We consulted on these procedures at the same time as our new BBC procedures to ensure that: they are appropriate; they are consistent with the proposed BBC procedures; our processes are fair, efficient and timely; and there is transparency and clarity as to how our processes will be run. In summary, we have published the following amended procedures:

**(Links to be confirmed on Monday 3 April before publication)**

- [procedures for investigating breaches of content standards for television and radio;](#)
- [procedures for the consideration and adjudication of Fairness & Privacy complaints;](#)
- [general procedures for investigating breaches of broadcast licences;](#)
- [procedures for the consideration of statutory sanctions in breaches of broadcast licences;](#)
- [procedures for investigating breaches of rules for ODPS; and](#)
- [procedures for the consideration of statutory sanctions arising in the context of ODPS.](#)

All Ofcom's procedural documents are available on Ofcom's website: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/procedures>

## Broadcast Standards cases

### In Breach

#### Celebrity 100% Hotter

**5STAR, 25 January 2017, 20:00**

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#### Introduction

5STAR is a general entertainment channel broadcast on a variety of digital platforms. It is owned and operated by Channel 5 Broadcasting Limited ("Channel 5" or "the Licensee").

*Celebrity 100% Hotter* is a "makeover" programme in which guest celebrities are rated by members of the public before and after the makeover. A complainant alerted Ofcom to offensive language broadcast at 20:07.

Holly Hagen, one of the guest celebrities, said in response to being rated:

- *"He fucking loves it";* and
- *"For me, your look is a fucking one".*

Ofcom considered this raised issues under Rule 1.14 of the Code which states:

"The most offensive language must not be broadcast before the watershed...".

We therefore asked the Licensee for comments under this rule.

#### Response

Channel 5 explained that a member of the compliance team had not followed its procedures and, consequently, an incorrect version of the programme had been broadcast pre-watershed. Channel 5 accepted and apologised for this "human error" which led to this breach of the Code.

The Licensee added that an internal investigation had been conducted and "temporary manual procedures" had been implemented to ensure, "as far as possible", that a similar incident did not occur again.

#### Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Rule 1.14 states the most offensive language must not be broadcast on television before the watershed. Ofcom's 2016 research<sup>2</sup> on offensive language clearly indicates that the word "fuck" and variations of it are considered by audiences to be amongst the most offensive language.

In this case the word "fucking" was broadcast twice in a programme before the watershed. This material was therefore a clear breach of Rule 1.14.

This is the third recent case in which Ofcom has found the Licensee in breach of the Code for broadcasting the most offensive language on one of its services before the watershed<sup>3</sup>. In all three cases, the Licensee explained that the breaches occurred because of a technical<sup>4</sup> or human error which resulted in a post-watershed version of the programme being broadcast before the watershed.

Ofcom is therefore requesting that the Licensee attend a meeting to discuss its compliance in this area.

### **Breach of Rule 1.14**

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<sup>2</sup> On 30 September 2016, Ofcom published updated research in this area: Attitudes to potentially offensive language and gestures on television and on radio:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

<sup>3</sup> See [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/51228/issue\\_303.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/51228/issue_303.pdf) and [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/51975/issue\\_297.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/51975/issue_297.pdf)

<sup>4</sup> Ofcom published a breach decision on 25 April 2016 for the inclusion of the most offensive language broadcast before the watershed. In this case the Licensee explained that the breach occurred due to a technical error. Ofcom recognised the different nature of the circumstances of this breach and reminded the Licensee of the need to have effective compliance procedures in this area:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0018/51228/issue\\_303.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0018/51228/issue_303.pdf)

## In Breach

### The Two Mikes

*Talksport, 29 December 2016, 13:40*

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#### Introduction

Talksport is a national radio station providing a 24-hour speech service that primarily features programming about sport as well as regular news bulletins. The licence for Talksport is held by Talksport Limited ("Talksport Ltd" or "the Licensee").

*The Two Mikes* is a weekday radio programme which is usually broadcast on Talksport between 01:00 and 05:00. However, on this occasion the programme was moved to replace a daytime programme broadcast between 13:00 and 16:00.

A complainant alerted Ofcom to comments by the presenters, Mike Graham ("Graham") and Mike Parry ("Parry"), about a former colleague's alleged lewd behaviour towards female colleagues. The listener considered the comments highly offensive, particularly because the presenters recounted the anecdotes in a light-hearted way.

During an unscripted conversation about their careers as newspapers journalists, the presenters made the following comments about a former colleague:

Parry: *"I think we had a nurse at The Express and I think that our old colleague [name redacted] seduced her in the sick bay..."*

Graham: *"...probably he went down and pretended to have a bad knee or something...have a look at that"*

Parry: *"...yeah, yeah he used to do that..."*

Graham: *"He's not around anymore is he [name]?"*

Parry: *"[Name] is dead – not sure what happened to the nurse – but, there you go...wounded knee that was it..."*

Graham: *"The worse thing about [name] as lecherous as he was, he somehow managed to get himself elected as the sexual harassment officer on The Daily Express, so that he would listen to these tales of woe from young women coming in saying they had been sexually harassed, he would make sure they gave him chapter and verse"*

Parry: *"Absolutely unbelievable - there is a young lady we still know who told us that [name] used to ask her if he could fondle her breasts in the lift..."*

Graham: *"...it's a family show this – he used to ask her?"*

Parry: *"Yeah, he used to ask her if it was alright, yeah, this is a family show and [name] ends up being the sexual offender...complaints er... monitor..."*

Graham: *"Well, it wasn't really 'offenders'..."*

- Parry: *"Yeah well...what was it? Sexual er...insinuation...officer?"*
- Graham: *"...sexual harassment".*
- Parry: *"Yes, harassment, harassment - yes that was it..."*
- Graham: *"Sexual harassment officer...sexual insinuation officer was probably more apt..."*
- Parry: *"Yes, well I can tell you, I knew a little bit about [name]'s wild ways from a long time back. We were doing a story in Sardinia..."*
- Graham: *"...we haven't got time for this...was this when you got arrested?"*
- Parry: *"No, it was something else..."*
- Graham: *"I thought you got arrested in Sardinia?"*
- Parry: *"That was a different story altogether – that was the World Cup. No, what happened here was that a family got kidnapped from their villa in Sardinia...a very prominent British family held for ransom..."*
- Graham: *"All of them?"*
- Parry: *"Yes all of them".*
- Graham: *"If you kidnap everyone there is no one to pay the ransom..."*
- Parry: *"Yeah, all of them, well the wife and the daughter – and they left the millionaire father to sort out the ransom...so I was a very lowly member of the Fleet Street pack at the time and went up to see [name] and knocked on the door and he said come in and I went out onto the balcony and found [name] with a stop watch, so I said: 'I'm Mike Parry, we work on the same paper...' so, I said 'what exactly are you doing there...?' He said, 'I'm timing them'. 'Timing who?' He said 'well, the back gate of this hotel is where all the hookers wait and passing motorists stop and they get into their car...one of them was only away for 16 minutes and she was back again..."*
- Graham: *"...and that's what she was doing? Well, we'll talk some more about [name] this is a family show as you know..."*

We considered this raised potential issues under the following rule of the Code:

- Rule 2.3: *"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence".*

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

## Response

Talksport accepted that the presenters' comments were not appropriate. It explained that the unscripted conversation between the presenters "touched upon reminiscences of more than 20 years ago when social mores were very different from today". It added that their programme was usually broadcast between 01:00 to 05:00 which was "a very different kind of programme given its timeslot and expected audience anticipation" than the afternoon programme it replaced.

As a result of the complaint, Talksport said that its Programme Director had reminded the presenters and the production staff of the need to ensure compliance with Sections One and Two of the Code. In mitigation, the Licensee explained that "the presenters' laughter was perceived by the complainant to be making light of sexual harassment – when, in fact, it was expressing incredulity at the woeful lack of sensitivity of a bygone era when unacceptable workplace practices were, unfortunately, far too commonplace". Nonetheless, the Licensee acknowledged that the comments "could be misinterpreted as being insensitive" and expressed regret that they were broadcast.

## Decision

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section Two of the Code requires that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of harmful or offensive material.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by context. Context is assessed by reference to a range of factors including the editorial content of the programme, the service in which the material is broadcast, the time of broadcast and the likely expectation of the audience.

Ofcom has taken account of the audience's and the broadcaster's right to freedom of expression set out in Article 10 of the European Convention on Human Rights. Ofcom must seek an appropriate balance between ensuring members of the public are adequately protected from material which may be considered offensive on one hand and the right to freedom of expression on the other.

We first considered whether the comments had the potential to cause offence.

These anecdotes were presented in a light-hearted manner and both presenters responded with laughter at their former colleague's behaviour. Although it may have been the case that the presenters' laughter was a result of "incredulity" at a "bygone era", in our view this implied disbelief was not necessarily evident to listeners. We recognised that the comments were anecdotal and alluded to alleged behaviour that would not be acceptable in the workplace today. However, at no point during the interchange did the presenters overtly criticise the behaviour of their former colleague.

We considered that the comments detailed degrading and sexually predatory behaviour towards women and, given the way in which they were delivered, they were capable of causing offence to the audience. The potential for offence was heightened because any "incredulity" on behalf of the presenters appeared to be based on the fact that the individual had avoided sanction for his alleged behaviour, rather than the nature of what he had allegedly done.

Ofcom then considered whether the broadcast of these comments was justified by the context.

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

We acknowledged that listeners to a talk radio show would be likely to expect to hear some challenging views expressed. We also took into account that the programme, usually broadcast at night, replaced a programme scheduled for the afternoon. However, we considered that listeners would still not have expected to hear such content at this time, especially given that it was broadcast during the Christmas period.

We took into account that the Licensee accepted that the presenters' comments were not appropriate and would have exceeded audience expectations.

Ofcom's view is that the presenters' offensive comments exceeded generally accepted standards and, therefore, the programme was in breach of Rule 2.3 of the Code.

### **Breach of Rule 2.3**

## In Breach

### Awakening with Brahma Kumaris MATV, 28 September 2016, 06:24

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#### Introduction

Midlands Asian Television ("MATV") is a satellite television service that broadcasts Indian programming primarily in Hindi, English, Gujarati and Punjabi. The licence for MATV is held by Middlesex Broadcasting Corporation Limited ("MBCL" or "the Licensee").

