

# Ofcom Broadcast Bulletin

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## Introduction

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<sup>1</sup>, Ofcom must include these standards in a code or codes. These are listed below.

The Broadcast Bulletin reports on the outcome of investigations into alleged breaches of those Ofcom codes, as well as licence conditions with which broadcasters regulated by Ofcom are required to comply. These include:

- a) Ofcom's Broadcasting Code ("the Code"), which, can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-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.  
COSTA can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/advert-code/>.
- 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>2</sup>.

The BCAP Code is at: [www.bcap.org.uk/The-Codes/BCAP-Code.aspx](http://www.bcap.org.uk/The-Codes/BCAP-Code.aspx)

- 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 on television and radio licences can be found at: <http://licensing.ofcom.org.uk/tv-broadcast-licences/> and <http://licensing.ofcom.org.uk/radio-broadcast-licensing/>.

Other codes and requirements may also apply to broadcasters, depending on their circumstances. These include the Code on Television Access Services (which sets out how much subtitling, signing and audio description relevant licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code. Links to all these codes can be found at:  
<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/>

It is Ofcom's policy to describe fully the content in television and radio programmes that is subject to broadcast investigations. Some of the language and descriptions used in Ofcom's Broadcast Bulletin may therefore cause offence.

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

<sup>2</sup> 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

## Standards cases

### In Breach

#### Beauty Simplified

*Sunrise TV, 13 June, 13 and 14 July, and 27 September 2011, 19:15 to 20:15*

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#### Introduction

Sunrise TV is a general entertainment television channel for the UK Asian community. The licence for the channel is held by Sunrise TV Limited ("Sunrise" or "the Licensee").

*Beauty Simplified* was a regular one-hour item, broadcast in Hindi and English, that offered viewers advice about beauty and well-being. Throughout the show a very prominent, permanent banner was displayed encouraging viewers to call the show using a premium rate telephone number. The presenter, Bina Khan (also known as Farzana Begum), also regularly encouraged viewers to call. Calls were charged at a premium rate of £1.50 per minute.

Ofcom examined the format of *Beauty Simplified* carefully and concluded that it was 'participation television' ("PTV"), in other words content that is predicated on generating revenue through viewers' phone calls. Ofcom regulates PTV as teleshopping, i.e. as long-form advertising<sup>1</sup>. Being advertising, PTV content is regulated under the BCAP Code: the UK Code of Broadcast Advertising ('the BCAP Code').<sup>2</sup>

*Beauty Simplified* was therefore required to comply with the BCAP Code.

#### Denigration

A complainant objected that *Beauty Simplified* had made various derogatory and damaging comments about his company, Welljuice, and its products. .

The complainant objected that Ms Khan had:

1. claimed that Welljuice had improperly used her "pictures";
2. claimed that Welljuice's products are inferior;
3. urged viewers not to buy Welljuice products and egg oil (Welljuice being the only brand of egg oil in the UK); and
4. claimed that Welljuice had hacked into her website.

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<sup>1</sup> Ofcom published a Regulatory Statement in June 2011 that confirmed that PTV material would be considered as advertising and regulated accordingly – see <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>

<sup>2</sup> Under a memorandum of understanding ("MoU") with Ofcom, the Broadcast Committee of Advertising Practice administers this Code. While broadcast advertising complaints are generally considered by the Advertising Standards Authority, under the same MoU, issues concerning PTV are not. Ofcom therefore remains responsible for enforcing the BCAP Code with regard to such content.

Having assessed the material, we noted the following comments from *Beauty Simplified*, from a translation commissioned by Ofcom:  
In the edition of 13 June 2011 Ms Khan said:

*"...But I will request viewers not to buy those things from the market that have my name on them, at the moment, because we have found that they are not genuine; spurious work is being done. I have been asked to say this though I was hesitating from saying this but orders have to be obeyed. People are hereby informed that those products are not genuine, please do not buy any of those products that has my picture on it and you should know why, because I cannot say it on air but I would like to say it. So, what you can do is ask me off-air, why, but, at the moment, if you find products associated with my name, please do not buy them. We do not know what is in them, and to what extent they are genuine...."*

In the edition of 13 July 2011 Bina Khan said:

*"Life teaches us a lot, the way it is teaching me these days; these days you search for "Bina Khan" and you do not find me there because it has been hacked and a new website opens up. People think of making money. Welljuice have taken my picture and are selling God knows what on the site. Please do not listen to them; listen to me. I did once recommend them but it was a mistake. I am not making that mistake anymore and please do not punish me for my mistake. If you find products being sold in my name, please do not buy them but talk to me directly..."*

[...]

*"I would say to those brothers, who are distributors of products and who use my recommendations, that I have no account there, no work there, just my picture has been pasted, and if one does that, there is nothing we can do. Until the case goes on, I apologize to you for this situation, which you are passing through; please understand my recommendation and do not buy these products. It is your own will – you can do as you wish..."*

On 14 July 2011 Ms Khan said:

*"Sister, there could be another possibility. The egg oil may not be pure. Although it has the name written on it, it may be useless. That is why I have been telling people – they would be listening – I request sisters that products in the market – and this includes egg oil – do not buy any product that has my name on it because I do not know what is inside those products. If I do not know, I cannot say, I have told them to remove my picture but they have not. Until the case goes on please save yourself. Okay? It is better if you make these things at home. I would advise you to use egg yolk. Take egg yolk, add two or four spoons of almond oil and apply it on hair. This too cures baldness."*

And on 27 September 2011:

*"I did popularize it a lot and then I found people had been packaging it and selling it at a premium price – even for £20. Then I exposed their secret but I cannot name it now for this puts me at risk. I have been receiving threats but I am not going to give up and I shall keep exposing the truth to people – the*

*products I name on-air, they get it packed and then sell it at double its price.  
So do not buy anything that has my name or picture on the packaging..."*

Having assessed the material, Ofcom considered it raised issues warranting investigation under BCAP Code Rule 3.42 which states:

"Advertisements must not discredit or denigrate another product, advertiser or advertisement or a trade mark, trade name or other distinguishing mark."

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

### Other issues

#### Remote health treatment

Ofcom noted frequent references to health conditions and their treatment in *Beauty Simplified*. The remote treatment of health is generally prohibited by the BCAP Code.

In every edition of *Beauty Simplified* a ticker ran throughout the item. One of the messages it repeated was: "*tips given by the presenters are just simple home remedies*". The term "remedy" was used extensively in the show.

Further, we noted the following comments from *Beauty Simplified*, from a translation commissioned by Ofcom:

13 July 2011:

Presenter: *You just listened to a hakeem [quack], and I have contacts of wise hakeems and I can refer you to them – that is if your problem is not solved by home remedies.*

[...]

14 July 2011:

Presenter: *Homemade remedies can help you get better, reduce your symptoms, that is what "better" means, but never see them as a cure to an illness. It should not be seen as such. If it was like that, it would be nice.*

[...]

Presenter: *The bad effect of this bad thing is that lips can turn black – and then it gets difficult. But if you clean your teeth immediately afterwards with an oil, which you can make at home – actually there are two cures; the first is – take one teaspoon of jasmine oil, and add an equal amount of lemon juice – you can have half teaspoon of each and mix them – and add an equal amount of rose water. Then dip your toothbrush in this and apply this mixture on your teeth. If you do it twice or day, or use it as a toothpaste, you can see your teeth getting better. But if you are doing it [smoking] too much, beyond limit, and your health does not allow it, and your health is being adversely affected, then it is difficult to get better. Okay? Drink lots of water, take care in drinking tea and coffee, the other intake which can aggravate this problem, drink less of these. And this*

*might help improve the situation. Okay? Do it for a week and if you do not see any improvement, then we will speak again.*

[...]

Presenter: *Yogurt not only makes the pimples disappear and keeps one calmer, it also balances the hormones... Children often have excess of hormones, which makes them active, and their minds start to think strange thoughts. It is said that if you eat yogurt and make your children eat yogurt, you will see calmness in the temperament. If your children are not calm but hyperactive, start giving them yogurt.*

[...]

Presenter: *There are many diseases of the feet – the skin may be cracked, and there is bad smell. For tired feet, cracked feet, smelly and sweaty feet, it is very good if you take a pot used for pedicure – or better call it a tub – fill it with water deep enough to immerse your feet up to ankles. Add a spoon of phatkari [an antiseptic mineral] and keep your feet immersed until the water gets cold.*

27 September 2011:

Presenter: *If you too want to ask about reducing weight, I have many homemade remedies that have been successful.*

[...]

Presenter: *Tell me about your health. Are you okay? Are you using any medicines? Do you take effects from some things – hot or cold effects?*

Caller: *I often get cold and I have “needles” but that is probably lack of blood circulation.*

Presenter: *You may be right. Have you so far seen my programmes and used any of my remedies?*

[...]

Caller: *I don't take medicines but because I cannot have children, doctors are giving me some injections and other things. They too are saying that I need to lose weight.*

Presenter: *That is right. When you lose weight, there is greater potential. Tell me about your temperament: If you have a “hot temperament” or “cold temperament”?*

Caller: *My feet are cold but I feel a burning sensation inside me.*

Presenter: *And a personal question please. Are your periods regular?*

Caller: *They are regular but sometimes they happen before the month has passed. And when it happens, it is little, not a lot.*

Presenter: *I will give you a remedy, which improves the hormones, and it will also help you in your attempts to get pregnant. If you could get "Royal Jelly" – have you heard about it? Royal Jelly tablets?*

[...]

Presenter: *If you do this daily for a month, Allah willing your periods and you weight situation will improve along with your hormones. If it does not help within a month, do not give up because hormones take a long time to take effect – it has to dissolve in your blood and reach the systems. It will not happen suddenly. You will need to be patient and pray to Allah and chant "Ya Awalu" and things will get better. Is it okay sister?*

[...]

Presenter: *One sister had a physical problem and she spoke to me during the break. If you too have a physical problem, like periods or other irregularities, you can call. I have done many experiments and I have many experiences of life. If you use homemade remedies and also do prayers and chants, you see a lot of success. There are several medicines too that I can tell you about but for that you have to phone me off-air because if I go into lengthy descriptions on-air, it might not be of interest to the other viewers. They would not like it. I provide general tips on-air and I try to speak about beauty to help you in this matter. But if you want help other than this and you think homemade remedies can help – and I know that they do help; it's my experience and it has been tried and tested – in every matter of life whether it be your depression or stress, you can improve your situation by improving your diet. If you eat right things at the right time, your depression too may be cured and you can be relieved. I have vast experience in this and you can speak to me.*

[...]

