

# **Ofcom Broadcast Bulletin**

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## Contents

|  |    |
|--|----|
| Introduction   | 4  |
| <u>Note to Broadcasters</u>  |    |
| <b>Future regulation of on-demand programme services</b>                           | 6  |
| <u>Notice of Sanction</u>  |    |
| <b>International Television Channel Europe Limited</b>                             | 7  |
| <b>Standards cases</b>   |    |
| <u>In Breach</u>   |    |
| <b>Channel 4 News</b><br><i>Channel 4, 24 August 2015, 19:00</i>                   | 9  |
| <b>Alor Dishari</b><br><i>Iqra Bangla, 31 August 2015, 22:00</i>                   | 14 |
| <b>Jimmy Swaggart The Classics</b><br><i>SBN International, 7 July 2015, 17:00</i> | 22 |
| <b>The Simpsons</b><br><i>Channel 4, 7 October 2015, 18:00</i>                     | 26 |
| <b>A League of Their Own</b><br><i>Sky Sports 1, 14 October 2015, 19:30</i>        | 29 |
| <b>Various programmes</b><br><i>Starz, various dates and times</i>                 | 31 |
| <u>Resolved</u>  |    |
| <b>TFI Friday</b><br><i>Channel 4, 23 October 2015, 20:53</i>                      | 34 |
| <b>Rick Jackson: The Big Drive</b><br><i>Wave 105.2 FM, 23 October 2015, 18:00</i> | 36 |
| <b>Advertising Scheduling cases</b>  |    |
| <u>In Breach</u>   |    |
| <b>Advertising minutage</b><br><i>Geo News, various dates and times</i>            | 39 |

## Broadcast Licence Conditions cases

### In Breach

|  |    |
|--|----|
| <b>Broadcasting licensees' late and non-payment of licence fees</b>  | 41 |
| <b>Providing a service in accordance with 'Key Commitments'</b><br><i>EAVA FM (Leicester), 24 to 26 June 2015</i>        | 42 |
| <b>Providing a service in accordance with 'Key Commitments'</b><br><i>Access FM (Bridgwater), 9 to 11 September 2015</i> | 45 |

## Fairness and Privacy cases

### Not in Breach

|   |    |
|---|----|
| <b>Dispatches: Politicians for Hire</b><br><i>Channel 4, 23 February 2015</i> | 47 |
|---|----|

|                                     |    |
|-------------------------------------|----|
| <b>Investigations Not in Breach</b> | 85 |
|-------------------------------------|----|

|  |    |
|--|----|
| <b>Complaints assessed, not investigated</b> | 86 |
|--|----|

|                                    |    |
|------------------------------------|----|
| <b>Complaints outside of remit</b> | 95 |
|------------------------------------|----|

|                            |    |
|----------------------------|----|
| <b>Investigations List</b> | 97 |
|----------------------------|----|

## Introduction

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives<sup>1</sup>. Ofcom must include these standards in a code or codes. These are listed below. Ofcom also has a duty to secure that every provider of a notifiable On Demand Programme Services (“ODPS”) complies with certain standards requirements as set out in the Act<sup>2</sup>.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes below, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. We also report on the outcome of ODPS sanctions referrals made by ATVOD and the ASA on the basis of their rules and guidance for ODPS. These Codes, rules and guidance documents include:

- a) [Ofcom’s Broadcasting Code](#) (“the Code”).
- b) the [Code on the Scheduling of Television Advertising](#) (“COSTA”) which contains rules on how much advertising and teleshopping may be scheduled in programmes, how many breaks are allowed and when they may be taken.
- c) certain sections of the [BCAP Code: the UK Code of Broadcast Advertising](#), which relate to those areas of the BCAP Code for which Ofcom retains regulatory responsibility. These include:
  - the prohibition on ‘political’ advertising;
  - sponsorship and product placement on television (see Rules 9.13, 9.16 and 9.17 of the Code) and all commercial communications in radio programming (see Rules 10.6 to 10.8 of the Code);
  - ‘participation TV’ advertising. This includes long-form advertising predicated on premium rate telephone services – most notably chat (including ‘adult’ chat), ‘psychic’ readings and dedicated quiz TV (Call TV quiz services). Ofcom is also responsible for regulating gambling, dating and ‘message board’ material where these are broadcast as advertising<sup>3</sup>.
- d) other licence conditions which broadcasters must comply with, such as requirements to pay fees and submit information which enables Ofcom to carry out its statutory duties. Further information can be found on Ofcom’s website for [television](#) and [radio](#) licences.
- e) rules and guidance for both [editorial content and advertising content on ODPS](#). Ofcom considers sanctions in relation to ODPS on referral by the Authority for Television On-Demand (“ATVOD”) or the Advertising Standards Authority (“ASA”), co-regulators of ODPS for editorial content and advertising respectively, or may do so as a concurrent regulator.

[Other codes and requirements](#) may also apply to broadcasters and ODPS, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant

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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.

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 the content in television, radio and on demand content. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.**

## Note to Broadcasters

### Future regulation of on-demand programme services

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From 1 January 2016, Ofcom will be the sole regulator for editorial content (programming) on UK 'video on demand' services. Previously our co-regulator, the Authority for Television on Demand (ATVOD), led on this.

On 18 December, we published the document 'Future regulation of on-demand programme services' which summarises the arrangements Ofcom will have in place from 1 January 2016. This document also consults on two substantive proposals. One is our proposed changes to the procedures for investigating breaches of rules for video on demand services, and the other is our proposal not to charge fees to on-demand service providers.

The document 'Future regulation of on-demand programme services' can be found at the following link: [http://stakeholders.ofcom.org.uk/consultations/vod\\_procedures](http://stakeholders.ofcom.org.uk/consultations/vod_procedures)

We have also created a new section of the Ofcom website containing relevant information for video on demand service providers: <http://stakeholders.ofcom.org.uk/broadcasting/on-demand/> and for consumers: <http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/video-on-demand-services>

## Notice of Sanction

### International Television Channel Europe Limited

*For a failure to comply with TLCS Licence Condition 17(2) between April 2013 and September 2014.*

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#### Introduction

NTV is a general entertainment and news service broadcast on the digital satellite platform. The channel is aimed at the Bangladeshi community in the UK and other parts of Europe. The licence for the service is held by International Television Channel Europe Limited (“ITCE” or “the Licensee”). Ofcom granted this Television Licensable Content Service (“TLCS”) licence (TLCS 1624) on 31 January 2012. ITCE holds no other Ofcom broadcasting licences.

#### Summary of Decision

In a finding published on 30 March 2015 in issue 276 of the Broadcast Bulletin<sup>1</sup>, Ofcom found that ITCE breached Licence Condition 17(2) of its licence in respect of its service NTV. Licence Condition 17(2) requires licensees to adopt procedures to ensure their programmes comply in all respects with their licence conditions, and ensure that such procedures are observed. In particular, it obliges the licensee to ensure there are enough sufficiently qualified or trained people to ensure compliance, and that they have sufficient seniority to ensure the licensed service complies “in all respects” with the Code.

Ofcom concluded that ITCE had breached Licence Condition 17(2) because:

- in the period April 2013 to September 2014, 20 breaches of the Broadcasting Code (“the Code”) were recorded against the Licensee in 16 separate cases in the Broadcast Bulletin;
- there was insufficient evidence to demonstrate that the Licensee had taken sufficient steps to put in place adequate compliance arrangements for the purposes of ensuring that all programmes broadcast complied in all respects with the provisions of its TLCS licence from the point at which it was granted a licence; and
- the number and repeated nature of these breaches demonstrated that they resulted from the Licensee’s systemic failure to implement adequate compliance procedures and satisfactory arrangements to ensure these procedures were followed.

The requirement in Licence Condition 17(2) to have effective arrangements in place to ensure compliance with licence obligations for the duration of the licence is fundamental to protecting UK audiences from harm. Ofcom is therefore always minded to consider a breach of Condition 17(2) to be extremely serious, and therefore subject to sanction, because the licensee has contravened a basic and a fundamental requirement of holding a television broadcasting licence under the Broadcasting Act 1990. This is the first sanction against a Licensee for a breach of Licence Condition 17(2).

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>

After considering all of the evidence and representations made to it, the Sanctions Panel decided that this Licence Condition 17(2) breach was so serious, repeated and reckless that a financial penalty should be imposed. The Panel considered the level of the fine to be imposed, in accordance with Ofcom's Penalty Guidelines.

Ofcom considered that ITCE did not take appropriate steps during the relevant period to prevent the Licence Condition 17(2) breach, that senior management was aware for several months that the Licensee's compliance arrangements and procedures were inadequate and that it had failed to take timely and effective action to address the weaknesses that had been drawn to its attention by Ofcom.

ITCE accepted that their compliance arrangements had been poor as a result of inadequate staffing and a lack of expertise but stated they had not intended to harm viewers. Following the Sanctions hearing Ofcom was of the view that the Licensee had now recognised its previous compliance failures and had taken steps to improve its compliance procedures, including putting in place training for its staff and introducing meaningful compliance procedures for the effective daily oversight of its programming as required by Licence Condition 17(2). These steps to remedy the contravention of Licence Condition 17(2) were factors Ofcom took into consideration when setting the financial penalty.

For these reasons and in accordance with Ofcom's Penalty Guidelines, Ofcom decided it was appropriate and proportionate in the circumstances of this broadcast to impose a financial penalty of **£20,000** on ITCE Limited in respect of the Licence Condition 17(2) breach (payable to HM Paymaster General).

In addition, Ofcom has also given notice to ITCE that it will be undertaking a period of monitoring of the Licensee's broadcast output to assess whether the content of the service is compliant with the Code. If there are further compliance failings following the imposition of the statutory sanction, Ofcom is likely to have serious concerns about the Licensee's understanding and regard for its regulatory responsibilities and the importance of ensuring that viewers are adequately protected from harm. In such circumstances, where the Licensee has failed to respond adequately to other regulatory action, we may have cause to reconsider whether revocation of the licence would be appropriate.

The full adjudication is available at:

[http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ITCE\\_sanction\\_151215.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/content-sanctions-adjudications/ITCE_sanction_151215.pdf)



## Standards cases

### In Breach

#### Channel 4 News

*Channel 4, 24 August 2015, 19:00*

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#### Introduction

On 24 August 2015, Channel 4 (or “the Licensee”) included a news item in *Channel 4 News* on the aftermath of the Shoreham air show crash<sup>1</sup>, which had taken place two days earlier.

A complainant was concerned that the news item was not duly accurate. The complainant considered that the item had inaccurately stated that Mark Trussler, a missing person at the time of broadcast, had been identified as one of the victims of the crash. Having assessed the content, Ofcom noted that a second missing person at the time of broadcast, Daniele Polito, had also been named as a victim of the crash.

We reviewed this edition of *Channel 4 News* and noted that the presenter Cathy Newman introduced the news item as follows:

*“Now the Civil Aviation Authority has announced new restrictions on vintage jets taking place in air displays after Saturday’s crash of a Hawker Hunter jet during the Shoreham air show in West Sussex. The announcement came as cranes moved in to lift the wreckage of the plane from the A27. Sussex Police said tonight that no evidence had been found of further victims after they lifted the jet. Our correspondent Cordelia Lynch is in Shoreham this evening. Cordelia tell us what the latest is there”.*

Behind Cathy Newman was a still image showing the text “Air crash” set against an aerial view of a plume of smoke from what was apparently the crash site.

The news item then began with the following statement broadcast live from a reporter at the crash site in Shoreham:

*“Well Cathy, light fading here this evening on a day when many families have been waiting to hear and some of course already had their worst fears confirmed. In the last few minutes we have had Maurice Abrahams, a 76 year old chauffeur, named among the dead. Sussex Police say 200 people have been in contact asking for information about relatives. Their estimate of 11 likely dead remains in place...”.*

The report that followed, which was around three minutes and 45 seconds long, began with footage of: debris being removed by a crane from the crash site; members of the public placing flowers near the crash site; an empty football pitch at Worthing United Football Club followed by a still image of two Worthing United FC players, Matthew Grimstone and Jacob Schilt, who had both been confirmed as victims; a short interview with both the Vice-Chairman and the Manager of the

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<sup>1</sup> On 22 August 2015, a vintage aircraft crashed onto a main road, the A27, during a display at the Shoreham air show, killing 11 people.

football club; and a still image of victim Matt Jones followed by a brief interview with his colleague Chris Smith.

Immediately after this sequence, a still image of Daniele Polito was broadcast for five seconds, followed by a still image of Mark Trussler for a further four seconds. The images were accompanied by the following commentary from the reporter:

*“By the afternoon Daniele Polito, who was in the car with him [Matt Jones], was also named among the dead. So too was motorcyclist Mark Trussler”.*

The report concluded with an interview with a bystander who had witnessed the crash.

Given that both Daniele Polito and Mark Trussler were missing but had not been formally declared as dead at the time of broadcast, Ofcom considered that the material raised issues warranting investigation under Rule 5.1 of the Code, which states:

“News, in whatever form, must be reported with due accuracy and presented with due impartiality”.

We therefore sought Channel 4’s comments as to how the material complied with this rule.

## **Response**

Channel 4 “unreservedly apologised” for “the serious error of judgement” made by two experienced journalists, who themselves had offered “their personal apologies to the families for any upset caused by their actions”.

The Licensee acknowledged that “the reference to Daniele Polito and Mark Trussler in the Channel 4 News report was inaccurate. At the time they had not been named among the dead, although they had been named as missing and feared dead”. It added that, “on 29 August family members confirmed on social media that tragically Mr Polito and Mr Trussler had died at the scene of the air crash”.

Channel 4 said that the plane crash at Shoreham was “a major news story that was reported on over a number of days as the facts and issues emerged over time”. It explained that this specific news item was broadcast two days after the crash when “events were still unfolding and new facts were coming into the public domain. It was not at all clear who had been caught up in this terrible incident”.

According to Channel 4, over the weekend of 22 and 23 August, the police had not “announced the names of anyone who had died” and instead “it had been left by the police for families to decide whether or not to publicly confirm the death of their family members”. By 24 August 2015, Channel 4 said that “some families had accepted...and confirmed” the death of family members, while “[o]ther families had not given confirmation” in the hope that “the family member might still be alive”.

Channel 4 said that on the day of the broadcast, 24 August 2015, it had sent an “experienced” reporting team to cover the day’s events. This team had sought to gather information about the crash and had “conducted interviews with friends” of confirmed victims (as detailed in the Introduction). The Licensee explained that, for a number of reasons, the reporting team “wrong[ly] concluded that Mr Polito and Mr

Trussler had been named as dead and that this information was known and accepted by the families". Specifically, and among other things, Channel 4 noted that:

- Mr Trussler and Mr Polito had "already been named and pictured across the news media, albeit with the caveat that they were 'missing feared dead'";
- the editorial team had been informed by a colleague of one of the confirmed victims (Matt Jones) that the colleague "had spoken to a family member of Matt Jones who told him that [Mr Jones's] passenger [i.e. Daniele Polito] had been killed in the car";
- a family member of Mark Trussler "had specifically asked not be contacted by the media" via a note circulated by the Independent Press Standards Organisation which stated that "Mr Trussler had been 'presumed killed'";
- on 23 August 2015 (the day before the broadcast), The Guardian website had reported that "Mr Polito's mother had stated on Facebook" that she had been informed by the sister of Mr Jones that "Mr Polito had been killed"; and
- "some news websites on the day of broadcast had referred to [Mr Trussler and Mr Polito] as victims". For example, the Licensee noted that photographs of both Mr Polito and Mr Trussler had been published by the Mirror website next to photographs of the confirmed dead. Channel 4 said, however, that "these online reports made clear in the body of the article that [Mr Polito and Mr Trussler] were still missing".

The Licensee highlighted that it had been "difficult to independently verify facts" because of the "degree of confusion" following the air crash. It said that "reporting conditions were more difficult than normal", noting that the police were neither answering individual queries, nor "unusually" were they "confirming the names of victims that had died." As a result, "there was no straightforward way" to confirm some of the information coming from friends and families through social media.

However, the Licensee acknowledged that, in the absence of direct confirmation from the two families, the report should not have stated Daniele Polito and Mark Trussler had died "without proper reference up to editorial management" in line with compliance procedures.

Channel 4 stated that it was not aware of the inaccurate references in the programme to Mr Trussler and Mr Polito until it was contacted by a family friend of Mark Trussler the day after the broadcast. The Licensee said the reference to the men was "immediately removed" from its online material and that the Editor of *Channel 4 News* had called the "family of Mr Trussler to give an unreserved apology". Channel 4 said that although it had offered to make an "on-air apology that night", because the offer was declined it had considered that it "would only cause further confusion" to proceed. The Licensee said it had also immediately contacted the police to offer an apology to the family of Daniele Polito and to seek "guidance on how best to communicate with [Mr Polito's] family".

Channel 4 said that as a result of this incident all *Channel 4 News* editorial staff had been addressed by the programme Editor and the Head of Compliance at ITN, the programme's producer, who had stressed the importance of referring matters to "editorial management when making fine cut decisions" and the "extra care needed

when referring to loss of life where independent verification from the authorities or families cannot be ascertained”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that news included in television and radio services is reported with due accuracy and presented with due impartiality. This objective is reflected in Section Five of the Code.

When applying the requirements to report news with due accuracy and present news with due impartiality, Ofcom must take into account the broadcaster’s and the audience’s right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirements in the Code to report news with due accuracy and present news with due impartiality.

Rule 5.1 contains the requirement on broadcasters to report the news with “due accuracy”. The notes published alongside the rules makes clear that “due” means adequate or appropriate to the subject and nature of the programme.

The rule is primarily intended to ensure that viewers can trust news broadcasters to report the facts of the news, and the factual background to it, with appropriate accuracy. It goes to the heart of the relationship of trust between a news broadcaster and its audience. Accordingly, breaches of this requirement can be amongst the most serious that can be committed by a broadcaster, because audiences of news programmes are likely to place a particularly high degree of trust in the broadcaster’s editorial integrity.

In this case, the news item covered a matter which was clearly of significant public interest: the aftermath of a plane crash on a busy main road that had caused a number of deaths. Because of the specific circumstances of the accident, the identities of the victims were not immediately clear and, according to Channel 4, important information about the crash was limited.

Ofcom acknowledged that, despite these circumstances, there was clear editorial justification for including information in news programming about the victims of the crash. However, in doing so, broadcasters needed to ensure that the news about the accident was reported with due accuracy.

We noted that in this news item, still images of Daniele Polito and Mark Trussler were shown and accompanied by the following commentary:

*“By the afternoon Daniele Polito, who was in the car with him [Matt Jones], was also named among the dead. So too was motorcyclist Mark Trussler”.*

Ofcom understood that at the time of broadcast on 24 August 2015, Sussex Police had only confirmed the name of one person who had been killed, and that the names of three others (including Matt Jones) had been released by their families. Further, Ofcom also understood that at the time of broadcast it had been reported in the media that both Daniele Polito and Mark Trussler were missing, with family members

appealing on social media to trace them<sup>2</sup>. However, as acknowledged by Channel 4, at the time of broadcast both Mr Polito and Mr Trussler had only been “named as missing and feared dead”, and the families of both men did not confirm they had died until some days afterwards.

In Ofcom’s view, there was potential for the audience to have been misled by the information provided about Mr Polito or Mr Trussler. In particular, we considered that the wording used in the broadcast gave viewers the impression that Mr Polito and Mr Trussler had been officially named as dead at the time of broadcast. In our view, this would have had the potential to cause distress to the friends and family of these two individuals, given that at the time of broadcast they had only been officially named as missing.

In reaching our Decision, we took into account Channel 4’s representation that due to the “confusion” and “conflicting accounts” when “events were still unfolding” it was “difficult to independently verify facts”. However, the Licensee incorrectly gave the impression that Daniele Polito and Mark Trussler had been officially named as having died in the Shoreham air crash, when in fact at the time of broadcast their death had not been confirmed. Given that this news item was pre-recorded, and broadcast at a time when it had been widely reported in the press that the families of Mr Polito and Mr Trussler were appealing for information about their whereabouts, we considered that Channel 4 could and should have identified the error before broadcast.

We noted Channel 4’s apology for the incident; the attempts it made to contact the families involved once it identified the error; the removal of inaccurate references from its website once it became aware of the error; and the steps taken to remind editorial staff of the care that needs to be taken when, for example, referring to loss of life.

Ofcom also recognises that decisions to broadcast material of this nature, when a news story is evolving, are often made at times of intense pressure and require fine editorial judgement. It is important that broadcasters are able fully to inform the audience of developments in an event of significant public interest. However, in doing so it is essential – to ensure both that viewers are not misled and that unnecessary distress to family and friends is avoided – that such events are reported with due accuracy. Ofcom considered the broadcast of a statement in a news item that two people had died without appropriate confirmation was a significant lapse in editorial judgement that breached Rule 5.1.

Ofcom noted that this is the third recent breach of Rule 5.1 of the Code in an edition of *Channel 4 News*<sup>3</sup>. Ofcom is therefore requesting that the Licensee attend a meeting to discuss its compliance in this area.

### **Breach of Rule 5.1**

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<sup>2</sup> See: <http://www.bbc.co.uk/news/uk-34039229> and <http://www.telegraph.co.uk/news/uknews/11822057/Shoreham-air-crash-who-are-the-victims.html>

<sup>3</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf> and <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb277/Issue277.pdf>

## In Breach/Not in Breach

### Alor Dishari

*Iqra Bangla, 31 August 2015, 22:00*

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#### Introduction

Iqra Bangla is a television channel broadcasting on satellite in Bangla to the Bangladeshi community in the UK. The licence for Iqra Bangla is held by Runners TV Limited (“Runners TV” or “the Licensee”).

Four complainants alerted Ofcom to the broadcast of a programme in Bangla featuring an Islamic scholar who, according to the complainants, made offensive remarks about how wives should be treated by their husbands.

Ofcom had the material translated from Bangla into English. Runners TV was given an opportunity to comment on the accuracy of the translation and the Licensee did not raise any concerns with this. We therefore relied on this translation for the purposes of this investigation.

This programme was a live religious discussion programme featuring a studio host and guest, who was an Islamic scholar. The scholar responded to questions put to him by members of the audience by telephone. At one point, a male caller posed the following question:

*“...if a wife doesn’t listen to her husband, what can a husband do? What should the husband do?”*

In response, the Islamic scholar said the following:

*“You can tell your wife that if she does whatever she likes then you will divorce her. Or you will remarry again. He should feed his wife these two ‘tablets’. He should ask his wife who does she think she is?! He should say ‘I am not your slave. I will send you back to your father’s house divorcing you if you don’t listen to me. Or I will bring another wife’. After giving her these two options, she would listen to him. If she doesn’t [listen to him] then what kind of man is he?! He has lost his manhood. You shouldn’t be a slave to your wife, show your manhood. If the woman’s volume is 50, yours should be 100. You should shout. You should be a tiger. You guys are becoming women. Can’t you shout? If you shout, that is not an offence in this country. Beating is offensive. Divorcing is not offensive as well. Also you can tell your wife that you will remarry if she doesn’t listen to you. That is not illegal as well. If it were in Bangladesh, I would have suggested you to give four or five slaps together”.*

Ofcom considered the material raised issues warranting investigation under the following Rules 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...Such material may include, but is not limited to...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...gender...)”.

Rule 2.4: “Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour”.

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

## Response

Runners TV said that it “seriously and deeply” regretted this incident, and that Iqra Bangla seeks to “bring together segments of our respective community, who ordinarily [do] not agree with each other’s viewpoints and opinions” and “harmony and peace are encouraged and exemplified by our programming”. The Licensee also said that “we take women’s rights very seriously” and that in the past the Islamic scholar who made the comments under consideration in this case had participated in programmes on another channel controlled by the Licensee, Iqra TV, where he had “addressed examples [of] how women and children are abused and how many people misunderstood Islamic teachings”.

Runners TV added that it invites “organisations working on domestic violence [from] time to time on our channels”. It said that the Licensee’s “umbrella body Al-Khair Foundation” is one of the largest financial supporters of the Ameerah Foundation, which is based in the Midlands and provides “assistance and shelter to those women who are facing domestic violence or abuse”.

Runners TV set out its various compliance processes in relation to religious programming, saying that, for example, it:

- held regular training sessions to ensure producers and presenters “are prepared to intervene appropriately” when “a guest, contributor or co-presenter makes any off the cuff comments or remarks, or makes a statement that is opinion based rather an objective statement”; and
- trains presenters in relation to “handling callers in on live shows who may question aspects of religion or related matters”.

In relation to the programme itself, Runners TV said that on the day after this broadcast, the programme producer had alerted senior channel staff to this material and further transmissions of the programme had been suspended. As a result of an investigation by the Licensee into this incident, the Licensee stated that the Islamic scholar who had made the offensive comments had been “permanently barred” from appearing on Iqra Bangla, as had the presenter, and the producer of this programme had been disciplined. The Licensee said also that it had: undertaken a review of its procedures “on content approval and contributor selection” to ensure such an incident did not recur; introduced extra staff to “monitor transmissions”; and, engaged an experienced media consultant to act as Editorial Controller.