As part of a routine monitoring exercise we identified a programme which contained references to the Brahma Kumaris Foundation, an organisation which offers meditation and yoga courses and meditation music tracks which users can download. It has centres around the world, including the UK.

The programme was broadcast in Hindi and Ofcom translated the content into English and gave the Licensee an opportunity to comment on the accuracy of the translation. MBCL did not raise any issues, and we therefore used this translation for the purposes of the investigation.

At the end of the programme, a segment lasting approximately two minutes featured on-screen and audio references to the services offered by the Brahma Kumaris Foundation, for example:

*"Brahma Kumaris, Raj Yoga Meditation, and Free of Cost. This course is for one hour, for seven days. From big cites to smaller ones, we have more than eight thousand centres..."*

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*"To find out about your nearest centre Call: [telephone number] ... 8500 centres in 130 countries"*

\*\*\*\*

*"Email: [email address]"*

\*\*\*\*

*"Courses offered: Stress free living, Self-management, Positive Thinking"*

*"Download song – [website address]..."*

\*\*\*\*

*"To learn Raj yoga or to find out more about the nearest centre, contact us..."*

Ofcom requested information from the Licensee to determine whether the references to the Brahma Kumaris Foundation and its products and services, constituted product placement as defined in the Code<sup>1</sup>. The Licensee confirmed that the references to the telephone numbers and email address were

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<sup>1</sup> The Code defines product placement as: "The inclusion in a programme of, or reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not prop placement."

not made in return for payment or valuable consideration to any relevant provider or any person connected with the relevant provider. Based on the information provided, we considered the material raised issues under the following Code rules:

- Rule 9.4 "Products, services and trade marks must not be promoted in programming."
- Rule 9.5 "No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:
- the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
  - the manner in which a product, service or trade mark appears or is referred to in programming".

We sought the Licensee's comments on how the material complied with these rules.

### Response

The Licensee said that the programme was part of MATV's "social welfare" programming and offered advice to viewers on the benefits of positive thought and meditation. MBCL said that Brahma Kumaris is a "registered social charitable institute" that offers a range of meditative services for free.

It added that the programme was not "commercial in any way" and the contact details were simply provided for viewers to obtain further information about the Brahma Kumaris Foundation.

Finally, MBCL said that it has stopped broadcasting the programme with immediate effect in the light of Ofcom's investigation.

### Decision

Under the Communications Act 2003 ("the Act"), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is "that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with". These obligations include ensuring compliance with the Audiovisual Media Services ("AVMS") Directive.

The AVMS Directive requires a distinction between advertising and editorial content, including that television advertising is kept visually and/or audibly distinct from programming. This is to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rules 9.4 and 9.5.

#### Rule 9.4

Rule 9.4 states that products, services and trade marks must not be promoted in programming.

At the end of this programme the contact details for the Brahma Kumaris Foundation, including its website and telephone numbers, were shown full screen for around two minutes. Viewers were encouraged to contact the organisation to find their nearest yoga centre or to sign up to a Raj Yoga

meditation course. This promotion of the Brahma Kumaris Foundation and the services it offered was therefore in breach of Rule 9.4 of the Code.

#### Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to. Ofcom's published guidance<sup>2</sup> on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears".

We took into account the Licensee's argument that the programme intended to offer advice to viewers on the benefits of positive thought and meditation and that details of the Brahma Kumaris Foundation and its services were provided for information only. Ofcom did not accept that the subject matter of the programme provided sufficient editorial justification for the numerous and extended visual and audio references to the products and services offered by one organisation. The programme was therefore in breach of Rule 9.5 of the Code.

#### **Breaches of Rules 9.4 and 9.5**

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

## In Breach

### Grahonkakhe

***MATV, 28 September 2016, 17:57***

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#### Introduction

Midlands Asian Television ("MATV") is a satellite television service that broadcasts Indian programming primarily in Hindi, English, Gujarati and Punjabi. The licence for MATV is held by Middlesex Broadcasting Corporation Limited ("MBCL" or "the Licensee").

As part of a routine monitoring exercise, Ofcom identified an episode of *Grahonkakhe*, an astrology programme hosted by Gurudev Suresh Shrimali Ji, a popular astrologer in India. The programme was broadcast in Hindi and Ofcom translated the content into English and gave the Licensee an opportunity to comment on the accuracy of the translation. MBCL did not raise any issues, and we therefore relied on this translation for the purposes of the investigation.

The programme covered the Hindu festival, Navratri<sup>1</sup>, planetary movements and various meditative and spiritual practices. During the programme, viewers were provided with information about how they could make an appointment to meet the host and have an astrology reading, for example:

*"For telephonic Appointment [telephone number]"*.

*"Website [website address]" and "Email [email address]"*.

In response to Ofcom's initial request for information, the Licensee advised Ofcom that it considered the content to be teleshopping. Ofcom considered that the material did not fulfil the criteria<sup>2</sup> to be classified as such. In our view the content was presented as a programme. We therefore requested information from the Licensee to determine whether the email and telephone references constituted product placement as defined in the Code<sup>3</sup>.

Based on the information provided, we considered the material raised issues warranting investigation under the following Code rules:

Rule 9.9: "References to placed products, services and trade marks must not be promotional".

Rule 9.10: "References to placed products, services and trade marks must not be unduly prominent".

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<sup>1</sup> Navratri is a festival dedicated to the worship of the Hindu deity, Durga.

<sup>2</sup> As set out in the Note to Broadcasters in issue 193 of Ofcom's Broadcast Bulletin, available at [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0028/47386/obb193.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0028/47386/obb193.pdf)

<sup>3</sup> The Code defines product placement as: "The inclusion in a programme of, or reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any other person connected with a relevant provider, and is not prop placement."

We therefore asked the Licensee for its comments as to how the material broadcast complied with these rules.

### **Response**

The Licensee said that this was a long running programme which had been broadcast by MATV for the past 12 years. It said that when “the new management took control [in 2007] this programme was on-air and no contract was supplied to [it] by the previous management. It has been [broadcast] since with no changes at all; hence [it] never felt the need of a contract”.

MBCL added that “it is basically a pre-recorded show on the lines of teleshopping” and that while contact details are offered to viewers; it is at their “discretion to approach [Gurudev Suresh Shrimali Ji] or not”.

### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, including “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

The AVMS Directive contains a number of provisions designed to help maintain a distinction between advertising and editorial content, including requirements that television advertising is kept visually and/or audibly distinct from programming in order to prevent programmes becoming vehicles for advertising and to protect viewers from surreptitious advertising. Further, both the AVMS Directive and the Act require that:

- programmes containing product placement shall not directly encourage the purchase or rental of goods or services; and
- programmes containing product placement shall not give undue prominence to the products, services or trade marks concerned.

Rules 9.9 and 9.10 of the Code reflect these requirements.

#### Rule 9.9

The programme included invitations to contact the host for astrology readings. Ofcom recognises that viewer interaction is a key component of some programmes. There may well be clear editorial grounds for broadcasters to provide viewers with details of how to contact the programme. The Code allows broadcasters to use a variety of communications routes to facilitate viewer interaction, including telephony, email and social media. However, when promoting such routes on air, care is needed to ensure that editorial content is not used, or perceived as being used, for advertising purposes (e.g. to promote a particular business or its products and services).

In this case, the programme was not broadcast live and therefore viewers would be unable to interact with the programme. Further, the contact details which appeared throughout the programme were not specific to the programme or channel but in fact were methods of contacting Gurudev Suresh Shrimali Ji directly and could be found on his own website. Ofcom considered that the explicit invitations to viewers to contact Gurudev Suresh Shrimali Ji to receive an astrological reading directly promoted his astrology service. Therefore the programme was in breach of Rule 9.9 of the Code.

### Rule 9.10

Ofcom's Guidance to Section Nine of the Code<sup>4</sup> makes clear that the level of prominence given to a product, service or trade mark will be judged against the editorial context in which it appears and that "a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent."

The programme was hosted by Gurudev Suresh Shrimali Ji and comprised spiritual and meditative teachings related to Hinduism. However, we considered the numerous references to Gurudev Suresh Shrimali Ji's contact details served an advertising rather than editorial purpose and this could not be justified by the editorial context. As a result, the references were unduly prominent, in breach of Rule 9.10 of the Code.

### **Breaches of Rules 9.9 and 9.10**

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<sup>4</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf)

## In Breach

### Picture Dating

*Kiss Me TV, 27 September 2016, 08:00*

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#### Introduction

Kiss Me TV is a dating channel that broadcasts on digital terrestrial platforms. The licence for Kiss Me TV is held by BoxBeat Media Limited ("BoxBeat Media" or "the Licensee").

*Picture Dating* consists of users' dating profiles, usually comprising a photograph and short message. Each profile features a personal identification number ("PIN") and viewers are invited to "text on TV" or "chat privately" with users via an SMS shortcode charged at a premium rate (60p and £1.20 respectively).

The channel is licensed as a teleshopping service because the content shown is predicated on the use of premium rate telephony services ("PRS")<sup>1</sup>. As teleshopping, the material on the channel is subject to the BCAP Code: the UK Code of Broadcast Advertising ("the BCAP Code"). For most matters the BCAP Code is enforced by the Advertising Standards Authority. Ofcom, however, is responsible for enforcing the rules for certain types of advertising, including long-form broadcast content that is based on paid-for viewer interaction, such as the content shown on Kiss Me TV.

A complaint alerted Ofcom to two separate dating profiles which appeared on screen repeatedly. The profiles featured the same photograph, but with different profile information. We sought information from the Licensee, who told us that the output had been affected by a technical issue which led to incorrect PINs accompanying some profile pictures.

We considered this raised potential issues under Rule 3.1 of the BCAP Code.

Rule 3.1: "Advertisements must not materially mislead or be likely to do so".

We therefore asked the Licensee for its comments as to how the content complied with this rule.

#### Response

BoxBeat Media informed us that incorrect information accompanied some profile pictures because of a fault caused by a database becoming full and a number of records being overwritten. It said that the fault developed in "back end systems" and that this resulted in a "small amount of the data broadcast" being "corrupted".