Caller: *My younger daughter is 12 – basically she has nits. When she was small, like when she was two, since then she has nits.*

Presenter: *There are two things you can do; very first thing I am going to give you is very very safe.*

Having assessed the material, Ofcom considered it raised issues warranting investigation under BCAP Code Rules 11.23 and 11.13.1 which state:

11.12.3: Teleshopping for these products or services is not acceptable:  
[...]  
medical treatments for humans or animals.

11.13.1: Advertisements must not contain offers to prescribe or treat remotely (including by phone, post, e-mail or fax). That does not preclude advertisements containing offers to distribute general information on health-related matters, such as leaflets or information packs.

We therefore sought the Licensee's comments as to how the material complied with these rules.

### Distinction of teleshopping from editorial material

We noted that the show adopted a simple format in which the presenter Bin Khan stood in a studio set and answered callers' questions. Other than the banner displaying the premium rate number and some related information (e.g. call costs) no positive indication was given that the material was advertising.

Ofcom considered the presentation to be potentially capable of being understood by viewers as programming and, as such, we considered that the material raised issues warranting investigation under BCAP Code Rule 2.1 which states:

"Advertisements must be obviously distinguishable from editorial content, especially if they use a situation, performance or style reminiscent of editorial content, to prevent the audience being confused between the two. The audience should quickly recognise the message as an advertisement."

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

### **Response**

As an over-arching point the Licensee commented that: "...whilst the translations that you have commissioned are in general terms accurate on a word for word basis, they do not fully reflect the context and the phraseology completely in their translated form. We have listened again to the recordings and feel that in the original language the context and meaning would be [more] equivocal to the viewer".

### Denigration

The Licensee explained that Bina Khan had in the past recommended Welljuice products but that since 2010 Ms Khan had not authorised the use of her name or image for the company's marketing. Ms Khan no longer endorses Welljuice products.

Further, Bina Khan had lodged complaints of harassment with the police and with Trading Standards about the unauthorised use of her name and image. The Licensee supplied a letter from an intellectual property management company indicating that the company believed Ms Khan (aka Fazarna Begum) to be the true owner of the rights attaching to the name "Bina Khan". The letter further indicated that the rights had been "incorrectly" registered to a director of Welljuice.

In the light of this background, the Licensee said: "Miss Khan's comments about Welljuice were intended to assist the viewers in understanding this and for Miss Khan to ensure that viewers were not misled by the advertising of this company. Her actions were in response to callers who were saying to her that they had bought Welljuice products because they had seen her name promoting these products on the Welljuice website."

Acknowledging the intentions of the BCAP Code in respect of denigration, Sunrise argued that there was a fundamental need, also recognised in the Code, that viewers should not be misled into believing that Bina Khan promotes Welljuice products. The Licensee added that "...the show is premised on the fact that the remedies can be prepared from easily available household items and whilst proprietary forms exist it was not necessary to buy these."

In the circumstances, the Licensee told us, it did not believe that the BCAP Code had been breached."

### Remote health treatment

Sunrise explained that it understood the issue being raised, and that it is the nature of the content as ‘PTV’ that brings it under the BCAP Code. Further, the Licensee referred to a similar matter that Ofcom raised with Sunrise in 2011 about a show called *Your Health*.<sup>3</sup> After Ofcom had recorded breaches of the BCAP Code against *Your Health* the Licensee had cancelled the feature: it could not see how that series could be made compliant with the BCAP Code rules prohibiting remote health treatment.

In this case, although Sunrise did not believe that *Beauty Simplified* was inherently problematic under those rules, the Licensee had also suspended transmission of *Beauty Simplified* after receiving Ofcom’s correspondence.

The Licensee said that the show’s viewers are advised by an on-screen ‘ticker’ that the advice and information given are ‘just simple home remedies’. The use of the word “remedy” was not intended, Sunrise said, nor did it believe it did, imply that the tips offered were an alternative for professional medical treatment and it believed that the audience understood the nature of the feature. Sunrise further told us that it was important to understand the cultural aspects that lie behind a show such as *Beauty Simplified*. For many Asian women, the Licensee argued, and certainly the viewers of the show, using a beautician and using “homoeopathic” remedies is a preference. The Licensee argued that the show was intended to provide a level of advice which would help viewers by providing beauty tips based on these remedies as well as offering general advice on the ingredients required and how to source them.

The use of the word “remedy” did not in the Licensee’s opinion bring the show into conflict with the relevant BCAP rules: it believed that the term should be understood in a much wider context. In that respect the Licensee pointed out all the tips and advice offered by the show suggest the use of ingredients that are widely available and are not licensed as medicines in the UK.

Further, Sunrise said that Bina Khan does point out to viewers that the remedies offered may help reduce symptoms but should not be seen as a cure for illness – one example of this advice was contained in Ofcom’s translation (above, 14 July extract).

Even so, the Licensee accepted that: “In some of the examples you quote we recognise that the presenter may not have been as clear as she could have been in explaining to the viewers and the individual caller the scope of the advice that she offered.” However Sunrise referred back to its over-arching comment regarding the translation and viewers’ understanding of the show in its original language.

### Distinction of teleshopping from editorial material

Sunrise accepted that *Beauty Simplified* adopted a programme format “with additional graphics to provide information to the viewer.” The Licensee believed that viewers would readily understand the nature of the show, but it noted that this view may not have been consistent with Ofcom’s expectations. It said that, were the show to return, a further graphic would be added to remove any doubt as to the nature of the show.

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<sup>3</sup> Ofcom’s Finding on *Your Health* was published in Broadcast Bulletin 187 which is available at: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb187/obb187.pdf>

Finally, the Licensee commented that: “Sunrise TV is a popular Asian Channel which broadcasts shows for the Asian Community in the UK. It is expected to reflect the culture of that community and has developed shows which provide a level of interaction through the PTV model and which address the specific requirements of some sections of the community which it serves. Clearly shows such as *Kundli Aur Kismat*,<sup>4</sup> *Beauty Simplified* and the Health Show [*Your Health*] provide formats which are popular within the Asian Community but which have the potential to raise a number of regulatory issues. Under no circumstances do we want to broadcast shows which are in breach of the regulatory framework, and it was clear that the Health Show [*Your Health*] could not be adapted to a PTV vehicle however, we do believe that *Beauty Simplified*, which is a popular show, is fundamentally a show format which is acceptable within the current regulations.”

Sunrise stressed that at no time did it set out intentionally to breach the rules. It said that it had tried to introduce “programming” which “...touches its audience and allows them to reflect some elements of their day to day culture in the broadcast arena”.

After receiving notification of Ofcom’s preliminary view of the issues under investigation, the Licensee confirmed to Ofcom that the show would not return.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a duty to set such 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.” In relation to the potential for advertising to cause medical harm, the BCAP Code therefore contains a number of rules regarding the advertising of medical treatments, including that “Teleshopping for these products or services is not acceptable...medical treatments for humans or animals” (Rule 11.12.3) and that “advertisements must not contain offers to ... treat remotely (including by phone...)...” (Rule 11.13.1).

A further standards objective under the Act requires Ofcom to ensure that the UK’s international obligations with respect to television advertising are complied with. Article 19 of the Audiovisual Media Services Directive<sup>5</sup> requires, among other things, that “television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content.” The BCAP Code therefore requires, among other things, that “advertisements must be obviously distinguishable from editorial content...” (Rule 2.1).

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<sup>4</sup> *Kundli Aur Kismat* [Future and Fortune], that offered astrological readings to callers, was another feature transmitted on Sunrise TV that was predicated on premium rate telephone or other similar revenue. Ofcom found the show in breach of the Broadcasting Code because at the time of the editions examined live ‘PTV’ formats were regulated as programming. The Finding for *Kundli Aur Kismat* can be found at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb175/issue175.pdf>

<sup>5</sup> See Chapter VII (Television Advertising and Teleshopping), at:  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>

### Denigration

Ofcom noted the Licensee's explanation of the background to the dispute between Bina Khan and Welljuice, but rejected this as any sort of proper basis for the inclusion of denigratory remarks about the company or its products.

It is not the purpose of advertising to act as a means by which one interest should disparage another or through which scores should be settled. For that reason Rule 3.42 forbids the discrediting of others' products, trademarks etc. Where a contractual or other commercial right is at issue, advertising may not be used as a vehicle to advance one or other side's interests. Such disputes should be settled through the usual channels of negotiation or legal action.

Ofcom considered that the content included a number of comments that discredited and denigrated Welljuice and its products. The relevant comments are set out in full in the Introduction section above, but included, in particular, comments in which the presenter said;

*"...we have found that they are not genuine; spurious work is being done..."*

*"...People are hereby informed that those products are not genuine, please do not buy any of those products that has my picture on it and you should know why,..."*

*"...Welljuice have taken my picture and are selling God knows what on the site. Please do not listen to them; listen to me. I did once recommend them but it was a mistake..."*

*"...The egg oil may not be pure. Although it has the name written on it, it may be useless. That is why I have been telling people – they would be listening – I request sisters that products in the market – and this includes egg oil – do not buy any product that has my name on it because I do not know what is inside those products...."*

*"...the products I name on-air, they get it packed and then sell it at double its price. So do not buy anything that has my name or picture on the packaging..."*

Ofcom concluded that the inclusion of these denigratory comments about Welljuice and its products in *Beauty Simplified* were in breach Rule 3.42 of the BCAP Code.

### Remote health treatment

In its application of Rules 11.12.3 and 11.13.1 in relation to PTV content, Ofcom does not require that licensed medicines or other recognised medically therapeutic treatments be offered or advised upon. Mere offers to treat or to advise on medical or health matters attract the prohibitions under these rules, whether or not they result in recognised treatments or "home remedies" being supplied or self-administered. The trigger for these rules is the inclusion in advertising of offers of treatment of medical or health matters, including diagnosis and advice, by any person.

In that respect it is important to make clear that advice on medical or health matters to viewers, or the offer of such advice to viewers, is included within the meaning of 'treatment' within Rules 11.12.3 and 11.13.1.

In this case, Ofcom considered that there was clear evidence that *Beauty Simplified* went beyond the provision of beauty and cosmetic concerns and focused on matters of health including weight problems, hormonal problems, smoking, foot health, infertility, stress, and circulation.

Furthermore, these medical and health matters were discussed in the context of the presenter providing advice on “remedies” which she told viewers could address these conditions. We noted the Licensee’s argument that the presenter made clear that these “remedies” should not be seen as a cure for illness – one example of this advice was contained in Ofcom’s translation (above, 14 July extract). We also noted that the ‘ticker’ running throughout the show included the message that the advice being provided amounted to “*tips given by the presenters are just simple home remedies*”.