In conclusion, the Licensee said that the Islamic scholar’s comments were “contrary to our own ethos, vision and direction” and added that “we ourselves were very upset with these remarks”.

Runners TV also provided representations in response to Ofcom’s Preliminary View, which was to record a breach of Rule 2.3. The Licensee said the Preliminary View was “harsh” given the various steps that Runners TV had taken as a result of this

error, which it considered to have been a “regretful, one off incident, for which we have taken decisive action”. The Licensee said since providing its initial representations in this case: the Executive Director of Iqra Bangla had left the channel and the “(Senior) Producer Director” and two transmission staff “who were on duty during the said show who did not interrupt the show” had all resigned. Runners TV said that it had also: taken disciplinary action against “other producers and team members linked to this show”; conducted “extensive” training with all presenters on both Iqra TV channels “where our main presenters shared their experience as to how they overcome this type of situation”; and “any historical programming with [the] guest has also been taken off schedule, to ensure viewers are not misled to believe we endorse his subjective opinions”. In addition, the Licensee said it would be holding “regular training sessions for producers and presenters to intervene with speakers and guests as necessary to ensure that appropriate context is provided for any remarks which might potentially be of an offensive nature”.

Runners TV also said that its selection process for guests and contributors had become “more rigorous”, through the introduction of a “three step process of vetting guests”, which included:

- an “Email disclaimer and release form” which would require contributors not to cause “offense, harm or incitement, to any segment of society”;
- a “Telephonic Q&A” session with contributors to gauge “their responses to controversial or difficult questions”; and
- a “Studio dry run on how to appropriately intervene, interrupt or dismiss when a situation or incident is identified which requires immediate action or counter responses”.

The Licensee stated its belief that the above “three step process” would “significantly improve the quality of broadcasts where there is a strong element of viewer participation or guest inclusion”.

In relation to the potentially offensive comments, Runners TV made various further points.

Firstly, it said these comments were not a statement “representing the channel”, but were made by a “specific individual” who had been “asked for his opinion on a matter (to which) he gave his subjective answer, which we wholly condemn”. Second, the Licensee said the comments “uttered by the guest also have no weight...when considered alongside all other programming” broadcast on Iqra Bangla “in relation to the subject matter”. On a related point, Runners TV said that Iqra Bangla “has a niche demographic of viewers, most of whom will be reasonably well versed in discussions and facts relating to the subject matter”. Therefore, in the Licensee’s view, Iqra Bangla’s audience’s “reasoning and level of cultural, societal awareness will be strong enough for them to differentiate between accurate and inaccurate statements”.

Third, Runners TV said that “it is imperative we have the remit to tackle prejudice head-on, which is a challenge and means sometimes voicing and then undermining uncomfortable views”. It added that in “debates and talk shows, there will always exist an inherent risk in contributors providing their subjective or biased opinion” and that “we couldn’t have been more responsible in our reaction in this incident, than



further tightening internal control methods and increasing procedures for safeguarding”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “generally accepted standards are applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material”. This duty is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights (“ECHR”). Ofcom had regard to Article 9 the ECHR, which states that everyone “has the right to freedom of thought, conscience and religion”. This Article goes on to make clear that this freedom “shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of ... health ... or for the protection of the rights and freedoms of others”.

Programming that derives from a particular religious or spiritual viewpoint may include advice to followers of particular faiths as to how to lead their lives which could cause offence to different sections of the audience. We recognise that it would be an unacceptable restriction of a broadcaster’s and audience’s freedom of expression and freedom of religion to curtail the transmission of certain views just because they might cause offence. However, broadcasters are permitted to provide advice from a religious viewpoint, provided that the material complies with the Code.

### Rule 2.4

Rule 2.4 of the Code states that:

“Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour”.

There are two tests under Rule 2.4. Firstly, the material must not, taking into account the context, condone or glamorise violent, dangerous or seriously antisocial behaviour. Second, the material should not be likely to encourage others to copy such behaviour. Ofcom must conclude that both these tests have been contravened for a breach of the rule to have occurred.

Ofcom took careful account of the programme’s editorial context. We noted that the programme was broadcast on a channel broadcast in Bangla and aimed at the UK Bangladeshi community. In addition, the programme featured a religious scholar answering questions from an Islamic perspective, put to him from audience members contacting the programme by telephone. At one point, a male viewer asked what a husband can do “*if a wife doesn’t listen to her husband*”. In response, the scholar said that if a wife “*does whatever she likes*” then a husband in reply should say that he would divorce the wife or remarry. The scholar also stated that if a wife does not listen to her husband then “*what kind of man is he!* [i.e. the husband]. In addition, the scholar variously stated that a husband should: not be a “*slave*” to his wife; “*show* [his] *manhood*” to his wife; if a wife shouts at a husband the man should shout twice

as loud. Although the scholar said it was not permissible for a husband to beat a wife in the UK, he said that if he were in Bangladesh he *“would have suggested you to give [a wife] four or five slaps together”*.

We considered the first test under Rule 2.4, i.e. whether, taking into account the context, the content condoned or glamorised violent, dangerous or seriously antisocial behaviour. We noted that the scholar was clearly giving his opinion on what a husband can and should do if his wife does not listen to him. In general, the actions that he suggested a husband should take were not violent, dangerous or seriously antisocial acts (e.g. divorce, remarriage or shouting at his wife). However, we were greatly concerned that the scholar said the following at the end of his advice: *“If it were in Bangladesh, I would have suggested you to give four or five slaps together”*. We also noted that just before this statement he said that: *“Beating is offensive”* and also that remarrying is *“not illegal as well”*. Taking these remarks together, we considered that the scholar was making clear that domestic violence is not permissible within the UK, but that he would advocate its use within Bangladesh.

We recognised that the phrase *“If it were in Bangladesh, I would have suggested you to give four or five slaps together”* could be construed as condoning some form of violent action (possibly including assault) against wives.

Having established that this statement could be construed as condoning violent behaviour, we then went on to consider whether the second test under Rule 2.4 had been contravened in this case i.e. whether, taking into account the context (and in addition to condoning violent behaviour), the programme would have been likely to encourage others to copy such violent behaviour. We had regard to the fact that the statement was made in a religious advice programme by an Islamic religious scholar, a person who holds a position of authority and respect within the Muslim community and that this factor would have given his comments extra weight.

However, we also took into account that: the scholar had immediately prefaced this comment with a statement pointing out that domestic violence is not permissible in the UK (*“beating is offensive”*); this statement, although directed to a Bangladeshi audience, was broadcast on a channel in the UK to a UK audience; the scholar’s use of the words *“I would have suggested”* (in the phrase *“If it were in Bangladesh, I would have suggested you to give four or five slaps together”*) was a conditional suggestion rather than an unambiguous call to action delivered as an imperative; and, the overall tenor of the scholar’s advice was for a husband to take non-violent forms of action (principally either divorce or remarriage). In addition, Ofcom understands that there are statutory provisions<sup>1</sup> within Bangladesh which prohibit domestic abuse within that country, a fact that some in the audience were likely to have known.

Therefore, after careful consideration, it was Ofcom’s view that the statement (*“If it were in Bangladesh, I would have suggested you to give four or five slaps together”*), although condoning violent behaviour, on its own would not have been likely to encourage violent, dangerous or seriously antisocial behaviour. Therefore, Ofcom did not consider that the programme breached Rule 2.4.

While Ofcom did not consider that this material was likely to result in the encouragement of violent, dangerous or seriously antisocial behaviour on these

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<sup>1</sup> The Domestic Violence (Prevention and Protection) Act 2010 (see [http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc\\_7c82\\_4aa0\\_98a6\\_8672334b235c/Domestic%20Violence%20Act%20English.pdf](http://mowca.portal.gov.bd/sites/default/files/files/mowca.portal.gov.bd/page/203db6dc_7c82_4aa0_98a6_8672334b235c/Domestic%20Violence%20Act%20English.pdf)).

particular facts, we considered this statement was at the limits of acceptability. Ofcom therefore urges broadcasters to apply extreme caution when complying such material, especially in the context of programmes dispensing practical advice from a religious perspective.

### Rule 2.3

Rule 2.3 states that:

“In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Such material may include, but is not limited to...humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of...gender...)”.

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including: the editorial content of the programme, the service on which the material was broadcast, the time of broadcast, what other programmes are scheduled before and after, the degree of harm or offence likely to be caused, likely audience expectations, warnings given to viewers, and the effect on viewers who may come across the material unawares.

Ofcom first considered whether the material in this programme had the potential to cause offence. As already discussed this case involved a religious scholar answering a question put to him as to what a husband should do *“if a wife doesn’t listen to”* him. In response, he said a husband should make clear that if a wife *“does whatever she likes”* then a husband should threaten to take various steps such as: divorcing her; remarrying; stating that he is not the wife’s *“slave”*; and/or sending the wife *“back to [her] father’s house”*. The scholar also said that if a wife shouted at her husband then the husband should shout back twice as loud. He also made a reference to the fact that if the husband was in Bangladesh rather than the UK the husband should give the wife *“four or five slaps together”*. In our view the overall message being given by the scholar in his advice was that a husband is intrinsically superior to his wife, a husband’s interests are inherently more important than his wife’s, and that it is acceptable (in Bangladesh) for a husband to commit a violent act such as slapping his wife to demonstrate this. As such, we considered these comments clearly had the potential to be considerably offensive.

We went on to consider whether the broadcast of these potentially offensive statements were justified by the context. We noted that they were broadcast on a channel aimed at a Muslim audience. In the programme, a scholar was giving advice from a Muslim perspective, on how people might carry out various activities in life. Ofcom acknowledged the Licensee had the right to broadcast programmes that discuss Islamic principles and that its audience expects such discussions. However, in doing so any potential offence had to be justified by the context.

In our view, the overall tone of the scholar’s advice was clearly dismissive of married women and based on a view that husbands were automatically superior to their wives. The potential offence in this case would have been likely to have been increased in our view by the scholar declaring that husbands should conform to a certain traditional male stereotype (*“You should be a tiger”*). In addition, the level of offence would have been exacerbated by the scholar implying that a husband would be somehow deficient (*“what kind of man is he! He has lost his manhood. You shouldn’t be a slave to your wife, show your manhood”*) if the husband did not follow

the scholar's advice and therefore conform to that stereotype. Overall in our view these statements were capable of causing a considerable degree of offence.

We noted that the scholar did slightly soften the potential offence by stating that "*Beating is offensive*" in the UK. However, any potential helpful effect of that statement by way of mitigation was immediately undercut by his subsequent suggestion that if a husband were in Bangladesh the husband should give his wife "*four or five slaps together*". In our view, by suggesting that a husband should commit physical violence against his wife in this way significantly increased the likelihood of these comments causing considerable offence.

We noted the various arguments put forward by Runners TV in this case. Firstly, it argued that the comments of concern were not made by someone "representing the channel", but were made by a "specific individual" who had been "asked for his opinion on a matter (to which] he gave his subjective answer, which we wholly condemn". While it was the case that the scholar in this case was not a member of its programming staff, the Licensee had editorial responsibility for what was being broadcast. Therefore, it was incumbent on Runners TV to ensure that all broadcasting content, including statements by programme guests, such as the scholar, complied with the Code.

Second, Runners TV argued that: the scholar's comments had "no weight to them when considered alongside all other programming" broadcast on Iqra Bangla "in relation to the subject matter"; Iqra Bangla "has a niche demographic of viewers, most of whom will be reasonably well versed in discussions and facts relating to the subject matter"; and Iqra Bangla's audience's "reasoning and level of cultural, societal awareness will be strong enough for them to differentiate between accurate and inaccurate statements". We disagreed. As mentioned above, we took into account the composition and likely expectations of the target audience. However, these factors, as well as any other programming on this subject matter that may have been broadcast by the Licensee, did not provide sufficient context to justify the substantial amount of offence caused in this case. Other relevant contextual factors, in our view, were the nature of the editorial content itself and the likely expectations of UK audiences about content broadcast on UK channels in general. In summary, we considered that the content of the scholar's comments in this case exceeded generally accepted standards for a broadcast service in the UK.

Third, the Licensee said that "it is imperative we have the remit to tackle prejudice head-on, which is a challenge and means sometimes voicing and then undermining uncomfortable views". It added that in "debates and talk shows, there will always exist an inherent risk in contributors providing their subjective or biased opinion." Consistent with the Code and their right to freedom of expression, broadcasters have the editorial freedom to broadcast "uncomfortable views". We also acknowledge the challenges of broadcasting such viewpoints in live programming. However, broadcasters must have in place sufficiently robust procedures to ensure that potentially offensive statements made in live broadcasts are placed in appropriate context, for instance by them being challenged, rebutted or otherwise contextualised. In this regard, we took into account the various steps that Runners TV had taken to improve compliance in this area, including the introduction of a "three step process for vetting guests".

In reaching our Decision we took into account that the Licensee: considered this incident to be a "regretful, one off incident, for which we have taken decisive action"; disciplined the programme producer and "other producers and team members linked

to this show”; “permanently barred” the scholar in this case from appearing on Iqra Bangla; and took the other steps referred to above to improve compliance.

However, we considered that there was insufficient context to justify these highly offensive statements, and Rule 2.3 was breached.

**Breach of Rule 2.3**

**Not in Breach of Rule 2.4**

## In Breach

### Jimmy Swaggart The Classics

*SBN International, 7 July 2015, 17:00*

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#### Introduction

Son Life Broadcasting Network International (“SBN International”) broadcasts on digital satellite platforms, primarily to a Christian audience. The channel’s content consists of music and sermons by Christian televangelist Jimmy Swaggart and members of his ministry. The licence for SBN International is held by Lancaster LLC (or “the “Licensee”).

A complainant alerted Ofcom to homophobic comments made during a sermon delivered by Jimmy Swaggart to an audience in Texas, and included in this *Jimmy Swaggart the Crusade Classics* programme.

Ofcom noted that throughout the programme as broadcast in the lower left corner of the screen the following graphic was shown:

“Jimmy Swaggart  
The Classics  
Houston, Texas  
February 22, 1985”.

At about 17:52 Jimmy Swaggart moved to the centre of the stage and began his sermon. He said that the world, and more specifically the United States, was being “*inundated by a variety of sexual sins*”. He stated, “*Our nation staggers under a quagmire of filth*”. He then listed the following as “*filth*”: “*pornography*”; “*homosexuality*”; “*paedophilia*”; “*sexual child abuse*” and “*incest, which runs rampant in the United States*”.

After referring to a Gay Pride event that had taken place in San Francisco, he stated that “*the Board of Deputies had issued a permit for this vile, degenerate event to be consummated*”, and went on to say that homosexuals were “*sex perverts, that is the correct terminology*”. To applause from the audience he added that homosexuals were “*not gay, not alternate lifestyle, but sex perverts*”. Describing scenes at the New Orleans Mardi Gras, he said that he saw “*repulsive looking transvestites*”, who had “*disgraced the floats with their obnoxious presence*”.

The segment referring to gay people and transvestites lasted approximately five minutes in total.

In Ofcom’s opinion, this content raised potential issues under the Code warranting investigation 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... Such material may include, but is not limited to...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)”.

Ofcom therefore asked Lancaster LLC how the programme complied with this rule.

## Response

In its initial comments the Licensee stated that Jimmy Swaggart had originally delivered this sermon on 22 February 1985 to an audience in Houston, Texas, before it was included in this *Jimmy Swaggart the Crusade Classics* programme.

Lancaster LLC stated that this programme was broadcast as a result of “human error”: “The fact that this programme aired in the UK on 7<sup>th</sup> July 2015 was a scheduling error which should not have occurred”. Lancaster LLC acknowledged that “some of the terminology used at the time this sermon was originally delivered might be considered offensive to members of the homosexual community in the present day, for which the channel sincerely apologizes.”

The Licensee said that as a consequence of this incident it had introduced new compliance measures. It said it will “no longer maintain separate programming libraries” for different channels to help ensure consistency of compliance, and was reviewing all of its back catalogue of *Jimmy Swaggart the Crusade Classics* to ensure that they complied with the Code. It added that, until this process was complete, no further programmes in the *Jimmy Swaggart the Crusade Classics* would be shown in the UK that was not fully cleared through this evaluation process.

In response to Ofcom’s Preliminary View (that there was a breach of Rule 2.3), the Licensee pointed out that due to “an error” it “deeply” regretted Lancaster LLC had originally provided Ofcom with an incorrect copy of the programme as broadcast. It therefore provided a complete copy, which showed that the graphic referred to in the Introduction was included in the bottom left hand corner of the screen (this was not included in the original version provided to Ofcom).

The Licensee made some further representations. Firstly, it argued that when Jimmy Swaggart mentioned “*filth*” he was referring to the sins he was discussing not people, he “did not refer to homosexuals as sin”; and, “Brother Swaggart did not identify homosexuals as “degenerate”, but rather the event in San Francisco...”.

The Licensee argued that various factors would have made it clear to viewers that the programme dated from many years before, including in particular the on-screen graphic, the title of the programme, and the style of dress of the people shown in the programme. Further Lancaster LLC stated that in all “Brother Swaggart recites and/or directly references Biblical Scripture 21 times during the course of this sermon to support his statements”. It continued that, from viewing the programme, there could have been “no question in the mind of the viewer that this programme, taken as a whole, conveys religious teaching and beliefs” and so provided a “spiritual context”.

Third, the Licensee set out a further step it was taking to improve its compliance. It said it broadcast its Christian programming on three different satellite feeds and, until this incident, had only been applying the Code to “the programming airing on its satellite feed” which serves viewers in countries subject to Ofcom regulation. It stated that it now applies Ofcom standards to all its programming “regardless of where such programming is intended to be broadcast”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives,

including that generally accepted standards are applied so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material. This duty is reflected in Section Two of the Code.

In reaching a Decision in this case, Ofcom has also taken account of the audience's and broadcaster's right to freedom of expression set out in Articles 9 and 10 of the European Convention on Human Rights ("ECHR"). Ofcom needed to seek an appropriate balance between ensuring members of the public were adequately protected from material which may be considered harmful or offensive on one hand and the broadcaster's and audience's right to freedom of expression on the other.

The Code contains no prohibition on the expression of religious beliefs but the broadcast of such material must comply with the Code. Ofcom recognises that it would be an unacceptable restriction on a broadcaster's and audience's freedom of expression to curtail the transmission of such views just because they cause offence.

Under Rule 2.3, broadcasters must ensure that potentially offensive material is justified by the context. Context is assessed by reference to a range of factors including: editorial content; the degree of offence; the effect of the material on viewers who might come across it unawares; warnings; and, likely audience expectations.

We first considered whether this content had the potential to cause offence. Ofcom noted that Jimmy Swaggart described a Gay Pride parade as a "*vile, degenerate event*", homosexuals as "*sex perverts*", and transvestites as disgracing floats at a carnival by "*their obnoxious presence*". Specifically referring to the San Francisco Gay Pride event, Jimmy Swaggart described it as "*the most obscene demonstration in the history of modern day nations [which] took place uninterrupted in the city of San Francisco*" and a "*vile degenerate event to be consummated*". Jimmy Swaggart did not specifically identify homosexual people as "degenerate", but by referring to the Gay Parade event as a "*degenerate event*", and an "*obscene demonstration*", viewers would have been left in no doubt that the participants in the parade were themselves being viewed as "*degenerate*" and "*obscene*". Further, although he did not describe homosexual people as "*filth*", Jimmy Swaggart did include homosexuality in his list of sins which were "*filth*". In our view this language was derogatory, homophobic and clearly capable of causing offence.

We therefore went on to consider whether the broadcast of this content was justified by the context.

Ofcom recognised that homosexuality was a controversial and divisive topic among Christian churches in the 1980s, and to some extent has remained so to the present day. In accordance with Articles 9 and 10 of the ECHR Christian broadcasters have the freedom to express their religious beliefs concerning homosexuality. In doing so however they must comply with the Code. The language used by Jimmy Swaggart to describe gay people was highly offensive, referring to them, as "*sex perverts*", homosexuality as "*filth*", and a Gay Pride Event as "*degenerate*" and "*obscene*". The degree of offence was heightened significantly by the fact that in describing "*filth*", he grouped homosexuality with "*paedophilia*", and "*incest*".

In Ofcom's view it would have been clear to viewers from factors like the on-screen graphic and style of dress of participants in the programme that the sermon dated from many years ago. We recognised that Jimmy Swaggart's remarks may have been likely to cause a lower level of offence to some when they were originally made in the 1980s. But we noted that when they were broadcast in this programme in 2015, they were much more likely to be understood by viewers as pejorative abuse,



rather than remarks grounded in religious teaching. We noted that in his sermon Jimmy Swaggart did make some references to scripture seeking to support of his statements, but in our view none of his Biblical references (as summarised by the Licensee) clearly provided support from the Bible for describing homosexual people as “*sex perverts*” and homosexuality as “*filth*”. We concluded therefore that these comments were likely to have exceeded the expectations of the audience for this channel.

We noted that this material was broadcast by mistake and the Licensee has told us it will take various measures to ensure a similar error does not happen in the future.

Nonetheless, for all these reasons, the broadcast of this material was not justified by the context. The Licensee did not apply generally accepted standards in this case and Rule 2.3 was breached

Ofcom was very concerned that initially the Licensee provided the incorrect version of the programme as broadcast. It is critical that licensees take great care to ensure that, when Ofcom requests a copy of broadcast, they provide a copy of it as broadcast and of broadcast quality. This is because Ofcom relies on that copy for its initial assessment of the programme in fulfilment of its statutory duties.

### **Breach of Rule 2.3**

## In Breach

### The Simpsons

Channel 4, 7 October 2015, 18:00

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#### Introduction

*The Simpsons* is an irreverent animated comedy produced in the USA, appealing to a mixed audience of children and adults, and broadcast by Channel 4 (or “the Licensee”) at 18:00 on weekdays.

Ofcom was alerted by a viewer to a sequence in which Homer Simpson was shown hanging by a noose from a tree. The viewer felt this was inappropriate for an early evening broadcast when families would be watching.

Ofcom viewed the programme. We noted that the storyline in this episode centred on the relationship between Homer Simpson and his son, Bart, and prominently featured strangulation. In summary, the key segments were as follows:

- Firstly, Homer was shown humiliating Bart by tickling him in public at a sporting event until Bart wet himself in front of others in the crowd. Subsequently, Homer’s wife Marge signed Homer up for ‘Fresh Start’ fatherhood classes at which he revealed that he regularly strangled Bart to discipline him.
- To help Homer understand “*what it feels like to be young, small and terrified*”, the therapist in the fatherhood classes enlisted former American basketball star Kareem Abdul-Jabbar to strangle Homer repeatedly in a sequence lasting approximately one minute.
- As the therapy had the effect of making Homer scared of Bart, the therapist sought to build trust between father and son through a series of outdoor activities, which Bart used to ridicule Homer. This culminated in a sequence in which Homer was shown standing on the branch of a tree with rope in a noose around his neck. The therapist persuaded Homer to jump, assuring him that “*Bart will cut you down*”. As Homer jumped from the branch, kicking and struggling against the tightened noose, Bart turned away to write a text message on his phone. The action then moved to a different location.
- When Bart was shown again, Homer’s feet were visible in the background, still kicking in thin air. The therapist then strangled Bart in frustration at the boy’s callousness, while Homer – avoiding suffocation by holding the noose away from his neck with his hands – remarked “*You see? You see how that boy pushes your buttons!*” The therapist continued to strangle Bart, stating “*We’ll talk when he’s dead. Just break already*”. Bart reached to cut Homer down. After Homer fell to the ground he removed the therapist’s fingers from around Bart’s neck.

Ofcom considered that this material raised issues warranting investigation under Rule 1.3 of the code, which states:

“Children must...be protected by appropriate scheduling from material that is unsuitable for them.”

We therefore sought comments from the Licensee as to how the material described above complied with this rule.

## Response

Channel 4 apologised for any offence caused to viewers by this episode and emphasised that it took its compliance responsibilities seriously. The Licensee said each acquired series “undergoes a robust viewing and compliance checking process to ensure content is made suitable for the time of day of broadcast and audience expectations, or otherwise restricted from broadcast before a certain time should the themes or cumulative elements be deemed un-editable for the intended slot”.

Channel 4 said that it had broadcast 22 seasons of *The Simpsons* since 2004. The Licensee noted that “The vast majority of episodes [of *The Simpsons*] contain an amount of non-realistic and slapstick animated violence” often involving Homer and Bart. Consequently, images of Homer strangling Bart were “long-established” and “very familiar to audiences”.

Channel 4 said that it had reviewed and made edits to the instances of violence and potentially imitable behaviour in this episode before it was originally broadcast in December 2014, mainly to reduce the hanging scene.

As a result of that broadcast, the Licensee said it had received two complaints about the content. In light of those complaints, Channel 4 said the episode was reviewed again with the result that “the cumulative effect of the mock strangulation together with the hanging scene were deemed to be too strong for the scheduled” time. Channel 4 said “regrettably, due to human error, the edits which were considered necessary to correct this were not put into effect” with the consequence that the episode was repeated “without the further edits”.