The Licensee said it was not able to determine precisely how long the fault had lasted, but believed that the fault affected the photographs and PINs of "fewer than 10 customer records" and lasted for "less than 24 hours".

The Licensee told Ofcom that it "[had] not suffered any similar technical faults in the past" and that the database has now been "upgraded to ensure this cannot happen again".

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<sup>1</sup> In June 2010, Ofcom published a statement confirming that Participation TV services (including dating services) predicated on the use of PRS were regulated as teleshopping (or long-form advertising). The statement can be found at <https://www.ofcom.org.uk/consultations-and-statements/category-1/participationtv3/statement>

BoxBeat Media continued that it did not believe that dating profiles could “reasonably be considered as advertisements in any conventional sense, nor that the public would expect them to be considered so”. The Licensee said that an advertisement “would conventionally be considered to be the promotion of a commercial product or service” or “placed by a commercial organisation or similar”. It added that dating profiles on Kiss Me TV consisted of a “picture of [users] with a few words of description” and that “there is no commercial element to this for the user”.

Accordingly, it argued that these dating profiles cannot be considered advertisements in the way anticipated in the BCAP Code.

The Licensee added that an advertisement could not be considered to be materially misleading by virtue of incorrect response details. It emphasised that the fault in its system caused the PIN numbers to be overwritten, meaning that if a viewer had wanted to interact with a dating profile any messages would have failed to reach the desired recipient. BoxBeat Media said that as this was the only way in which data was corrupted, any “reasonable person” would not consider the material to be misleading.

The Licensee highlighted that it had received no complaints about the material and that, as no responses were received from viewers while the fault was occurring, it was of the view that no viewers had suffered any financial loss. The Licensee therefore concluded that it was “hard to see that there [was] any material viewer or consumer issue”.

## Decision

Under the Communication Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, one of which is that “the inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This objective is reflected in the rules set out in the BCAP Code.

The BCAP Code states that it applies to “all advertisements (including teleshopping, content on self-promotional television channels, television text and interactive television advertisements) and programme sponsorship on radio and television services licensed by Ofcom”. It also defines teleshopping as “television broadcast direct offers for the supply of goods and services, including immovable property, rights and obligations in return for payment”.

*Picture Dating* directly offered viewers the opportunity to interact with users at a cost of 60p or £1.20. As made clear in Ofcom's Statement on Participation TV<sup>2</sup>, dating services dependent on the promotion of PRS phone lines are regulated under the BCAP Code by Ofcom. Ofcom was concerned that the Licensee appeared not to understand that the BCAP Code applied to its content.

### Rule 3.1

The Licensee explained that a fault resulted in some profiles displaying incorrect PINs, and that, had a viewer attempted to send a message to an affected user, this message would not have reached the owner of the chosen dating profile.

In Ofcom's view this had the potential to mislead viewers who, from the information provided on screen (i.e. a specific profile picture accompanied by a specific PIN, and the options to “text on TV” or “chat privately”), would reasonably have believed that by paying the stipulated premium rate charge, they would be able to interact with the person featured in the profile of their choosing.

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<sup>2</sup> See <https://www.ofcom.org.uk/consultations-and-statements/category-1/participationtv3/statement>

The Licensee submitted that no responses to profiles were received from viewers whilst the fault was occurring. However, it also told us that it was unable to determine exactly how long the fault lasted. Ofcom is concerned that, for the reasons outlined above, any viewer attempting to interact with an affected profile during this time would have been materially misled – namely, they would have paid a premium rate to receive their chosen service but would not have done so due to the fault.

Ofcom recognised the measures undertaken by the Licensee to upgrade its systems to prevent a recurrence. However, for the reasons above, Ofcom's Decision is that Rule 3.1 was breached.

**Breach of Rule 3.1 of the BCAP Code**

## In Breach

### Vindicate Album Launch<sup>1</sup>

*Olive TV, 14 October 2016, 08:23*

### Solution Hour

*Olive TV, 14 October 2016, 13:00*

### Advertising Minutage

*Olive TV, 14 October 2016, 08:00 and 17:00*

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## Introduction

Olive TV is a Christian channel that broadcasts in English, French and Lingala on a digital satellite platform. The licence for this service is held by Zion of the Holy One of Israel Ministries Limited (“the Licensee”).

As part of a routine monitoring exercise, Ofcom assessed content broadcast on Olive TV. Where the content was broadcast in Lingala, Ofcom commissioned an independent translation of the material.

Ofcom identified the following content that raised issues warranting investigation under the Code, or the Code on the Scheduling of Television Advertising (“COSTA”).

### Vindicate Album Launch

This programme, broadcast in English and Lingala, consisted of an interview with music artist and preacher Beni Olive Nkosi. The interview, described by the presenters as a “*press conference*”, focused on the launch of Beni Olive Nkosi’s new album ‘Vindicate’. During our assessment we noted the following:

- several references to Beni Olive Nkosi’s new single and album ‘Vindicate’ including: three broadcasts of her music video, a promotional poster of the album cover shown on set for the duration of the programme, discussion of the inspiration behind the album and the meaning of the song ‘Vindicate’, the anticipated album launch, and texts from viewers praising the artist and the single;
- the statement “[j]ust to remind the public that the L’Or Mbongo Album ‘BOKOYOKA SANGO’ is already on sale, in Carmel Shop Media or in the Chemin des Artistes” made by the programme presenter; and
- two captions, which remained on-screen throughout the duration of the programme, featuring the web address for Le Chemin des Artistes – promoters of Christian music and Christianity.

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<sup>1</sup> This issue of the Broadcast Bulletin was amended after its original publication to include this decision. It was not published at the time due to an administrative error.

### Solution Hour

This series features a mixture of lectures and studio discussions on verses from the bible, with Pastor Abbeam Danso, Pastor Chris Danso and guest contributors. In this episode Pastor Danso discussed the "end of the year" and how problems around this time of year may affect viewers spiritually. During the programme the following references were made about God's Solution Centre, a Pentecostal church and registered charity that hosts social gatherings, youth training and conferences:

- at approximately 13:00 and 13:30, a sequence of clips, filmed from a church service, referred to God's Solution Centre. The accompanying voiceover welcomed viewers "to hear the word of God" with Reverend Abbeam Danso and included text in a caption that said:

*"WORSHIP WITH US EVERY SUNDAY AND FRIDAY".*

\*\*\*\*

*"Time: Fridays@6PM Sundays@10am".*

\*\*\*\*

*"[Address, telephone and website address given]"*.

- a sequence referring to God's Solution Centre, was broadcast at approximately 13:01, 13:31, and 13:55 and included the following on-screen text and accompanying voiceover:

*"God's Solution Centre presents 'Breaking Negative Altars' with your host Rev. Dr. Abbeam Danso [clip of the Pastor delivering a speech].*

*Date: From the 27<sup>th</sup> to the 30<sup>th</sup> of October 2016.*

*Time: 6pm daily and 10AM on Sundays.*

*[Address and telephone given]"*.

- from approximately 13:32, during a discussion with Pastor Chris Danso, the following text appeared on screen for 23 minutes:

*"PASTOR ABBEAM AMPOMAH DANSO. GOD'S SOLUTION CENTRE.*

*[Address, telephone, email and website address given]"*.

Ofcom requested information from the Licensee to determine whether these references constituted product placement as defined in the Code<sup>2</sup>. In response to a request for copies of contracts regarding the programmes, the Licensee provided Ofcom with contracts showing that both Le Chemin des

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<sup>2</sup> Product placement is defined as the inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for payment or other valuable consideration to the programme maker, the broadcaster or any person connected with either.

Artistes and God's Solution Centre paid Olive TV to transmit these programmes. Based on this information, Ofcom considered that the references set out above appeared to meet the definition of product placement and featured in programmes produced under UK jurisdiction<sup>3</sup>.

For the reasons set out in the Decision section below, Ofcom was of the view that both *Vindicate Album Launch* and *Solution Hour* were religious programmes. Ofcom's Guidance on Section Nine of the Code<sup>4</sup> states that Ofcom will adopt the following meaning for a religious programme: "a programme that covers religious acts of worship or whose main focus is religious belief (but is not a news or current affairs programme)".

We therefore considered that both *Vindicate Album Launch* and *Solution Hour* raised issues under Rule 9.12 of the Code which states:

"Product placement is not permitted in the following:

(a) religious programmes [...]"

#### Advertising minutage

In the 08:00 clock hour there were 17 minutes and 45 seconds of advertising. Further, the 17:00 clock hour contained 31 minutes and 52 seconds of advertising. We considered that this raised issues under Rule 2 of COSTA which states:

"Time devoted to the television advertising and teleshopping spots on any channel in any clock hour must not exceed 12 minutes".

We therefore asked the Licensee how the material complied with these rules.

#### **Response**

The Licensee initially said that both programmes were Christian religious programmes which did not refer to "products, adverts nor teleshopping in religious terms".

#### *Vindicate Album Launch*

The Licensee said that the programme is a weekly live music talent show showcasing the achievements of young members from the community, its purpose is to encourage innovation, develop talent, and to

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<sup>3</sup> "[P]rogrammes produced under UK jurisdiction" means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the Audiovisual Media Services Directive).

<sup>4</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0014/33611/section9\\_may16.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0014/33611/section9_may16.pdf)

keep youths occupied and “off the streets”. It stated that ‘Vindicate’ the album was an example of such a project and was not commercially driven.

The Licensee explained that the music artist and preacher Beni Olive Nkosi, a university student and younger sister of the managing director of Olive TV, was invited by the producer of the programme to discuss the upcoming release of her new album; what led her to become a singer; and the role God plays in her life and work. In its initial response to Ofcom, the Licensee stated that the producer of the programme was Le Chemin des Artistes. However, in its later representations it stated that *Vindicate Album Launch* was an in-house production of Olive TV.

#### *Solution Hour*

The Licensee stated that this programme was editorial and that the Pastor Abbeam Danso, the senior pastor of God's Solution Centre, was “a client” of Olive TV. It continued that the programme was intended to provide adequate details of a particular church or denomination to viewers to assist them in deciding which church and/or church event to attend.