However, Ofcom also took into account that, when providing her advice on the “remedies”, the presenter made repeated and direct claims about the apparent efficacy of the “remedies” in reducing particular symptoms and improving conditions. In Ofcom’s view, these claims negated the presenter and Licensee’s attempts to provide viewers with a disclaimer that the “*simple home remedies*” were merely “*tips*”. The claims in question are set out in the quotes provided in the Introduction section, but in particular, Ofcom noted these claims made by the presenter:

“... *Homemade remedies can help you get better, reduce your symptoms, that is what “better” means...*”.

“...*And this might help improve the situation. Okay? Do it for a week and if your do not see any improvement, then we will speak again...*”.

“...*Yogurt not only makes the pimples disappear and keeps one calmer, it also balances the hormones...*”.

“...*If you too want to ask about reducing weight, I have many homemade remedies that have been successful...*”.

“...*I will give you a remedy, which improves the hormones, and it will also help you in your attempts to get pregnant...*”.

“...*One sister had a physical problem and she spoke to me during the break. If you too have a physical problem, like periods or other irregularities, you can call. I have done many experiments and I have many experiences of life. If you use homemade remedies and also do prayers and chants, you see a lot of success...*”.

In addition, the presenter made an offer of off-air advice on specific “medicines” and also offered referral to a “wise hakeem”:

“...*There are several medicines too that I can tell you about but for that you have to phone me off-air because if I go into lengthy descriptions on-air, it might not be of interest to the other viewers...*”.

“...*I have contacts of wise hakeems and I can refer you to them – that is if your problem is not solved by home remedies...*”.

Given the content of the feature, as demonstrated through the extracts set out in the Introduction and above, Ofcom concluded that *Beauty Simplified* promoted

“remedies” which were presented as treatments for medical and health conditions, in breach of Rule 11.12.3 of the BCAP Code,

Further, Ofcom concluded that the content contained offers of advice on the remote treatment of medical and health conditions, in breach of Rule 11.13.1 of the BCAP Code.

#### Distinction of teleshopping from editorial material

The central purpose of features such as *Beauty Simplified* to generate premium rate revenue for the licensee can often reasonably be expected to be deduced by viewers from the prominence given to the phone number to call. Even so, it is Ofcom’s view that the format remains sufficiently novel and unfamiliar as advertising that unless the generality of the presentation is very clearly that of advertising some positive indication should be given to viewers about the status of the material.

In this case, Ofcom considered that the presentation was not distinctively that of advertising and could have been understood by some viewers as programming, given the long-form format and the studio setting involving a presenter and a phone-in by viewers. In our view there should have been indications to the audience of the show’s status as advertising, for example, by the use of unambiguous, prominent and frequent captions notifying the audience that this was a commercial presentation.

In view of the absence of any such captions, or other means of letting the audience know the nature of this content, Ofcom concluded that *Beauty Simplified* had breached BCAP Code Rule 2.1.

#### Conclusion

The breaches of BCAP Code Rules 11.12.3, 11.13.1 and 2.1 were of considerable concern to Ofcom in this case. In our view Sunrise should have known that inclusion of health treatment advice in PTV formats would be unacceptable, following the breach Finding against *Your Health*. Indeed, as noted above the Licensee made reference to that Finding itself in its response.

We recognise that the focus of *Beauty Simplified* was beauty and cosmetic advice rather than health, so to that extent distinguishing it from *Your Health*. But it was clear to Ofcom that insufficient care had been taken to confine the advice given to areas of beauty and cosmetic appearance.

Similarly, in the area of programme-advertising distinction there was precedent for the Licensee from Ofcom Findings about two its own shows – *Your Health* and *Kundli Aur Kismat*. At the end of the *Kundli Aur Kismat* Finding<sup>6</sup>, the earlier of the two, from February 2011, we included a Note to Broadcasters, as follows:

#### “Note to Broadcasters

Although there is some latitude for PRS in programmes under the Code, they must nevertheless be editorially justifiable. This requirement is especially acute where interaction is charged for by higher priced premium rate telephone calls.

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<sup>6</sup> See footnote 4.

On 1 September 2010 (therefore some weeks after this programme was transmitted) revisions to Section Ten came into force that clarified the need for the promotion of PRS in programmes to be clearly subsidiary to the programme's editorial purpose. The changes to the Code and Guidance arose from the Ofcom Regulatory Statement Rules on the promotion of premium rate services<sup>7</sup>.

Guidance published at the same time contains extensive advice on the Code's new, more detailed requirements. This advice discusses, among other things, the relative balance of the PRS and other elements of a programme, the extent of the promotion of the PRS and the cost of the PRS.

In that respect, Ofcom wishes to make clear that programmes apparently wholly or mainly formulated to take advantage of premium rate revenues are likely to be in breach of the Code, or to require re-classifying by licensees as teleshopping (i.e. advertising) in the form of "participation TV" (PTV). **In the latter case, programmes must meet the requirements for teleshopping and licensees may need to adapt the item's format accordingly. Also, broadcasters must make absolutely clear to the audience that what they are watching is advertising material..."** (Emphasis added)

In the *Your Health* Finding we said: "Given the editorial style and studio presentation of the content, we did not consider that, without further information (by caption, for example) it would have been clear to viewers that the content was advertising (and not editorial). The broadcasts were therefore in breach of Rule 2.1 of the BCAP Code."

Most worrying, however, was the very clear warning given to Sunrise in the *Your Health* Finding:

"However, this is the sixth breach Finding recorded by Ofcom against Sunrise TV over the past 15 months, all of which have concerned the broadcast of promotional material. Ofcom is therefore putting the broadcaster on notice that any further breach of this nature is likely to result in our consideration of the imposition of statutory sanctions."

This case therefore marks the seventh breach Finding against the Licensee since April 2010.<sup>8</sup>

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<sup>7</sup> Available at:

<http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>

<sup>8</sup> The six previous recorded breaches are:

*Your Health*, Broadcast Bulletin issue number 155, published on 12 April 2010, at:  
<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb155/Issue155.pdf>;

*Asiana Bridal Show 2010*, Broadcast Bulletin issue number 158, published on 24 May 2010, at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb158/Issue158.pdf>;

in the Breach Findings Table (COSTA compliance report), Broadcast Bulletin issue number 169, published on 8 November 2010, at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb169/issue169.pdf>;

Ofcom is now putting the Licensee on notice that the breaches recorded in this Finding will be considered for the imposition of a statutory sanction.

**Breaches of BCAP Code Rules 2.1, 3.42 11.12.3 and 11.13.1**

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*Kundli Aur Kismat (Future & Fortune)*, Broadcast Bulletin issue number 175, published on 7 February 2011, at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb175/issue175.pdf>;

in the Breach Findings Table (COSTA compliance report), Broadcast Bulletin issue number 179, published on 4 April 2011, at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb179/obb179.pdf>;

and, *Your Health*, Broadcast Bulletin issue number 187, published 1 August 2011, at:

<http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb187/obb187.pdf>

## In Breach

### Channel S News

Channel S, 24 and 29 May 2011, 4 June 2011, 22:00

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#### Introduction

Channel S is a free-to-air satellite general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel S is held by Channel S Global Limited ("Channel S" or "the Licensee").

A total of 11 viewers alerted Ofcom to three editions of *Channel S News* in relation to news reports in these broadcasts about a Bangladeshi journalist, Syed Anas Pasha, who was reported to have written articles concerning the Chairman of the Licensee, Ahmed-us Samad Chowdhury. According to complainants, the programmes had stated that the articles written by Syed Anas Pasha had alleged the Chairman of Channel S was seeking to stand as a candidate for the post of UK President of the Bangladesh Nationalist Party; and that Ahmed-us Samad Chowdhury was encouraging his supporters to support him in his candidacy. Complainants considered that the programmes were not duly impartial because the programmes included various statements and interviews with individuals, including Ahmed-us Samad Chowdhury, that criticised Syed Anas Pasha's journalism; and the programmes did not reflect the viewpoint of Syed Anas Pasha.

Ofcom reviewed the three programmes in question. The programmes were broadcast in Urdu. Ofcom therefore commissioned an independent translation and transcript of the output. We noted the following from the transcript.

#### 24 May 2011

In this programme, an item about Syed Anas Pasha was presented by a Channel S reporter as follows:

*"London based journalist Syed Anas Pasha has targeted Channel S chairman and important community personality Ahmed-us Samad Chowdhury JP, reporting that Samad Chowdhury has ordered his supporters to become active as he would like to become the UK president of a party, on a free newspaper published from East London and on an online newspaper. The report contains some very offensive remarks and mentions his link with a fundamentalist party. Furious about this type of careless report Ahmed-us Samad Chowdhury has sent legal notice to Syed Anas Pasha and to the news editor of that newspaper and member of its editorial board".*

We noted that this news item included a statement by the Chairman of Channel S, Ahmed-us Samad Chowdhury:

*"They are practising yellow journalism in order to have a place and status in the community. They are wearing a mask and reporting unrealistic news against many people, no one is protesting against them. I feel it is my duty to stand up and fight, put a fight against them".*

Other brief statements by individuals criticised the reporting of Syed Anas Pasha. For example, Abul Kalam (UK president of the Bangladeshi Solicitors Association) said:

*"This kind of journalistic misconduct causes severe damage to society and people. If someone's reputation is reduced or damaged and it is deemed as publication without justification or lawful excuse then it falls under liability".*

29 May 2011

A report about Syed Anas Pasha said:

*"Discussions taking place within the community about the legal notice served by Channel S chairman Ahmed-us Samad Chowdhury JP, for publicising tactless and false news against him...London based journalist, Syed Anas Pasha, and a few others are included in this notice. Ahmed-us Samad Chowdhury complained that false and deceptive information has been written about him without taking his comments".*

We also noted several brief statements by individuals criticising the reporting of Syed Anas Pasha. For example, Syed Monsur Uddin commented:

*"Whenever you report about anything, comments from the associated person or agency must be included. This is common practice in journalism and it is followed around the world. In this instance, if any comment from Mr Ahmed-us Samad Chowdhury was not taken, then I believe this is extremely unfair and the guidelines of journalism have been breached".*

Abul Kalam, a prominent member of the Bangladeshi community, said:

*"The thing about journalism is that when they produce news, they should have evidence or proof behind it. Without evidence it is baseless, and if it is baseless then I will say in the language of law that a person's good name has been in disrepute".*

4 June 2011

In this programme, an item about Syed Anas Pasha was presented by a Channel S reporter as follows:

*"Almost all of the community newspapers have published the news about Channel S chairman and important community person Ahmed-us Samad Chowdhury's 10 million pounds defamation case against a reporter and two newspapers. On the other hand the acting chairman of UK BNP, Mia Monirul Alam, and senior vice president of UK Awami League, Jalal Uddin, have expressed their animosity against the report which was written based on fictional and objectionable information".*

Again, statements by individuals criticised the reporting of Syed Anas Pasha. For example:

A prominent member of the Bangladeshi community, Pasha Khondokar, said:

*"In our small community, yellow journalism is used to black-mail people. But, not everyone is as solvent as Samad Chowdhury who can fight back against it. I will say we are grateful to Samad Chowdhury that he has stood up".*

Parvez Quereshi, another prominent member of the Bangladeshi community, said:

*"I think journalism is a very responsible profession and our integrity our responsibility all the time should remember, because we see the world in the eye of a journalist, we see our society. This is why a journalist has special responsibility. When producing news, details should be known. Producing news knowing the facts then people will get appropriate news".*

The Channel S reporter continued:

*"Channel S chairman and important community personality Ahmed us Samad Chowdhury JP has sent a notice of £10 million seeking to claim damages for defamation against a reporter and two newspapers for writing and publishing a report based on fictional information, targeting him".*

Ofcom considered 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 the Licensee's comments as to how this material complied with this rule.