Channel 4 said it would not repeat this episode before the watershed, and that it “will be reviewing the specific compliance process for *The Simpsons* going forward”.

## Decision

Under the Communications Act 2003, Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content; the time of broadcast; and, likely audience expectations.

We first assessed whether the programme included material unsuitable for children.

Ofcom considered the programme contained themes and humour that would have been familiar to viewers of *The Simpsons* – for example, Homer’s various failings as a father, the comic tensions in the relationship between Homer and Bart, and Bart’s seriously mischievous behaviour. We also acknowledged Channel 4’s argument that images of Homer strangling Bart were a regular and expected joke within *The Simpsons*, illustrating Homer’s near-constant frustration with Bart’s actions.

However, scenes in which Homer strangles Bart are normally both brief and incidental to an episode's storyline. In contrast, and although we were mindful of the comedic nature of the material, this episode focused on strangulation and contained a prolonged sequence showing a repeated physical attack on Homer who did not resist, and who clearly appeared to suffer as the assault was taking place. We considered that a sequence in which a well-known character was first encouraged to hang himself and was then shown doing so was uncomfortable and unexpected. We acknowledged that the comedic tone helped to limit the potential unsuitability of the material for child viewers. However, we considered that this was insufficient to counteract the overall effect of the separate and lengthy instances of physical harm shown. We therefore considered that the cumulative effect of these sequences made the material unsuitable for children.

We went on to assess whether the content was appropriately scheduled. Appropriate scheduling is judged according to all the relevant factors. These include such points as: the nature of the content; the likely number and age range of children in the audience; and, the nature of the channel.

We noted that *The Simpsons* appeals to a wide audience when shown on Channel 4. Audience viewing figures for this episode showed 19.4% of total viewers for the programme were children aged between 4 and 15 years. There was therefore a significant child audience for this programme.

Ofcom acknowledges that the inclusion of potentially harmful acts in an animated programme can distance viewers from their portrayal and can mitigate their potential unsuitability for child viewers to some extent. However, this does not mean that the portrayal of such acts does not need to be suitably limited in this type of programming. In this case, we considered that the scenes of strangulation and hanging were likely to have exceeded audience expectations for a programme shown at 18:00 on a public service channel.

We noted the decision by Channel 4 not to show this episode again in a pre-watershed slot and its apology for the broadcast of this material. Nevertheless, we concluded that this episode of *The Simpsons* was not appropriately scheduled and was therefore in breach of Rule 1.3.

Ofcom was concerned that, although Channel 4 had previously identified this episode as containing material which was unsuitable for transmission at 18:00, the episode had been broadcast again without additional editing. We noted Channel 4's commitment to review its specific compliance processes for *The Simpsons*. However, we take this opportunity to remind the Licensee of the importance of ensuring that effective systems are in place to prevent unsuitable material being scheduled in daytime or early evening slots.

### **Breach of Rule 1.3**

## In Breach

### A League of Their Own

*Sky Sports 1, 14 October 2015, 19:30*

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#### Introduction

*A League of Their Own* is a comedy sports-themed panel show shown on various Sky channels, including Sky Sports 1. The licence for Sky Sports 1 is held by Sky UK Limited (“Sky” or “the Licensee”).

A complainant alerted Ofcom to the broadcast of offensive language during an episode broadcast at 19:30 on 14 October 2015. Ofcom viewed the programme and noted that it included three uses of the words “fuck” or “fucking”.

We considered the material raised issues warranting investigation under Rule 1.14 of the Code, which states:

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

We therefore sought comments from the Licensee as to how the material complied with this rule.

#### Response

Sky said a “major error” had resulted in a post-watershed version of the programme being transmitted at 19:30 for which it apologised.

The Licensee explained that the wrong version of this programme had been assigned to this early evening timeslot as a result of human error. Sky said this was “highly unusual as *A League of Their Own* was scheduled at 20:00 for the previous two weeks and the correct version was assigned to those slots”.

Sky also said that following a recent case of offensive language being broadcast pre-watershed on Sky Sports 1<sup>1</sup>, it was in the process of introducing an additional check to flag any cases of post-watershed programmes being scheduled pre-watershed. However, Sky said that unfortunately this check was not in place in time to prevent this broadcast.

Sky told Ofcom that it had made some “immediate changes” to its scheduling system that would prevent a post-watershed programme being scheduled pre-watershed and would have prevented the error that occurred in this case. The Licensee also said that it was also still working on a “long term alarm system that would further alert for any inappropriate versions in timeslots” with implementation of this system due “around the end of December”.

#### 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 the standards objectives,

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<sup>1</sup> See Decision regarding Time of Our Lives in issue 291 of Ofcom’s Broadcast Bulletin: ([http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb291/Issue\\_291.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb291/Issue_291.pdf))

one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

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>2</sup> notes that the word “fuck” and its variations are considered by audiences to be amongst the most offensive language. In this case, the word “fuck” or variations on this word were broadcast on three occasions during this pre-watershed programme. Therefore, there was a clear breach of Rule 1.14.

We noted the actions Sky told us it is undertaking to improve its scheduling and compliance processes by the end of the year. However, we remind the Licensee of the importance of ensuring that – during the intervening period – suitable checks are made to ensure that further examples of incorrect scheduling of material intended for post-watershed broadcast do not recur.

### **Breach of Rule 1.14**

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

## In Breach

### Various programmes

*Starz, various dates and times*

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#### Introduction

Starz is a music television channel with output consisting of music videos broadcast alongside texts and photographs submitted by viewers. Viewers are invited to contact the channel via the use of premium rate telephony services (“PRS”), at a cost of £1 per text message and £1.50 per picture message. Using the text message service, viewers are able to request videos for broadcast from a pre-selected playlist. This playlist is broadcast on-air, in the form a scrolling banner that runs along the bottom of the music videos, as well as being available on the channel’s Facebook page. Viewers are directed to the channel’s website for full terms and conditions of the text and photo services. The licence for Starz is held by Cloud Television One Limited (“Cloud Television” or the “Licensee”).

We received a complaint from a viewer who noted that, on occasion, viewers submitted a request for a video that had previously been requested and, as a consequence, was already scheduled to play. The complainant noted that the channel did not display which songs were scheduled to play and questioned whether viewers would have chosen to pay for a video request had they been made aware that their request would not affect the schedule.

On receipt of the complaint, Ofcom viewed the channel’s terms and conditions and noted that, in relation to video requests, these stated that “once a track has been selected it is delisted, which means you will not be able to request it again...until 20 minutes have passed”.

Although the channel is an editorial service, the text and photo elements of the channel are classified as teleshopping by Ofcom. This is because these elements are predicated on the use of PRS – they invite viewers to pay to contact the channel with a view to selecting videos and/or getting their messages and photographs on screen<sup>1</sup>. As teleshopping, these interactive elements are subject to the requirements of The UK Code of Broadcast Advertising (“the BCAP Code”). For most matters the BCAP Code is enforced by the Advertising Standards Authority (“the ASA”). Ofcom, however, is responsible for enforcing the rules in respect of certain types of advertising, including long form broadcast content that is based on paid-for viewer interaction.

Ofcom therefore considered the complaint raised issues warranting investigation under the following rules:

BCAP Rule 3.1: “Advertisements must not materially mislead or be likely to do so.”

BCAP Rule 3.2: “Advertisements must not mislead consumers by omitting material information. They must not mislead by hiding information or

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<sup>1</sup> Ofcom’s Regulatory Statement on Participation TV established that content predicated on the use of PRS services is advertising. The Statement can be found at:  
<http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/summary/ptv3.pdf>

presenting it in an unclear, unintelligible, ambiguous or untimely manner.”

## Response

Cloud Television explained that the terms and conditions that Ofcom viewed had been inadvertently carried across to the Starz website from a similar music request channel it had operated previously and which had operated a 20 minute delist policy. It said that the same policy did not operate on Starz and the information should not have been included in the terms and conditions featured on this channel’s website. The Licensee said that following contact from Ofcom it took immediate steps to amend the Starz website, removing reference to the delist policy.

Cloud Television explained that Starz features a scrolling ticker with a list of the videos available for request alongside a code linked to each video. Viewers are invited to request one of these videos by texting the relevant code to the PRS number shown on screen. Once a video is requested, it is added to the queue to be played. If no requests are received a channel moderator picks tracks to play. The Licensee confirmed that track information remains on the ticker even if the related video has already been added to the queue. Cloud Television noted that if a viewer requests a track that is already in the queue, this would by default be played (as it was already scheduled). On this basis, it took the view that viewers’ requests are fulfilled provided the requested track is broadcast.

Cloud Television said that although it might seem obvious to display or notify viewers about what tracks are scheduled to play, communicating this information to viewers would be complex and present editorial challenges. For example:

- Limitations in on-screen space – if an artist had more than one video track in the playlist, both the artist name and track name would need to be featured. Given the screen resolution of a standard TV, the Licensee believed that such information would take up a considerable and disproportionate amount of the screen, particularly at peak times when there might be four or more tracks in the request queue.
- The viewer experience – the Licensee said its experience of transmitting the upcoming playlist on another channel had not been successful editorially. The playlist was constantly changing, scrolling and rotating and was not, in its view, attractive for viewers. It said that viewer feedback for this other channel had been that the service was confusing to use and counter-intuitive. The Licensee explained that it found that viewers would watch the ticker and see one or more videos they wanted to request; wait for the ticker to scroll through again to note the unique request code for their chosen video but in that time someone else might have requested the same video, which as a result would have been delisted and not appear. Those viewers could not understand why the track had been removed and text the PRS number anyway to find out why it could not be requested.

Cloud TV stated that it took compliance extremely seriously and its editorial, compliance and moderating staff worked hard to ensure compliance with all relevant codes as well as to ensure the viewer’s interaction experience was as good as possible. The Licensee stressed that it has never been its intention to materially mislead viewers either by omitting or hiding information. By way of background, Cloud Television explained that the channel had been in operation since 2005 and, to its knowledge, this was the first complaint to Ofcom about the operation of the video



request service. The Licensee said it strived at all times to ensure viewer satisfaction with this service and with the channel more generally as it hoped to retain viewers. If a viewer raised an issue, Cloud Television said it was always ready to provide financial reimbursement or provide a number of free requests to compensate.

## **Decision**

Under the Communications Act 2003, 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 inclusion of advertising which may be misleading, harmful or offensive in television and radio services is prevented”. This standard objective is reflected in the rules contained in the BCAP Code. In particular, the BCAP Code requires that advertising material must not mislead viewers, whether by omission or otherwise.

Ofcom noted Cloud TV’s representations on the feasibility of including the upcoming playlist on-screen, including the Licensee’s view that a viewer’s request is fulfilled provided the track is played after a request is made. We also noted that the terms and conditions published on the Starz website at the time of the complaint stated “Once a track has been selected it is delisted, which means you will not be able to request it again ... until 20 minutes have passed.”

In Ofcom’s view, the inclusion of this information in the terms and conditions would have led viewers to believe that if a specific track was listed in the on-screen ticker, the channel had received no request to play it within the preceding 20 minutes. Therefore, if a viewer wanted to see this particular video, they would need to request it via the PRS text number. As this was not necessarily the case, we considered that the terms and conditions as they had appeared on the website had the potential to mislead viewers about how the service operated. Although noting that the Licensee took steps to rectify the error as soon as they were made aware of it by Ofcom, we were concerned that it was unaware of the issue prior to receiving notification of the complaint.

We therefore considered that the Licensee’s failure to ensure the accuracy of terms and conditions to which viewers were directed was in breach of Rules 3.1 and 3.2 of the BCAP Code.

## **Breaches of BCAP Rule 3.1 and BCAP Rule 3.2**

## Resolved

### TFI Friday

Channel 4, 23 October 2015, 20:53

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#### Introduction

*TFI Friday* is a weekly entertainment programme broadcast by Channel 4 (or “the Licensee”) which features interviews with various celebrities.

Two complaints alerted Ofcom to the use of offensive language in an episode broadcast on 24 October 2015 before the 21:00 watershed.

Ofcom noted that during this programme, the programme host Chris Evans interviewed the actor Nicholas Hoult. During the interview, at approximately 20:53, Nicholas Hoult was handed a trombone which he was asked to play. He then said:

*“This is not some set-up to play the trombone? I picked it up – ah, fuck it! I can’t play it”.*

Chris Evans then looked straight to the camera and said:

*“I apologise for that”.*

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

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

We therefore asked Channel 4 how the material complied with this rule.

#### Response

By way of background, the Licensee said that the production and editorial teams on *TFI Friday* “are all trained on legal and compliance issues...[and] are acutely aware of the requirements of” Rule 1.14 of the Code. Channel 4 said that this programme was subject to Channel 4’s Live Programme Guidelines and “tailored guidelines” for *TFI Friday*.

The Licensee said that Nicholas Hoult was “not known as someone who regularly swears in interviews and, although normal procedures were followed, no special consideration (such as pre-recording his interview) was considered necessary”. Prior to his appearance, Nicholas Hoult was “given a full producer briefing, outlining the fact that [*TFI Friday* is] a pre watershed show, and that he must not swear”. Channel 4 said, in its view, this use of offensive language was an “unplanned incident and was purely a case of [Nicholas Hoult] being caught up in the moment”. It added that following the programme, Nicholas Hoult told production staff that he “was utterly mortified that he had unfortunately and totally unintentionally sworn” while appearing in the programme.

The Licensee said that following the use of offensive language, the presenter “immediately apologised to viewers and swiftly moved the item on”, in accordance with the relevant compliance guidelines for the programme. In addition, it said that “a

clear apology was made by the continuity announcer” following the commercial break at the end of the programme, a few minutes after this incident. Channel 4 added that it decided that, as the programme would not be repeated pre-watershed, the offensive language would not be edited out of the programme for future transmissions “but rather a clear strong language warning would be added for all repeats and on the version available” on Channel 4’s on demand service.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast on television before the watershed. Ofcom’s research on offensive language<sup>1</sup> notes that the word “fuck” or its variations are considered by audiences to be amongst the most offensive language.

In this case, the word “*fuck*” was broadcast at 20:53, before the watershed in breach of Rule 1.14. However, we took into account the various steps taken by Channel 4 including that: it had specifically briefed the interviewee before his appearance not to swear; the programme host immediately apologised after the incident; and, the Channel 4 continuity announcer made a further apology immediately following the end of this programme.

Given the above, we considered the matter resolved.

## **Resolved**

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

## Resolved

### Rick Jackson: The Big Drive

Wave 105.2 FM, 23 October 2015, 18:00

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#### Introduction

Wave 105.2 FM is a local commercial radio station broadcasting to the Solent area of southern Hampshire and eastern Dorset. The licence for Wave 105.2 FM is held by Bauer Radio (“Bauer” or “the Licensee”).

*Rick Jackson: The Big Drive* is the afternoon drive-time show broadcast on 105.2 FM from 16:00 to 19:00. In this case, the Licensee alerted Ofcom to an example of offensive language being used in an edition of this programme broadcast on 23 October 2015.

Ofcom noted that during this programme, there was a competition feature called “*The Big £20,000 Bonus*”. This competition had required listeners to contact the radio station by text with the answer to a multiple choice question which had been asked in the edition of *Rick Jackson: The Big Drive* broadcast a week previously on 16 October 2015. During the programme broadcast on 23 October 2015, the presenter, Rick Jackson telephoned one of the audience members who had correctly answered the competition question live on air to inform them that they won a prize of £20,000. When the competition winner (“Julian”) answered the telephone, there was the following exchange:

Julian: “Hello”.

Rick Jackson: “Hello, it’s Rick Jackson here at Wave 105, and you’ve just won £20,000!”

Julian [Speaking to somebody he was with]:

“[Inaudible] You ain’t going to fucking believe what’s happened! We’ve won twenty thousand [inaudible]”.

Rick Jackson: “First of all, may I apologise for the language. Obviously, you’ll understand how excited this person is. [To Julian] Hello, remember you’re live on the radio: Do not swear!”

Julian: “Oh, sorry!”

Rick Jackson: “Sorry, yes, OK...Do not swear whatever you do”.

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

“The most offensive language must not be broadcast...when children are particularly likely to be listening...”.

We therefore asked the Licensee how the material complied with this rule.

## Response

By way of background, Bauer said that it had been “running this weekly competition for 6 years without incident...although admittedly this was the first time we’d given away £20,000”. It added that given the nature of the competition format “it would be difficult to pre-record or pre-warn the winner” and therefore it was “reluctant to change the mechanic” of the competition. However, the Licensee said it was “confident this was an isolated incident and [it had] taken steps to prevent it happening again”. In particular, Bauer said that it had told the presenter in future to warn a competition winner not to swear “just before he tells them they’ve won the cash”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, one of which is that “persons under the age of eighteen are protected”. This objective is reflected in Section One of the Code.

Rule 1.14 states that the most offensive language must not be broadcast on television before the watershed. Ofcom’s research on offensive language<sup>1</sup> notes that the word “fuck” or its variations are considered by audiences to be amongst the most offensive language.

The Code states that the phrase “when children<sup>2</sup> are particularly likely to be listening” refers to: “the school run and breakfast time, but might include other times”. Ofcom’s guidance<sup>3</sup> on offensive language in radio notes that:

“For the purpose of determining when children are particularly likely to be listening, Ofcom will take account of all relevant information available to it. However, based on Ofcom’s analysis of audience listening data, and previous Ofcom decisions, radio broadcasters should have particular regard to broadcasting content at the following times:

- between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time;...”

In this case, the word “ *fucking* ” was broadcast at 18:00 on a Friday afternoon during the school holidays. However, we took into account the programme presenter apologised immediately after the incident and warned the audience member to refrain from swearing twice soon afterwards. We have also taken account of the steps that the Licensee has taken to ensure that, prior to competition winners being informed live on air that they have won a prize, they will be warned specifically against the use of offensive language,

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<sup>1</sup> Audience attitudes towards offensive language on television and radio, August 2010 (<http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>).

<sup>2</sup> The Code says that “children” means: “people under the age of fifteen years”.

<sup>3</sup> Ofcom Guidance, Offensive language on radio, December 2011, paragraph 13 (<http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/offensive-language.pdf>).

Given all the above, we considered the matter resolved.

**Resolved**

## Advertising Scheduling cases

### In Breach

#### Advertising minutage

*Geo News, various dates and times*

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#### Introduction

Geo News is a television channel broadcast in Urdu, serving the Pakistani community in the UK and Europe. The licence for the service is held by Geo TV Limited (“Geo TV” or “the Licensee”).

Rule 4 of the Code on the Scheduling of Television Advertising (“COSTA”) states:

“time devoted to television advertising and teleshopping spots on any channel in any one hour must not exceed 12 minutes”.

During its routine monitoring of compliance with COSTA, Ofcom identified 73 instances between 8 August 2015 and 11 October 2015 when the Licensee had broadcast more than the permitted advertising allowance in a clock hour. The amount of excess advertising broadcast in each affected clock hour ranged from 10 seconds to two minutes and 33 seconds.

Ofcom considered the matter raised issues warranting investigation in respect of Rule 4 of COSTA. We therefore asked the Licensee for its comments under this rule.

#### Response

The Licensee said the instances were due to human or operational equipment errors.

The Licensee explained that Geo News is a live rolling news channel that schedules breaks on the hour (00:00) and at half past the hour (00:30). It said that it involves a number of teams working under pressure to deliver credible content and advertising breaks cannot always be broadcast precisely as scheduled. It said that to accommodate this, it allowed its transmission team to move scheduled breaks back or forward by 10 minutes. However, although the 00:30 break could be rescheduled without any impact, when the team decided to broadcast the 00:00 break earlier, the advertising in this break was broadcast in the preceding clock hour. This practice occasionally caused the preceding clock hour to broadcast more than the permitted 12 minutes of advertising.

Geo TV said that as a result of these incidents, it has now moved the 00:00 break to 00:20 to avoid the possibility of advertising shifting into the preceding clock hour. It added this process would be reviewed to ensure effectiveness. The Licensee said it was also undertaking a review across its compliance, operations and transmission teams to ensure that any changes are thoroughly reviewed in line with Ofcom’s rules.

#### Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of

the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the Audiovisual Media Services Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA.

On 73 occasions, the Licensee broadcast more advertising than permitted by Rule 4 of COSTA and therefore breached this rule in each case.

Ofcom noted the measures undertaken by the Licensee to address the specific issue causing the error and improve compliance in this area. However, this is the second time that Ofcom has identified instances of excessive advertising on a channel licensed to Geo TV Limited within a five month period. In issue 282 of Ofcom’s Broadcast Bulletin<sup>1</sup>, we recorded 11 breaches of Rule 4 of COSTA for similar instances on the services Geo TV and Geo Tez.

Ofcom considers this to be a significant number of breaches and therefore puts the Licensee on notice that if further breaches of COSTA are identified, Ofcom will consider taking further regulatory action

#### **Breaches of Rule 4 of COSTA**

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<sup>1</sup> Issue 282 of Ofcom’s Broadcast Bulletin available at:  
[http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb282/Issue\\_282.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb282/Issue_282.pdf)



## Broadcast Licence Conditions cases

### In Breach

#### Broadcasting licensees' late and non-payment of licence fees

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Ofcom is partly funded by the licence fees it charges television and radio licensees. We have a statutory obligation 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 television licensee failed to pay its annual licence fee by the required payment date. This licensee has therefore been found **in breach** of Conditions 4(1) and 4(2) of its broadcast licence.

In the specific circumstances of the following case, Ofcom considers the licence breaches to be serious. **Ofcom is therefore putting this licensee on notice that the breaches are being considered for the imposition of a statutory sanction, which may include a financial penalty.**

| Licensee                    | Service Name | Licence Number |
|-----------------------------|--------------|----------------|
| Abu Dhabi Media Company PJS | Abu Dhabi TV | TLCS001660BA   |

**Breaches of Licence Conditions 4(1) and (2) in Part 2 of the Schedule of the relevant licences.**

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

2 [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)

3 As set out in Licence Condition 3 for radio licensees and Licence Condition 4 for television licensees.

## In Breach

### Providing a service in accordance with ‘Key Commitments’

*EAVA FM (Leicester), 24 to 26 June 2015*

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#### Introduction

EAVA FM (Leicester) is a community radio service for “inner-city Leicester’s new migrant and refugee communities, particularly those from East Africa and related areas.” The Licensee for the service is St. Matthews Community Solution Centre Ltd (“SMCSC” or “the Licensee”).

Like other community radio stations, EAVA FM is required to deliver the ‘Key Commitments’ which form part of its licence<sup>1</sup>. These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

The station’s ‘Character of Service’, which forms part of its Key Commitments, states that: “EAVA FM’s philosophy is to broadcast programmes that will be a benefit to all in the community with a view to giving a balanced output targeted to meeting the needs of all, including new migrant communities originating from East Africa”.

Ofcom received a complaint alleging that, during the Ramadan religious period of June 2015, EAVA FM had “switched most of their output to Ramadan programmes” and that, “looking at the Key Commitments, EAVA FM is meant to cater for all cultures”.

We requested recordings of three days of EAVA FM’s output, covering Wednesday 24, Thursday 25 and Friday 26 June 2015. After monitoring this output we concluded that while the religious programming for Ramadan was very dominant, accounting for the overwhelming majority of EAVA FM’s output, there was nevertheless some programming broadcast that would be likely to be of interest to a wider audience, including non-Muslim migrant communities. This included a discussion programme featuring local Leicester councillors, and an interview with the UK Charity Commission about UK charity laws.

However, based on our monitoring days, it appeared to us that the following Key Commitments were not being delivered:

- Speech output will include...news.
- Music output will be mainly from a selection of East African & other local BME genres and includes Somali Music, Reggae, Soukous, Afro Beat, Kwasa Kwasa, Fuji, Kwaito, Asian, Hi Life, Soca, Calipso and R&B from the 90s until the present also highlighting music of Black origin.

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<sup>1</sup> The Key Commitments are contained in an annex to SMCSC’s licence. They can be viewed in full at:  
<http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000178.pdf>.

Ofcom considered that the issue warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to SMCSC's licence. These state, respectively:

"The Licensee shall provide the Licensed Service specified in the Annex for the licence period." (Section 106(2) of the Broadcasting Act 1990); and

"The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period." (Section 106(1) of the Broadcasting Act 1990).

We therefore requested SMCSC's comments on how it was complying with these conditions, with reference to the two specific Key Commitments set out above.

## **Response**

The Licensee said that EAVA FM's audience "are mostly from East African communities" and have many celebrations and community events throughout the year including Diwali, Ramadan and Christmas. It said that its audience always listens to the station's output regardless of whether it is English music, reggae or Somali music that is broadcast during the rest of the year. SMCSC noted that its data for listening to EAVA FM via its website showed that the Ramadan programming weeks were particularly popular with the audience. It added that it sought to serve all communities in Leicester whatever their background.

## **Decision**

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

On the three days of EAVA FM's output we monitored, there were no news bulletins (either local or national), or any programming broadcast that could reasonably be considered to constitute news.