Having considered Ofcom's Preliminary View, that these religious programmes contained product placement, the Licensee acknowledged the breaches of the Code. It stated that the breaches were not international and it recognised that it required additional training. The Licensee welcomed a meeting with Ofcom and further guidance in this area.

#### *Advertising minutage*

The Licensee did not comment on how the material complied with Rule 2 of COSTA.

### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure specific standards objectives, including that the “product placement requirements...are met...”. The Act prohibits the inclusion of product placement in religious television programmes made under UK jurisdiction<sup>5</sup>. This prohibition is reflected in Rule 9.12(a) of the Code.

Another objective is that “that the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive. Article 23 of the AVMS Directive sets out a strict limit on the amount of television advertising that can be transmitted within a clock hour. This requirement is reflected in Rule 2 of COSTA.

#### Rule 9.12(a)

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<sup>5</sup> See footnote 2.

Rule 9.12(a) prohibits the inclusion of product placement in religious programmes made under UK jurisdiction.

#### *Vindicate Album Launch*

Ofcom took into account that Olive TV is a religious channel and that the Licensee considered *Vindicate Album Launch* to be a "Christian religious" programme. Ofcom observed that the central theme of the programme consisted of the artist's religious beliefs and experience as a preacher, which provided inspiration for her album and single. In addition, the programme included a discussion on the artist's message behind the new single:

*"I like the message because Vindicate is something we need in our lives as children of God. We are attacked spiritually. There are also some hard situations that can happen to us when we'll ask God to defend us".*

In Ofcom's view the programme was a "religious programme" as defined in Section Nine of the Code.

Information provided by Olive TV indicated that it had received payment from Le Chemin des Artistes to broadcast this programme, which featured references to Beni Olive Nkosi, her new single and album, the L'Or Mbongo album and the web address for Le Chemin des Artistes. Ofcom considered that these references met the Code's definition of product placement. Our Decision is therefore that the programme was in breach of Rule 9.12(a) of the Code.

#### *Solution Hour*

As *Solution Hour* consisted of lectures and studio discussion on verses from the bible, this programme also met the definition of a religious programme in Section Nine of the Code.

The Licensee broadcast *Solution Hour*, a programme that included references to God's Solution Centre, a registered charity, in return for payment. The Licensee submitted that the programme did not refer to products. However, Ofcom considered that the programme referred to various services provided by the charity.

The fact that an organisation may operate without seeking to make a profit does not preclude it from the product placement rules. In this case, the programme explicitly referred to God's Solution Centre and invited viewers to attend events hosted by the organisation. We therefore considered that the references to God's Solution Centre met the Code's definition of product placement. Because the references were in a religious programme made under UK jurisdiction, our Decision is that the programme was in breach of Rule 9.12(a) of the Code.

#### Rule 2 of COSTA

The amount of advertising on Olive TV exceeded the permitted allowance on two occasions. The 08:00 clock hour exceeded the allowance by 5 minutes and 45 seconds, and the 17:00 clock hour contained 19 minutes and 52 seconds more advertising than permitted.

Ofcom's Decision is that the material was in breach of Rule 2 of COSTA in each case.

### Conclusion

Ofcom is concerned that the Licensee's comments in this case imply a lack of understanding of the requirements of Section Nine of the Code and COSTA. We are therefore requesting that the Licensee attends a meeting to discuss its compliance arrangements.

### **Vindicate Album Launch and Solution Hour: Breaches of 9.12(a) of the Code**

### **Advertising Minutage: Breaches of Rule 2 of COSTA**

## Resolved

### East Midlands Today

***BBC1 East Midlands, 30 January 2017, 18:30***

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#### Introduction

A complainant alerted Ofcom to the inclusion of offensive language in a news report about protests against Donald Trump.

The pre-recorded footage of the protests showed at one point a placard held up by one of the anti-Trump protesters that read "*Fuck Donald Trump*". This was visible for approximately three seconds.

We considered this language raised issues that warranted investigation under Rule 1.14 of the Code which states:

"The most offensive language must not be broadcast before the watershed...".

We therefore asked the BBC for comments under this rule.

#### Response

The BBC said "the programme-makers sincerely regret this unfortunate incident, which we believe is the first of its kind since *East Midlands Today* began broadcasting in 1991". It explained that the material had been edited "under extreme pressure in very limited time". The Licensee however acknowledged the seriousness of the mistake and said that the programme-makers "fully accept that greater care was necessary".

The BBC said that an on-air apology was made at the end of the programme. It explained that "the programme-makers immediately instructed the BBC iPlayer service that the programme should not appear on that platform in order to reduce the harm and offence caused". It also said that "the library archive has been firmly labelled 'restricted'" to avoid any future re-broadcast of the item". The Licensee explained that the Editor had advised the production team of the "seriousness of the matter and spoke with individuals concerned" and "sent a message to all staff urging them to be vigilant for offensive material on any similar occasion".

The Licensee also said it had immediately apologised to "any viewers who contacted the newsroom during and after the programme".

#### Decision

Reflecting our duties under the Communications Act 2003<sup>6</sup>, Section One of the Code requires that people under eighteen are protected from material in programmes.

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<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

Rule 1.14 of the Code states that the most offensive language must not be broadcast before the watershed. Ofcom research on offensive language<sup>7</sup> clearly states that the word "fuck" and similar words are considered by audiences to be among the most offensive language.

In this case, a placard reading "*Fuck Donald Trump*" was clearly legible for three seconds and was shown in a pre-recorded package before the watershed.

Ofcom took into account that the Licensee had: apologised at the end of the programme and apologised immediately to any viewers who had contacted the newsroom; removed the material from any future broadcast on TV and on the BBC iPlayer; and, taken steps to ensure a similar incident will not recur. Our Decision was therefore that the matter was resolved.

## **Resolved**

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<sup>7</sup> On 30 September 2016, Ofcom published updated research in this area: Attitudes to potentially offensive language and gestures on television and radio:

([http://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](http://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf));  
([http://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/91625/OfcomQRG-AOC.pdf](http://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf)).

## Resolved

### Football League

#### *Sky Sports 2, 5 February 2017, 13:57*

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A complainant alerted Ofcom to offensive language during live coverage of a match between Huddersfield Town and Leeds United.

The following exchange occurred at approximately 13:57, when the presenter interviewed Man of the Match, Michael Hefele, shortly after the end of the game:

P: *"Michael, just tell us what that win means. How big a win is this?"*

MH: *"I think, er, that's a very big win, the whole championship see that Huddersfield Town is a serious team in the championship. And we have no limit, we showed it, we played on the pitch, er, we played our socks off, we were aggressive, we fight until the last minute, I'm, I'm just proud and happy to play with such good talent boys, you know, and I'm just proud".*

P: *"Sum it up, scoring a winner in the last minute?"*

MH: *"Yeah, that is my dream, I always want to play in big games, and score in the last minute, and also, yeah, now what I think, what I get, that is a fucking dream, it's er, all the big players get this, and I'm just happy".*

P: *"Sorry you...sorry you must apologise for that, you can't use that language on an interview at this time, I'm sorry about that—".*

MH: *"—sorry—".*

P: *"—sorry for people at home offended by that language".*

The presenter then ended the interview to talk to another player.

Ofcom considered the material raised issues under Rule 1.14 of the Code, which states:

*"The most offensive language must not be broadcast before the watershed..."*.

We asked Sky UK Limited ("Sky" or "the Licensee") for its comments on how this content complied with this rule.

### Response

Sky apologised for this incident. It added that Michael Hefele had been interviewed as Man of the Match live and immediately after the game when "emotions were still running high". The Licensee also said it was editorially important for him to be interviewed at that point due to him having scored the "pivotal goal" in the match. Sky said this language "was very much an uncharacteristic comment when compared to the responses we usually receive from footballers and therefore completely unexpected". It added that following the offensive language being broadcast: the presenter immediately apologised for the language, prompting "Hefele himself to apologise"; and the presenter reiterated his apology for any offence to viewers before choosing to end the interview and move on to another player.

Sky said the language "was regrettable but did not occur due to any negligence on [its] part" and that it "took sensible steps to minimise offence".

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>1</sup>, Section One of the Code requires that people under eighteen are protected from unsuitable material in programmes.

Rule 1.14 states that the most offensive language must not be broadcast before the watershed. Ofcom research<sup>2</sup> on offensive language clearly notes that the word "fuck" and variations of it are considered by audiences to be among the most offensive language.

The use of the word "fucking" at approximately 13:57 was a clear example of the most offensive language being broadcast before the watershed and was in breach of Rule 1.14.

However, Ofcom took into account that: the language took place in the context of a live interview at a sports event; the language was not used in an aggressive manner; and, the presenter immediately apologised twice before promptly ending the interview.

In light of these actions, Ofcom's Decision is that the matter is resolved.

### **Resolved**

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<sup>1</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

<sup>2</sup> Attitudes to potentially offensive language and gestures on TV and radio, September 2016. See page 6 of the Quick Reference Guide: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0023/91625/OfcomQRG-AOC.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0023/91625/OfcomQRG-AOC.pdf)  
See also the main report: [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0022/91624/OfcomOffensiveLanguage.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0022/91624/OfcomOffensiveLanguage.pdf)

## Resolved

### Broadcast competition

#### *Channel 5, 9 January 2017, 13:55*

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#### Introduction

Between 9 January and 12 February 2017, around the programme *Neighbours*, Channel 5 Broadcasting Limited ("Channel 5" or the Licensee) broadcast an invitation for viewers to enter a competition to win a holiday to Melbourne, a "Neighbours Tour" and £500 spending money. Viewers could enter by premium rate ("PRS") text message costing £1.50 plus the users' standard network rate, or by post.

Channel 5 notified Ofcom that the text message entry route to the competition did not open on time. As a result, viewers who attempted to enter within 10 minutes of the first invitation on 9 January 2017 received a message advising them that the competition had closed and that they had been charged their standard network rate for submitting the text message.

Ofcom considered this raised issues under Rule 2.14 of the Code, which states:

"Broadcasters must ensure that viewers are not materially misled about any broadcast competition".

Ofcom did not consider it necessary to seek formal representations from the Licensee before reaching a Preliminary View in this case but, in line with our published procedures<sup>1</sup>, Channel 5 was provided with an opportunity to make representations on Ofcom's Preliminary View.