### **Response**

Firstly, the Licensee said that Ofcom should stay its due impartiality investigation under Section Five of the Code until after the determination of legal proceedings for defamation started by Ahmed-us Samad Chowdhury, Channel S Chairman, against Syed Anas Pasha. As background, Channel S said that the three broadcast news reports in question related to articles written by a journalist, Syed Anas Pasha, in both a London-based Bangladeshi newspaper and an online newspaper. These articles, according to the Licensee, alleged Ahmed-us Samad Chowdhury "to be a supporter of an extremist, Islamic fundamentalist political party". Following these articles being published, Channel S said that Ahmed-us Samad Chowdhury had taken legal proceedings against Syed Anas Pasha because: "It is a known fact within the community that Mr. Chowdhury is not associated with any Bangladeshi political parties but when the article associated Mr. Chowdhury seeking a presidential post for UK branch of a Bangladeshi political party and confirming links with extremist Islamic fundamentalist party and groups, Bangladeshis in Britain and abroad could not accept these false allegations".

The Licensee noted that Ofcom had ceased a separate Fairness and Privacy investigation into the programmes because of the "overlap" between the Fairness and Privacy investigation and the legal proceedings. Channel S stated its belief that there was a similar overlap between the Ofcom investigation into Channel S under Section Five of the Code and the legal proceedings against Syed Anas Pasha: this was because, in the Licensee's view, an Ofcom investigation under Section Five of the Code would be "likely to impinge at least in some way on the investigations of the factual issues" relating to these legal proceedings. For example, Channel S said that "the factual issue as to whether Mr. Pasha was given an opportunity to respond to the content or tenor" of the broadcasts in this case was one of the factual issues which would be dealt with as part of the legal proceedings. Given the above, the Licensee requested that Ofcom not proceed with its investigation under Section Five of the Code until the legal proceedings were determined.

Second, Channel S queried the extent to which Ofcom should rely on the complaints received by Ofcom in this case<sup>1</sup>. It said that “it is evident that some of the complaints are duplicates and/or part duplicates of others (albeit presumably submitted individually, perhaps to boost the overall number of complaints)”. The Licensee stated its view that, in view of what it suggested to be a number of duplicated complaints, Ofcom should “very carefully consider both the integrity of the complaints and their motivation and to take the same into account in assessing the merit of the complaints”.

Third, the Licensee also queried whether Ofcom was aware that in his newspaper article, according to Channel S, Syed Anas Pasha had alleged that Ahmed-us Samad Chowdhury was “a supporter of an extremist, Islamic fundamentalist political party”. Channel S stated that Ofcom should “take due account of the seriousness of the allegations against Mr Chowdhury” and ensure these allegations are “accurately represented.”

In addition the Licensee also made a number of points in relation to Rule 5.1 of the Code:

- the programmes in question did not breach Rule 5.1 just because individuals made criticisms about Syed Anas Pasha. “[I]f a news broadcaster interviews ten people to give their view on the antics of a footballer, or a politician, and those interviewees all have disobligeing remarks to make...so be it. It is not for the broadcaster to invent a body of differently-held views”;
- the programmes on *Channel S News* contained “the interviews of various personalities, newspaper Editors, Leaders of main Bangladeshi organisations speaking out about Syed Anas Pasha. On two occasions Channel S reporters “tried to get Mr. Pasha’s comment but he refused.” This was because Syed Anas Pasha preferred “to reply within the legal process”;
- a summary of Syed Anas Pasha’s allegations were contained in the broadcast dated 24 May 2011 and the programmes dated 29 May 2011 and 4 June 2011 were “follow-up broadcasts describing the subsequent events which had developed; Channel S was right to accurately report the legal action which Mr. Ahmed-us Samad Chowdhury was taking. Such reporting also manifested Mr. Chowdhury’s freedom of expression”; and
- concerning the fact that Ahmed-us Samad Chowdhury, Channel S Chairman, had participated in the programme broadcast on 24 May 2011, the Licensee said that the reporter and producer of this programme “felt that to bring calm to the [Bangladeshi] community in Britain Mr Chowdhury’s interview was vital”. Channel S added that “In his interview Mr. Chowdhury speaks about Yellow Journalism but does not mention Mr. Pasha’s name”. In addition, Channel S said that “Mr. Chowdhury is a prominent member of the Bangladeshi community. The allegations made about him were newsworthy and had created... ‘some controversy’. The fact that Mr. Chowdhury is the Chairman of Channel S does not disqualify him from giving his views about serious, defamatory allegations”.

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<sup>1</sup> Ofcom had provided the Licensee with the text of the complaints received by Ofcom in this case. Although Channel S requested details of the complainants from Ofcom, Ofcom was unable to comply with this request because of data protection legislation.

## Decision

Under the Communications Act 2003, Ofcom has a duty to ensure that news included in television and radio services is presented with due impartiality. This duty is reflected in Rule 5.1 of the Code which states that: "News, in whatever form, must be reported with due accuracy and presented with due impartiality".

When applying the requirement to preserve due impartiality in news, Ofcom must take into account the broadcaster's and audience's right to freedom of expression. This is set out in Article 10 of the European Convention on Human Rights. Article 10 provides for the right of freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without unnecessary interference by public authority.

Article 10 is also clear, however, that the exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society as well as for the protection of the reputation or the rights of others. The requirement for news to be presented with due impartiality reflects these considerations and necessarily obliges broadcasters to ensure appropriate balance in presenting news so that, for example, neither side of a controversy is unduly favoured.

Ofcom's investigation of the complaints relating the news reports on *Channel S News* considered the Licensee's specific comments under Rule 5.1 of the Code and its general representations concerning Ofcom's investigation of the matter.

### General considerations: the Licensee' representations concerning Ofcom's investigation of the matter

Firstly, we noted Channel S's request that Ofcom should not proceed with its investigation under Section Five of the Code until "after determination" of the legal proceedings, due to what the Licensee termed the "overlap" between the legal proceedings and Ofcom's investigation under Section Five of the Code.

It is important to note at the outset that Sections Seven and Eight of the Code, which deal with Fairness and Privacy, are on a different statutory footing to other sections of the Code. Sections Seven and Eight have been drawn up pursuant to Ofcom's duty under Part 5 of the Broadcasting Act 1996 ("the 1996 Act") to draw up, and from time to time review, a code giving guidance as to the principles to be observed, and practices to be followed, in connection with the avoidance of unjust or unfair treatment in programmes, or unwarranted infringement of privacy in, or in connection with the obtaining of material included in, such programmes (section 107 of the 1996 Act). By contrast, Section Five, and other sections of the Code which set specific standards for the content of television and radio services, are drawn up pursuant to Ofcom's duty under section 319(1) of the Communications Act 2003.

Section 110 of the 1996 Act sets out Ofcom's duty to consider and adjudicate on fairness and privacy complaints whilst section 114 sets out the circumstances in which Ofcom is precluded from entertaining or from proceeding with consideration of a fairness complaint. In particular, subsection (2)(a) of section 110 states that Ofcom must not proceed with the consideration of a complaint if it appears to Ofcom that the matter complained of is the subject of proceedings in a court of law in the United Kingdom. The parties to the legal proceedings are different from the parties to the fairness complaint which has been brought by Syed Anas Pasha against the

broadcaster, Channel S, of which Ahmed-us Samad Chowdhury is the Chairman. By contrast, the legal proceedings are between the individuals in person. Nevertheless, these legal proceedings relate to the allegations made by Syed Anas Pasha in the newspaper articles which are also the subject of Syed Anas Pasha's fairness complaint against Channel S. For this reason, and in accordance with its duty under section 114(2)(a) of the 1996 Act, Ofcom decided to discontinue its consideration of the fairness complaint. This is because we consider that there is a sufficiently strong link between the subject of the proceedings and the issues raised in the fairness complaint that has been made to Ofcom to prevent us from being able to continue with our consideration of the complaint.

Unlike in relation to its consideration of Fairness and Privacy complaints, there is no statutory obligation on Ofcom to cease consideration of a complaint in circumstances such as those set out in section 114(2) of the 1996 Act raising issues under other sections of the Code. This is not to say that Ofcom would be unable to discontinue its consideration of a standards complaint if such circumstances were to arise. In this case, however, Ofcom does not consider that the defamation proceedings preclude Ofcom from deciding whether or not Rule 5.1 has been breached. Rule 5.1 requires broadcasters to ensure that news, in whatever form, is reported with due accuracy<sup>2</sup> and presented with due impartiality. This involves an overall consideration of the material that was broadcast and the context within which it was broadcast.

In this case, there is no question surrounding the subject of the Channel S news reports which might require Ofcom to have determined (in advance of deciding the issue of due impartiality of the news reports) any of the underlying facts that are at issue in the defamation proceedings and Channel S failed to set out to Ofcom's satisfaction that this was the case. Rather, the matter relates to the balance of the reporting by Channel S of Syed Anas Pasha's allegations concerning Ahmed-us Samad Chowdhury as well as Syed Anas Pasha's journalism i.e. whether one side has been unduly favoured over the other. Ofcom rejected Channel S's contention that this required Ofcom to consider, for example, whether it is factually accurate that Channel S twice sought Syed Anas Pasha's views and that he declined to comment. Whether or not Channel S took these measures (and Ofcom has no reason to believe that it did not) this does not prevent Ofcom from assessing whether the news was presented with due impartiality.

For these reasons it was not necessary or appropriate for Ofcom to stop its investigation into the due impartiality issues under Rule 5.1 of the Code raised by these broadcasts.