On the issue of EAVA FM's music output, the programming broadcast during the monitoring days was comprised only of speech and nasheeds (Islamic religious chants). This was contrary to the Key Commitment which requires the Licensee to broadcast music "mainly from a selection of East African & other local BME genres and includes Somali Music, Reggae, Soukous, Afro Beat, Kwasa Kwasa, Fuji, Kwaito, Asian, Hi Life, Soca, Calipso and R&B from the 90's until the present also highlighting music of Black origin."

We accepted it was legitimate for EAVA FM to have an increased focus on Islamic religious programming during the Ramadan period, and a greater amount of speech output than would usually be the case. However, none of the music genres required by the Key Commitments, nor any news, were broadcast during our monitoring period.

The Character of Service in EAVA FM's Key Commitments requires the station to "broadcast programmes that will be a benefit to all in the community with a view to giving a balanced output targeted to meeting the needs of all". We took into account the Licensee's representation that its Ramadan programming had been popular with

listeners. Nevertheless, we did not consider that it was appropriate for EAVA FM to suspend delivery of a number of important Key Commitments during the month of Ramadan without seeking Ofcom's consent for this in advance.

We are putting the Licensee on notice that, should similar issues arise in future, we may consider taking further regulatory action.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by St. Matthews Community Solution Centre Ltd (licence number CR000158).**

## In Breach

### Providing a service in accordance with ‘Key Commitments’

*Access FM (Bridgwater), 9 to 11 September 2015*

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#### Introduction

Access FM is a community radio station licensed to provide a service for people in Bridgwater, and the surrounding area. The licence is held by Bridgwater Young Men’s Christian Association (“BYMCA” or “the Licensee”).

Like other community radio stations, BYMCA is required to deliver the ‘Key Commitments’ which form part of its licence<sup>1</sup>. These set out how the station will serve its target community and include a description of the programme service; social gain (community benefit) objectives such as training provision; arrangements for access for members of the target community; opportunities to participate in the operation and management of the service; and accountability to the community.

Ofcom received a complaint alleging that BYMCA was failing to meet a number of its Key Commitments, and specifically those involving its on-air programming.

We requested recordings of three days of Access FM’s output, covering Wednesday 9 September, Thursday 10 September, and Friday 11 September 2015. After monitoring this output we identified a number of potential issues with BYMCA’s delivery of the following Key Commitments:

- “Output will typically comprise 70% music and 30% speech during the day, with a higher percentage of music in the evening and at night. (‘Speech’ excludes advertising, programme/promotional trails and sponsor credits).”
- “The service broadcasts at least 35 hours of original output per week (live or first-run pre-recorded material).”

We noted that throughout the three days of our monitoring period Access FM broadcast very little speech content or original output, with the vast majority of the content consisting of continuous music. For example, on both Wednesday 9 and Thursday 10 of September, there was only one hour of original programming which contained some speech content, and even these two hours consisted almost entirely of music.

While there was a greater amount of speech and original output broadcast on Friday 11 September, the levels of speech during daytime output on that day were significantly below the 30% required by the Key Commitment.

Ofcom considered this warranted investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to BYMCA’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

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<sup>1</sup> The Key Commitments are contained in an annex to BYMCA’s licence. They can be viewed in full at: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000240.pdf>

“The Licensee shall ensure that the Licensed Service accords with the proposals set out in the Annex so as to maintain the character of the Licensed Service throughout the licence period.” (Section 106(1) of the Broadcasting Act 1990).

We therefore requested BYMCA’s comments on how it was complying with these conditions, with reference to the specific Key Commitments set out above.

## Response

BYMCA accepted that, during the monitoring period, it did not meet its Key Commitments. It noted that, just over a week prior to Ofcom’s monitoring period, Access FM had broadcast live from a local festival arranged to raise funds for the YMCA, and to promote volunteering at the station.

The Licensee explained that: “As a result of this intense period we were left with a challenging two weeks [after the live broadcast] whilst volunteers and paid staff took time off, this clearly impacted on the output of the station, and should have been factored into matters prior to the event. We have taken learning from this”.

BYMCA also informed Ofcom that there had recently been some management changes at the station, which have allowed it to “carry out a fuller review of output, and importantly to attract new volunteers to the station”. It added: “We now feel with our new team on board that the Key Commitments will be met and are being developed further to ensure that Access FM makes the positive contribution to the community it serves”.

## Decision

Ofcom has a number of duties in relation to radio broadcasting, including securing a diverse range of local radio services which are calculated to appeal to a variety of tastes and interests, along with the optimal use of the radio spectrum. These matters are reflected in the licence condition requiring the provision of the specified licensed service. Provision by a licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted.

In this case, BYMCA was not delivering the required 30% level of daytime speech content on any of the three days we monitored, nor was it delivering the required 35 hours of original output per week.

Ofcom welcomes the steps the Licensee has told us it is taking to increase the amount of speech and original output on Access FM. However, as acknowledged by the Licensee, it was clear that, during our monitoring period, BYMCA failed to deliver the amount of speech output required by its Key Commitments, therefore breaching Licence Conditions 2(1) and 2(4).

**Decision: Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by Bridgwater Young Men’s Christian Association (licence number CR000240).**

## Fairness and Privacy cases

### Not in Breach

#### Dispatches: Politicians for Hire

Channel 4, 23 February 2015

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##### Summary

Ofcom has found that the Channel Four Corporation (“Channel 4”), the licensee<sup>1</sup> for the Channel 4 channel, had taken reasonable steps to ensure that it avoided unjust or unfair treatment of the individuals featured in the programme, *Dispatches: Politicians for Hire*.

In particular, we considered that:

- Channel 4 had taken reasonable care to satisfy itself that the facts (as detailed below) were not presented, disregarded or omitted in a way that portrayed Sir Malcom Rifkind or Mr Jack Straw unfairly in the programme as broadcast;
- Channel 4 had given both individuals an appropriate and timely opportunity to respond to the allegations raised in the programme in relation to their conduct;
- Channel 4 had represented the views of Sir Malcolm Rifkind and Mr Straw in a fair manner; and,
- the use of secret filming to obtain footage for the programme, and its subsequent inclusion in the programme as broadcast, was warranted in the circumstances.

Ofcom concluded, therefore, that Channel 4 did not breach Rule 7.1 of Ofcom’s Broadcasting Code (“the Broadcasting Code”).

##### Introduction

On 23 February 2015, Channel 4 broadcast an edition of *Dispatches*, entitled *Politicians for Hire*, which reported allegations that Sir Malcolm Rifkind and Mr Straw were willing to use their positions and contacts as MPs (as they were at the time of broadcast) and senior parliamentarians for personal gain. The programme considered if their behaviour fell short of public expectations, regardless of whether or not Parliamentary rules had been breached. The programme included secretly recorded footage of both men meeting with the representatives of a Chinese communications company (“PMR Communications”) and to discuss their interest in joining the company’s advisory board and to consult on planned investments in the UK and Europe. However, the company was fictitious and its representatives were undercover reporters who recorded the meetings with both men for use in the programme.

The broadcast of the programme and related articles in the *Daily Telegraph* newspaper<sup>2</sup>, led to significant, further press and media reporting about the conduct of

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<sup>1</sup> Television Licensable Content Service (TLCS) C400001.

<sup>2</sup> The investigation was a joint one between Channel 4 and the *Daily Telegraph* newspaper.

the two MPs. As a result of the media coverage, the Parliamentary Commissioner for Standards (“the Parliamentary Commissioner”) launched an inquiry into the conduct of Sir Malcolm Rifkind and Mr Straw<sup>3</sup>. Channel 4 assisted the Parliamentary Commissioner in her inquiry and provided her with recordings of the unedited, secretly filmed footage and transcripts of the filmed meetings, as well as, journalistic notes and correspondence with the MPs.

On 17 September 2015, the findings of the Parliamentary Commissioner’s inquiry into the two MPs were published<sup>4</sup>. The report found that neither Sir Malcolm Rifkind, nor Mr Straw was in breach of the Code of Conduct<sup>5</sup> or the Rules of the House (other than, in Mr Straw’s case, by a minor misuse of parliamentary resources), and that there was no evidence that their conduct, in itself, caused significant damage to the reputation and integrity of Parliament. The report also made critical comments about both the programme and the *Daily Telegraph* articles, suggesting that the programme had been inaccurate and misleading, and was, therefore, unfair and damaging not only to the two MPs concerned, but to those around them and to Parliament. On the same day, Channel 4 issued a statement in which it rejected these criticisms and maintained that the programme had been accurate and fair in all material respects.

Also on 17 September 2015, Channel 4 wrote to Ofcom referring the programme to Ofcom for consideration as to whether it had complied with the provisions of the Broadcasting Code. On 25 September 2015, Ofcom informed Channel 4 that it would be investigating the programme in relation to issues of fairness and sought the broadcaster’s formal response that the programme complied with the Broadcasting Code for the reasons summarised below.

### **Framework for the investigation**

Ofcom did not receive a fairness complaint from Sir Malcolm Rifkind or Mr Straw (or anyone authorised by them to make a complaint on their behalf).

However, Ofcom has a general duty under section 3 of the Communications Act 2003 (“the 2003 Act”) to (among other things) secure the application, in the case of all television and radio services, of standards that provide adequate protection to members of the public and all other persons from both (i) unfair treatment in programmes included in such services; and (ii) unwarranted infringements of privacy resulting from activities carried on for the purposes of such services (Section 3(2)(f) of the 2003 Act)<sup>6</sup>.

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<sup>3</sup> Mr Straw referred himself to the Parliamentary Commissioner, while the Parliamentary Commissioner decided on her own initiative to investigate Sir Malcolm Rifkind.

<sup>4</sup> House of Commons Committee of Standards, First Report of Session 2015-6 – Sir Malcom Rifkind and Mr Straw,  
<http://www.publications.parliament.uk/pa/cm201516/cmselect/cmstandards/472/47202.htm>.

<sup>5</sup> The Code of Conduct for Members of Parliament,  
<http://www.publications.parliament.uk/pa/cm201012/cmcode/1885/188501.htm>.

<sup>6</sup> <http://www.legislation.gov.uk/ukpga/2003/21/section/3>.



Ofcom's Procedures for the consideration and adjudication of Fairness & Privacy complaints<sup>7</sup>, published on 1 June 2011, state at paragraph 1.5 that:

"in exceptional circumstances, where Ofcom considers it necessary in order to fulfil its general duty (under section 3(2)(f) of the 2003 Act) to secure the application of standards that provide adequate protection to members of the public (and all other persons) from unfair treatment in programmes and unwarranted infringements of privacy, Ofcom may consider fairness or privacy issues in the absence of a complaint from "the person affected" ... In those exceptional circumstances, Ofcom would set out in advance the procedures that it intends to follow and allow any relevant parties to respond accordingly. The procedures would be similar to these but adapted as appropriate to ensure that they are fair in the particular circumstances".

Ofcom considered that "exceptional circumstances" existed for it to consider the fairness implications raised by the programme's allegations against Sir Malcolm Rifkind and Mr Straw, in the absence of a complaint from "the person affected", in order to fulfil its general duty to secure the application of standards that provide adequate protection to members of the public from unfair treatment. Ofcom considered such exceptional circumstances to exist in light of the fact that allegations were made in the programme that both men were prepared to offer their services as MPs for personal gain.

In reaching this decision, we took into account the fact that Channel 4 had written to Ofcom asking us to investigate this programme following the publication of a recent report of the Parliamentary Commissioner for Standards, in which comments were made to the effect that the programme had not accurately reported what was said by those two individuals and that footage was selectively edited in a way which was liable to be misleading.

The 'Standards' in respect to fairness are set out in Section Seven (Fairness) of the Broadcasting Code<sup>8</sup>. This section sets out a Principle and a Rule (Rule 7.1) to be observed by broadcasters. The Principle is "to ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes". Rule 7.1 states that:

"Broadcasters must avoid unjust or unfair treatment of individuals or organisations in programmes".

Section Seven (Fairness) of the Broadcasting Code also sets out a series of "practices to be followed" by broadcasters when dealing with individuals or organisations participating in or otherwise directly affected by programmes. These include that:

- Before broadcasting a factual programme, broadcasters should take reasonable steps to ensure that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation (Practice 7.9);

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<sup>7</sup> <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/fairness/>

<sup>8</sup> <http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/fairness/>

- If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond (Practice 7.11);
- Where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner (Practice 7.13); and,
- Broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception (including surreptitious filming or recording). However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means (Practice 7.14).

Failure to follow the practices will only constitute a breach of the Broadcasting Code where it results in unfairness to an individual or organisation in the programme.

### **Summary of the programme as broadcast**

The edition of its investigative programme *Dispatches*, entitled *Politicians for Hire*, broadcast on 23 February 2015, principally concerned the non-Parliamentary, commercial interests of two senior MPs at the time: Sir Malcolm Rifkind, and Mr Straw.

As explained in the introductory narration to the programme, this programme followed an earlier *Dispatches* programme broadcast in 2010 which also used secret footage to examine MPs' commercial activities, and which led to an inquiry into the conduct of certain MPs featured.

The narrator to the programme explained that the focus of the programme was to examine "*if there's still a problem with politicians for hire?*" and if, despite the new rules introduced following the previous public attention to the issue generated in 2010, "*there is still a gap between the conduct of some politicians and how the public expects them to behave?*"

The narrator to the programme explained that the programme makers, claiming to be from a (fictitious) Chinese communications company called PMR Communications, had written to a number of MPs to discuss whether they would be interested in joining the company's board, to advise on possible investments in the UK and EU. It was further explained that the deception was intentionally not sophisticated in order to see to what extent the MPs would undertake due diligence into a foreign company that was approaching them about potential work. The narrator said that most MPs who were approached did not express an interest in joining the board of PMR, but that a small number did, including Sir Malcolm Rifkind and Mr Straw.

Throughout the first half of the 30 minute programme, secretly filmed footage was included of Sir Malcolm Rifkind explaining what he thought he could bring to the role on the advisory board (and what he could not); the level of remuneration he might expect; as well as footage of the MP talking about the amount of free time he had. The programme also included footage showing Sir Malcolm Rifkind offering to hold a future meeting at his Parliamentary office and to give a personal tour of the Parliament building for PMR Communications' owner should he come to London.

The second part of the programme focused on Mr Straw and included secretly filmed footage of him in his Parliamentary office, explaining how he had helped other commercial clients in the past, in the context of what he could bring to the role he was being offered; the level of remuneration he might expect; as well as footage of him discussing the possibility of him moving to the House of Lords and the impact this might have on his involvement with the company. The programme also included footage of Mr Straw taking the two undercover reporters on a tour of part of the Houses of Parliament building, and offering to try to arrange a future tour.

In relation to both MPs, the programme included comment from Sir Alistair Graham, who as the former Chairman of the Committee on Standards in Public Life, provided the programme with his “expert opinion” (as described in the programme) on the MPs’ conduct as shown in the secretly filmed footage. The programme explained that Sir Alistair Graham was shown the edited footage that appeared in the film before commenting on it<sup>9</sup>.

### **Ofcom’s Investigation and Channel 4’s response**

Ofcom wrote to Channel 4 on 25 September 2015 informing it that having considered its letter of 17 September 2015 (referred to above) and the programme, as well as the supporting material provided by Channel 4 along with its letter, Ofcom considered that the *Dispatches* programme raised potential issues warranting investigation in relation to the avoidance of unjust or unfair treatment to an individual. Ofcom requested Channel 4 to submit its formal representations on how it maintained appropriate standards and complied with Rule 7.1 of the Code in connection with the filming and broadcast of the secretly filmed footage of the two MPs featured in the *Dispatches* programme and the allegations made in the programme to the effect that they were willing to use their positions and contacts as MPs and senior parliamentarians for personal gain, having particular regard to Practices 7.9, 7.11, 7.13, and 7.14.

In summary, Channel 4 responded as follows:

**a) What steps were taken to ensure that reasonable care was taken by Channel 4 to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the individuals concerned?**

- *Channel 4’s explanation of its processes and the background to the programme team*

Channel 4 said that its own procedures and guidelines were adhered to rigorously from the very start of the investigation all the way through to its broadcast. It said that there was extensive editorial and legal scrutiny of the investigation and the programme at every stage, with scrupulous attention being paid to fairness and accuracy at all times.

Channel 4 said that expert advice and comment was also sought from Sir Alistair Graham, a former Chairman of the Committee on Standards in Public Life. The broadcaster said that he was provided with the full transcripts of the meetings on which he was basing his opinion, as well as the edited footage which appeared in the programme, so that he could clearly see the comments the MPs were making

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<sup>9</sup> As noted below, Channel 4 told us in its response that Sir Alistair Graham had also been provided with the full transcripts of the meetings on which he was basing his opinion.

in context. The broadcaster explained that the Committee's remit was to examine concerns about standards of conduct, including arrangements relating to financial and commercial activities, of all holders of public office including ministers and MPs. Therefore, Channel 4 said that Sir Alistair Graham was eminently qualified to advise and comment on the evidence presented to him.

- *Channel 4's analysis of the way in which the programme presented all relevant material*

Channel 4 said that the programme's principal consideration was whether the MPs' behaviour fell short of public expectations, regardless of whether or not Parliamentary rules had been broken. This was made clear to viewers at various points in the programme. For example, it was stated in the programme that:

*"Tonight, we ask if there's still a problem with politicians for hire?"*

*"...Despite that, is there still a gap between the conduct of some politicians and how the public expects them to behave".*

*"Even if they're observing Parliamentary rules, are they acting in a manner the public expects?"*

At the very end of the programme, the programme's narrator said:

*"Whatever the rules, our investigation raises questions about the behaviour of two senior politicians. And with the election around the corner, the conduct of our Parliamentarians inside and outside the Commons is likely to remain firmly in the spotlight".*

Channel 4 said that the programme ended with a final "end thought", that whether or not Parliamentary rules had in fact been broken, the investigation had raised questions about the behaviour of the two MPs, and that the conduct of Parliamentarians both inside and outside the House of Commons was likely to remain "firmly in the spotlight".

In summary, Channel 4 said that it and the programme makers had gone to great lengths to ensure that all secret filming included in the programme was fairly and accurately reproduced and properly contextualised. Furthermore, it said that nothing of significance was omitted which was capable of causing unfairness. Channel 4 said that the secret filmed footage was presented in the programme in chronological order except for one sequence, which was made clear to viewers. It said that internal edits to the undercover footage were also signalled to viewers by the use of a "white flash". Channel 4 also said that the programme's narrator had fairly and accurately framed and introduced the various sequences and the programme let viewers to judge for themselves the significance of what it was the MPs were saying and offering.

As regards potential rule-breaking in respect of some of the evidence, Channel 4 said that the programme left any expert opinion to Sir Alistair Graham. Channel 4 said that his words were accurately reproduced, properly contextualised, and represented his honest opinion, based on what was said during the secretly filmed meetings with Sir Malcolm Rifkind and Mr Straw, and that his comments were reasonable and measured.

Channel 4 said that it considered that criticisms that the programme was inaccurate and misleading do not bear up to scrutiny in light of careful examination of the programme and how it presented material, compared to the rushes and transcripts of the meetings that took place. In support of this, Channel 4 made detailed comments about how it considered the secretly filmed footage relating to each MP was presented throughout the course of the programme, making reference to how they considered it compared to the rushes and transcripts of the meetings, and why they considered this was fairly and accurately reproduced and properly contextualised.

#### Presentation of material relating to Sir Malcolm Rifkind

Channel 4 said that three short extracts of secretly filmed footage were included in the pre-title sequence to the programme to alert viewers as to what they would later see in the main body of the programme. The broadcaster submitted that there was no unfairness in the way these extracts were presented as viewers would have appreciated that the use of the short quotes in the pre-title sequence was simply a trail for what was coming up later in the programme.

Channel 4 said that after summarising the outcome and consequences of the earlier 2010 *Dispatches* programme, the programme's narrator summed up its purpose and defining its parameters: namely, that it would examine the question of whether, "... *there is still a gap between the conduct of some politicians and how the public expects them to behave*". The programme summarised the nature of the undercover elements of the investigation involving the fictional company PMR Communications. Channel 4 said that viewers were explicitly told that while the illusion of a real business had been created, anyone checking it thoroughly would have found flaws. The deception employed by the programme makers was intentionally not sophisticated in order to see to what extent MPs would undertake any due diligence into a previously unknown foreign company approaching them about potential work. Channel 4 said that there was nothing in the material in this section of the programme, nor in the way in which it was presented, which caused unfairness to either Sir Malcolm Rifkind or Mr Straw. It simply explained how the programme makers went about their investigation.

Channel 4 said that what followed in the programme was an explanation by the programme's reporter that, of the twelve MPs that the programme approached, the majority had not expressed an interest in what was on offer, but that a few had. Sir Malcolm Rifkind was then introduced to viewers and the programme accurately set out some biographical information about the MP and summarised the non-Parliamentary jobs and earnings that he declares.

Channel 4 said that viewers were then shown footage taken from the undercover reporters' first meeting with Sir Malcolm Rifkind. The programme accurately explained that the fictional company had told the MP that it was looking to recruit people with appropriate political or regulatory backgrounds in the areas of energy, engineering and transport. At this point, some introductory, secretly recorded, footage was then included, showing the MP arriving at the meeting and asking a few background questions about the company. Channel 4 said that there was nothing inaccurate or misleading about the way in which this footage was presented: it was accurately reproduced with only a couple of minor, inconsequential internal edits in the first sequence, in order to remove the names of the undercover reporters, and it showed, in fairness to the MP, that he was seeking to make some enquiries of the company that had approached him.

The programme then included a secretly filmed sequence showing Sir Malcolm Rifkind raising the issue of potential clashes between any role with the company he might be offered and his Parliamentary commitments. The broadcaster said that this sequence was included for reasons of fairness to the MP, as it showed that he was both conscious of his Parliamentary commitments and was concerned to ensure that any role he might be offered would not significantly interfere with them. The broadcaster said this short extract was reproduced accurately and was not misleading.

Channel 4 said that the next secretly filmed sequence from the meeting included in the programme showed the undercover reporters expressing an interest in the history of [the Palace of] Westminster. Sir Malcolm Rifkind was shown saying that, had he known, the meeting could have taken place at his office in Westminster and went on to offer the Chinese owner of PMR Communications, (the fictional "uncle" of one of the company representatives who was, in reality an undercover reporter, and the man who Sir Malcolm Rifkind thought would ultimately decide if he should be offered a place on the company's board), a personal tour of the Houses of Parliament if he was to come to London. Once again, Channel 4 said that the extract was reproduced accurately in the programme and that there was nothing unfair about the way this material was presented.

The next sequence included in the programme showed the MP explaining one of the things that he could bring to a role on the Board of PMR Communications. The MP was then shown stating, that he can "*see any ambassador that I wish to see. They will see me personally ... because of having been a foreign minister*". Channel 4 said, again, that the extract was accurately reproduced in the programme and contained no internal edits. It said that the footage was properly contextualised and contained his exact words.

Channel 4 submitted that Sir Malcolm Rifkind was, essentially, "pitching" his services to a prospective client and it was in that context that his comments ought to be viewed and judged. Channel 4 said that there was no suggestion in the programme that the MP's comments about having access to ambassadors was the only thing he said he could bring to the role.

Following this, Channel 4 said that the programme next included a sequence in which Sir Malcolm Rifkind raised the issue of remuneration. The extracts of secretly filmed footage included on this point were taken from the moment in the meeting when the MP first raised the question of remuneration. In these extracts, Sir Malcolm Rifkind gave an example of what he had been paid in the past: £5000 to £8000 for approximately half a day's work, when delivering presentations on the Middle East. Channel 4 said that the extracts were presented contiguously with some of the discussion that took place in the meeting about remuneration not included in the programme. Channel 4 said that it was Sir Malcolm Rifkind that first raised the subject of remuneration. Channel 4 said that the extract was accurately reproduced and properly contextualised. It explained that there was one small internal edit in one of the extracts to remove the name of the company Sir Malcolm Rifkind had delivered the presentations to, but this did not, in any way, change the meaning of what he said.

Channel 4 said that as already noted above, all secret filming sequences were presented in the programme in chronological order except for one - concerning remuneration. It said that the reason why the chronology was altered and the

subject of remuneration raised later in the programme was so that the impression would not be given that the MP's primary motivation was money.

Following the footage of the discussion about remuneration, Channel 4 said that the programme then used extracts from the second secretly filmed meeting with Sir Malcolm Rifkind which showed him: (i) talking about the amount of free time that he had; (ii) saying that he was "*self-employed*" and was "*not paid a salary*"; and, (iii) explaining that Thursday evenings to Monday lunch times were quiet times for him, as most other MPs had gone to their constituencies in other parts of the country. Channel 4 said that these three extracts were taken from the same part of the meeting, with the edits indicated by a "white flash". Channel 4 said that all the extracts used in this section of the programme were reproduced accurately, were properly and fairly contextualised, and that there was nothing misleading or unfair about the way in which they were presented.