#### Response

The Licensee explained that its PRS service provider was not included on the email distribution list when the details of the competition were confirmed. Consequently, the service provider did not receive instructions to open the lines at a particular time or to test them prior to the opening of the competition.

The Licensee said it is standard practice for its service provider to confirm via email when competition lines are opened. However, Channel 5 explained that on 9 January 2017, it experienced network outages resulting in many staff being unable to use their computers or send or receive emails. It therefore did not question why it did not receive the usual email from its service provider confirming that lines were open.

Channel 5 said that it became aware of the issue when it tested the lines approximately 90 minutes prior to the first broadcast of the invitation to participate. Upon discovering that the lines were not open, it contacted the service provider who took immediate action. Channel 5 said that the service provider was able to open the lines 10 minutes after the competition information was first broadcast.

Channel 5 explained that, although viewers attempting to enter while lines were closed would not have been charged the £1.50 PRS entry fee for the competition, they would have been charged their mobile carrier's standard network charge for one text message – between 10p and 12p per message. The Licensee said that it had identified 528 viewers who had been affected by the error. It said that

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<sup>1</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

each of these viewers were sent a text message which explained the incident<sup>2</sup> and offered a refund of the network charge via cheque. Channel 5 added that it processed 49 refunds and a sum representing the unclaimed amount was donated to charity.

The Licensee said it takes compliance with the Code very seriously and that there are numerous checks along every step of the lifespan of every competition. It added that thorough auditing of these procedures is carried out.

Channel 5 said as a result of this incident, further procedures and checks in the planning stages had been implemented, which it was confident would prevent a recurrence. This included checks to ensure that all relevant parties receive the final email containing competition details.

Channel 5 said that it sincerely regretted and apologised for the error in this case. However, it believed that the issue was "swiftly identified and rectified" and as such did not believe viewers were materially misled.

### **Decision**

Reflecting our duties under the Communications Act 2003<sup>3</sup>, Section Two of the Code requires that adequate protection is given to viewers and listeners from harmful material in programmes.

Rule 2.14 requires broadcasters to ensure that viewers and listeners are not materially misled about any broadcast competition.

In this case, a human error resulted in lines opening 10 minutes after the first invitation to enter the competition was broadcast. Viewers who responded to the invitation to enter via text message during this time were unable to do so but were still charged their standard network rate.

Ofcom took into account: the swift action taken by the Licensee to open the competition lines once it had become aware of the incident; the comprehensive process it put in place to ensure those affected were offered a refund; and the additional measures it had instigated to prevent similar problems arising in future. We also noted that the Licensee had itself alerted Ofcom to this incident.

Taking the above factors into account, Ofcom considered the matter is resolved.

### **Resolved**

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<sup>2</sup> The text message stated "FreeMsg: Sorry you couldn't enter our Neighbours comp today, due to an error it had not opened correctly. For a cheque refund for [10p/12p] please text REFUND to [text message entry number] by 07/02/17 with your full name, address and postcode (reply text cost of [10p/12p] will be refunded). Comp now open if you'd like to try again."

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/319>

## Broadcast Licence Condition Cases

### In Breach

#### Production of recordings

#### *West Hull Community Radio, 8, 9 and 10 December 2016*

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##### Introduction

West Hull Community Radio (“WHCR”) is a community radio station located in Hull. WHCR is for the West Hull communities of Riverside, West and Wyke areas. The licence is held by West Hull Community Radio Limited (or “the Licensee”).

To assess a complaint regarding WHCR’s compliance with its Key Commitments<sup>1</sup>, Ofcom requested recordings of the Licensee’s output on 8, 9 and 10 December 2016.

The Licensee initially provided recordings by the Ofcom’s deadline. However, the audio appeared to be incomplete because the output for 8 and 9 December was identical. Ofcom requested clarification from WHCR, who explained it had made an error in uploading the files and that it would send new files immediately. Despite repeated requests, the Licensee failed to provide the requested recordings by the deadlines set<sup>2</sup>. After some time, the Licensee did provide further recordings, but Ofcom noted that they were also incomplete. Eventually, the Licensee supplied the remaining recordings.

Ofcom considered that this raised potential issues under Licence Condition 8(2)(b) which states:

“8(2) In particular the Licensee shall:

- (b) at the request of Ofcom forthwith produce to Ofcom any... recording for examination or reproduction...”.

Ofcom therefore asked the Licensee for its formal comments on its compliance with this licence condition.

##### Response

The Licensee did not provide any representations.

##### Decision

In each broadcaster’s licence there is a condition requiring the licensee to comply with any request by Ofcom to produce recordings of programmes as broadcast. For community radio licences, this is reflected in Licence Condition 8(2)(b).

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<sup>1</sup> ‘Key Commitments’ form part of each community radio station’s licence and are contained in an annex to the licence. They set out how the station will serve its target community and include a description of the programme service.

<sup>2</sup> The Licensee stated that it had posted the recordings to Ofcom but did not provide proof of postage when requested.

The Licensee did not provide the requested recordings within the deadlines set by Ofcom. Ofcom's view was therefore that West Hull Community Radio Limited had breached Condition 8(2)(b) of its community radio licence.

This failure by West Hull Community Radio Limited comply with Condition 8(2)(b) represents a significant breach of its licence, because it resulted in Ofcom being unable to fulfil its statutory duty properly to assess and regulate broadcast content in this case in a timely manner.

We will monitor the Licensee's arrangements to provide recordings to Ofcom in due course, and should similar compliance issues arise, we will consider taking further regulatory action.

**Breach of Licence Condition 8(2)(b) of the community radio licence held by West Hull Community Radio Limited (licence number 000056BA)**

## Broadcasting licensees' late payment of licence fees

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Ofcom is partly funded by the broadcast licence fees it charges television and radio licensees. Ofcom has a statutory duty to ensure that the fees paid by licensees meet the cost of Ofcom's regulation of broadcasting. The approach Ofcom takes to determining licensees' fees is set out in the Statement of Charging Principles<sup>1</sup>. Detail on the fees and charges payable by licensees is set out in Ofcom's Tariff Tables<sup>2</sup>.

The payment of a licence fee is a requirement of a broadcasting licence<sup>3</sup>. Failure by a licensee to pay its licence fee when required represents a significant and fundamental breach of a broadcast licence, as it means that Ofcom may be unable properly to carry out its regulatory duties.

### In Breach

The following radio licensees failed to pay their annual licence fees by the required payment date. These licensees have therefore breached their broadcast licences.

The outstanding payments have now been received by Ofcom. Ofcom will not be taking any further regulatory action in these cases.

Licensee	Licence Number	Service Name
Afro Caribbean Millennium Centre	CR000037BA	New Style Radio 98.7
Panjab Radio Ltd	DN101356BA	Panjab Radio

### Breaches of Licence Conditions 3(2) in Part 2 of the Schedule of the relevant licences.

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging\\_principles.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/socp/statement/charging_principles.pdf)

<sup>2</sup> [http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff\\_Tables\\_2015\\_16.pdf](http://www.ofcom.org.uk/content/about/annual-reports-plans/tariff-tables/Tariff_Tables_2015_16.pdf)

<sup>3</sup> As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

## Broadcast Fairness and Privacy cases

### Not Upheld

#### Complaint by Mrs A on behalf of Mr B *Rookies, ITV, 6 September 2016*

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##### Summary

Ofcom has not upheld this complaint of unwarranted infringement of privacy made by Mrs A on behalf of her son, Mr B.

The programme included footage of Mr B after his arrest for suspicion of attempted murder. He was shown sitting on the ground speaking to police officers about the incident and as he was led away to the police van. Mr B was not named in the programme and his face was blurred. His voice was heard in the programme, but its pitch was altered.

Ofcom found that Mr B had a limited legitimate expectation of privacy in relation to the filming and subsequent broadcast of the footage of him without his consent. However, on balance, this did not outweigh the broadcaster's right to freedom of expression and the public interest in the particular circumstances of the case. Therefore, we considered that Mr B's privacy was not unwarrantably infringed either in connection with the obtaining of the footage or its subsequent broadcast.

##### Programme summary

On 6 September 2016, ITV broadcast an episode of *Rookies*, a series which followed seven probationary police officers from their initial training, being accompanied by experienced "mentor" police officers, through to patrolling on their own.

The probationary police officers were shown embarking on their final shifts with their mentors and then, going out on patrol on their own. One of the probationary police officers, "Anthony", was shown as he started his first shift alone. The programme's narrator said:

*"Suddenly, a call comes through regarding a violent incident in a park. The attacker [Mr B] appears to have fled the scene".*

Anthony explained:

*"Someone's been stabbed. Allegedly been stabbed in the torso. They've lost consciousness. The world and his missus are all on their way and I'm caught up by these red lights once again. I'm 20 minutes away".*

Anthony was then shown as he drove to the scene of the incident. The narrator said:

*"As Anthony is about to arrive at the scene, he discovers that two other officers have already apprehended the alleged attacker".*

As Anthony got out of the police car, two police officers were shown with Mr B, as he said:

*"He was the one that started this".*

Mr B, who was 17 years old, was then shown sitting on the ground. His face was blurred. A police officer was sat beside him with two other police officers stood around him. Mr B said:

*"He saw my knife, he clearly saw that and then he was like 'stab me'. He told me to. Why, why would he tell me to stab him with a knife? Why would he tell me that? He told me to, he told me to stab him so I done it".*

Mr B was then shown being led by the police officers to a police van. As Mr B got into the police van, he said: *"He told me to. He told me to stab him, so I did"*.

The narrator said:

*"The incident is being treated as an attempted murder. The crime scene is in a park, half a mile away. Anthony has been asked to cordon off the area as quickly as possible"*.

Footage of Anthony at the crime scene was shown as he spoke to another police officer about what was required of him. The other police officer said:

*"I've seen here, this is where the alleged victim's been stabbed... so what we need to do is encompass the whole scene with this here [crime scene tape] and the part where witnesses have been"*.