Second, we noted the Licensee's representations that, in its view, some of the complaints received in this case were duplicated to some degree, and therefore, Ofcom should "very carefully consider both the integrity of the complaints and their motivation and to take the same into account in assessing the merit of the complaints". Ofcom acknowledged that some of the complaints did indeed appear to duplicate each other to some extent. In fulfilling its duties in relation to enforcing broadcast standards, Ofcom does not investigate matters on the basis of broadcast

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<sup>2</sup> In this case, while Ofcom considered that the programmes raised issues under the due impartiality requirement of Rule 5.1, we did not consider that the programmes raised any issues under the due accuracy requirements of that rule. This was because we considered that the news items reported the material facts relating to any allegations made by Syed Anas Pasha with due accuracy.

complaints alone<sup>3</sup>. Complaints are useful because they alert Ofcom to potential issues. Ofcom however only proceeds to a full investigation of broadcast content after carefully assessing programme content as broadcast against the provisions of the Code, and deciding that the content does in fact raise potential issues under the Code.

Third, we noted that the Licensee wished Ofcom to take account of the seriousness of the allegations which Channel S said were made by Syed Anas Pasha, that Ahmed-us Samad Chowdhury was “a supporter of an extremist, Islamic fundamentalist political party”. Ofcom acknowledges that it is a potentially serious matter if a journalist inaccurately reports that an individual in the UK with some public profile in their community is linked with “a *fundamentalist party*”. Whatever the level of seriousness of an allegation, however, presentation of news of that allegation on broadcast television and radio, and news related to that allegation, must be duly impartial.

#### Due impartiality

The requirement in Rule 5.1 that news is presented with due impartiality applies potentially to any issue covered in a news programme where there is more than one viewpoint, and not just matters of political or industrial controversy and matters relating to current public policy. In judging whether due impartiality has been preserved in any particular case, the Code makes clear that the term “due” means adequate or appropriate to the subject matter. Therefore “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of the argument has to be represented. Due impartiality may be preserved in a number of ways and it is an editorial decision for the broadcaster as to how it ensures due impartiality is maintained.

Therefore, in considering the issues raised under Rule 5.1 by this case Ofcom has had regard to how the matter was presented, including whether - and if so, to what extent - differing viewpoints were reflected.

We recognise that this case dealt with three separate news items relating to criticisms of a particular journalist’s reporting of, what the journalist alleged to be, the links of a prominent member of the UK Bangladeshi community, Ahmed-us Samad Chowdhury, to a Bangladeshi political party, the Bangladesh Nationalist Party and to a “*fundamentalist party*”<sup>4</sup>. The Code does not prohibit news from including critical views providing that any views that are included are reported with due accuracy and presented with due impartiality. As stated above, there was no question in this case that the reporting was not duly accurate; the matter relates to the manner in which the criticisms of Syed Anas Pasha that were made were presented.

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<sup>3</sup> Section 1.6 of Ofcom’s *Procedures for investigating breaches of content standards for television and radio* state: “Ofcom may launch investigations on its own initiative as well as investigate complaints” (see <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/june2011/breaches-content-standards.pdf>).

<sup>4</sup> According to correspondence dated 23 May 2011 and written on behalf of Ahmed-us Samad Chowdhury and provided to Ofcom by Channel S this reference appears to be to the “Jamat party” i.e. Jamaat-e-Islami, an Islamic fundamentalist party in Bangladesh.

In assessing whether any particular news item has been presented with due impartiality, we take into account all relevant facts in the case, including: the nature of the coverage; and whether there are varying viewpoints on a news story, and if so how a particular viewpoint, or viewpoints, on a news item could be or are reflected within news programming.

In this case, Ofcom noted that the three programmes in question included news items that focused on newspaper articles written by Syed Anas Pasha in which he was reported to have made various allegations about the activities and ambitions of the Channel S Chairman, Ahmed-us Samad Chowdhury. The Channel S news items included various statements from members of the UK Bangladeshi community which could be construed as being highly critical of Syed Anas Pasha. The allegations were clearly controversial.

We noted that within the first programme, broadcast on 24 May 2011, there was a brief summary of the allegations that Syed Anas Pasha is reported to have made against Ahmed-us Samad Chowdhury:

*"London based journalist Syed Anas Pasha has targeted Channel S chairman and important community personality Ahmed-us Samad Chowdhury JP, reporting that Samad Chowdhury has ordered his supporters to become active as he would like to become the UK president of a party, on a free newspaper published from East London and on an online newspaper. The report contains some very offensive remarks and mentions his link with a fundamentalist party. Furious about this type of careless report Ahmed-us Samad Chowdhury has sent legal notice to Syed Anas Pasha and to the news editor of that newspaper and member of its editorial board".*

This news item then included: a statement by Ahmed-us Samad Chowdhury; and statements by individuals, criticising the reporting of Syed Anas Pasha.

While the first programme, broadcast on 24 May 2011, did to some degree include a summary of the allegations Syed Anas Pasha is reported to have made against Ahmed-us Samad Chowdhury, we noted that the second and third programmes, broadcast on 29 May 2011 and 4 June 2011, did not include a summary of these allegations. Rather, we noted that the second and third programmes, broadcast on 29 May 2011 and 4 June 2011: focused on the legal proceedings that Ahmed-us Samad Chowdhury was reported to be taking against Syed Anas Pasha; and included more statements by individuals criticising the reporting of Syed Anas Pasha.

We also noted that at only two points within the three programmes, in the programmes broadcast on 29 May and 4 June 2011, were there any references (albeit oblique) to the viewpoint of Syed Anas Pasha, in relation to the criticisms being made about him within the programmes.

In the programme broadcast on 29 May 2011, the Channel S reporter concluded the news item by stating:

*"Channel S tried to contact Syed Anas Pasha...but was unable to get any comments".*

In the programme broadcast on 4 June 2011, there was the following statement:

*"Chairman S chairman and important personality Ahmed us Samad Chowdhury JP has sent a notice of £10 million seeking to claim damage for*

*defamation to a reporter and two newspapers for writing and, publishing reports based on fictional information, targeting him. With regards to this, the reporter Syed Anas Pasha has informed that he will reply within the legal process*" [Ofcom emphasis underlined].

Ofcom considered that within the three news bulletins in this case the allegations made by Syed Anas Pasha in relation to Ahmed-us Samad Chowdhury were only briefly summarised in one of the three programmes and that the viewpoint of Syed Anas Pasha to the criticisms being levelled at him were very obliquely and briefly referred to in two of the three programmes. In this context, we noted Channel S's representations that a summary of Syed Anas Pasha's allegations were contained in the broadcast dated 24 May 2011 and that the programmes dated 29 May 2011 and 4 June 2011 were "follow-up broadcasts describing the subsequent events which had developed" and that "Channel S was right to accurately report" the legal proceedings.

While it is an editorial matter for a broadcaster as to how it reports news items, news must be presented with due impartiality in accordance with Rule 5.1. In this case, the great majority of the three news items in question consisted of, variously: Ahmed-us Samad Chowdhury's rebuttal of the allegations made about him by Syed Anas Pasha; descriptions of the legal action that Ahmed-us Samad Chowdhury was reported to be taking against Syed Anas Pasha; and criticisms of Syed Anas Pasha and his journalism by various individuals in interview clips, including by Ahmed-us Samad Chowdhury. For example, Syed Anas Pasha was variously described as having: produced "*yellow journalism... to blackmail people*"; and engaged in "*journalistic misconduct*". Further Ofcom noted that on 24 May 2011 a Channel S reporter referred to Syed Anas Pasha's news articles about Ahmed-us Samad Chowdhury as a "careless report"; and a Channel S journalist on 29 May described Syed Anas Pasha as publishing "tactless and *false news*" against Ahmed-us Samad Chowdhury.

In reaching our decision, we were particularly concerned that the news items in question focused on the views of a person linked to the Licensee, Ahmed-us Samad Chowdhury, the Chairman of Channel S. We considered that the editorial approach taken in the three news items in this case about Syed Anas Pasha suggested that the Channel S television service was being used as a platform on which to put forward, across several programmes, the viewpoint of a person closely linked to the Licensee on a news item which was creating some controversy in the Bangladeshi community.

We noted the Licensee's representations that the "fact that Mr. Chowdhury is the Chairman of Channel S does not disqualify him from giving his views about serious, defamatory allegations". It is the case that Rule 5.1 does not specifically prohibit a broadcast service from including the views of a person linked to a Licensee on a news item<sup>5</sup>. However, it is our view that a broadcaster must take care in such

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<sup>5</sup> Rule 5.4 of the Code by contrast sets out an explicit prohibition that: "Programmes...must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement". In our view, the news in this case did not relate to matter of current public policy. In addition, Ofcom was not aware of any evidence that the alleged reports written by the journalist, Syed Anas Pasha, in relation to Ahmed-us Samad Chowdhury were the subject of debate at, for example, the political level or the media in general. We therefore considered that the programmes in this case were not dealing with a matter of political or industrial controversy or a matter relating to current public policy. Therefore, Rule 5.4 did not apply in this case.

circumstances to ensure that news is presented with due impartiality and that no perception could be created that its editorial independence is compromised in any way.

There is no requirement on broadcasters to provide an alternative viewpoint in all news stories or all issues in the news. All news stories must however be presented with due impartiality: that is with impartiality adequate or appropriate to the subject and nature of the programme and of the individual news items. Presenting news stories with due impartiality in news programmes very much depends on editorial discretion being exercised appropriately in all the circumstances.

We note the following representations made by the Licensee:

- (a) the programmes in question did not breach Rule 5.1 just because various individuals made criticisms about Syed Anas Pasha's journalism;
- (b) in circumstances where many individuals are expressing the same viewpoint on a particular news item then it "is not for the broadcaster to invent a body of differently-held views"; and
- (c) Channel S tried twice to obtain Syed Anas Pasha's comments on the matters being discussed in the programmes "but he refused"; and the "Bangladeshi community knew very well what Mr. Pasha had alleged in the news media, and which was already in the [public] domain".

In line with the broadcaster's and audience's right to freedom of expression, Ofcom underlines that the broadcasting of highly critical comments by particular individuals of others is not, in itself, a breach of Rule 5.1 and the rules on due impartiality. It is an editorial matter for the broadcaster as to how it maintains due impartiality. Ofcom noted that in this case, Channel S said it approached Syed Anas Pasha twice and asked him to comment but he did not respond. However, just because Channel S approached Syed Anas Pasha for his comments and he did not respond did not discharge the Licensee's obligations under Rule 5.1 of the Code. It was, therefore, on the facts of this case, the responsibility of Channel S to find an alternative way of ensuring that these items were presented overall with due impartiality

In this case, Channel S, in broadcasting these news items, where alternative views were not readily available (because Syed Anas Pasha declined to give an interview or give comments), might have considered various alternative editorial techniques for maintaining due impartiality. For example, the Licensee could have: sought alternative viewpoints to counter the criticisms being made about Syed Anas Pasha from individuals associated with Syed Anas Pasha; summarised with due objectivity and in context the allegations being made by Syed Anas Pasha about Ahmed-us Samad Chowdhury more than just once within the various programmes; summarised alternative viewpoints to the criticisms being made about Syed Anas Pasha with due objectivity and in context within a programme, for example, through interviewees expressing alternative views; made clear with greater frequency and prominence that they sought comments from Syed Anas Pasha but none were provided; and/or, ensured that the criticisms being made about Syed Anas Pasha were challenged more critically by presenters and reporters within the programmes. When reporting the news, presenters and reporters employed by the channel must take care that they present the news with due impartiality and maintain the editorial independence of the channel they represent.