The broadcaster said that the programme then turned to the possibility of PMR Communications investing in property near the route of possible future rail project, HS3. The programme explained briefly what HS2 and HS3<sup>10</sup> were and included extracts of secretly filmed footage of the discussions that took place. Sir Malcolm Rifkind stated that he could potentially find out what the current detailed state of government thinking was on the project and he discussed the sorts of questions that could be asked and information that potentially could be gleaned. The broadcaster said that the MP explained that, in respect of *public* information, he could personally write to the relevant minister to find out the information, and said that he could do so without naming on whose behalf he was asking; and that while he could seek discrete 'soundings', such as what might be "*ruled out*" in relation to a project, one would need to proceed with caution in respect of such soundings. Channel 4 said that the extracts used in the programme were all taken from one section of the meeting. Some edits (which were indicated by a "white flash") were made to the footage in order to condense it, but nothing was edited that was capable of altering the meaning of what was said and discussed.

Channel 4 said that in fairness to Sir Malcolm Rifkind, the programme included what the MP had clearly said would not be possible. Channel 4 said that when it was suggested that he might be told things in relation to government policy that others might not be, the MP stated that would not be the case and the extract used in the programme made it clear that Sir Malcolm Rifkind said that he would not be able to provide "*privileged information*". It was made very clear to viewers, Channel 4 said, through a combination of narration and the secret filming extract used in the programme that he would not be able to provide privileged, confidential information and that he considered it improper to provide such information.

The broadcaster said that the section of the programme relating specifically to Sir Malcolm Rifkind concluded with secretly filmed footage showing him telling the undercover reporters that he could join the advisory board as soon as the Friday of that week. While it would be clear to viewers that the comment was being made, somewhat, in jest, Channel 4 said that it was clearly an expression of his interest in joining the company's board. The broadcaster said that the extract was accurately reproduced in context and was not misleading. Viewers were left to judge the extract for themselves.

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<sup>10</sup> HS2 is a proposed high speed rail link between London and the west Midlands (Phase 1) and the west Midlands to Leeds and Manchester (Phase 2). HS3 is a proposed east-west high speed rail link connecting Liverpool to Hull via Manchester and Leeds.

### Presentation of material relating to Mr Straw

Channel 4 said that the first part of the programme concluded with a trail for what was coming up in the second part and a short extract of secretly filmed footage of Mr Straw was shown of him telling the undercover reporters what he charged for his services.

The second part of the programme itself began with the programme's narrator explaining that Mr Straw had invited the two undercover reporters to a meeting at his Parliamentary office. The programme then included a short extract of secret filming in which Mr Straw was shown telling the undercover reporters that he was an adviser to ED&F Man, a commodity trading company. The programme's narrator summarised part of what was discussed at the meeting, namely, how Mr Straw had helped ED&F Man with a problem it had encountered in Ukraine in connection with sugar, a commodity it trades in and secretly filmed footage was shown of Mr Straw describing how: he had managed to get Ukrainian law changed following a meeting he had with the British Ambassador and Ukrainian Prime Minister; and had also managed to get EU sugar regulations changed, following a meeting with the relevant Director General and officials at the European Commission. Channel 4 said that it was in this sequence that the MP mentioned that the best way of dealing with such matters was "*under the radar*". The broadcaster said that also, for fairness reasons, the programme made it explicitly clear that Mr Straw had ensured that his work for ED&F Man had been properly signed off by the appropriate Parliamentary committee, and that he had declared the trip. The broadcaster said, therefore, that the way the discussion was presented in the programme was entirely fair and accurate.

Channel 4 said that extracts were then shown of Mr Straw acknowledging the value of his name, and querying what it was he might be able to bring to the role, before moving on to the subject of remuneration. By way of example, Mr Straw said that if he was delivering a "*speech or something*", he would charge in the region of £5000 per day. The extracts used here, Channel 4 said, were all taken from the same part of the meeting and that the exchange had been fairly condensed in the programme and edited together. It said that the extracts were accurately reproduced and were properly contextualised.

Channel 4 said that secretly filmed footage was included showing Mr Straw making clear that his first responsibility was to his job as an MP and that he must be able to justify to himself and his constituents that any non-Parliamentary work that he carried out was in his spare time.

Channel 4 said that the programme then included a secretly filmed sequence showing Mr Straw making it clear to the undercover reporters that there were strict rules governing MPs undertaking advocacy for those paying them, but not if he was not in the House of Commons. He also mentioned that there was talk of him moving to the House of Lords and that, if he was a member of the House the Lords, rather than the House of Commons, he would be able to help more. Channel 4 said that this extract was "one discrete extract" and that it was taken from a moment in the meeting when one of the undercover reporters asked Mr Straw what the implications might be if he were to step down as an MP. In addition, Channel 4 said that in the extract used in the programme, the MP was included stating that he would not be willing to take on the role whilst he was still an MP. This, Channel 4 said, was included because it was felt that it was important, for fairness reasons.



Channel 4 said that at the end of the programme, secretly filmed footage was included showing Mr Straw giving the undercover reporters a tour of the Houses of Parliament as well as offering to arrange a tour for the fictional owner of PMR Communications and the man who would ultimately decide if the MP was offered a job. Channel 4 said that this material was presented entirely fairly in the programme.

**b) What steps were taken by Channel 4 and/or the programme makers to ensure that the individuals against whom the allegations made in the programme were directed were given a timely and appropriate opportunity to respond to them?**

Channel 4 said that it and the programme makers provided both Sir Malcolm Rifkind and Mr Straw with a timely and appropriate opportunity to respond to the findings of the investigation and the matters that they were intending to include in the programme. On 10 February 2015, the programme's executive producer sent letters by email to both Sir Malcolm Rifkind and Mr Straw alerting them to the forthcoming programme, setting out how it was intended they would be featured within it, and invited their written responses to specific matters.

Sir Malcolm Rifkind

In relation to Sir Malcolm Rifkind, the executive producer emailed the letter referred to above to the MP on 10 February 2015 and explained that the programme makers were producing a programme for Channel 4's *Dispatches* series which would be broadcast at 20:00 on 23 February 2015. The letter outlined the nature of the investigation, referenced the earlier, 2010 *Dispatches* programme and explained that the programme in production would examine whether things had changed since the 2010 *Dispatches* programme. The letter explained the nature of undercover investigation, namely that PMR Communications had been a fictitious company and that the meetings with the MP had been secretly filmed. The executive producer also informed the MP that Sir Alistair Graham had viewed the covertly recorded footage of the meetings and had appraised and commented about some of the things that Sir Malcolm Rifkind had said. Channel 4 also said that the letter listed all significant allegations and matters that it was intended that the programme would include.

In addition, Channel 4 said that the letter reassured the MP that the programme would include his comments that he would not be able to attend PMR Communications meetings if they conflicted with an important vote in the House of Commons, and that he would not be able to offer access to any privileged or secret information. The letter ended by inviting a written response from Sir Malcolm Rifkind by 18 February 2015.

Channel 4 said that, in response, Sir Malcolm Rifkind telephoned the executive producer on 11 February 2015 and, later that day, sent a detailed email responding to the various points that had been raised. Further on the same day, the broadcaster said that the MP sent another email attaching the original email he had received from the fictional company. The only other correspondence between the programme makers and the MP before the programme's broadcast was an exchange of emails on 16 February 2015. The executive producer emailed Sir Malcolm Rifkind on the morning of 16 February to say that the MP's position, based on his written responses, would be fairly reflected in the programme and that the programme makers would not be seeking an on-camera

interview with him. Sir Malcolm Rifkind responded by email and the executive producer, in turn, responded later that evening. In that final email, the executive producer confirmed that the MP would feature in the programme, that he was not the only MP that would feature, and declined to provide a transcript of the secret filming which had taken place. The executive producer stated that the programme makers were under no obligation to provide such a transcript, given that they were satisfied that he had been given an appropriate and timely opportunity to respond to all significant matters, which, Channel 4 submitted, was entirely the correct position and in accordance with the Broadcasting Code. The email ended with the executive producer reassuring the MP that his position would be fairly reflected in the programme, which the broadcaster said it was.

Channel 4 said that a comparison of the executive producer's letter of 10 February 2015 and the programme's transcript showed clearly that all significant matters concerning Sir Malcolm Rifkind to be raised in the programme were put to the MP prior to broadcast for his response. He was provided with over a week in which to respond, and indeed, he provided a detailed response within a day. For the reasons given above, Channel 4 submitted that Sir Malcolm Rifkind was given an appropriate and timely opportunity in which to respond to all significant allegations and matters concerning him and that the programme makers and the broadcaster fully complied with their regulatory obligations in this regard.

#### Mr Straw

Channel 4 said that the executive producer's letter to Mr Straw (also sent by email on 10 February 2015) was similar in structure and content to that sent to Sir Malcolm Rifkind. The letter explained that the programme makers were producing a programme for Channel 4's *Dispatches* series to be broadcast at 20:00 on 23 February 2015. It outlined: the nature of the investigation/programme; referenced the earlier, similar, 2010 *Dispatches* programme; and, explained that the programme in production would examine whether things had changed since the 2010 programme. Again, Channel 4 said that the letter explained the nature of the undercover investigation: that PMR Communications had been a fictitious company and that the meetings with the MP had been secretly filmed. The executive producer also informed Mr Straw that Sir Alistair Graham had viewed the footage and had appraised and had commented about some of the things that he had said in the covertly filmed meetings. As with the letter to Sir Malcolm Rifkind, the letter to Mr Straw listed all significant allegations and matters that it was intended that the programme would include about the MP, including the views of Sir Alistair Graham.

Channel 4 said that the letter reassured Mr Straw that "in the interests of fairness" the programme would "...include your comments that your day job is your first responsibility and that you've avoided any scandal in your political career. Also that you have to be able to justify yourself to your constituents and that working for [ED&F] Man is 'something I can do in my spare time'". The letter ended by inviting a written response from the MP by 18 February 2015.

Channel 4 said that Mr Straw responded to the executive producer's letter through his solicitors, in a letter dated 13 February 2015. The letter responded in detail to the various points that had been raised and included attachments to support their client's position in relation to some matters. Channel 4 responded to that letter through its own solicitors, in a letter dated 17 February 2015, which, in turn, Mr Straw's solicitors responded to, on behalf of their client, on 18 February 2015 enclosing a statement for broadcast. Mr Straw also wrote personally to

Channel 4's Chief Executive on 17 February 2015 to which the programme's commissioning editor responded the following day.

Channel 4 said that a comparison of the executive producer's letter of 10 February 2015 and the programme's transcript showed clearly that all significant, material matters concerning Mr Straw to be raised in the programme were put to the MP for his response. It said that Mr Straw was provided with just over a week in which to respond and did so through his solicitors within the time limit and his response was fairly included within the programme. For the reasons given above, Channel 4 submitted that Mr Straw was given an appropriate and timely opportunity in which to respond to all significant allegations and matters concerning him and that the programme makers and the broadcaster had complied fully with their regulatory obligations in this regard.

**c) What steps were taken by Channel 4 to ensure that where it represented the views of the individuals concerned, that it was done in the programme in a fair manner?**

In summary, Channel 4 said that the programme makers had written to both MPs seeking their responses to all significant allegations and matters that were to be raised in the programme. Both MPs provided detailed response in correspondence and, in the case of Mr Straw, in a statement. The broadcaster said that the programme makers, working in collaboration with Channel 4's editorial and legal teams, considered carefully the MPs' responses which resulted in the programme being scrutinised again and edits made to it. However, Channel 4 said it and the programme makers judged that the principal matters referred to in correspondence with the MPs, which they had been intending to include within the programme, remained matters which, it said, was in the public interest to broadcast and examine. On this basis, therefore, the programme was prepared and finalised for broadcast and the two MPs' responses were fairly and accurately reflected in it.

In respect of Sir Malcolm Rifkind, Channel 4 said that the programme included the following summarised response:

*"I have never undertaken nor would undertake any lobbying as an MP on behalf of any private organisation for which I was receiving remuneration.*

*You suggest that I showed myself as 'willing to act as an MP for hire'. That is untrue ... there was no suggestion that I was being approached as an MP...their approach to me was because of my previous experience as a minister...Ambassadors tend to respond not because I am a current MP but because I was Foreign Secretary.*

*I did look at their website. Due diligence is something one does when one has received a firm offer.*

*No business meeting in my office was proposed.*

*I said I would not be prepared to write to ministers on behalf of PMR Communications or any other company ... the most I could do would be to enquire from them information ... which was already in the public domain.*

*I arrange my affairs so that around 75% of my time is spent on Parliamentary and constituency business...Most constituency events are during the week rather than at the weekend”.*

Channel 4 said that the words attributed to Sir Malcolm Rifkind were taken from his letter to the programme makers dated 11 February 2015. It said that all the significant allegations and matters that the programme intended to make were addressed; Sir Malcolm Rifkind’s relevant responses are included or summarised; and, the MP’s words are accurately reproduced. Given this, Channel 4 submitted that Sir Malcolm Rifkind’s views and responses were fairly and accurately represented in the programme.

In respect of Mr Straw, the following response was included in the programme:

*“Having researched the company, I made enquiries in Hong Kong and was told the company appeared to be bona fide, but that the best way to carry out further due diligence was to meet with the individuals. If I had not received that response I would have cancelled the meeting.*

*I would have made full official checks before accepting an appointment.*

*I made clear from the outset that I was not available for any work until after I stood down as a Member of Parliament.*

*Due to my other Parliamentary commitments, and to save time for further such work, I met the individuals in my Parliamentary office. We had a general discussion about work I’ve done on a consultancy basis for another company.*

*All of my outside paid work is fully and properly declared under the rules that apply to MPs. I have also sought specific guidance from the office of the advisory committee on business appointments (of former ministers) before undertaking projects.*

*I am confident that I behaved, as I have always done, with integrity and that I did not breach any Parliamentary rules in substance or in spirit”.*

Channel 4 said that the words attributed to Mr Straw were read out in the programme and that most of the statement provided was reproduced with some extraneous elements removed. For example, it said that a sentence included in the statement about the MP’s researcher was not included because the broadcast programme did not make any claim in this regard. It was made clear that Mr Straw considered that he had not breached Parliamentary rules and had done nothing wrong. Channel 4 said that there was no obligation on the programme makers or Channel 4 to include criticisms made by Mr Straw about the actions of the undercover journalists. The broadcaster said that the words that were included from the statement in the programme were reproduced accurately and fairly and that Mr Straw’s views were fairly represented.

**d) What was the editorial sign off process followed by the programme makers and Channel 4 to satisfy themselves that it was warranted and in the public interest to use material obtained through misrepresentation or deception (i.e. the secret filming by the undercover reporters) without consent?**

In summary, Channel 4 said that it was careful to ensure that all use of deception was justified and proportionate. It said that the programme makers had

conducted detailed research into the two MPs before deciding to go ahead with the secret filming and the secret filming and its broadcast was considered to be justified by the overriding public interest, after careful consideration at the highest levels within Channel 4. Moreover, at key stages throughout the investigation and the production of the programme, all significant matters, including the nature and level of the deception employed in the undercover investigation, were referred up to senior executives within Channel 4, including its Chief Executive, and external Leading Counsel who was instructed at various stages to advise on the programme and to ensure that any claims made about the evidence were justified and defensible.

Channel 4 submitted that, all use of deception in connection with the programme was wholly justified (for reasons summarised further below) and that Channel 4's and the programme maker's rights to freedom of expression, as well as the public's right to receive information and ideas, together with the public interest, in all the circumstances, outweighed the rights to the two MPs featured.

Channel 4 said that the programme makers and relevant Channel 4 staff followed Channel 4's Secret Filming Guidelines with respect to all the secret filming of the two MPs. Channel 4 said that its Secret Filming Guidelines have been devised and put in place to ensure that all secret filming and recording being undertaken by programme makers with a view to broadcast on Channel 4 (and its other channels) is compliant with the relevant provisions of the Broadcasting Code and the law (in particular data protection law and the law relating to misuse of private information), and is undertaken in accordance with industry best practice. Channel 4 said that the Secret Filming Guidelines require programme makers to follow a two stage process:

- stage 1 requires programme makers to establish that secret filming is justified;
- stage 2 requires that once filming has taken place, programme makers are to establish that broadcasting the footage obtained by secret filming is justified.

The broadcaster said that agreement from Channel 4's Head of News and Current Affairs, taking advice from Channel 4's General Counsel and/or legal and compliance department, is required both to carry out the filming, and before material obtained by secret filming may be broadcast.

It said that "fishing expeditions" are not allowed and that there must already be some *prima facie* evidence which suggests that there is behaviour or actions of the proposed subject that it is in the public interest to expose or uncover by secretly filming. In addition, Channel 4 requires that secret filming is necessary and that the material could not reasonably be obtained through other means, for example, by filming openly. Channel 4 also said that there should also be reasonable grounds to suspect that the secret filming will reveal further material evidence.

The processes by which Channel 4 said that the secret filming of both Sir Malcolm Rifkind and Mr Straw was undertaken and broadcast are summarised below:

### Stage 1 – Sir Malcolm Rifkind

Channel 4 said that the programme makers conducted detailed research into Sir Malcolm Rifkind's Parliamentary work, as well as the non-Parliamentary jobs and advisory roles that he declared.

Channel 4 said that the programme makers identified a number of areas of concern regarding the MP's non-Parliamentary activities which they considered it was in the public interest to explore further undercover, including the use of secret filming. These concerns related principally as to whether the sheer number and nature of the non-Parliamentary roles Sir Malcolm Rifkind was involved with conflicted with his Parliamentary duties and concerns that he may be using his contacts and experience to secure highly paid commercial work. The programme makers also were concerned that Sir Malcolm Rifkind may have displayed poor judgement by agreeing to meet the fake representatives of PMR Communications without having undertaken proper due diligence.

Channel 4 said that the programme makers had written to Sir Malcolm Rifkind on 19 November 2014 pretending to be writing from the fictional company, PMR Communications. In that correspondence, the programme makers enquired whether the MP might be interested in joining the company's advisory board. A meeting was set up with the MP to discuss the proposed advisory role on 7 January 2015 at the company's 'pop up' office in Mayfair, London. On the basis of their research and the concerns outlined above, Channel 4 considered that the matters under investigation were of sufficiently important public interest to justify secretly filming the meeting and it was on this basis that permission to secretly film was granted by Channel 4's Head of News and Current Affairs and its General Counsel.

Following the meeting on 7 January 2015, Channel 4 said that the programme makers carefully evaluated the secretly recorded footage and considered it was in the public interest to explore Sir Malcolm Rifkind's conduct more fully. A second meeting was set up with the MP to discuss further his joining the board of the fictional company and what he could offer to the role. Again, Channel 4 said that the programme makers sought its formal permission to secretly film this second meeting, and after careful consideration by Channel 4's Head of News and Current Affairs, and its General Counsel permission was granted.

Channel 4 said that in relation to both meetings, there was sufficient cause for concern, on matters of important public interest, to justify secret filming. It said that secret filming was necessary, as it was considered to be the only way in which to explore, and obtain compelling evidence of how the MP transacted with potential commercial clients in private, and it was reasonably considered that further material evidence could be obtained.

### Stage 1 – Mr Straw

Channel 4 said that the programme makers conducted detailed research into Mr Straw, involving both his Parliamentary work, and his non-Parliamentary jobs and advisory roles that he declares.

Channel 4 said that the programme makers had identified a number of areas of concern which they considered it was in the public interest to explore further undercover and through the use of secret filming. These concerns related principally to whether Mr Straw was using his contacts and experience to secure

highly paid commercial work and his close involvement with ED&F Man. Another concern was that Mr Straw had displayed poor judgement in agreeing to meet with fake PMR Communications representatives without having undertaken proper due diligence.

When the question of secretly filming this particular meeting was considered by Channel 4, after very careful consideration, it was decided that, given the extra and particular sensitivities of undertaking secret filming within the precincts of the Houses of Parliament, some further evidence was required, in terms of proportionality, to justify the filming. Consequently, the meeting went ahead on 7 January 2015, but was not secretly filmed. Following this meeting, it was agreed between Channel 4 and the programme makers that there were now sufficient grounds to secretly film a second meeting with Mr Straw in his offices in the Houses of Parliament. The principal concerns justifying secretly filming this second meeting were that the MP appeared willing, potentially, to breach Parliamentary rules by using Parliamentary facilities to conduct non-Parliamentary business, and to boost his employment prospects. Permission was granted and the second meeting went ahead on 15 January 2015.

Channel 4 said that it was reasonably considered in all the circumstances that there was sufficient cause for concern, on matters of important public interest, to justify secretly filming the 15 January 2015 meeting with Mr Straw. It said that secret filming was necessary, as it was considered to be the only way in which to explore and obtain compelling evidence of how the MP transacted with potential commercial clients in private, and it was reasonably considered that further material evidence could be obtained.

#### Stage 2 – Sir Malcolm Rifkind and Mr Straw

Channel 4 said that after carefully evaluating all secretly filmed footage of both Sir Malcolm Rifkind and Mr Straw, the programme makers consulted with Channel 4's editorial and legal teams, and it was agreed that parts of the secretly filmed footage revealed important matters which it said potentially breached Parliamentary rules, as well as matters which, irrespective of whether or not they breached current rules, were in the public interest to bring to the attention of the wider public. It said that the footage raised serious questions about whether a gap remained between the conduct of some politicians and how the public expects them to behave.

With regard to Sir Malcolm Rifkind, Channel 4 said that it was agreed that there was an overriding public interest to bring to the public's attention the fact that the MP was willing to consider and enter into discussions about offering his services as an adviser to a commercial, foreign company of which he knew very little; that in discussions with the company, he was marketing himself as someone who, as a former minister and long-standing politician, could provide advantageous, direct access to ambassadors as well as other politicians; that he was offering to write to ministers on behalf of those he represented and not declare the identity of whom he was writing on behalf of (in apparent breach of the Parliamentary rules); and that such services would be provided for significant remuneration. In addition, the broadcaster said that he was potentially willing to breach Parliamentary rules by offering to have a future meeting concerning non-Parliamentary work in his Parliamentary office and was offering his prospective client a tour of Parliament.

With regard to Mr Straw, the broadcaster said that it was agreed that there was an overriding public interest to bring to the public's attention the fact that the MP was willing to consider and enter into discussions in connection with providing his services as an adviser to a commercial, foreign company of which he knew very little; that in discussions with the company, he was marketing himself as someone who, as a former minister and long-standing politician, was able to assist clients by providing advantageous, direct access to both British and foreign public officials and do so operating "*under the radar*"; that he understood that part of what he brought to any such role was his "name"; that he was arguably trading on his name, and on the prospect of him moving to the House of Lords; and that like Sir Malcolm Rifkind, such services would be provided for significant remuneration. In addition, Channel 4 said that Mr Straw had potentially breached the House of Commons Code of Conduct by holding two private meetings, about commercial non-Parliamentary matters, in his Parliamentary office, and by taking the company's representatives on a tour of the Houses of Parliament.

Channel 4 said that formal agreement to include the secret filming sequences was taken once all extracts included in the programme were carefully considered and evaluated by it. Also, the fact that detailed responses from the MPs had been sought and would be included in the programme was also borne in mind, as were Sir Alistair Graham's comments about the MPs' actions and behaviour. Channel 4 said it was clearly in the public interest to include extracts of the secretly recorded footage in order to illustrate the concerns referred to above. Channel 4 concluded that, for the reasons given above, the programme was entirely fair and complied fully with Rule 7.1 of the Broadcasting Code.

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

Ofcom prepared a Preliminary View in this case that Channel 4 was not in breach of Rule 7.1 of the Broadcasting Code in that the broadcaster had taken reasonable steps to ensure that it avoided unjust or unfair treatment of the individuals featured in the programme as broadcast. Channel 4 was given an opportunity to make representations on the Preliminary View, but chose not to do so.

Once Ofcom had reached its Preliminary View, Ofcom also provided Sir Malcolm Rifkind and Mr Straw, as relevant third parties, the opportunity to make representations on the Preliminary View. Neither chose to do so.

### **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 unfair treatment and unwarranted infringement of privacy in, or in the making of, programmes included 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 its Decision, Ofcom carefully considered all the relevant material provided by Channel 4 in relation to Ofcom's investigation. This material included a recording of the programme as broadcast and the unedited footage of the secretly filmed footage of meetings between the undercover reporters and Sir Malcolm Rifkind and



Mr Straw, as well as certified transcripts of both. We also considered Channel 4 written submission in response to the investigation and supporting documentation.

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Broadcasting Code. Ofcom had regard to this Rule when reaching its Decision on its investigation.

**a) What steps were taken to ensure that reasonable care was taken by Channel 4 to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to the individuals concerned?**

In assessing whether or not the programme created unfairness to the two individuals featured, Ofcom considered whether the programme's presentation of the statements made by Sir Malcolm Rifkind and Mr Straw during the secretly filmed meetings gave a misleading impression of their conduct in a way which was unfair to them.

As part of this assessment, Ofcom had regard to Practice 7.9 of the Code. As noted above, this provides that before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. Ofcom therefore also considered whether the programme failed to present, disregard or omit any material facts which would have a bearing on how the MPs' statements were likely to be perceived by the viewer.