Anthony was shown as he cordoned off the crime scene. He said:

*"A young man has been stabbed. So, we're looking at attempted murder here, so at the moment I'm cordoning off the crime scene as he was stabbed just over there. We've got one in custody as he made a significant statement when I was there: 'he told me to stab him so I did'. I think the knife is still outstanding, so hopefully the dog can locate it"*.

Anthony was then shown as he made a log of the crime scene and spoke to another police officer at the scene who said:

*"We've arrived, suspects been laying, sorry, victims been laying down here, there's been an injury to his sternum – one puncture knife wound. He's been picked up, in and out of consciousness, [and] taken to St George's, St Thomas' in London. That's where we're at. Suspect in custody. Two witnesses to speak to"*.

Footage of Scenes of Crime Officers was shown and the narrator said that: *"Anthony has some vital evidence of his own to share with his sergeant and lead detective on the case"*.

The Police Sergeant read from Anthony's scene log and said:

*"Significant statement 'he told me to stab him so I did'. Where has that significant statement come from?"*

The following conversation then took place:

Anthony: *"Him. He said it as he was in cuffs sitting on the floor"*.

Police Sergeant: *"Did you hear that?"*

- Anthony: *"I heard it yeah..."*
- Police Sergeant: *"Are the other officers aware of that?"*
- Anthony: *"Yeah, they were sitting there with him".*
- Police Sergeant: *"Did you get that, he made a significant statement about it?"*
- Detective: *"What did he say?"*
- Anthony: *"When he was sat on the floor, he said 'he told me to stab him, so I did' and he kept going on about 'why would he ask me to stab him? I'm gonna get in trouble. He told me to do it,' stuff like that".*

The detective explained that it was Anthony's responsibility to guard the crime scene.

The narrator concluded this part of the programme by stating:

*"The charge was later downgraded to GBH with intent and possession of an offensive weapon. The attacker pleaded guilty in court and was remanded in custody for sentencing".*

No further footage of or reference to Mr B was included in the programme.

### **Summary of the complaint and broadcaster's response**

- a) Mrs A complained that Mr B's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast because his arrest was filmed without consent.

ITV said that when filming an observational documentary about the work of the police, it is often the case that the police and film crew will attend the scene of a reported crime with little prior knowledge of the incident beyond the basic details provided to them. In this case, all that was known to the police and camera crew when they attended the scene was that a suspect had been apprehended following a stabbing in a local park. No other information, for example, about the age of the suspect, was known to them.

ITV said that Mr B was arrested in a public place on suspicion of a very serious violent offence, that of attempted murder. It added that he appeared to admit on the spot that he had stabbed his victim. In these circumstances, ITV said that there was no legitimate expectation of privacy in the commission of a serious crime, or its aftermath, and that the material was obtained by proportionate means. In particular, it said that the programme makers filmed openly and Mr B made no objection to its presence at the time. ITV added that it would have been impractical to seek his consent explicitly by interrupting his interaction with the police at that particular time and in any event his consent was not required to film this incident.

If, however, Ofcom considered that Mr B had a legitimate expectation of privacy in these circumstances, then ITV said that the filming was warranted in the context of an observational documentary about police work, and the range of unpredictable and challenging situations that a probationary police officer may have to deal with.

- b) Mrs A also complained that Mr B's privacy was unwarrantably infringed in the programme as broadcast because footage of his arrest was broadcast without consent and prior to the completion of the court proceedings. Mrs A said that her son was recognisable from the footage, as there had been no attempt to disguise his voice, and that he had been identified from the footage by "numerous people", including a boy who had recognised her son and by "relative strangers".

Further, Mrs A said that because her son was 17 years old at the time of arrest, not in a position to give consent due to his mental health and in a state of heightened distress, the consent of his parents should have been obtained prior to the broadcast of the footage.

Mrs A said that there were reporting restrictions in place for her son's subsequent trial, and the court did not allow press coverage of the trial because it was not considered to be in the public interest. Mrs A said that the programme makers were also aware of Mr B's court date and therefore knew the programme would be broadcast prior to the completion of the court proceedings.

ITV said that it did not consider the inclusion of the footage in the programme without the consent of Mr B or his parents constituted an unwarranted infringement of his privacy. This was because, ITV said, Mr B had no reasonable expectation of privacy in the circumstances of having been arrested and having later pleaded guilty to a serious offence.

If, however, Ofcom considered that Mr B did have a legitimate expectation of privacy in these circumstances, then ITV said that the inclusion of the footage in the programme was warranted, in the context of an observational documentary about police work.

ITV said that following the filming, the programme makers obtained more information about the incident and so were aware that Mr B was aged 17 at the time of his arrest. Therefore, the broadcaster said that taking into account the relevant provisions of the Code, and the reporting restrictions imposed by statute and by a specific court order in this case, the programme makers were particularly careful to ensure that Mr B's identity was concealed by blurring his face and, contrary to Mrs A's belief, altering the pitch of Mr B's voice in the footage of his arrest.

ITV added that Mr B was filmed briefly, and that no personal information about him was disclosed other than that he was a young man who had been arrested and later pleaded guilty to grievous bodily harm with intent and possession of an offensive weapon. The broadcaster said that if Mr B was identifiable to some people watching the programme then it was likely to be as a result of their previous knowledge of the facts of the case, and not because they recognised him from the footage. ITV said that the location of the incident is a "relatively small area" and that Mr B and his victim were known to each other. In addition, ITV stated that there was local press reporting of the incident prior to the broadcast of the programme.

ITV said that it did not accept that the express consent of Mr B or his parents was required for the broadcast of this footage in the circumstances of the case. The broadcaster noted Mrs A's comments about the mental health of her son at the time, but it stated that the court apparently did not find Mr B's mental health to be an obstacle to accepting his capacity to plead guilty to grievous bodily harm with intent.

Further, ITV said that in the circumstances, namely where Mr B had already pleaded guilty to a serious offence, it decided it was warranted to feature him (with his identity obscured and voice disguised) without his consent or that of his parents.

ITV stated that insofar as it was relevant to Mrs A's complaint, it was aware of an Order dated 8 July 2016 under Section 45 of the Youth Justice and Criminal Evidence Act 1999, which prohibited the publication of anything likely to lead members of the public to identify the defendant in connection with the proceedings while he is under 18. ITV said that as Mr B was not identified in the programme, the reporting restriction was complied with in the broadcast of the programme.

ITV reiterated that the local press reported the incident at the time it occurred, and later reported more detailed information about Mr B's family background and the circumstances of the assault after the sentencing hearing, which ITV said the programme had deliberately omitted.

ITV said that it was aware that Mr B had pleaded guilty and was awaiting sentence when the broadcast was shown. The broadcaster stated that Mr B pleaded guilty to grievous bodily harm with intent and possession of a bladed weapon in July 2016 and the programme was transmitted nearly two months later, on 6 September 2016. ITV added that the sentencing hearing took place after the broadcast, when Mr B was sentenced to four years' imprisonment. ITV said that broadcasting the programme prior to the sentencing hearing could not amount to a breach of Mr B's privacy, nor did it amount to contempt of court as Mrs A had suggested.

ITV concluded that although it regretted that Mrs A and her son were distressed by the broadcast of the programme, having committed a serious crime, Mr B had no reasonable expectation of privacy in the filming or in the broadcast of the footage of his arrest, and there was no unwarranted infringement of his privacy in the making of the programme.

### **Ofcom's Preliminary View**

Ofcom prepared a Preliminary View on this case that the complaint should be not upheld. Both the complainant and the broadcaster were given the opportunity to make representations on the Preliminary View. The complainant did not submit any representations. ITV made the following representations on the Preliminary View.

ITV said that in considering whether or not Mr B had a legitimate expectation of privacy, Ofcom should have taken into consideration that at the time of filming, Mr B had been arrested on suspicion of having committed a serious crime of violence, a crime to which he confessed and to which he later pleaded guilty. In these circumstances ITV said that his expectation of privacy should have been limited and in particular to Mr B's case, that expectation should have been reduced to "zero".

ITV also said that in the circumstances of the case, the programme makers were not required to seek or obtain Mr B's consent to be filmed, or to obtain his or his parent's consent to include this material in the broadcast programme.

### **Decision**

Ofcom's statutory duties include the application, in the case of all television and radio services, of standards which provide adequate protection to members of the public and all other persons from unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

In carrying out its duties, Ofcom has regard to the need to secure that the application of these standards is in the manner that best guarantees an appropriate level of freedom of expression. Ofcom is also obliged to have regard, in all cases, to the principles under which regulatory activities should be

transparent, accountable, proportionate and consistent and targeted only at cases in which action is needed.

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and transcript, the unedited footage and transcript, and both parties' written submissions. Ofcom also took into account the representations made by ITV on the Preliminary View. However, Ofcom concluded that none of the further points raised by ITV materially affected the outcome of not upholding this complaint.

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcaster to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to intensely focus on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate. This is reflected in how Ofcom applies Rule 8.1 which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- a) We first considered the complaint that Mr B's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast because his arrest was filmed without consent.

Ofcom had regard to Practices 8.5 and 8.9. Practice 8.5 states that any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted. Practice 8.9 states that the means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

We assessed the extent to which Mr B had a legitimate expectation of privacy in the particular circumstances in which the material included in the programme was obtained.

We noted ITV's view that Mr B could not have a legitimate expectation of privacy in circumstances where he had been arrested on suspicion of having committed a serious violent crime and had later pleaded guilty to that crime. However, in our view, someone is not necessarily deprived of a legitimate expectation of privacy because he or she was involved in criminal conduct. Ofcom considers that the test as to whether a legitimate expectation of privacy arises is objective: it is fact-sensitive and must always be assessed in light of the circumstances in which the person concerned finds him or herself. Ofcom therefore approaches each case on its facts. It is important to note that some activities may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy.

We recognised that Mr B was filmed after he had been arrested on suspicion of attempted murder and that the incident, and his subsequent apprehension, had occurred in a public place and in full view of any members of the public who happened to be in the area at the time. The programme makers filmed Mr B openly and it was apparent in the unedited footage that he did not object to being filmed. However, Mr B had been filmed from a distance and it did not appear that anyone had informed him about the presence of the cameras. It was not clear to Ofcom therefore whether, at the time of the incident, Mr B was aware that he was being filmed by the programme makers and that the footage, potentially, would be used in a programme.