Ofcom recognises that it is an editorial matter for the broadcaster as to how it presents news with due impartiality. As the Code makes clear, impartiality means not favouring one side over another. Therefore, for example and depending on the circumstances, the more prominence that is given over a range of news programmes to a particular viewpoint the more a broadcaster is likely to need to ensure greater prominence is given to an alternative viewpoint.

### Conclusion on breach of Rule 5.1

Taking all these factors into consideration, Ofcom concluded that on the facts of this case the news reports did not appropriately balance the criticisms made concerning Syed Anas Pasha's journalism in order to ensure that the news reports in question were presented with due impartiality.

In reaching this decision we have taken particular note that the news stories on Channel S concerned the Chairman of the Licensee and presented almost exclusively his viewpoint on the allegations made by Syed Anas Pasha and the criticisms of Syed Anas Pasha's journalism. We also took account of the Licensee's submissions that the reports related to serious allegations made by Syed Anas Pasha about Ahmed-us Samad Chowdhury and that these are the subject matter of defamation proceedings brought by Ahmed-us Samad Chowdhury against Syed Anas Pasha. Whatever the extent of the truth of any allegations against Ahmed-us Samad Chowdhury, however, Channel S was under an obligation to report the news in relation to these allegations with due accuracy and to present it with due impartiality.

We have taken account of the Licensee's view that Syed Anas Pasha's allegations against Ahmed-us Samad Chowdhury were well known to the UK Bangladeshi community and were a matter of some controversy within that community. However, Ofcom does not consider it was appropriate for Channel S to assume prior knowledge on the part of its viewers about the allegations made against Ahmed-us Samad Chowdhury in order to discharge its duty to ensure the news was presented with due impartiality. The requirement for news to be presented with due impartiality is an objective one which requires an assessment of all the circumstances. In this case, whether or not the UK Bangladeshi community were familiar with the allegations Ofcom considered the nature and degree of the criticisms made concerning Syed Anas Pasha's journalism, were such that Channel S was required to take appropriate editorial steps to ensure due impartiality (i.e. that the news reports did not favour one view over the other). These steps were not taken and accordingly, Ofcom has found the material to be in breach of Rule 5.1 of the Code.

We are concerned that the breach in this case comes after two previous contraventions of the Code rules covering due impartiality and elections recorded against Channel S in Ofcom Broadcast Bulletin 177<sup>6</sup> and Ofcom Broadcast Bulletin 188<sup>7</sup>. Should there be any further breaches of the due impartiality and elections rules of the Code in future by the Licensee, we will consider taking further regulatory action.

### **Breach of Rule 5.1**

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<sup>6</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb177/issue177.pdf>

<sup>7</sup> <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb188/obb188.pdf>

## Fairness and Privacy Cases

### Not Upheld

#### Complaint by Mr Samee Mian on his own behalf and on behalf of Deltaclub Group

*Dispatches: Riding Europe's Gravy Train, Channel 4, 15 November 2010*

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**Summary:** Ofcom has not upheld this complaint of unfair treatment made by Mr Samee Mian on his own behalf and on behalf of Deltaclub Group ("Deltaclub"). It has also not upheld Mr Mian's complaint of unwarranted infringement of privacy.

An edition of Dispatches examined the generous package of salary, expenses and pensions received by Members of the European Parliament ("MEPs"), alleged abuses of the system and "*who was doing well out of Europe*". One section of the programme investigated allegations of fraud in relation to European Union ("EU") grant money and looked at the case of two London businessmen (Mr Mian and Mr Shaukat Nawaz Khan) involved in projects that received various EU grants. One project was a club which was set up to help people from the EU's newer states to start businesses in the UK by providing them with business advice and support.

Following the broadcast of the programme, Mr Mian, who was described as running the project with Mr Khan, complained to Ofcom that he and Deltaclub were treated unjustly or unfairly in the programme as broadcast and that his privacy and that of Deltaclub was unwarrantably infringed in the programme as broadcast.

In summary, Ofcom found the following:

- The programme's reference to Mr Mian and Mr Khan as "*business partners*" was reasonable and there was no suggestion that they were the only two people working on the project. It was also accurate and reasonable for the programme to refer to the request for repayment of over £800,000 due to "*significant issues*". The programme did not accuse Mr Mian of fraud, but fairly reflected the circumstances surrounding the request for repayment of the funding. The commentary made it clear that the training for which the funding had been granted did take place mostly, but not exclusively, at Deltaclub.
- Having approached Mr Joe Lewandowski (a co-founder of the project), Mr Mian and Mr Khan, the programme makers had obtained information from the three main people involved in the running or delivery of the project and it was not incumbent on the programme makers to interview any other parties.
- The use of a photograph of Mr Mian did not result in any unfairness to him.
- Mr Mian was given an appropriate and timely opportunity to respond to the allegations in the programme and the programme's suggestion that he did not respond to the programme makers did not result in any unfairness to him.
- There was no unwarranted infringement of Mr Mian's privacy as a result of the inclusion of photographs of him as the photographs were similar to others in the public domain and did not reveal anything personal about him.

## Introduction

On 15 November 2010, Channel 4 broadcast an edition of its current affairs investigative series *Dispatches*. This edition, entitled *Riding Europe's Gravy Train*, examined the generous package of salary, expenses and pensions received by Members of the European Parliament ("MEPs"), alleged abuses of the system and "*who was doing well out of Europe*", in the context of the global economic downturn and the tightening up of the expenses system in the House of Commons and House of Lords.

One section of the programme investigated allegations of fraud in relation to European Union ("EU") grant money. The reporter, Deborah Davies, said:

*"Last week the EU's auditors produced their annual report and as with almost every year they found serious errors and weaknesses. That means that no one knows exactly where all the money's gone..."*

The programme investigated the case of two London businessmen involved in projects worth over £5 million, which received various EU grants.

Ms Davies said that four years earlier a reputable group of businesses and universities in East London had applied for a European grant and set up a club to help people from the EU's newer states, mainly Eastern Europeans, to start businesses in the UK. Mr Joe Lewandowski, a co-founder of the project, said that the aim was to run courses in local colleges offering business advice and support. Ms Davies said that the project would then have been able to claim over £300,000 in EU grant money, but that not enough people had applied for the courses. She said that this had left Mr Lewandowski two options, namely scrapping the scheme or handing it to someone else and that this was where "*Lord Khan [Mr Shaukat Nawaz Khan] and his business partner, Samee Mian*" came in. Both men had been part of the original consortium that set the scheme up and they took over the running of the scheme. Mr Lewandowski said that this made sense, as they were offering cash to keep the project running and to equip the project office and they were already known to the project. The project was given a European grant.

The reporter said Mr Lewandowski had become suspicious at the way Mr Khan ran the project and his claims that it had quickly become a huge success. Mr Khan claimed that in a period of four months the project had delivered 330 business outputs and run 30 courses, but Mr Lewandowski said that he did not believe that this was possible.

Ms Davies said that most of the training Mr Khan said had taken place had "*supposedly*" been done at Deltaclub, which is part of Deltaclub Group, a group of companies described on its website as providing "solutions for both individuals and businesses to grow". Deltaclub is run by Mr Mian. Ms Davies said that Mr Lewandowski had "bombed" the Government Office for London ("GOL"), the body that administered the European grant, with emails saying that he suspected that training courses had never happened. GOL would not disclose information to Mr Lewandowski as he was no longer part of the project, so he contacted Ms Marta Andreasen, an MEP who he knew was concerned about how EU grants were handed out. The reporter said that Ms Andreasen's office and Mr Lewandowski "*finally discovered that GOL had paid Khan and Mian £232,000*" and that a few weeks later GOL said that they had just asked for the money back "*after finding what they called significant issues with Deltaclub*". The programme reported that GOL had been scrapped and that much of its work had been taken over by a Government

department, which had confirmed that Mr Khan and Mr Mian were also ordered to pay back a second grant as well, amounting to a total of £380,000. The programme then stated that it had also discovered that the names of Mr Khan and Mr Mian were still attached to at least five other projects worth a total of £5 million.

The reporter said "*Khan and Mian didn't reply to a letter, email or phone calls*" and she approached Mr Khan in the street and asked him why he had not paid back the EU grants. Mr Khan said the grants were still under discussion and denied that money should be paid back.

The programme included still photographs of Mr Mian and exterior shots of the Deltaclub offices.

Following the broadcast of the programme, Mr Mian complained to Ofcom that he and Deltaclub were treated unjustly or unfairly in the programme as broadcast and that his privacy and that of Deltaclub was unwarrantably infringed during the making of the programme and in the programme as broadcast.

### **The Complaint and Channel 4's response**

#### Unfair treatment

In summary, Mr Mian complained that he and Deltaclub were treated unjustly or unfairly in the programme as broadcast in that:

- a) The programme included false allegations about Mr Mian and Deltaclub. In particular:
  - i) The programme alleged that Mr Mian and Mr Khan were business partners. This was not true and resulted in the false impression being given that they were the only two people working on the project. In fact Mr Mian and Mr Khan were directors of London East Ethnic Business Association ("LEEBA"), a business representation organisation that had over 200 members at the time of the project and eight directors governing the management of the project. Mr Mian also said that the programme gave the false impression that he and Mr Khan were business partners at Deltaclub.

In response and in summary Channel 4 stated that the reference to Mr Mian and Mr Khan as "*business partners*" was made in the context of explaining that four years earlier, an organisation which was set up to assist the EU's newest member states (mainly East Europeans) start businesses applied for an EU grant. However as explained in the programme, due to there being too few people applying for the courses run by the organisation, Mr Lewandowski had to either scrap the scheme or hand it over to someone else. It was at this point that Mr Mian and Mr Khan were introduced in the programme as "*business partners*" who took over the project's operation.

Channel 4 denied that the programme gave the impression that Mr Mian and Mr Khan were business partners at Deltaclub and said that the reference to them being business partners only related to their relationship at the time of taking over the project. Channel 4 stated that in any event they were business partners on any reasonable interpretation of the phrase. The programme makers had carefully researched the businesses in which Mr Khan and Mr Mian were involved and had confirmed they were company directors of

LEEEBA for almost a decade together. They had also been involved together for over five years in a company called Asian Link Network.