Whether a broadcaster has taken reasonable care to present material facts in a way that is not unfair to an individual or organisation will depend on all the particular facts and circumstances of the case including, for example, the seriousness of any allegations and the context within which they are made.

Ofcom therefore considered that it was important to assess the presentation of the MPs' statements and conduct in the programme, having regard to the nature of the programme and its subject matter. In this regard, we noted that the programme was part of Channel 4's long established investigative documentary series, *Dispatches*, which often reported on topics of a high profile nature and matters of significant public interest. This particular edition of *Dispatches* and its subject matter (as discussed below) was, in our view, in keeping with the established nature of this programme series.

Having carefully viewed the programme and examined a transcript of it, Ofcom considered that the primary focus of the programme, as stated in the introductory narration, was to examine:

*"if there's...a problem with politicians for hire?"; and*

*"is there still a gap between the conduct of some politicians and how the public expects them to behave?"*

It was within this context that the secretly filmed footage of Sir Malcolm Rifkind and Mr Straw was included in the programme, which sought to examine their

conduct in relation to their commercial activities using secretly filmed footage of them having meetings with representatives from a fictional company.

Ofcom considered that the programme did not allege that the MPs had breached Parliamentary Rules. In our view, the programme questioned whether their conduct fell short of public expectations for MPs, regardless of whether or not their conduct complied with those Rules. This was indicated through statements made in the programme by the narrator, for example:

- At the beginning of the programme:

*“This is the story of two of Parliament’s most respected members...And who else they work for...And what you might get if you hire them...Tonight we ask if there’s still a problem for politicians for hire?...Five years ago, Dispatches conducted an undercover investigation into how some MPs were asking for large sums of money for their services...There was an inquiry and one or two new rules were introduced. Despite that, is there still a gap between the conduct of some politicians and how the public expects them to behave?”*

- At the beginning of part two of the programme:

*“Even if they’re observing Parliamentary Rules, are they acting in a manner the public expects?”*

- At the very end of the programme:

*“Whatever the Rules, our investigation raises questions about the behaviour of the two senior politicians. And with an election round the corner, the conduct of our Parliamentarians inside and outside the Commons is likely to remain firmly in the spotlight”.*

In this context, Ofcom considered the extent to which the programme presented extracts from the secretly filmed footage of Sir Malcolm Rifkind and Mr Straw as examples of the type of conduct which might be expected from “politicians for hire”, in the sense that they were senior politicians who were prepared to use their position for personal gain, and whether the programme had the potential to materially and adversely affect viewers’ opinions of them in a way that was unfair. We then went on to consider, if it did have this potential, whether the manner in which their statements and conduct were presented resulted in unfairness to them.

We noted that the programme featured secretly filmed footage of Sir Malcolm Rifkind and Mr Straw, which was taken from two meetings that took place between Sir Malcolm Rifkind and representatives of PMR Communications (who were, in fact, undercover reporters) on 7 and 13 January 2015 and one meeting which took place between Mr Straw and the undercover reporters on 15 January 2015<sup>11</sup>. Ofcom understood that the programme makers had initially written to both MPs pretending to be from PMR Communications, enquiring whether they might be interested in joining the company’s advisory board.

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<sup>11</sup> An earlier meeting took place between Mr Straw and one of the undercover reporters which was not secretly filmed and did not feature in the programme.

We considered that it was important to note the context in which this background was presented in the programme. We noted that the programme's narrator explained that the programme makers had set up a fictitious company and then said that all the programme makers needed now were *"some influential politicians to join the company's advisory board to help us get a foothold in the UK and Europe"*. The narrator then went on to say that the programme makers had *"invited 12 MPs to apply for jobs with PMR. We chose ones who already earn large sums of money from their outside interests"*. The narrator, speaking to camera, also qualified the response the programme makers had had by stating:

*"Not all politicians are for hire. Half of those we approached didn't respond. One said he wanted to check us out in Hong Kong, so we took it no further. And another said he just wasn't that interested. Of the others, two stood out"*.

Those two MPs were Sir Malcolm Rifkind and Mr Straw.

We also noted that when introducing the section on Sir Malcolm Rifkind, the programme included a description of certain factual details about Sir Malcolm Rifkind, including the fact he had held four cabinet positions, including Foreign Secretary, and had been appointed Chair of the Intelligence and Security Committee, and that he *"declares five other jobs outside Parliament that have earned him more than £800,000 in the last five years"*. The narrator then explained that the programme makers (pretending to be PMR Communications) had initially contacted Sir Malcolm Rifkind by email saying that they were: *"looking to recruit people with appropriate political or regulatory backgrounds in the areas of energy, engineering and transport"*, and then stated that he *"agreed to meet the two PMR representatives in our pop-up office in Mayfair"*. We further noted that the section of the programme which focused on Mr Straw was introduced in a similar manner, beginning with a description of certain factual details about Mr Straw's political career (such as the fact that he had been Foreign Secretary) and the fact that he declared *"two outside interests: both in advisory roles, one of them earning him £60,000 a year working for a British commodities trader"*, and then explaining that the programme makers had contacted him by email and that he had responded by inviting the PMR representatives to his Parliamentary office.

Ofcom considered that it was clear to viewers from this presentation that the two MPs were not the only MPs who had been approached by the programme makers, but that they had been targeted due to their existing commercial interests (which we noted were summarised at the beginning of the section of the programme relating to each MP). We also noted that it was made clear in the programme that both MPs had responded to the invitation by 'PMR Communications' and agreed to meet with them. Having considered copies of correspondence between the purported representatives from PMR Communications and the two MPs which had been provided to us by Channel 4, as well as the unedited secretly filmed footage of the meetings which had taken place, it appeared to Ofcom that, while the programme did not set out all the detail behind the interactions between the two MPs and the programme makers, the programme contained, overall, a fair and accurate presentation of the background to the secretly filmed footage of the two MPs.

The programme included extracts of secretly filmed footage of Sir Malcolm Rifkind which focused on the following matters:

- i) Footage showing Sir Malcolm Rifkind offering to host the representatives of PMR Communications in a private business meeting in his Parliamentary office and provide a personal tour of Parliament to the uncle of one of the representatives.
- ii) Footage said to show a discussion with Sir Malcolm of “what he thought he could bring to a role on the board”. In this context, Sir Malcolm Rifkind indicated that he could gain access to foreign ambassadors due to his previous role as Foreign Secretary *“in a way that is useful”*.
- iii) Footage of Sir Malcolm Rifkind discussing the level of remuneration that might be expected for the work involved if he were to join PMR Communications’ advisory board. Sir Malcolm Rifkind indicated that his fee would be similar to fees that he had earned in the past, i.e. in the region of £5,000 to £8,000 for part of a day.
- iv) Footage showing Sir Malcolm Rifkind discussing whether he would have the time to take on the role given his commitments as an MP and how much free time he has. In addition, there was footage showing Sir Alistair Graham’s response to these comments, in which he says, when asked how he thinks *“the public might view a Member of Parliament who makes a statement like that”*, that he thinks *“they’d be appalled that a member of Parliament seems...to have so much free time rather than representing...real issues that they will have in the constituency”*.
- v) Footage of a discussion about how, hypothetically, Sir Malcolm Rifkind could provide assistance to PMR Communications in connection with their interests relating to the HS3 project and, in that context, the MP was shown explaining how he may be able to get hold of potentially useful information by writing to a minister without naming the company he is representing. He is also shown explaining the limits of what information he could obtain. In addition, there was footage showing Sir Alistair Graham’s response to these comments, in which he says: *“It’s absolutely clear in the Code of Conduct for Members of Parliament that they have to be open and frank in all communications and yet he was saying that clip he would be able to write to ministers, and he wouldn’t have to...say who exactly he was representing...well that would be a clear breach of the Code of Conduct”*. He also suggested that this would be an example of an experienced MP using their privileged position as a public servant to access information which would benefit a company *“in a way that I think the public would find totally unacceptable”*.

The programme also included secretly filmed footage of Mr Straw and the undercover reporters posing as representatives of PMR Communications which focused on the following matters:

- i) Footage which explained that Mr Straw had invited the two undercover reporters to his Parliamentary office. Later, at the end of the meeting, footage was included of him taking the undercover reporters on a tour of the Houses of Parliament and offering to arrange a similar tour for the fictitious owner of PMR Communications. Following the footage of Mr Straw giving the undercover reporters a tour, Sir Alistair Graham was shown making the following comments in response: *“Now it’s perfectly understandable that Jack Straw wants to have a positive and constructive retirement...and he wants to have an income that takes advantage of his past public experience. But it is worrying that he is using public facilities to try and...negotiate contracts for*

*when he's left Parliament. And the Code of Conduct makes this absolutely clear that they're there to support their Parliamentary duties not following their private interests".*

- ii) Footage of Mr Straw explaining how he had previously helped ED&F Man, for whom he was acting as an advisor. Specifically, Mr Straw was shown discussing how he helped the company in the past by arranging a meeting for the company with the British Ambassador in Kiev and the Ukrainian Prime Minister Azarov, as a result of which the law was changed in a way which benefited ED&F Man, and discussing how he had helped obtain changes to the EU sugar regulations in a way which was, again, to the benefit to ED&F Man. In this context, Mr Straw was shown saying that he found the best way to get these things done was *"under the radar"*. In addition, there was footage showing Sir Alistair Graham's response to these comments, in which he says: *"that's worrying because that's saying 'I can do these things without transparency'. Without the openness and frankness that the MPs' Code of Conduct is expecting is the normal behaviour from Members of Parliament"*.
- iii) Footage of Mr Straw asking for further information about the job and what it is they want from him, during which he states that he's *"well aware of the fact that I bring my name"*. Following this, there was a discussion of the level of remuneration that might be expected for the work involved if Mr Straw were to join PMR's advisory board, in which Mr Straw indicates that his normal rate for doing a speech or similar is £5,000 a day.
- iv) Footage of Mr Straw discussing that he was well aware of his Parliamentary commitments to Blackburn and his constituents. In particular, he describes his job as an MP as his *"first responsibility"* and says: *"I've got to be able to justify towards myself and as well to my constituents...that working for [ED&F] Man, for example, is something I can do in my spare time."*
- v) Footage of Mr Straw discussing the possibility of him moving to the House of Lords and what impact that could have on his ability to assist PMR Communications compared to being an MP. In particular, Mr Straw was shown explaining that there are strict rules in the House of Commons against MPs advocating on behalf of companies paying them and saying that the rules in the House of Lords *"are different"*; *"plenty of people have commercial interests there"*; and, that he would *"be able to help you more"* if he did go to the House of Lords. However, Mr Straw also said that he *"wouldn't take this on as long as I was a Member of Parliament"*. In addition, there was footage showing Sir Alistair Graham's response to these comments, in which he says that he thinks Mr Straw *"probably needs to brush up on the regulations because the House of Lords have had a fair number of scandals in recent years and they have gone to some lengths and disciplinary processes"*.

In our view, the conduct and statements made by Sir Malcolm Rifkind and Mr Straw as included in the programme would be likely to be understood by viewers to be evidence of their willingness to exploit their experience and connections that they made as senior politicians who have occupied ministerial roles in, potentially, taking up an advisory position with a foreign company for their own financial interests. We considered that the allegations made in the programme about Sir Malcolm Rifkind's and Mr Straw's willingness to use their political experience for their personal financial interests were serious in nature and that the broadcast of extracts from the secretly filmed footage of their meetings with

the undercover reporters had the potential to impact materially and adversely on the MPs' reputations and viewers' perceptions of them.

However, we also considered that it was important to note that the programme itself did not make allegations that the MPs had breached the Parliamentary Rules of conduct (as discussed above). Furthermore, the programme included footage of Sir Malcolm Rifkind and Mr Straw in which they discuss their responsibilities as MPs and the limitations of what they would be able to do for PMR Communications, assuming they were to join the advisory board, as well as of comments made by both MPs which made clear that they were aware of certain types of conduct being against Parliamentary Rules.

We noted, for example, that footage was included of Sir Malcolm Rifkind telling the undercover reporters that he would not be able to travel when he was expected to vote in Parliament and that Channel 4 had said it was included for reasons of fairness to the MP, as it showed that he was conscious of his Parliamentary commitments, and was concerned to ensure that any role he might be offered would not significantly interfere with them:

*"I do travel sometimes when Parliament is sitting but there is always a risk of some important vote will be announced and I have to come back ...*

*But if it was possible to try and fix these dates for o...overseas meetings, er, when Parliament is not sitting in Britain, then that, I have no problem".*

We also noted that Sir Malcolm Rifkind was also clear in setting out the limitations in relation to providing privileged information:

Narrator: *"But Sir Malcolm does make clear the limitations of what can be achieved.*

SMR: *"They have to be very careful. You cannot give privileged information to one private citizen or a company that is not available to others...Er, because that, why should they? There is no benefit from their point of view, and they will simply be very severely criticised. But there is an awful lot of information which is not secret which if you ask the right questions you'll get the answers..."*

In relation to Mr Straw, we noted that footage was included of him making the following statement when discussing advocating issues in the House of Commons in which he had an interest, which we considered demonstrated the programme also showed he was aware of the rules for MPs' conduct:

*"if I was ever to go stand up in the House of Commons and talk about sugar, I could end up being disqualified, okay? Because there are very strict rules against advocating advocacy on behalf of, erm, er, companies who are paying you".*

In addition, as noted above, footage was included of Mr Straw indicating that he was "well aware of his Parliamentary commitments to Blackburn and his constituents" (as stated by the programme's narrator), and that he would not take on a role on the advisory board for as long as he remained an MP.

Also, when representing the views of both MPs in response to the allegations made about them in the programme (see head c) below), the programme

included statements setting out their position that they had not breached any Parliamentary Rules in their discussions with the undercover reporters.

For example, Sir Malcolm Rifkind, while not explicitly referring to the Parliamentary Rules or Codes of Conduct, refuted the allegations made about him and said:

*"I have never undertaken nor would undertake any lobbying as an MP on behalf of any private organisation for which I was receiving remuneration".*

He also said that:

*"There was no suggestion that I was being approached as an MP...Their approach to me was because of my previous experience as a Minister".*

Mr Straw maintained that:

*"All of my outside paid work is fully and properly declared under the rules that apply to MPs".*

He further said that he was:

*"...confident that I behaved, as I have always done, with integrity and that I did not breach any Parliamentary rules in substance or in spirit".*

The inclusion of such footage, in our view, provided some balance in favour of the MPs and demonstrated to viewers that they were aware of their obligations under Parliamentary Rules and of their responsibilities as MPs, including towards their constituents. This balance was further bolstered by the programme's inclusion of the detailed, albeit edited and summarised, responses to the allegations made in the programme from both MPs that refuted the claims made about them and made their position clear that Parliamentary Rules had not been broken (see head c) below).

Given these factors, Ofcom considered that, while the inclusion of extracts of the secretly filmed footage and of Sir Alistair Graham's opinions on some of this footage had the potential to materially and adversely affect viewers' perceptions of Sir Malcolm Rifkind and Mr Straw, the inclusion of the material outlined above created balance in the programme and provided sufficient information for the viewers to make an informed judgement on whether the conduct of both MPs fell short of what the public expected of them.

Ofcom recognises that programme makers and broadcasters can legitimately select and edit material from interview footage for inclusion in a programme and that this is an editorial decision for them to make. However, in editing such material and presenting it in a programme, broadcasters must ensure that they do so in a manner that is fair to those who are the subject of the filming.

Having compared the extracts of the secretly recorded footage included in the programme and the unedited rushes (and examined the transcripts of both), Ofcom noted that the secretly filmed footage included in the programme was comprised of selected parts of a much longer sequence of footage covering the whole of the meetings between the two MPs and the undercover reporters. We considered each extract of secretly filmed footage shown in the programme

(which is set out in detail in Channel 4's submission above) and how this footage was presented in the programme.

From our comparison, we considered that the extracts included in the programme reflected, accurately, the words spoken by Sir Malcolm Rifkind and Mr Straw to the undercover reporters in the secretly filmed meetings and that, apart from one excerpt relating to Sir Malcolm Rifkind and the issue of remuneration, the footage was presented in the programme chronologically.

In relation to the extract about remuneration, we noted Channel 4's explanation that the chronology was edited so that it appeared later in the programme in an attempt not to create an unfair impression that the MP's primary motivation in meeting the bogus representatives of PMR Communications was financial.

We noted too, from comparing the broadcast material with the unedited rushes, that not only were all but one of the extracts included in chronological order, they were contextualised in the programme in a way that accurately represented the discussions that took place between the MPs and the undercover reporters at the secretly filmed meetings. Given the amount of material concerned, we do not discuss in any detail our analysis in respect of all of the material statements and conduct presented in the programme about the two MPs. However, we outline below some examples by way of illustration.

For example, in relation to Sir Malcolm Rifkind, we noted that in relation to his availability to take up the advisory role, the programme indicated that the issue was raised by the undercover reporter and that Sir Malcolm Rifkind willingly discussed his time:

Narrator: *"An important question for our ambitious company: does Sir Malcolm have time for us along with his MP duties, chairing of the security committee and 5 other jobs?"*

SMR: *"You'd be surprised how much free time I have. I spend a lot of time reading, I spend a lot of time walking. Because...eh... because I'm not a minister or full-time working for one person I can sort out my day".*

SMR: *"I am self-employed. So nobody pays me a salary. I have to earn my income, but when I'm not doing something I can do what I like".*

SMR: *"Most members of Parliament leave London on a Thursday evening and don't come back 'til Monday lunchtime. So they're in another part of the country. For me, that is quiet time".*

Having compared the material broadcast with the relevant parts of the unedited rushes (and the transcripts of both), we noted that the part of the conversation from which this footage was extracted started with the undercover reporter asking Sir Malcolm Rifkind if he had: *"had a chance to have a think about [his] availability and whether, how or if the advisory board would...work for [him]?"* Sir Malcolm Rifkind noted that he did not think there would be a difficulty because he assumed it would be possible to discuss the timing of the meetings. The reporter noted that he seemed to be *"very busy"*, in response to which he said that he was *"very busy"* and that he was used to this given the time he spent as a Government minister when he had *"no free time at all"*. He went on to say: *"You have to be busy, you know, because I find it stimulating, and it's how you use your time,"* immediately before making the comments included in the broadcast



footage (i.e. *“You’d be surprised by how much free time I have”...*). We recognised that the extracts of Sir Malcolm Rifkind’s comments included in the broadcast footage did not follow immediately on from each other, but had been said relatively close together in the same part of the meeting in which his time and availability was discussed. Ofcom considered that Sir Malcolm Rifkind’s comments were accurately presented in the programme and that, overall, they were placed in their correct context. In particular, the narration explained that these comments were made in response to a question as to whether he had time to take on the role, and we did not consider that the selection of the extracts broadcast gave rise to a misleading presentation of the exchange which took place with the reporter.

We also considered the presentation of the sequence included in the programme showing Sir Malcolm Rifkind explaining to the undercover reporter the things that he could bring to a role on the Board of PMR. The programme’s narrator stated: *“We discussed with Sir Malcolm what he thought he could bring to a role on the board”*. The MP was shown stating,

SMR: *“Well and oh ... Well you see what I can do in London, I can see any ambassador that I wish to see. They will see me personally”*.

UCR: *“Brilliant”*.

SMR: *“If I ask to see...to see them, because of...of having been a foreign minister, it is, it is almost automatic – they would do that and that provides access in a way that is, is useful”*.

We noted that Sir Malcolm Rifkind’s comments were made during part of the meeting in which he gave the undercover reporters an example of the type of assistance he could provide to the company, given his experience and the fact that he had been Foreign Secretary (rather than solely being an MP). Having compared this material with the relevant part of the unedited rushes and transcripts, we noted that this topic formed part of a series of exchanges between Sir Malcolm Rifkind and the undercover reporters and that what was presented in the programme were edited extracts of these longer exchanges.

For example, earlier in the meeting, the undercover reporter had asked Sir Malcolm Rifkind, in terms of *“what you think you’d bring to the board”*, what he thinks his *“key skills would be”*. Sir Malcolm explained that this *“very much depends on what the company’s own priorities are, but...if your interest is in...the political issues involved in investing, not just in Britain but in [the] European Union, other European countries, my background is political, that was the experience I’ve had”*. He went on to explain that he was Europe Minister under Prime Minister Margaret Thatcher and, therefore, had dealings with the EU, and he explained that he could potentially provide input on ‘political risk’ involved with investments in different countries. In this context, he provided certain examples of the ‘political risks’ he considered to be involved in investing in different countries (such as China, Russia and the Middle East). Following that discussion, the undercover reporter asked Sir Malcolm Rifkind if he had *“contacts”* for *“finding out what’s going on”* in such countries, to which he responded: *“in most of these countries there are people I, I know, who either I worked with as, a, who were ministers or who I met since then”*, explaining, for example that he was part of a group of 22 former foreign ministers which met several times a year.

The extract which appeared in the programme was taken from a later part of the meeting, which began with one of the undercover reporters state that one of the areas PMR Communications was looking at was “*strategic investments*” in the UK. Sir Malcolm Rifkind asked about the types of sectors they were looking at, to which the undercover reporter responded that one of the sectors they are looking into was energy sector and goes on to ask him “*what do you think you could bring to that issue?*” Sir Malcolm Rifkind explained in that context that he spent several years as a consultant to a mining company and that as part of the work he did for them he had “*helped sort out*” a problem the company had in Kazakhstan following a meeting with the President of Kazakhstan. The undercover reporter commented that: “*that is the kind of thing that is incredibly useful isn’t it. If you know those people, actually having a quick cup of coffee or a gin and tonic...*”. It was in response to those comments that Sir Malcolm Rifkind made the statement that he could “*see any ambassador that I wish to see*”.

Therefore, while we noted that the programme did not present all of the detail relating to the discussions between Sir Malcolm Rifkind and the undercover reporters about the experience and expertise he considered that he had which could potentially be relevant if he were to join the advisory board, Ofcom considered that the footage included in the programme accurately represented the comments made by Sir Malcolm Rifkind to the effect that he had an ability to see foreign ambassadors if he wished to do so as being made in the context of a general discussion about the type of assistance he could provide to PMR Communications if he joined the advisory board.

In summary, we considered that Sir Malcolm Rifkind’s comments were placed in their correct context and that there was nothing misleading in the way that this extract was presented in the programme.

By way of a further example, Ofcom noted the extract of secretly filmed footage of Mr Straw discussing with the undercover reporters his role as an advisor for ED&F Man and the part he played in getting Ukrainian law changed to revolve problems the company had experienced in refining sugar there. The programme also included footage in which the following comments are made:

Narrator: *“ED&F Man is perfectly entitled to pursue its legitimate commercial interests and seek changes in the law. And Mr Straw ensured that his work for them was signed off properly by the appropriate Parliamentary committee. He also declared the trip.*

*But what he told our reporters reveals how his lobbying activities as a senior politician were extremely useful to a private company.*

*And his usefulness to the commodity trader didn’t end there. When EU sugar regulations were hampering ED&F Man’s ability to do business, Mr Straw told us he got to work on the case”.*

Mr Straw: *“I got into see the, er, the relevant director general and his officials in Brussels”.*

UCR: *“Oh right”.*

- Mr Straw: *“And we got the sugar regulations changed”.*
- UCR: *“Oh amazing”.*
- Mr Straw: *“Um, so”.*
- UCR: *“That must have meant an awful lot to ED&F”.*
- Mr Straw: *“Well it means a lot to them, yeah yeah. I mean, I mean also the crucial thing about these it’s all, it’s all...it’s public that the regulations have been changed, but, erm, the best way of dealing with these things is under the radar”.*
- Narrator: *“Once again we asked the former Chairman of the Committee on Standards in Public life, Sir Alistair Graham, to have a look at our footage”.*
- Interviewer: *“What did you make of Mr Straw’s comments that the change in regulations is public but to do these things it’s better to operate under the radar?”*
- Sir Alistair Graham: *“Well that’s worrying because that’s saying ‘I can do these things without transparency’...”*

Again, after comparing this material with the relevant part of the unedited rushes, Ofcom considered that Mr Straw’s comments were accurately presented in the programme and that they were placed in their correct context. From the unedited footage, it was clear that Mr Straw talked openly to who he thought were representatives of PMR Communications about how he was able to effect changes to EU regulations for the benefit of a company he was advising. We noted that in his discussion with the undercover reporter, Mr Straw explained in further detail the background to the sugar regulations and why ED&F Man had an interest in having the regulations changed, but we did not consider that the omission of this detail led to a misleading representation in the programme of what he said. We further noted that the meaning of “under the radar” in this context was ambiguous, and that this could be seen as a reference to having negotiations out of the public spotlight, but that this did not necessarily indicate any form of misconduct on the part of Mr Straw, given that, as Mr Straw said, the fact that the regulations were changed was “public”. We further noted that, following the preceding discussion where Mr Straw explained how he had also helped the company to resolve an issue in the Ukraine, the programme’s narration included a statement to the effect that his work with the company was “*signed off properly*”, and that his work in relation to the sugar regulations was presented by the narration as something that was “useful” to the company’s commercial interest, but without any suggestion that it was illegitimate in any way. Therefore, in our view, the manner in which this extract was presented in the programme was not misleading or unfair, but rather allowed viewers to form their own opinions about the implications of Mr Straw’s work for the commodity trader.