At the time of filming, Mrs A said that her son was 17 years old; had mental health issues; and, was in a state of heightened distress. We also took into account that Mr B had been filmed in the aftermath to him having committed a serious crime and that it was clear from the unedited

footage and footage subsequently included in the programme as broadcast, that he was upset and distressed by the incident and his actions. Taking the above factors into account, we considered that Mr B was filmed in a sensitive situation and had a legitimate expectation of privacy, albeit limited by the fact that the filming was conducted in a public place.

Ofcom also took into account the broadcaster's statement that the programme makers had not requested Mr B's consent to obtain the material given the circumstances in which he was filmed.

Ofcom then considered whether the infringement into Mr B's privacy was warranted. In doing so, we assessed the broadcaster's competing right to freedom of expression and the audience's right to receive information and ideas without unnecessary interference.

The Code states that "warranted" has a particular meaning. Where broadcasters wish to justify an infringement of privacy, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest could include revealing or detecting crime, protecting public health and safety, exposing misleading claims by individuals or organisations or disclosing incompetence that affects the public.

Ofcom considered carefully ITV's reasoning for why the filming was justified in the public interest. Ofcom acknowledged that there was a genuine public interest in the making of observational programmes of this nature and in the filming of the probationary police officers as they carried out their training and duties. Therefore, we accepted that it was in the public interest to convey to viewers an understanding of the nature of police work and the kind of difficult and challenging situations probationary police officers face. In particular, we considered that the filming of Mr B was important as it enabled the broadcaster to illustrate the specific challenges probationary police officers such as Anthony encountered when dealing with incidents of very serious crime.

We also considered whether, in accordance with Practice 8.9, the material had been obtained proportionately in all the circumstances and was relevant to the subject matter of the programme. The footage was obtained while the programme makers followed a probationary police officer as he carried out his official duties. As noted above, the filming appeared to be open and unobtrusive in that it was filmed from a distance. Given that the programme makers had little prior knowledge of the incidents they would be attending, we did not consider that they were in a position, nor would it have been realistic, to have obtained Mr B's prior consent to filming him. Given these circumstances, and taking into account the public interest in obtaining the material, Ofcom considered that the means of obtaining the footage had been proportionate and was relevant to the subject matter.

Taking all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining the footage of Mr B's arrest outweighed his privacy in the circumstances of this case. Therefore, there was no unwarranted infringement of Mr B's privacy in connection with the obtaining of material included in the programme.

- b) Mrs A also complained that Mr B's privacy was unwarrantably infringed in the programme as broadcast because footage of his arrest was broadcast without consent and prior to the completion of the court proceedings. Mrs A said that her son was recognisable from the footage, as there had been no attempt to disguise his voice, and that he had been identified from the

footage by “numerous people”, including a boy who had recognised her son and by “relative strangers”.

We had regard to Practices 8.4 and 8.6 of the Code. Practice 8.4 states that broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted. Practice 8.6 states that if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom also had regard to Practice 8.21, which states that where a programme features a person aged under 16 or a vulnerable person in a way that infringes privacy, consent must be obtained from: a parent, guardian or other person of 18 or over in loco parentis; and wherever possible, the person concerned; unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

We first considered the extent to which Mr B had a legitimate expectation of privacy in relation to footage of him included in the programme. As noted in head a), the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its particular facts.

We considered that the footage of Mr B included in the programme was brief and other than revealing his reaction to the incident, no private or sensitive information about him was disclosed in the programme. We also recognised that at the date of broadcast, Mr B had already pleaded guilty to grievous bodily harm with intent and possession of an offensive weapon. However, we also took into account that Mrs A said that Mr B was 17 years old when the programme was broadcast, had mental health issues and, that the footage showed him in a state of heightened distress.

There was a court order in place which prohibited the publication of anything likely to lead members of the public to identify Mr B while he was under 18 years old. Mrs A asserted that despite the steps taken by the broadcaster to disguise her son's identity, people had been able to identify Mr B from the footage as broadcast. Mrs A stated that there had been no attempt to disguise Mr B's voice in the programme. However, having carefully examined the unedited footage and footage as broadcast, it was clear to Ofcom that the pitch of Mr B's voice had been altered. Further, Mr B was not named in the programme, his face was blurred, and there were no personal details about him disclosed. Therefore, given the steps taken by the broadcaster, we considered that the programme did not identify Mr B to members of the public. To the extent that Mr B may have been recognisable from the footage, we considered that this would only have been to a very limited number of people who already knew him and were likely to already have knowledge of his involvement in the incident.

Taking all the factors into account, we considered that Mr B had a legitimate expectation of privacy with regard to the inclusion of the footage which showed him in a sensitive situation. However, we considered that any infringement of Mr B's legitimate expectation of privacy was limited by the circumstances in which he had been filmed, i.e. in a public place.

We took into account the broadcaster's statement that neither the programme makers nor the broadcaster had sought the consent of Mr B, or of Mrs A on his behalf. Therefore, Ofcom went on

to consider whether the infringement of Mr B's privacy was "warranted" within the meaning set out in the Code (see above under head a)).

We carefully balanced Mr B's right to privacy with regard to the inclusion of the relevant footage of him in the programme with the broadcaster's right to freedom of expression and the audience's right to receive the information broadcast without unnecessary interference. We considered that there was a genuine public interest in the programme including the footage of Mr B to convey to viewers an understanding of the work undertaken by probationary police officers and the kind of difficult and challenging situations they face. It provided an illustration of the specific challenges probationary police officers such as Anthony encountered when dealing with very serious crimes. We therefore considered that, on balance, the public interest in broadcasting the footage outweighed Mr B's right to privacy.

Given all the factors set out above, Ofcom considered that there was no unwarranted infringement of Mr B's privacy in the inclusion of the footage of him in the programme as broadcast.

**Ofcom has not upheld Mr B's complaint of unwarranted infringement of privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 13 and 26 March 2017 and decided that the broadcaster or service provider did not breach Ofcom's codes, rules, licence conditions or other regulatory requirements<sup>1</sup>.

### Investigations conducted under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date	Categories
Katie Hopkins	LBC 97.3 FM	29/01/2017	Generally accepted standards

For more information about how Ofcom conducts investigations about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

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<sup>1</sup> A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC from 3 April 2017. On 29 March 2016, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The investigations in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 13 and 26 March 2017 because they did not raise issues warranting investigation<sup>1</sup>.

### Complaints assessed under the Procedures for investigating breaches of content standards for television and radio

For more information about how Ofcom assesses complaints about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Sex Pod (trailer)	5Star	16/03/2017	Sexual material	1
Geoff Lloyd	Absolute Radio	28/02/2017	Religious/Beliefs discrimination/offence	1
BBC News	BBC 1	07/03/2017	Sexual material	1
BBC News	BBC 1	21/03/2017	Other	1
BBC News	BBC 1	22/03/2017	Generally accepted standards	1
BBC News	BBC 1	22/03/2017	Privacy	1
BBC News	BBC 1	22/03/2017	Scheduling	1
BBC News	BBC 1	23/03/2017	Crime and disorder	1
Call the Midwife	BBC 1	12/03/2017	Sexual material	1
EastEnders	BBC 1	21/02/2017	Sexual material	2
EastEnders	BBC 1	21/03/2017	Outside of remit	1
Let's Sing and Dance for Comic Relief	BBC 1	11/03/2017	Under 18s in programmes	1
Let's Sing and Dance for Comic Relief	BBC 1	18/03/2017	Transgender discrimination/offence	3
Life in Immigration Town: Panorama	BBC 1	27/02/2017	Race discrimination/offence	1
Six Nations: France v Wales	BBC 1	18/03/2017	Gender discrimination/offence	3
Six Nations: France v Wales	BBC 1	18/03/2017	Offensive language	1
Taboo	BBC 1	11/02/2017	Violence	1
The Big Questions	BBC 1	12/03/2017	Race discrimination/offence	1
Tracey Ullman's Show	BBC 1	25/02/2017	Religious/Beliefs discrimination/offence	1