With reference to the complaint that the programme gave the false impression that Mr Mian and Mr Khan were the only two people working on the project, Channel 4 stated that it was made clear in the programme that there were others involved in the project. Channel 4 further stated that, given the issues being explored in the programme, it was not necessary to go into a detailed explanation of the business structure and membership of LEEEBA beyond identifying Mr Mian and Mr Khan. This was because they were the primary individuals involved with taking over the project, with Mr Mian as Director of LEEEBA and Managing Director of Deltaclub (one of the main delivery partners of the project) and Mr Khan as the Chief Executive of the project.

- ii) The programme alleged that Deltaclub had been asked by GOL to repay over £800,000 on three projects due to “*serious issues*”. In fact Deltaclub had not been asked to pay back any money on any of the projects it had delivered.

Mr Mian said that Deltaclub had never directly received European Regional Development Funding (“ERDF”) from GOL as Deltaclub was a private company. Under ERDF regulations, a private company cannot lead an ERDF programme. Mr Mian stated that there were issues with Deltaclub timesheets, but pointed out that Mr Lewandowski had received original copies of these timesheets and had held onto them.

In response and in summary, Channel 4 stated that the programme referred to the GOL’s confirmation that it had identified “significant issues” with Deltaclub’s involvement in the project and had therefore asked for the EU funding to be repaid. Channel 4 said that when the reporter approached Mr Khan for a response regarding the request for repayment of EU funding she was referring specifically to Mr Khan and Mr Mian and not to Deltaclub.

Channel 4 said that with reference to the £800,000 figure that would potentially have to be repaid if Deltaclub was not able to account for funding, the programme makers’ research had revealed that the GOL, the Department for Communities and Local Government and the Skills Funding Agency had all confirmed that they had requested repayments which all together amounted to £818,615.39.

- iii) The programme alleged that Mr Mian and Mr Khan had committed fraud. In fact the government department concerned had not at any time stated that there had been fraud. Mr Mian said that LEEEBA supported 531 East European owned businesses through the project, of which 330 businesses were beneficiaries of the project. He said that the project safeguarded 80 jobs and created 40 new jobs.

Mr Mian said that the allegation in the programme that there were significant issues with Deltaclub came directly after the commentary on fraud in relation to EU projects, therefore highlighting this particular project. Mr Mian stated that Channel 4 had ignored evidence which showed that Mr Lewandowski, the main contributor to the programme, had not passed on the paperwork he received as project manager from Deltaclub and other partners despite several requests.

In response, Channel 4 stated that the programme's references to fraud were generic and were made in the context of the EU auditors' findings. The programme's commentary clearly stated that there are European projects "suspected" of fraud. This commentary was accompanied by generic shots of the interior of the European Parliament. Later the programme introduced a new sequence which refers to Mr Mian and Mr Khan and at this point the visuals changed from generic shots of the European Parliament to footage of a street in East London. Channel 4 said that the programme then went on to explain GOL's specific reason for requesting repayment of the money. The programme did not make any express allegation of fraud but relied on the facts, i.e. the GOL asked for money back "*after finding what they called significant issues with Deltaclub*". Channel 4 said that the programme makers made efforts to separate the EU auditors' findings and the story involving the complainants. Channel 4 added that Mr Mian did not dispute that the request to return the EU funding had been made.

- iv) The programme alleged that training was delivered at Deltaclub premises, when in fact the business support and training were delivered in various community locations, benefiting over 500 East European business people. Mr Mian said that signed registers of the training that took place and the names of attendees were evidence that the training had taken place.

In response and in summary, Channel 4 said that the programme did not suggest that training was only delivered at Deltaclub but that "*most of the training had supposedly been done here – at Deltaclub*". Channel 4 stated that viewers were informed that the initial plan was for the training to be delivered at other premises and shots of these premises were featured in the programme.

b & c)

The programme misrepresented material facts and gave an unrealistic and biased account of the events, as a result of the inclusion of the interview with Mr Lewandowski speaking about what the issues with the project were, when he was the person who had mismanaged the project and led it into difficulties. The programme also failed to interview other representatives of London East Chambers Partnership ("LECP") and LEEBA who were involved with the delivery of the project to get a realistic and unbiased view of the events that occurred during the project's lifetime.

Mr Mian said that the East European Business Club Project ("EEBCP") was originally awarded to LECP, where Mr Lewandowski was chief executive and Mr Mian and Mr Khan were directors. As a result of LECP not being able to deliver the outputs on the project, the board of LECP requested that GOL novate the contract for the project to LEEBA, as they were not happy with how Mr Lewandowski, the initial project manager, had mismanaged the project.

In response, Channel 4 said that the programme makers did not consider it relevant to interview other representatives of the organisations in order to "get a view of events that occurred during the project's lifetime". Channel 4 said that the EU funding concerns raised by the GOL were specifically linked to Deltaclub, which was not involved in the project when Mr Lewandowski was part of it. Channel 4 said that in addition to the information provided by Mr Lewandowski, the programme makers carried out further research to ensure what was being said in the programme was fair and accurate to those concerned.

Channel 4 stated that the purpose of the programme was to investigate how the EU budget was spent and who was benefiting from it, both in the UK and abroad. The sections of the programme that related to Mr Mian examined the issue of misuse of EU funds and conveyed the fact that EU funds were paid to LEEBA for training courses, the running of which had been questioned by various bodies, as referred to in the response at head a) ii) above.

Channel 4 said that, although they and the programme makers were aware of the background and the problems that arose when Mr Lewandowski left the project and Mr Mian and Mr Khan took over, this information was not relevant to the EU funding issue, nor was it relevant to investigate any disagreement between Mr Lewandowski, Mr Khan and Mr Mian.

Channel 4 stated that Mr Lewandowski explained in the programme that, having received a letter from Mr Khan, he had doubts about how LEEBA had successfully completed and delivered the courses after only four months, taking into account the problems they had had in the past. The programme went on to explain how Mr Lewandowski investigated his concerns.

Channel 4 said that the request for the return of EU funds had nothing to do with Mr Lewandowski, who did not pursue any claims for EU funding and did not receive any money for the projects, as EU funding was only granted after he left the project. Channel 4 stated that Mr Lewandowski's management of the project prior to his departure was irrelevant.

Channel 4 also referred to correspondence which formed part of the programme makers' research and which revealed that the GOL had stated that there were "significant issues" with Deltaclub and that repayment of the grant was being requested. Channel 4 said that in addition to the information provided by Mr Lewandowski, the programme makers carried out further research to ensure that what was being said in the programme was accurate and fair to those concerned.

- d) An image of Mr Mian included in the programme had been deliberately distorted and digitally edited.

Channel 4 denied that the photo of Mr Mian had been deliberately distorted or digitally edited and said that it did not differ in any material respect from any images found on Mr Mian's own website and on social and professional networking sites.

- e) Mr Mian was not given an appropriate and timely opportunity to put his views across and respond to the allegations. Mr Mian said that when the reporter telephoned his offices, his son told her that Mr Mian was off sick and asked her to email any questions so that Mr Mian could provide answers and give his side of the story. The reporter however said that this would not be required due to Mr Mian's ill health. However, Channel 4 stated in the programme that Mr Mian refused to respond.

In response, Channel 4 stated that on 26 October 2010 the programme makers wrote to Mr Mian in his capacity as director of LEEBA and as a director of Deltaclub. The letter set out what the programme was about and sought an opportunity to interview him about his involvement in LEEBA, about why the GOL had asked for return of a grant, about what action had been taken to refund the grant and about his involvement in other ongoing EU funded projects. The letter

was emailed to Mr Mian and also sent by courier to the Deltaclub premises. A separate letter was sent to Mr Khan. By Monday, 1 November 2010 the reporter had not received a response and telephoned Mr Mian. The reporter was told that Mr Mian was out at lunch and Mr Khan was in a meeting. The reporter called again the same day and was told that Mr Mian was unwell following a series of strokes he had suffered the previous year. She was also informed that Mr Mian only came into the office occasionally and would not have "cleared" his emails as he could not type. The reporter was informed that the letters that had been sent by courier had arrived. The reporter then asked if the person she spoke to could ensure that Mr Mian saw the letter and tell Mr Khan that she would like to speak to him about the programme. The reporter said that she would call back to ensure Mr Mian had seen the letter and to see whether he wished to comment or not.

Channel 4 said that the reporter denied requesting anyone to ask Mr Khan to respond on his own behalf and on behalf of the complainants. The reporter telephoned Mr Mian's office a number of times later that week but received no response. Channel 4 stated that, taking into account Mr Mian's health, Channel 4 and the programme makers discussed what the most appropriate and reasonable course of action would be. They decided not to pursue Mr Mian further and this ruled out "doorstepping" him. Channel 4 said that a letter had been sent to Mr Mian by two reliable means and had been followed up with a number of phone calls. Mr Mian could therefore have responded if he wished to, but neither he nor any representative for him or Deltaclub had done so.

Channel 4 stated that, following his doorstep interview, Mr Khan had emailed the reporter giving more information. However, the email focused on the issues Mr Khan had with Mr Lewandowski, which Channel 4 said were not relevant to the points made in the programme and the issues the GOL had with the project. Channel 4 said that Mr Khan's response did not purport to be an official response on behalf of Mr Mian or Deltaclub and that it was therefore fair and accurate to state that the programme makers did not receive any response from them.

#### Unwarranted infringement of privacy

Mr Mian also complained that his privacy and that of Deltaclub was unwarrantably infringed in the programme as broadcast in that:

- f) Images of Mr Mian, taken without his consent, were included in the programme without his consent. One of those images was distorted. Mr Mian also stated that the image used in the broadcast was not on any social network site that he was part of.

In response, Channel 4 stated that Mr Mian did not have a legitimate expectation of privacy, as his Mr Mian's identity both in relation to his name and face was in the public domain and easily accessible. His identity and details about his professional work were widely available to the public through his "LinkedIn" profile, Facebook and his company website. Channel 4 said that, given these circumstances, identifying Mr Mian by photographic image in the programme was not an infringement of privacy. Channel 4 said that Mr Mian did not complain that any other information of a private nature had been disclosed.

#### **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 both parties. This included a recording of the programme as broadcast and transcript and both parties' written submissions.

#### Unfair treatment

When considering complaints of 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 Ofcom's Broadcasting Code ("the Code"). Ofcom had regard to this Rule when reaching its decisions on the individual heads of complaint detailed below.

- a) The programme included false allegations about Mr Mian and Deltaclub.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, which states that before broadcasting a 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 an individual or organisation. Ofcom therefore assessed the various ways in which the complainant said the material facts were presented in an unfair manner.

- i) Ofcom first considered the complaint that the programme alleged that Mr Mian and Mr Khan were business partners and resulted in the false impression being given that they were the only two people working on the project. The complaint also alleged that the programme gave the impression that Mr Mian and Mr Khan were business partners at Deltaclub.