Ofcom also considered the way in which Sir Alistair Graham’s comments were included in the programme and whether they had been presented in a way that created unfairness to Sir Malcolm Rifkind and Mr Straw. We noted that Sir Alistair Graham’s contribution to the programme was to comment on the secretly filmed

footage of the two MPs and to give his opinion on their conduct, in view of his previous experience as Chairman of the Committee on Standards in Public Life. We noted that Sir Alistair Graham had watched the edited footage of the secretly recorded meetings with the MPs and that he had been provided with the full transcripts of the meetings and that he had been the Chairman of the Committee on Standards in Public Life. We noted that Channel 4 had submitted that this experience meant he was able to offer an expert opinion on such matters as discussed in the programme.

Ofcom considered that Sir Alistair Graham's comments as shown in the programme were couched very much in these terms. While we noted that Sir Alistair Graham's comments expressed his opinion that certain conduct – if it took place – could amount to possible breaches of the Parliamentary rules, it was clear to viewers that this was his own, personal view of the material that he viewed. We considered that Sir Alistair Graham's comments appeared to be reasonable in the circumstances and did not, in themselves, amount to allegations of misconduct by Sir Malcolm Rifkind or Mr Straw specifically. Ofcom took the view that viewers would have understood the context in which Sir Alistair Graham's comments were being made and would have been in a position to make up their own minds about his comments. We therefore considered that Sir Alistair Graham's contribution to the programme was fairly presented.

In conclusion, having regard to programme as broadcast and the unedited footage we considered that the programme's presentation of the statements made by Sir Malcolm Rifkind and Mr Straw during the secretly filmed meetings did not give a misleading impression of their conduct in a way which was unfair to them and that the programme makers took reasonable care to satisfy themselves that material facts were not presented, disregarded or omitted in a way that was unfair to them. In particular, Ofcom considered that, after viewing the programme overall, the presentation of the secretly filmed footage was an accurate representation of the discussions that took place during the meetings between Sir Malcolm Rifkind and Mr Straw and the undercover reporters and that there was sufficient balance, by the inclusion of statements by the MPs that they were aware of the Parliamentary rules and their responsibilities as MPs, in the programme such that it did not unfairly represent the MPs as "politicians for hire", and allowed viewers to make their own minds up as to whether or not they thought the conduct shown fell short of public expectations for MPs' conduct.

Ofcom considered therefore that Channel 4 had taken reasonable care in accordance with Practice 7.9 of the Broadcasting Code to satisfy itself that the facts were not presented, disregarded or omitted in a way that portrayed Sir Malcolm Rifkind or Mr Straw unfairly in the programme as broadcast.

**b) What steps were taken by Channel 4 and/or the programme makers to ensure that the individuals against whom the allegations made in the programme were directed were given a timely and appropriate opportunity to respond to them?**

In considering this head, Ofcom had regard to Practice 7.11 which states that if a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

Ofcom examined the steps taken by the broadcaster in ensuring that Sir Malcolm Rifkind and Mr Straw were given a timely and appropriate opportunity to respond to the allegations made about them in the programme. In doing so, Ofcom noted the detail in Channel 4's submission in response to Ofcom's investigation and the copies of the correspondence referred to in relation to the exchanges between the MPs, the programme makers, and Channel 4 prior to broadcast. In particular, we noted that the programme makers made initial contact with both MPs on 10 February 2015, which was 13 days prior to the date of broadcast, alerting them to the programme, setting out the allegations that the programme intended to make, and invited their response.

In relation to Sir Malcolm Rifkind, Ofcom noted that the programme makers explained to him in the letter of 10 February 2015 that the programme would make reference to the early 2010 *Dispatches* programme and explained the nature of the undercover investigation involving the fictitious company, PMR Communications, and that it would include secretly filmed footage of the meetings the undercover reporters had had with the MP. Ofcom noted too that the programme makers also informed Sir Malcolm Rifkind that Sir Alistair Graham had viewed the secretly recorded footage of his meeting with the undercover reporters and had commented on some of the things that Sir Malcolm Rifkind had said.

Ofcom also took particular note of the detail of the letter sent to Sir Malcolm Rifkind. From this letter, Ofcom considered, after assessing the content of the programme itself, that the programme makers had referred to all the significant allegations and matters that the programme intended to include. Furthermore, Ofcom noted that the letter included an assurance that the programme would include his comments that he would not be able to attend PMR Communications' meetings if they conflicted with an important vote in the House of Commons, and that he would not be able to offer access to any privileged or secret information. It also invited his written response to the allegations to be included in the programme and that he was given a deadline of 18 February 2015, which was five days prior to the broadcast of the programme, by which to respond.

Ofcom noted, from Channel 4's submission, that Sir Malcolm Rifkind telephoned the programme makers on 11 February 2015 and sent a follow up email on the same day in which he responded to the points raised by the programme makers' letter of the day before. We also noted that on the same day, i.e. 11 February 2015, Sir Malcolm Rifkind sent a further email in which he attached the original email he had received from PMR Communications.

On 16 February 2015, which was seven days prior to the broadcast of the programme, Ofcom understood that the programme makers emailed Sir Malcolm Rifkind informing him that his responses would be fairly reflected in the programme, but that an on-camera interview with him would not be necessary. A further email exchange between Sir Malcolm Rifkind and the programme makers ensued, resulting in the programme makers informing Sir Malcolm Rifkind that he would not be the only MP to feature in the programme and giving an assurance that his position would be fairly reflected in the programme as broadcast.

Turning to Mr Straw, Ofcom again noted that Mr Straw was sent a letter by the programme makers dated 10 February 2015 in which it was explained to him in the letter of 10 February 2015 that the programme would make reference to the early 2010 *Dispatches* programme and explained the nature of undercover investigation involving the fictitious company, PMR Communications, and that it

would include secretly filmed footage of the meeting the undercover reporters had had with the MP. Ofcom noted too that the programme makers also informed Mr Straw that Sir Alistair Graham had viewed the secretly recorded footage of his meeting with the undercover reporters and had commented on some of the things that Mr Straw had said.

Again, Ofcom also took particular note of the detail of the letter sent to Mr Straw. From this letter, Ofcom considered, after assessing the content of the programme itself, that the programme makers had referred to all the significant allegations and matters that the programme intended to include. We noted too that the programme makers' letter gave an assurance that the programme would include comments made by him about his "day job" as an MP being his first responsibility and that his work for ED&F Man was work he did in his spare time. The programme makers' letter also invited him to respond to the allegations intended to be included in the programme by 18 February 2015.

Ofcom noted that Mr Straw responded via his solicitors on 13 February 2015, which was 10 days prior to the broadcast of the programme, and that they responded in detail to the points raised in the programme makers' letter of 10 February 2015. Channel 4 responded to this via its own legal representatives on 17 February 2015 and on the following day, i.e. 18 February 2015, Mr Straw's solicitors provided a written statement on behalf of Mr Straw for broadcast.

Having examined the content of the programme makers' letters sent to both Sir Malcolm Rifkind and Mr Straw, Ofcom considered that in all material respects, all significant, material allegations concerning the two MPs that the programme intended to include were put to them for response well in advance of the programme's transmission. We also considered that both MPs were able to provide detailed responses to the programme makers and that further correspondence was, indeed, exchanged in advance of the programme being broadcast.

Given the factors set out above, Ofcom considered that the broadcaster and the programme makers had taken reasonable steps to ensure that Sir Malcolm Rifkind and Mr Straw were both given an appropriate and timely opportunity to respond to all the significant allegations and matters concerning their conduct raised in the programme. Therefore, Ofcom was satisfied that the programme makers and the broadcaster had followed Practice 7.11 and had complied fully with their regulatory obligations under the Broadcasting Code in that respect.

**c) What steps were taken by Channel 4 to ensure that where it represented the views of the individuals concerned, that it was done in the programme in a fair manner?**

Ofcom recognises that programme makers and broadcasters can select and edit material provided to it by way of a written statement for inclusion in a programme. This is an editorial decision and it would be unreasonable, in Ofcom's view, for an individual to expect a broadcaster to include a lengthy statement in full. Broadcasters must, however, ensure that where it is appropriate to represent the views of a person not participating in a programme that it is done in a fair manner (as set out on Practice 7.13 of the Broadcasting Code).

As already acknowledged in heads a) and b) above, the programme included material that could be regarded as amounting to significant allegations about the MPs' conduct and, as such, that the MPs should be given an opportunity to

respond, which they were given. Ofcom noted that both Sir Malcolm Rifkind and Mr Straw (through his solicitors) responded to the allegations the programme intended to make and set out in detail in the letter sent to both MPs by the programme makers on 10 February 2015.

In the particular circumstances of this case, Ofcom noted the content of the full response (provided to Ofcom by the broadcaster) sent from Sir Malcolm Rifkind to the programme makers in his letter of 11 February 2015 and the edited and summarised version of his response included in the programme (as set out in detail in head c) above of Channel 4's response to Ofcom's investigation). Although the programme did not present Sir Malcolm Rifkind's response in its entirety, the edited extract of it included in the programme adequately addressed, in our view, the MP's position regarding all the relevant and significant allegations raised in the programme about his conduct. We noted that viewers were informed that Sir Malcolm Rifkind maintained that:

- He had *"never undertaken nor would undertake any lobbying as an MP on behalf of any private organisation for which I was receiving remuneration"*;
- He was approached not because of his position as an MP, but because *"...of my previous experience as a minister"* and that it was for this reason that *"...Ambassadors tend to respond not because I am a current MP but because I was Foreign Secretary"*;
- He did look at PMR's website and that *"Due diligence is something one does when one has received a firm offer"*;
- *"No business meeting in my [Parliamentary] office was proposed"*;
- He would not be *"prepared to write to ministers on behalf of PMR Communications or any other company"*, *"... the most I could do would be to enquire from them information...which was already in the public domain"*, and,
- He arranged his affairs so that *"around 75% of my time is spent on Parliamentary and constituency business...Most constituency events are during the week rather than at the weekend"*.

Given this summary, Ofcom considered that the summary of Sir Malcolm Rifkind's response was appropriately and fairly reflected in the programme as broadcast.

In respect of Mr Straw's response to the programme, Ofcom again noted the content of the full responses (provided to Ofcom by the broadcaster) sent from Mr Straw's solicitors on his behalf and the edited and summarised version of the responses included in the programme (as set out in detail in head c) above of Channel 4's response to Ofcom's investigation). Although the programme did not present Mr Straw's response in its entirety, the edited extract of it included in the programme adequately addressed, in our view, the MP's position regarding all the relevant and significant allegations raised in the programme about his conduct. We noted that viewers were informed that Mr Straw maintained that:

- He had researched the company, but that he considered that *"the best way to carry out further due diligence was to meet with the individuals"* and that he

would have cancelled the meeting if he had not received a response from them;

- He would have made *“full official checks before accepting an appointment”* and that he had made it clear from the outset that he was not *“available for any work until after I stood down as a Member of Parliament”*;
- He had held the meeting in his Parliamentary office to save time for his Parliamentary work and commitments and that during the meeting *“We had a general discussion about work I’ve done on a consultancy basis for another company”*;
- *“All of my outside paid work is fully and properly declared under the rules that apply to MPs”* and that he sought specific guidance *“from the office of the advisory committee on business appointments (of former ministers) before undertaking projects”*; and,
- He was *“confident that I behaved, as I have always done, with integrity and that I did not breach any Parliamentary rules in substance or in spirit”*.

Given this summary, Ofcom considered that the summary of Mr Straw’s responses was appropriately and fairly reflected in the programme as broadcast and that viewers would have understood that Mr Straw considered that he was not in breach of any Parliamentary rules or had done anything wrong.

Taking all these factors into account, Ofcom considered that, although edited and summarised, the broadcaster had taken reasonable steps to ensure that where it represented the views of both Sir Malcolm Rifkind and Mr Straw, that it was done in a fair manner in accordance with Practice 7.13 and in compliance with the Broadcasting Code.

**d) Was it warranted and in the public interest for Channel 4 to use material obtained through misrepresentation or deception (i.e. the secret filming by the undercover reporters) without consent?**

In assessing this head of complaint, Ofcom had regard to Practice 7.14 of the Broadcasting Code which states that broadcasters or programme makers should not normally obtain or seek information, audio, pictures or an agreement to contribute through misrepresentation or deception. (Deception includes surreptitious filming or recording.) However, it may be warranted to use material obtained through misrepresentation or deception without consent if it is in the public interest and cannot reasonably be obtained by other means. Also, we had regard to Practices 8.13 and 8.14 which, although under Section Eight (Privacy) of the Broadcasting Code, are applicable in all cases where secretly, or surreptitious recording or filming has been used in obtaining material included in programmes. Practice 8.13 states that “surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and,
- it is necessary to the credibility and authenticity of the programme”.



Practice 8.13 also provides the meaning of "surreptitious filming or recording": "Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end". Practice 8.14 states that material gained by surreptitious filming and recording should only be broadcast when it is warranted.

In considering what steps Channel 4 took to satisfy itself that it was warranted and in the public interest to use material obtained through misrepresentation or deception (i.e. the secret filming by the undercover reporters) without the consent of Sir Malcolm Rifkind and Mr Straw, Ofcom noted the detailed submission provided to it by Channel 4 in relation to this particular issue.

Ofcom noted that Channel 4 stated in its submission that the level and nature of the deception used in the undercover operation, required that the decision to do so was referred to a number of senior Channel 4 executives. In particular: the Editor of *Dispatches* (who was also Deputy Head of News and Current Affairs); the Head of News and Current Affairs; and Channel 4's General Counsel. In addition, we noted that the decision to use secret filming was referred to Channel 4's Chief Creative Officer and its Chief Executive. We also took note that with all the secret filming undertaken, the programme makers and Channel 4 followed the broadcaster's Secret Filming Guidelines which, Channel 4 said, had been devised to ensure that all secret filming and recording being undertaken by programme makers with a view to broadcast on Channel 4 (and its other channels) was compliant with the Broadcasting Code and the law.

The requirements of Channel 4's Secret Filming Guidelines are set out in detail in the broadcaster's submission above and Ofcom does not intend to repeat them again here. However, we noted in particular that the Guidelines employ a two stage process to establish that: (1) secret filming is justified; and, (2) the broadcasting of material obtained by secret filming is justified. We also noted that permission from its Head of News and Current Affairs, is needed to both carry out the secret filming, and before material obtained by secret filming is broadcast and that programme makers are required to identify exactly who is to be secretly filmed and the reasons why.

Having carefully considered Channel 4's submission in relation to this point, we took into account that evidence from preliminary research undertaken by the programme makers had triggered concerns about the extra-Parliamentary work undertaken by both Sir Malcolm Rifkind and Mr Straw and that both the programme makers and the broadcaster considered that, based on the evidence they had already gained, secretly filming the two MPs was necessary to the credibility and authenticity of the programme. Ofcom considered that it was unlikely that the programme makers would have been able to explore or further obtain material as to how the MPs transacted with potential commercial clients in private in any way other than by secretly filming them.

Ofcom considered that the programme was a serious piece of broadcast journalism and that there was a significant public interest in the programme makers exploring the conduct of both Sir Malcolm Rifkind and Mr Straw, who were prominent parliamentarians and had held a number of senior ministerial positions including Foreign Secretary, in relation to their commercial interests and

their attitude to the potential conflict these interests might have with their political commitments. Given this, we considered that, in this particular case, there was a genuine public interest justification in Channel 4 agreeing that the programme makers should undertake secret filming. In our view there was a reasonable likelihood that secret filming would reveal further evidence relating to the two MPs' conduct and attitude in relation to potential commercial work alongside their political activities. For these reasons, Ofcom considered that the use of surreptitious filming was proportionate and warranted (in accordance with Practice 7.14 (and Practice 8.13) of the Broadcasting Code) in the circumstances.

Having reached the view that the use of surreptitious filming was warranted in obtaining the footage of both MPs, Ofcom next considered whether it was warranted and in the public interest to broadcast the footage of Sir Malcolm Rifkind and Mr Straw that had been obtained through secret filming.

Again, we noted Channel 4's submission and, in particular, its focus on the second stage test it said it applied from its Secret Filming Guidelines. Having logged and evaluated all the secretly recorded footage, Channel 4 said that the programme makers consulted with Channel 4's editorial and legal teams, as well as gaining the expert opinion of Sir Alistair Graham, and it was agreed that parts of the secretly filmed footage revealed important matters which, it believed were in the public interest to bring to the attention of the wider public. It was on this basis that Channel 4 said that the programme makers sought Channel 4's agreement to broadcast parts of the secretly recorded footage of both Sir Malcolm Rifkind and Mr Straw.

Ofcom took note that with regard to Sir Malcolm Rifkind, Channel 4 said in its submission that it considered that there was an overriding public interest in bringing to the public's attention the fact that:

- he was willing to consider and discuss offering his services as an adviser to a commercial, foreign company of which he knew very little;
- he was marketing himself as someone who, as a former minister and long-standing politician, could provide advantageous, direct access to ambassadors as well as other politicians;
- he was offering to write to ministers on behalf of those he represented and not declare the identity of whom he was writing on behalf of;
- his services would be provided for significant remuneration; and,
- he was potentially willing to breach Parliamentary rules, according to Channel 4, by offering to have a future meeting concerning non-Parliamentary work in his Parliamentary office and was offering his prospective client a tour of the Houses of Parliament.

With regard to Mr Straw, Ofcom noted that the broadcaster said that there was an overriding public interest to bring to the public's attention that:

- he was willing to consider and discuss providing his services as an adviser to a commercial, foreign company of which he knew very little;

- he was marketing himself as someone who, as a former minister and long-standing politician, was able to assist clients by providing advantageous, direct access to both British and foreign public officials and do so operating “*under the radar*”;
- he understood that part of what he brought to any such role was his “name”;
- he was arguably trading on his name, and on the prospect of him moving to the House of Lords;
- his services would be provided for significant remuneration; and,
- he had, according to Channel 4, potentially breached the House of Commons Code of Conduct by electing to hold two private meetings, about commercial non-Parliamentary matters, in his Parliamentary office, and by taking the company’s representatives on a tour of the House of Parliament.

As already mentioned above, in Ofcom’s view, the programme was a serious piece of broadcast journalism and that there was a significant public interest in the programme makers secretly filming both Sir Malcolm Rifkind and Mr Straw. We also considered that there was a genuine public interest justification for Channel 4 using some of the secretly filmed footage in the programme as broadcast in order to bring to the attention of the wider public the conduct of the two prominent parliamentarians who had held a number of senior ministerial positions, in relation to their commercial interests and their attitude to the potential conflict these interests might have with their political commitments.

Ofcom recognised that the allegations made in the programme about Sir Malcolm Rifkind and Mr Straw were serious in nature and that the broadcast of extracts from the secretly filmed footage of their meetings with the undercover reporters had the potential to impact adversely on the MPs’ reputations. However, notwithstanding this, Ofcom considered that the public interest in broadcasting the secretly filmed footage in the programme overrode the potential negative impact the broadcast would have on the MPs. In coming to that view, we had regard to Channel 4’s and the programme maker’s rights to freedom of expression, as well as the public’s right to receive information and ideas, together with the public interest, and we considered that these, in all the circumstances, outweighed the rights of the two MPs featured.

In particular, we considered that it was essential for the programme to include the footage in order for the programme to inform viewers of the conduct of the MPs, particularly fulfilling its primary focus of examining “*if there’s...a problem with politicians for hire?*” and whether there was “*...still a gap between the conduct of some politicians and how the public expects them to behave?*”. We also took into account that while the programme included secretly filmed footage of both MPs, it also included summarised responses from Sir Malcolm Rifkind and Mr Straw in which they refuted the allegations made about them in the programme and set out their own position in relation to the material that had been obtained by the undercover reporters (see head c) above).

Given the factors above, therefore, Ofcom considered that the broadcaster’s decision to include surreptitiously filmed footage obtained by undercover reporters was, in the particular circumstances of this case, proportionate and

warranted (in accordance with Practice 7.14 (and Practice 8.14) of the Broadcasting Code).

Taking all the factors considered above into account, Ofcom concluded that Channel 4 had taken reasonable steps to ensure that it avoided unjust or unfair treatment of Sir Malcolm Rifkind and Mr Straw in the programme as broadcast, and that Channel 4 had therefore not failed to meet its requirement under Section Seven (Fairness) of the Broadcasting Code to avoid unjust or unfair treatment of individuals in programmes.

**Ofcom found that Channel 4 was not in breach of Rule 7.1 of the Code.**

## Investigations Not in Breach

Here are alphabetical lists of investigations that Ofcom has completed between 28 November and 11 December 2015 and decided that the broadcaster did not breach Ofcom's codes, licence conditions or other regulatory requirements.

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

| Programme   | Broadcaster | Transmission date       | Categories         |
|-------------|-------------|-------------------------|--------------------|
| Programming | Now Music   | 14/11/2015 & 16/11/2015 | Offensive Language |

For more information about how Ofcom conducts investigations about content standards, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 28 November and 11 December 2015 because they did not raise issues warranting investigation.

### 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, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

| Programme                     | Broadcaster                   | Transmission Date | Categories                       | Number of complaints |
|-------------------------------|-------------------------------|-------------------|----------------------------------|----------------------|
| The Morning Show              | 97.5 Kemet Radio (Nottingham) | 04/12/2015        | Generally accepted standards     | 1                    |
| Christian O'Connell           | Absolute Radio                | 30/11/2015        | Race discrimination/offence      | 1                    |
| BBC News                      | BBC 1                         | 29/11/2015        | Violence and dangerous behaviour | 1                    |
| BBC News                      | BBC 1                         | 04/12/2015        | Generally accepted standards     | 1                    |
| BBC News at Six               | BBC 1                         | 04/12/2015        | Generally accepted standards     | 1                    |
| BBC News at Ten               | BBC 1                         | 04/12/2015        | Generally accepted standards     | 2                    |
| Breakfast                     | BBC 1                         | 27/11/2015        | Violence and dangerous behaviour | 1                    |
| Capital                       | BBC 1                         | 24/11/2015        | Under 18s in programmes          | 1                    |
| Doctors                       | BBC 1                         | 30/11/2015        | Scheduling                       | 1                    |
| EastEnders                    | BBC 1                         | 01/12/2015        | Scheduling                       | 1                    |
| F1: Grand Prix                | BBC 1                         | 29/11/2015        | Outside of remit / other         | 1                    |
| Fifa, Sepp Blatter and Me     | BBC 1                         | 07/12/2015        | Generally accepted standards     | 1                    |
| Holby City                    | BBC 1                         | 01/12/2015        | Generally accepted standards     | 1                    |
| Match of the Day              | BBC 1                         | 05/12/2015        | Race discrimination/offence      | 1                    |
| Regional News and Weather     | BBC 1                         | 19/11/2015        | Product placement                | 1                    |
| Strictly Come Dancing         | BBC 1                         | 22/11/2015        | Scheduling                       | 1                    |
| Strictly Come Dancing         | BBC 1                         | 22/11/2015        | Voting                           | 13                   |
| The Apprentice                | BBC 1                         | 08/12/2015        | Violence and dangerous behaviour | 1                    |
| The Apprentice                | BBC 1                         | 09/12/2015        | Offensive language               | 2                    |
| This Week by-Election Special | BBC 1                         | 03/12/2015        | Generally accepted standards     | 1                    |
| Watchdog                      | BBC 1                         | 26/11/2015        | Television Access Services       | 1                    |
| Bargain Hunt                  | BBC 2                         | 08/12/2015        | Fairness                         | 1                    |