<sup>1</sup> A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC from 3 April 2017. On 29 March 2016, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The complaints in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC London News	BBC 1 London	09/03/2017	Race discrimination/offence	1
Live at the Apollo	BBC 2	04/03/2017	Race discrimination/offence	1
London Road	BBC 2	05/03/2017	Generally accepted standards	1
The Daily Politics	BBC 2	10/03/2017	Privacy	1
Top Gear	BBC 2	05/03/2017	Animal welfare	2
Top Gear	BBC 2	05/03/2017	Offensive language	1
BBC News	BBC Channels	Various	Religious/Beliefs discrimination/offence	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	10/03/2017	Scheduling	1
Ace	BBC Radio 1Xtra	27/02/2017	Gender discrimination/offence	1
Jeremy Vine	BBC Radio 2	20/02/2017	Crime and disorder	1
The Now Show	BBC Radio 4	04/03/2017	Sexual material	1
Today	BBC Radio 4	06/03/2017	Race discrimination/offence	1
Soul Sessions	BET	18/02/2017	Race discrimination/offence	1
Competition	Capital FM (Liverpool)	Various	Competitions	1
Bodge and Matt Breakfast show	Capital FM (North East)	06/03/2017	Sexual material	1
We Bare Bears	Cartoon Network	09/03/2017	Religious/Beliefs discrimination/offence	1
A Killing in My Family (trailer)	Channel 4	08/03/2017	Scheduling	1
Brooklyn 99	Channel 4	14/03/2017	Gender discrimination/offence	1
Channel 4 News	Channel 4	10/02/2017	Due impartiality/bias	1
Come Dine With Me	Channel 4	24/02/2017	Sexual orientation discrimination/offence	2
Couples Come Dine with Me	Channel 4	13/03/2017	Race discrimination/offence	1
Gogglebox	Channel 4	06/03/2017	Generally accepted standards	1
Mutiny (trailer)	Channel 4	28/02/2017	Offensive language	1
The Jump	Channel 4	05/03/2017	Sexual material	3
The Secret Life of the Zoo	Channel 4	07/03/2017	Offensive language	2
Advertisement	Channel 5	12/03/2017	Advertising content	1
Celebrity Sex Pod (trailer)	Channel 5	01/03/2017	Sexual material	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
NCIS	Channel 5	08/02/2017	Advertising minutage	1
NCIS	Channel 5	01/03/2017	Scheduling	1
Neighbours	Channel 5	13/03/2017	Sexual material	1
The Nightmare Neighbour Next Door	Channel 5	09/03/2017	Offensive language	1
When TV Goes Horribly Wrong	Channel 5	17/03/2017	Generally accepted standards	1
Fort Boyard Ultimate Challenge	CITV	11/03/2017	Animal welfare	1
Classic FM Dating (trailer)	Classic FM	Various	Materially misleading	1
Suits	Dave	26/02/2017	Gender discrimination/offence	1
E-bay's sponsorship of Motoring on Discovery	Discovery Channel / Discovery Turbo	20/03/2017	Sponsorship credits	1
Hungry House's sponsorship of The Big Bang Theory	E4	Various	Sponsorship	1
Timeless	E4	08/03/2017	Advertising minutage	1
Lissi and the Wild Emperor	Filmbox	03/12/2016	Offensive language	1
Carpetright's sponsorship of programming	Home / Really	04/03/2017	Sponsorship credits	1
Niall's Mid-Morning Bit	Hot Radio 102.8FM (Poole)	06/03/2017	Offensive language	1
Benidorm	ITV	08/03/2017	Generally accepted standards	1
Broadchurch	ITV	13/03/2017	Religious/Beliefs discrimination/offence	1
Coronation Street	ITV	10/03/2017	Sexual material	1
Coronation Street	ITV	15/03/2017	Generally accepted standards	6
Emmerdale	ITV	06/03/2017	Violence	2
Emmerdale	ITV	07/03/2017	Generally accepted standards	1
Emmerdale	ITV	08/03/2017	Sexual material	1
Emmerdale	ITV	09/03/2017	Religious/Beliefs discrimination/offence	1
Emmerdale	ITV	09/03/2017	Sexual material	14
Emmerdale	ITV	14/03/2017	Scheduling	1
Emmerdale	ITV	14/03/2017	Sexual material	1
Good Morning Britain	ITV	21/02/2017	Generally accepted standards	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Good Morning Britain	ITV	08/03/2017	Gender discrimination/offence	1
Good Morning Britain	ITV	10/03/2017	Drugs, smoking, solvents or alcohol	1
Good Morning Britain	ITV	13/03/2017	Due accuracy	1
ITV News	ITV	06/03/2017	Generally accepted standards	1
ITV News	ITV	19/03/2017	Other	1
ITV News Special	ITV	22/03/2017	Generally accepted standards	6
Party Political Broadcast by the Labour Party	ITV	02/03/2017	Race discrimination/offence	1
Play to the Whistle	ITV	07/03/2017	Generally accepted standards	1
Sainsbury's sponsorship of ITV Showcase Drama	ITV	20/02/2017	Sponsorship credits	1
Scrambled	ITV	04/03/2017	Race discrimination/offence	1
Six Nations: Ireland v England	ITV	18/03/2017	Charity appeals	1
The Chase	ITV	09/03/2017	Gender discrimination/offence	1
The Jeremy Kyle Show	ITV	28/02/2017	Race discrimination/offence	1
The Nightly Show with David Walliams (trailer)	ITV	24/02/2017	Sexual material	1
The Nightly Show with Davina McCall	ITV	13/03/2017	Offensive language	1
The Nightly Show with John Bishop	ITV	09/03/2017	Offensive language	2
The Voice UK	ITV	11/03/2017	Voting	1
This Morning	ITV	09/02/2017	Materially misleading	1
This Morning	ITV	01/03/2017	Promotion of products/services	1
You've Been Framed	ITV	04/03/2017	Generally accepted standards	1
ITV Granada News	ITV Granada	23/02/2017	Elections/Referendums	1
Guidance	ITV2	12/03/2017	Offensive language	1
Ibiza Weekender	ITV2	11/03/2017	Generally accepted standards	1
You've Been Framed	ITV2+1	27/02/2017	Race discrimination/offence	1
Live Racing	ITV4	11/02/2017	Other	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Kiss 100	Kiss 100	25/02/2017	Offensive language	1
Drivetime	LBC 97.3 FM	01/03/2017	Due accuracy	1
Iain Dale	LBC 97.3 FM	22/02/2017	Generally accepted standards	1
Nick Ferrari	LBC 97.3 FM	21/03/2017	Other	1
Kaajal	Lyca Dil Se Radio	01/02/2017	Competitions	1
Come Dine With Me	More4	07/03/2017	Dangerous behaviour	1
Benefits by the Sea: Jaywick	My5	03/03/2017	Animal welfare	1
My Family	n/a	Various	Animal welfare	1
Britain's Most Evil Killers (trailer)	Pick	19/03/2017	Scheduling	1
The Big Drive Home with Owen & Yazz	Q Radio	03/02/2017	Competitions	1
News Beat 2016	Samaa	01/01/2017	Religious/Beliefs discrimination/offence	1
Sky News	Sky News	22/03/2017	Scheduling	22
Sky News	Sky News	22/03/2017	Under 18s in programmes	4
Sky News	Sky News	23/03/2017	Other	1
Sky News at 10 (trailer)	Sky News	23/02/2017	Materially misleading	1
Live Nissan Super Sunday	Sky Sports 1	26/02/2017	Offensive language	1
Soccer AM	Sky Sports 1	25/02/2017	Scheduling	1
The Gloves Are Off	Sky Sports 1	27/02/2017	Disability discrimination/offence	1
Indian Wells Masters	Sky Sports 3	14/03/2017	Materially misleading	1
Live World Golf Championship	Sky Sports 4	03/03/2017	Advertising minutage	1
STV News	STV	09/03/2017	Due impartiality/bias	3
Greg Upwards Show	Sunshine Radio (Herefordshire)	09/03/2017	Drugs, smoking, solvents or alcohol	1
Law and Order: SVU (trailer)	Syfy	08/02/2017	Materially misleading	1
Music Hall	Talking Pictures TV	21/03/2015	Other	1
Programming	TruTV	Various	Scheduling	1
BBC Asian Network / Shazia Awan	Twitter	18/03/2017	Outside of remit	3
Channel 4 News	YouTube	10/02/2017	Due impartiality/bias	1

## Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television, radio or on demand adverts or an on demand service does not fall within the scope of regulation<sup>1</sup>.

For more information about what Ofcom's rules cover, go to: <https://www.ofcom.org.uk/tv-radio-and-on-demand/how-to-report-a-complaint/what-does-ofcom-cover>

### Complaints about television or radio programmes

For more information about how Ofcom assesses complaints about television and radio programmes, go to: [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
BBC Breakfast News	BBC 1	16/03/2017	Due impartiality/bias	1
BBC News	BBC News website	18/03/2017	Outside of remit	1
Today	BBC Radio 4	21/03/2017	Due impartiality/bias	1
Advertisement	Channel 5	12/03/2017	Advertising content	1
Advertisement	Channel 5	23/03/2017	Advertising content	1
Advertisement	Dave	20/03/2017	Advertising content	1
Advertisement	ITV	18/03/2017	Advertising content	3
Advertisement	ITV	19/03/2017	Advertising content	1
Advertisement	ITV	22/03/2017	Advertising content	1
Advertisement	ITV3	18/03/2017	Advertising content	1
Advertisement	n/a	24/03/2017	Advertising content	1
Advertisement	Quest	18/03/2017	Advertising content	1
Advertisement	Sky News	10/03/2017	Advertising content	1
Advertisement	Talksport	18/03/2017	Advertising content	1
Advertisement	Travel Channel	14/03/2017	Advertising content	1

<sup>1</sup> A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC from 3 April 2017. On 29 March 2016, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The complaints in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

## Investigations List

If Ofcom considers that a broadcaster or service provider may have breached its codes, rules, licence condition or other regulatory requirements, it will start an investigation.

**It is important to note that an investigation by Ofcom does not necessarily mean the broadcaster or service provider has done anything wrong. Not all investigations result in breaches of the codes, rules, licence conditions or other regulatory requirements being recorded.**

Here are alphabetical lists of new investigations launched between 13 and 26 March 2017<sup>1</sup>.

### Investigations launched under the Procedures for investigating breaches of content standards for television and radio

Programme	Broadcaster	Transmission date
Broadcast competition	5USA	8 January 2017
Scott Mills	BBC Radio 1	15 March 2017
Marche Bike Tour	Bike	6 February 2017
Medical Detectives	CBS Reality	20 February 2017
Channel 4 News	Channel 4	22 March 2017
ITV News London	ITV London	16 March 2017
Botched	Kanal 5	17 February 2017
Drive Time	North Manchester FM 106.6	21 February 2017
Taste of Asia competition	SAB TV	18 February 2017
Sam Rocks Rugby	Sam FM Bristol	26 February 2017
Sikh Channel News Report	Sikh Channel	18 February 2017
Latin Hot	Swindon 105.5 FM	7 January 2017

<sup>1</sup> A new BBC Royal Charter and Agreement was published in December 2016, which made Ofcom, not the BBC Trust, the independent regulator of the BBC from 3 April 2017. On 29 March 2016, Ofcom published new procedures for handling complaints and investigations about BBC programmes. At the same time, Ofcom also published new procedures for handling complaints and investigations about all other broadcasters and on demand service providers. The investigations in the tables on this page were all considered under Ofcom's previous procedures which were in force at the time.

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Various programmes	Takbeer TV	08 February 2017
Believers' Voice of Victory	TBN UK	22 February 2017
**** That's Delicious	Viceland	26 February 2017

For more information about how Ofcom assesses complaints and conducts investigations about content standards on television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0020/55109/breaches-content-standards.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0020/55109/breaches-content-standards.pdf)

### **Investigations launched under the Procedures for the consideration and adjudication of Fairness and Privacy complaints**

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission date</b>
Channel 4 News	Channel 4	20 February 2017
The Fried Chicken Shop	London Live	30 January 2017

For more information about how Ofcom considers and adjudicates upon Fairness and Privacy complaints about television and radio programmes, go to:

[https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0031/57388/fairness-privacy-complaints.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0031/57388/fairness-privacy-complaints.pdf)