| Programme                                     | Broadcaster        | Transmission Date | Categories                                   | Number of complaints |
|---|--------------------|-------------------|--|----------------------|
| Gymnastics                                    | BBC 2              | 30/10/2015        | Flashing images/risk to viewers who have PSE | 1                    |
| London Spy                                    | BBC 2              | 16/11/2015        | Generally accepted standards                 | 1                    |
| Strictly Come Dancing: It Takes Two           | BBC 2              | 23/11/2015        | Generally accepted standards                 | 1                    |
| The Daily Politics                            | BBC 2              | 29/10/2015        | Generally accepted standards                 | 1                    |
| The Daily Politics                            | BBC 2              | 08/12/2015        | Generally accepted standards                 | 1                    |
| The Last Kingdom                              | BBC 2              | 03/12/2015        | Gender discrimination/offence                | 1                    |
| The Papers                                    | BBC News Channel   | 07/12/2015        | Generally accepted standards                 | 5                    |
| Scott Mills                                   | BBC Radio 1        | 08/12/2015        | Scheduling                                   | 1                    |
| The Radio 1 Breakfast Show with Nick Grimshaw | BBC Radio 1        | 07/12/2015        | Disability discrimination/offence            | 1                    |
| BBC News                                      | BBC Radio 4        | 02/12/2015        | Generally accepted standards                 | 1                    |
| Broadcasting House                            | BBC Radio 4        | 22/11/2015        | Generally accepted standards                 | 1                    |
| Today   | BBC Radio 4        | 04/12/2015        | Race discrimination/offence                  | 1                    |
| 5 Live Breakfast                              | BBC Radio 5 Live   | 17/11/2015        | Due accuracy                                 | 1                    |
| Afternoon Edition                             | BBC Radio 5 Live   | 18/11/2015        | Offensive language                           | 1                    |
| Good Morning Scotland                         | BBC Radio Scotland | 15/11/2015        | Scheduling                                   | 1                    |
| Tottenham Hotspur v Chelsea                   | BT Sports 1        | 29/11/2015        | Generally accepted standards                 | 1                    |
| Ooglies                                       | CBBC               | 04/12/2015        | Scheduling                                   | 1                    |
| My Reality                                    | CBS Reality        | 04/12/2015        | Generally accepted standards                 | 1                    |
| Bernard Matthews' sponsorship of The Simpsons | Channel 4          | 03/12/2015        | Sponsorship credits                          | 5                    |
| Bernard Matthews' sponsorship of The Simpsons | Channel 4          | 04/12/2015        | Sponsorship credits                          | 1                    |
| Bernard Matthews' sponsorship of The Simpsons | Channel 4          | 09/12/2015        | Sponsorship credits                          | 1                    |
| Bernard Matthews' sponsorship of The Simpsons | Channel 4          | Various           | Sponsorship credits                          | 3                    |
| Catastrophe (trailer)                         | Channel 4          | 20/11/2015        | Scheduling                                   | 1                    |
| Channel 4 News                                | Channel 4          | 17/11/2015        | Religious/Beliefs discrimination/offence     | 2                    |
| Channel 4 News                                | Channel 4          | 25/11/2015        | Due impartiality/bias                        | 1                    |
| Channel 4 News                                | Channel 4          | 04/12/2015        | Due impartiality/bias                        | 3                    |

| Programme                                    | Broadcaster | Transmission Date | Categories                               | Number of complaints |
|--|-------------|-------------------|--|----------------------|
| Channel 4 News                               | Channel 4   | 04/12/2015        | Generally accepted standards             | 1                    |
| Channel 4 News                               | Channel 4   | 08/12/2015        | Generally accepted standards             | 1                    |
| Channel 4 News                               | Channel 4   | 08/12/2015        | Race discrimination/offence              | 1                    |
| First Dates                                  | Channel 4   | 03/12/2015        | Generally accepted standards             | 1                    |
| Fosters' sponsorship of Original Comedy on 4 | Channel 4   | 20/11/2015        | Sponsorship credits                      | 1                    |
| Fosters' sponsorship of Original Comedy on 4 | Channel 4   | 25/11/2015        | Sponsorship credits                      | 1                    |
| Fosters' sponsorship of Original Comedy on 4 | Channel 4   | 27/11/2015        | Sponsorship credits                      | 1                    |
| Fosters' sponsorship of Original Comedy on 4 | Channel 4   | 01/12/2015        | Sponsorship credits                      | 1                    |
| Fosters' sponsorship of Original Comedy on 4 | Channel 4   | Various           | Sponsorship credits                      | 4                    |
| Isis: The British Women Supporters Unveiled  | Channel 4   | 23/11/2015        | Crime                                    | 1                    |
| Isis: The British Women Supporters Unveiled  | Channel 4   | 23/11/2015        | Generally accepted standards             | 1                    |
| Isis: The British Women Supporters Unveiled  | Channel 4   | 27/11/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Jimmy Carr: Being Funny                      | Channel 4   | 22/11/2015        | Offensive language                       | 1                    |
| My Psychic Life                              | Channel 4   | 04/11/2015        | Materially misleading                    | 1                    |
| Sunday Brunch                                | Channel 4   | 15/11/2015        | Materially misleading                    | 1                    |
| TFI Friday                                   | Channel 4   | 27/11/2015        | Offensive language                       | 1                    |
| TFI Friday                                   | Channel 4   | 29/11/2015        | Animal welfare                           | 1                    |
| TFI Friday                                   | Channel 4   | 04/12/2015        | Offensive language                       | 1                    |
| The Murder Detectives                        | Channel 4   | 30/11/2015        | Product placement                        | 1                    |
| The Secret Life of 6 Year Olds               | Channel 4   | 03/12/2015        | Gender discrimination/offence            | 1                    |
| 5 News Lunchtime                             | Channel 5   | 16/11/2015        | Due accuracy                             | 1                    |
| Capital One Cup                              | Channel 5   | 03/12/2015        | Generally accepted standards             | 1                    |
| Fail Army                                    | Channel 5   | 05/12/2015        | Gender discrimination/offence            | 2                    |
| Greatest Christmas TV Moments                | Channel 5   | 21/11/2015        | Generally accepted standards             | 1                    |
| The Wright Stuff                             | Channel 5   | 01/12/2015        | Due impartiality/bias                    | 3                    |
| Ultimate Police Interceptors                 | Channel 5   | 26/11/2015        | Offensive language                       | 1                    |
| Extreme Fishing with Robson Green            | Dave        | 25/11/2015        | Animal welfare                           | 1                    |



| <b>Programme</b>   | <b>Broadcaster</b> | <b>Transmission Date</b> | <b>Categories</b>                 | <b>Number of complaints</b> |
|--|--------------------|--------------------------|-----------------------------------|-----------------------------|
| The Money Pit / Storage Hunters                                  | Dave               | 21/11/2015               | Offensive language                | 1                           |
| Halfords' sponsorship of Motoring on Dave                        | Dave Ja Vu         | 06/12/2015               | Sponsorship credits               | 1                           |
| 1000 Heartbeats  | ITV                | 27/11/2015               | Materially misleading             | 1                           |
| 1000 Heartbeats  | ITV                | 03/12/2015               | Generally accepted standards      | 1                           |
| Anadin's sponsorship of The Chase                                | ITV                | 25/11/2015               | Sponsorship credits               | 1                           |
| Aunt Bessie's sponsorship of I'm a Celebrity Get Me Out of Here! | ITV                | 22/11/2015               | Sponsorship credits               | 2                           |
| Aunt Bessie's sponsorship of I'm a Celebrity Get Me Out of Here! | ITV                | 30/11/2015               | Sponsorship credits               | 1                           |
| Aunt Bessie's sponsorship of I'm a Celebrity Get Me Out of Here! | ITV                | 05/12/2015               | Sponsorship credits               | 1                           |
| Aunt Bessie's sponsorship of I'm a Celebrity Get Me Out of Here! | ITV                | Various                  | Sponsorship credits               | 4                           |
| Coronation Street  | ITV                | 25/11/2015               | Offensive language                | 1                           |
| Coronation Street  | ITV                | 07/12/2015               | Offensive language                | 1                           |
| Emmerdale  | ITV                | 25/11/2015               | Violence and dangerous behaviour  | 1                           |
| Emmerdale  | ITV                | 01/12/2015               | Scheduling                        | 9                           |
| Emmerdale  | ITV                | 03/12/2015               | Disability discrimination/offence | 1                           |
| Good Morning Britain   | ITV                | 02/12/2015               | Age discrimination/offence        | 2                           |
| Good Morning Britain   | ITV                | 03/12/2015               | Offensive language                | 1                           |
| Good Morning Britain   | ITV                | 04/12/2015               | Gender discrimination/offence     | 1                           |
| Good Morning Britain   | ITV                | 08/12/2015               | Generally accepted standards      | 8                           |
| Green Flag's sponsorship of ITV Weather                          | ITV                | 22/11/2015               | Sponsorship credits               | 1                           |
| Green Flag's sponsorship of ITV Weather                          | ITV                | 23/11/2015               | Sponsorship credits               | 1                           |
| Green Flag's sponsorship of ITV Weather                          | ITV                | 30/11/2015               | Sponsorship credits               | 1                           |
| Green Flag's sponsorship of ITV Weather                          | ITV                | 07/12/2015               | Sponsorship credits               | 1                           |
| I'm a Celebrity, Get Me Out of Here!                             | ITV                | 15/11/2015               | Disability discrimination/offence | 1                           |

| <b>Programme</b>                     | <b>Broadcaster</b> | <b>Transmission Date</b> | <b>Categories</b>                        | <b>Number of complaints</b> |
|--------------------------------------|--------------------|--------------------------|--|-----------------------------|
| I'm a Celebrity, Get Me Out of Here! | ITV                | 16/11/2015               | Animal welfare                           | 4                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 16/11/2015               | Gender discrimination/offence            | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 16/11/2015               | Generally accepted standards             | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 16/11/2015               | Race discrimination/offence              | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 18/11/2015               | Generally accepted standards             | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 19/11/2015               | Animal welfare                           | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 21/11/2015               | Generally accepted standards             | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 21/11/2015               | Race discrimination/offence              | 2                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 24/11/2015               | Generally accepted standards             | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 24/11/2015               | Violence and dangerous behaviour         | 2                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 25/11/2015               | Animal welfare                           | 19                          |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 25/11/2015               | Generally accepted standards             | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 25/11/2015               | Race discrimination/offence              | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 25/11/2015               | Transgender discrimination/offence       | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 26/11/2015               | Race discrimination/offence              | 2                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 27/11/2015               | Generally accepted standards             | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 27/11/2015               | Materially misleading                    | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 27/11/2015               | Religious/Beliefs discrimination/offence | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 28/11/2015               | Animal welfare                           | 11                          |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 28/11/2015               | Generally accepted standards             | 246                         |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 29/11/2015               | Animal welfare                           | 3                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 30/11/2015               | Animal welfare                           | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 01/12/2015               | Advertising minutage                     | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 01/12/2015               | Gender discrimination/offence            | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 01/12/2015               | Generally accepted standards             | 8                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 01/12/2015               | Materially misleading                    | 1                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 01/12/2015               | Race discrimination/offence              | 6                           |
| I'm a Celebrity, Get Me Out of Here! | ITV                | 01/12/2015               | Religious/Beliefs discrimination/offence | 1                           |

| Programme                                      | Broadcaster | Transmission Date | Categories                         | Number of complaints |
|--|-------------|-------------------|------------------------------------|----------------------|
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 01/12/2015        | Scheduling                         | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 01/12/2015        | Surreptitious advertising          | 2                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 02/12/2015        | Generally accepted standards       | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 02/12/2015        | Generally accepted standards       | 4                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 02/12/2015        | Offensive language                 | 2                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 03/12/2015        | Generally accepted standards       | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 03/12/2015        | Race discrimination/offence        | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 04/12/2015        | Animal welfare                     | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 04/12/2015        | Offensive language                 | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 04/12/2015        | Sexual material                    | 3                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 05/12/2015        | Gender discrimination/offence      | 1                    |
| I'm a Celebrity, Get Me Out of Here!           | ITV         | 06/12/2015        | Voting                             | 1                    |
| I'm a Celebrity, Get Me Out of Here! (trailer) | ITV         | 29/11/2015        | Offensive language                 | 1                    |
| ITV Evening News                               | ITV         | 02/12/2015        | Crime                              | 1                    |
| ITV News                                       | ITV         | 27/11/2015        | Due impartiality/bias              | 1                    |
| ITV News at Ten and Weather                    | ITV         | 02/12/2015        | Crime                              | 1                    |
| ITV News at Ten and Weather                    | ITV         | 02/12/2015        | Generally accepted standards       | 2                    |
| Las Vegas with Trevor McDonald                 | ITV         | 07/12/2015        | Race discrimination/offence        | 1                    |
| Loose Women                                    | ITV         | 26/11/2015        | Transgender discrimination/offence | 11                   |
| Loose Women                                    | ITV         | 01/12/2015        | Disability discrimination/offence  | 1                    |
| Loose Women                                    | ITV         | 01/12/2015        | Transgender discrimination/offence | 1                    |
| Loose Women                                    | ITV         | 04/12/2015        | Generally accepted standards       | 5                    |
| Lorraine                                       | ITV         | 30/11/2015        | Competitions                       | 1                    |
| Lorraine                                       | ITV         | 02/12/2015        | Generally accepted standards       | 1                    |
| McCain's sponsorship of Emmerdale              | ITV         | 25/11/2015        | Sponsorship credits                | 1                    |
| Programming                                    | ITV         | 06/12/2015        | Fairness                           | 2                    |
| Text Santa (trailer)                           | ITV         | 02/12/2015        | Nudity                             | 1                    |
| The Chase                                      | ITV         | 01/12/2015        | Outside of remit / other           | 1                    |
| The Jeremy Kyle Show                           | ITV         | 28/11/2015        | Materially misleading              | 1                    |

| Programme  | Broadcaster     | Transmission Date | Categories                         | Number of complaints |
|--|-----------------|-------------------|------------------------------------|----------------------|
| The Jeremy Kyle Show                                 | ITV             | 30/11/2015        | Generally accepted standards       | 2                    |
| The Jeremy Kyle Show                                 | ITV             | 03/12/2015        | Materially misleading              | 1                    |
| The Jeremy Kyle Show                                 | ITV             | 04/12/2015        | Transgender discrimination/offence | 1                    |
| The Jeremy Kyle Show                                 | ITV             | 06/12/2015        | Scheduling                         | 1                    |
| The X Factor   | ITV             | 21/11/2015        | Scheduling                         | 1                    |
| The X Factor   | ITV             | 21/11/2015        | Surreptitious advertising          | 1                    |
| The X Factor   | ITV             | 28/11/2015        | Product placement                  | 1                    |
| The X Factor   | ITV             | 28/11/2015        | Race discrimination/offence        | 3                    |
| The X Factor   | ITV             | 28/11/2015        | Scheduling                         | 3                    |
| The X Factor   | ITV             | 05/12/2015        | Scheduling                         | 20                   |
| The X Factor Results Show                            | ITV             | 08/11/2015        | Voting                             | 1                    |
| The X Factor Results Show                            | ITV             | 29/11/2015        | Scheduling                         | 2                    |
| The X Factor Results Show                            | ITV             | 06/12/2015        | Advertising scheduling             | 1                    |
| The X Factor Results Show                            | ITV             | 06/12/2015        | Scheduling                         | 11                   |
| This Morning   | ITV             | 27/11/2015        | Disability discrimination/offence  | 1                    |
| This Morning   | ITV             | 27/11/2015        | Offensive language                 | 1                    |
| This Morning   | ITV             | 03/12/2015        | Generally accepted standards       | 2                    |
| This Morning   | ITV             | 07/12/2015        | Age discrimination/offence         | 1                    |
| This Morning   | ITV             | 07/12/2015        | Generally accepted standards       | 1                    |
| Tonight  | ITV             | 03/12/2015        | Materially misleading              | 1                    |
| Travel Guides  | ITV             | 30/11/2015        | Animal welfare                     | 1                    |
| Whitechapel (trailer)                                | ITV             | 21/11/2015        | Scheduling                         | 1                    |
| The Jonathan Ross Show / Alan Carr: Chatty Man       | ITV / Channel 4 | Various           | Offensive language                 | 1                    |
| ITV News Central                                     | ITV Central     | 01/12/2015        | Due impartiality/bias              | 1                    |
| ITV News London                                      | ITV London      | 25/11/2015        | Due impartiality/bias              | 2                    |
| ITV News London                                      | ITV London      | 27/11/2015        | Due accuracy                       | 1                    |
| Royal London's sponsorship of London Weekday Weather | ITV London      | 01/12/2015        | Sponsorship credits                | 1                    |
| ITV News Calendar                                    | ITV Yorkshire   | 27/11/2015        | Due accuracy                       | 1                    |
| Coronation Street Omnibus                            | ITV2            | 29/11/2015        | Offensive language                 | 1                    |
| I'm a Celebrity, Get Me Out of Here Now!             | ITV2            | 03/12/2015        | Generally accepted standards       | 1                    |

| Programme                                  | Broadcaster           | Transmission Date | Categories                               | Number of complaints |
|--|-----------------------|-------------------|--|----------------------|
| I'm a Celebrity, Get Me Out of Here Now!   | ITV2                  | 03/12/2015        | Offensive language                       | 1                    |
| I'm a Celebrity, Get Me Out of Here!       | ITV2                  | 17/11/2015        | Animal welfare                           | 1                    |
| I'm a Celebrity, Get Me Out of Here!       | ITV2                  | 19/11/2015        | Scheduling                               | 1                    |
| I'm a Celebrity, Get Me Out of Here!       | ITV2                  | 20/11/2015        | Scheduling                               | 1                    |
| The Jeremy Kyle Show                       | ITV2                  | 27/11/2015        | Gender discrimination/offence            | 1                    |
| The Jeremy Kyle Show                       | ITV2                  | 07/12/2015        | Generally accepted standards             | 1                    |
| The Mobo Awards 2015                       | ITV2                  | 04/11/2015        | Competitions                             | 1                    |
| The Xtra Factor                            | ITV2                  | 29/11/2015        | Gender discrimination/offence            | 1                    |
| Wild at Heart                              | ITV3                  | 30/11/2015        | Animal welfare                           | 1                    |
| Deals, Wheels and Steals                   | ITV4                  | 26/11/2015        | Materially misleading                    | 1                    |
| Station ident                              | Jack FM (Oxfordshire) | 03/12/2015        | Generally accepted standards             | 1                    |
| Station ident                              | Jack FM Oxfordshire   | 25/11/2015        | Generally accepted standards             | 1                    |
| Now You See Me                             | Kanal 5 Denmark       | 02/11/2015        | Advertising minutage                     | 1                    |
| Cheese on Koast with Ian 'The Icon' Conway | Koast FM              | 01/12/2015        | Offensive language                       | 1                    |
| Koast FM                                   | Koast FM              | 01/12/2015        | Generally accepted standards             | 1                    |
| Cristo                                     | LBC 97.3 FM           | 29/11/2015        | Disability discrimination/offence        | 1                    |
| James O'Brien                              | LBC 97.3 FM           | 12/11/2015        | Due impartiality/bias                    | 5                    |
| Stig Abell / Beverley Turner               | LBC 97.3 FM           | 15/11/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Nick Ferrari                               | LBC 97.3FM            | 17/11/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Dance Moms                                 | Lifetime              | Various           | Under 18s in programmes                  | 1                    |
| Programming                                | More4                 | 05/12/2015        | Fairness                                 | 1                    |
| Programming                                | More4                 | 05/12/2015        | Fairness                                 | 1                    |
| Bicentennial Man                           | Movie Mix             | 29/11/2015        | Violence and dangerous behaviour         | 1                    |
| Victorious                                 | Nick                  | 14/11/2015        | Transgender discrimination/offence       | 1                    |
| Peppa Pig                                  | Nick Jr Too           | 06/12/2015        | Offensive language                       | 1                    |
| Programming                                | Oscar Radio           | Unknown           | Generally accepted standards             | 1                    |
| Programming                                | Really                | 10/12/2015        | Fairness                                 | 2                    |
| Birmingham Live                            | Sikh Channel          | 15/11/2015        | Religious/Beliefs discrimination/offence | 1                    |
| Fungus the Bogeyman (trailer)              | Sky News              | 16/11/2015        | Generally accepted standards             | 1                    |
| Sky News                                   | Sky News              | 25/11/2015        | Due accuracy                             | 1                    |

| Programme                                   | Broadcaster       | Transmission Date | Categories                        | Number of complaints |
|---|-------------------|-------------------|-----------------------------------|----------------------|
| Sky News at Ten                             | Sky News          | 14/11/2015        | Due accuracy                      | 1                    |
| Sky News at Ten                             | Sky News          | 02/12/2015        | Due impartiality/bias             | 1                    |
| Sky News Tonight with Adam Boulton          | Sky News          | 04/12/2015        | Crime                             | 1                    |
| Sky News with Martin Stanford               | Sky News          | 05/12/2015        | Generally accepted standards      | 1                    |
| Sunrise                                     | Sky News          | 06/12/2015        | Offensive language                | 1                    |
| Fury Vs Klitschko                           | Sky PPV           | 28/11/2015        | Generally accepted standards      | 1                    |
| Football League: Portsmouth v AFC Wimbledon | Sky Sports 1      | 15/11/2015        | Race discrimination/offence       | 1                    |
| Premier League Football                     | Sky Sports 1      | 22/11/2015        | Offensive language                | 1                    |
| Meet the Psychopaths (trailer)              | Spike             | 01/12/2015        | Disability discrimination/offence | 1                    |
| Savadhan India                              | Star Life OK      | Various           | Scheduling                        | 1                    |
| Programming                                 | Studio 66         | 18/10/2015        | Participation TV - Offence        | 1                    |
| The London Sessions with Cynthia Garrett    | TBN UK            | 16/11/2015        | Product placement                 | 1                    |
| Vineyard Church                             | TBN UK            | 22/11/2015        | Undue prominence                  | 1                    |
| Nya Efterlyst                               | TV8 Sweden        | 11/11/2015        | Crime                             | 1                    |
| Law and Order                               | Universal Channel | 16/11/2015        | Offensive language                | 1                    |
| Competitions                                | Wave 105 FM       | Various           | Competitions                      | 1                    |
| Programming                                 | Yesterday         | 06/12/2015        | Fairness                          | 1                    |

### Complaints assessed under the General Procedures for investigating breaches of broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.

| Licensee                          | Licensed service       | Categories                    |
|-----------------------------------|------------------------|-------------------------------|
| Hull Kingston Radio Limited       | Hull Kingston Radio    | Technical                     |
| Nation Radio Limited              | Nation Radio           | Format                        |
| Fire Media Limited                | 100% Dragon Hits       | Technical                     |
| Sunny Govan Community Media Group | Sunny Govan Radio      | Provision of licensed service |
| Global Radio Hampshire Ltd        | Capital FM South Coast | Format                        |

## 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 and radio adverts, or accuracy in BBC programmes.

For more information about what Ofcom's rules cover, go to:

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/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:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>

| Programme                                 | Broadcaster      | Transmission Date | Categories                     | Number of complaints |
|---|------------------|-------------------|--------------------------------|----------------------|
| The Apprentice                            | BBC 1            | 25/11/2015        | Outside of remit / other       | 1                    |
| The Apprentice                            | BBC 1            | 25/11/2015        | Promotion of products/services | 1                    |
| The One Show                              | BBC 1            | 30/11/2015        | Due impartiality/bias          | 1                    |
| BBC News                                  | BBC 2            | 02/12/2015        | Due impartiality/bias          | 1                    |
| The Andrew Marr Show                      | BBC iPlayer      |                   | Due impartiality/bias          | 1                    |
| BBC News                                  | BBC News Channel | 03/12/2015        | Due impartiality/bias          | 1                    |
| Today                                     | BBC Radio 4      | 01/12/2015        | Due impartiality/bias          | 1                    |
| Advertisement                             | Channel 4        | 05/12/2015        | Advertising content            | 1                    |
| Advertisement                             | Channel 5        | 10/12/2015        | Advertising content            | 1                    |
| Advertisement                             | Food Network     | 07/12/2015        | Advertising content            | 1                    |
| Advertisement                             | ITV              | 27/11/2015        | Advertising content            | 1                    |
| Advertisement                             | ITV              | 29/11/2015        | Advertising content            | 1                    |
| Advertisement                             | ITV              | 01/12/2015        | Advertising content            | 1                    |
| Advertisement                             | ITV              | 09/12/2015        | Advertising content            | 1                    |
| ITV Hub                                   | ITV              | Various           | Television Access Services     | 1                    |
| Sky News                                  | Sky News website | 07/11/2015        | Outside of remit / other       | 1                    |
| 'Jihadi Jez' Under Fire From His Own Side | Sky News website | 13/11/2015        | Outside of remit / other       | 3                    |
| Advertisement                             | Sky Sports 1     | 07/12/2015        | Advertising content            | 1                    |
| Advertisement                             | Various          |                   | Advertising content            | 1                    |

## Complaints about broadcast licences

For more information about how Ofcom assesses complaints about broadcast licences, go to: <http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>

| Licensed service  | Licensee   | Categories |
|-------------------|------------|------------|
| Talksport Limited | Talk Sport | Other      |



## Investigations List

If Ofcom considers that a broadcaster may have breached its codes, a condition of its licence 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 has done anything wrong. Not all investigations result in breaches of the licence or other regulatory requirements being recorded.**

Here are alphabetical lists of new investigations launched between 28 November 2014 and 11 December 2015.

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

| Programme                      | Broadcaster         | Transmission date |
|--------------------------------|---------------------|-------------------|
| Big T Show                     | All FM (Manchester) | 11 October 2015   |
| CSI: Crime Scene Investigation | Sky Living          | 22 November 2015  |
| Most Haunted Live              | Really              | 31 October 2015   |
| Family Guy                     | BBC 3               | 29 November 2015  |

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

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/standards/>.

### Investigations launched under the General Procedures for investigating breaches of broadcast licences

| Licensee                        | Licensed Service |
|---------------------------------|------------------|
| Tamworth Radio Broadcasting CIC | TCR FM           |

For more information about how Ofcom assesses complaints and conducts investigations about broadcast licences, go to:

<http://stakeholders.ofcom.org.uk/broadcasting/guidance/complaints-sanctions/general-procedures/>.