Ofcom noted that the programme introduced this section by stating:

*"We've investigated a case of two London businessmen, involved in schemes worth over five million pounds. Four years ago a reputable group of businesses and universities in East London applied for a European grant. They set up a club to help people from the EU's newest member states -mainly East Europeans [to] start businesses here. Joe Lewandowski was a co-founder of the project".*

The programme went on to interview Mr Lewandowski, who said that not enough people applied for the courses. Ofcom also noted the following commentary:

*"He [Mr Lewandowski] had two options - scrap the scheme or hand it over to someone else. That's where these men come in - Shaukat Nawaz Khan - who calls himself Lord Khan - and his business partner Samee Mian. Both were among the original consortium who set the scheme up - now they took over its running".*

Ofcom noted that the programme did refer to Mr Mian and Mr Khan as “*business partners*” and that Mr Mian did not deny that he had a business relationship with Mr Khan. Ofcom also noted that the annual accounts for LEEBA indicated that Mr Khan and Mr Mian were both directors of the company and had been for a number of years. Ofcom considered that this amounted to evidence of an established business relationship. Ofcom also considered that it was clear from the commentary that the term “*business partners*” was being used to describe the relationship at the time the project was handed over by Mr Lewandowski. Further, the programme did not make any reference to Mr Mian and Mr Khan being business partners at Deltaclub. The context in which Deltaclub was mentioned in the programme was when discussing the issue of training for the project. Taking all these factors into account, Ofcom took the view that the description of Mr Mian and Mr Khan as “*business partners*” was accurate and reasonable.

Ofcom then went on to consider whether the programme gave the impression that Mr Mian and Mr Khan were the only two people working on the project. Ofcom noted that the commentary set out above made the point that there was a group of businesses involved in the project but that Mr Mian and Mr Khan were the main people responsible for the running of the project, once it had been handed to them. Therefore in Ofcom’s view the programme did not allege that Mr Mian and Mr Khan were the only people involved in the project.

- ii) Ofcom then considered the complaint that the programme stated that Deltaclub had been asked to repay over £800,000 received on three projects after the GOL had found “*serious issues*”.

Ofcom noted that the programme stated:

*“Lewandowski finally discovered GOL had paid Khan and Mian £232,000. A few weeks later GOL said they’d asked for the money back after finding what they called “significant issues” with Deltaclub...GOL was scrapped in May and much of its work taken over by a government department. They confirmed that Khan and Mian were ordered to repay not just that grant but also a second one - a total of £380,000. We’ve also discovered their names are still attached to at least five other projects worth a total of 5 million pounds”.*

Ofcom acknowledged Mr Mian’s point that Deltaclub, as a private company, was not entitled to any funding. However in Ofcom’s view the above commentary did not state that Deltaclub had been given funding. It was clear from the above commentary that it was Mr Khan and Mr Mian, as members of the “*original consortium who set the scheme up*” and who had taken over running the project from Mr Lewandowski, who were being asked to re-pay the grant and not Deltaclub itself.

Ofcom also considered the following commentary:

*“Unless Deltaclub can justify the money it’s claimed by next month, they’ll be told to repay a third grant. In total they’re supposed to pay back over £800,000”.*

When assessing the commentary, Ofcom considered that by this point in the programme, it was clear to viewers that Deltaclub’s role in the project was to assist in providing the training courses that were funded by the grants.

Therefore, Ofcom considered that most viewers would have understood that requests for repayments were being made to Mr Khan and Mr Mian, as the recipients of the funding, rather than Deltaclub. Ofcom considered that the programme accurately reflected the letters that the programme makers received from the GOL and the Department for Communities and Local Government, which confirmed that issues had been raised over two grants which amounted to £380,000 as stated in the programme. Also with reference to Deltaclub, the programme makers had received a letter from the Skills Funding Agency which explained that it had a contract with Deltaclub, worth £435,980 to “deliver Train to Gain activity”, which may be subject to repayment as a result of an audit.

In these circumstances Ofcom considered it was accurate and reasonable for the programme to refer to the request for repayment of over £800,000 due to “*significant issues*”.

- iii) Ofcom considered next the complaint that the programme alleged that Mr Mian and Mr Khan had committed fraud.

The following commentary was included in the programme:

*“Last week the European Union’s auditors produced their annual report. And as with almost every year they found serious errors and weaknesses. That means no one knows exactly where all the money’s gone... The previous year almost five hundred million pounds went to European projects later suspected of fraud. And 28 million pounds of that went on grants in the UK”.*

Ofcom considered that the purpose of the programme as a whole was to investigate how the current EU budget is being spent; either through generous expenses to MEP’s or through grants, which the section of the programme complained about focused on. Ofcom noted that this section of the programme was introduced with a reference to the fact that a substantial amount of money went to projects “*later suspected of fraud*”. The programme then introduced “*the case of two London businessmen involved in schemes worth over five million pounds*”. Ofcom also noted that this part of the programme referred to Mr Lewandowski’s “*suspicions*” about the running of the project and Mr Khan’s previous criminal conviction for “*forging cheques and stealing money meant for the community groups*”.

Ofcom noted that the programme makers provided material that demonstrated that they had received confirmation from the GOL that the GOL were seeking to recover repayment of the grant due to “*significant issues*” with Deltaclub. Ofcom therefore considered that the programme makers had received evidence from a reliable source that repayment of the grant was being requested. Ofcom also noted that other than stating there were “*significant issues*”, the reasons why repayment was being sought were not made clear in the programme. In Ofcom’s view, the programme did not state that Mr Mian had committed fraud.

Given the general reference to “*fraud*” and to the fact that GOL had requested “*repayment*” of the grants, Ofcom considered that some viewers may have concluded that the repayment was requested due to impropriety on the part of Mr Mian and/or Mr Khan. However, given the confirmation from GOL that there were “*significant issues*” that led to the request for repayment and a

letter from the Skills Funding Agency which stated that an audit performed by them considered the use of funding at Delta Club to be “unsatisfactory”, Ofcom concluded that the programme, while not accusing Mr Mian of fraud, fairly reflected the circumstances surrounding the request for repayment of the funding.

- iv) Ofcom considered the complaint that the programme alleged that training was delivered at Deltaclub premises, when in fact the business support and training were delivered in various community locations, benefiting over 500 East European business people.

Ofcom noted that the programme stated that “*The plan was to run courses in local colleges, like this one*”, which was accompanied by a shot of the exterior of a college called “Barclay Hall”. Ofcom also observed that later in the programme the reporter explained that “*most of the training had supposedly been done here - at Deltaclub - run by Samee Mian*”. This was accompanied by a shot of the outside of Deltaclub.

Mr Mian complained that the programme alleged that training was delivered only at Deltaclub. However, Ofcom considered that the above commentary made it clear that the training for which the funding had been granted took place mostly, but not exclusively, at Deltaclub.

Ofcom therefore found no unfairness to Mr Mian or Deltaclub in respect of head a) of the complaint (i.e. each of i) to iv) above).

b) & c)

Ofcom considered heads b) and c) of the complaint together as both raised similar issues in relation to the reliability of a one contributor, Mr Lewandowski.

Ofcom first assessed the complaint that the programme gave an unrealistic and biased account of events. This was because it: included an interview with Mr Lewandowski in relation to what the issues with the project were, when he was the person who had mismanaged the project and led it into difficulties; but failed to interview other representatives of LECP and LEEBA that were involved with the delivery of the project, to get a realistic and unbiased view of the events that occurred during the project’s lifetime.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom noted the following section in the programme:

Commentary: “*Without knowing his past, Lewandowski quickly became suspicious of the way Khan was running things now. After taking over the struggling project, Khan claimed it quickly became a huge success*”.

Mr Lewandowski: “*We got a thank you letter saying how the project had gone really well, it was successful and that they succeeded in delivering 330 business outputs and ah, 30 courses from the time that they'd taken over the project at the end of November through to the end of March 2008*”.

Reporter:            "*So in four months...?*"

Mr Lewandowski: "*In four months they had suddenly delivered all the outputs and it just wasn't doable. I couldn't believe that in three and a half months when you knock out Christmas that all the work could have been done and within, given the problems that we'd had in the past.*"

In Ofcom's view, the above commentary suggested that Mr Lewandowski's opinion was that the issues with the running of the project only became apparent after Mr Mian and Mr Khan became involved and that this was because training did not happen as they claimed. This was further highlighted later in the programme when the reporter stated that Mr Lewandowski had:

*"...bombed GOL with emails saying he suspected the training courses Khan and Mian claimed for had never happened. But GOL wouldn't tell him anything because he wasn't part of the project any more".*

Ofcom noted Mr Mian's submissions that there had been issues with Mr Lewandowski's management of the project and that he had not handed over paperwork which was being requested by the GOL, and that there was no mention of this in the programme. Ofcom recognised the potential for unfairness to Mr Mian and Deltaclub in suggesting problems experienced by the project were solely the responsibility of Mr Khan and Mr Mian and omitting references to concerns about Mr Lewandowski's management of the project.

Ofcom recognises that programme makers and broadcasters are entitled to exercise their editorial discretion and legitimately select what material to include in a programme, provided that in exercising this discretion they do not cause unfairness to an individual or organisation. Therefore, Ofcom went on to consider what steps were taken by the programme makers to avoid unfairness, and the information they had available to them at the time.

Channel 4 provided Ofcom with letters that the programme makers had seen during their research. One letter, from the GOL to Mr Lewandowski and dated 6 November 2009, stated:

*"I can confirm that following our visit we have written to LEEBA explaining that the audit identified significant issues on the match funding provided by Deltaclub in the form of staff activities".*

An email from the Skills Funding Agency, dated 11 November 2010, stated:

*"The Skills Funding Agency currently has an ESF funded contract with Delta Club to deliver Train to Gain activity. An audit performed by Agency staff in July 2010 considered the use of ESF funding at this provider to be unsatisfactory, The Agency has asked Delta Club to carry out a 100 percent check of all its funded provision and report back to the Agency by early December. Once the 100 percent check is complete, the Agency's staff will carry out a follow up visit to verify the results of the internal check. The Agency will require Delta Club to repay funds associated with any errors arising through this process".*

A letter from the Department for Communities and Local Government to the reporter, dated 26 October 2010, stated:

"In April 2006, an ERDF contract was awarded to East European Business Club. The project's main aim was to provide support for people setting up businesses in deprived areas of London. The ERDF grant was £232,695.

An inspection visit was conducted by the former Government Office for London in autumn 2009. The visit found that the organisation could not provide records of its expenditure as required by the European Regulations. As a result repayment of the full ERDF grant was demanded.

A further inspection visit was undertaken to another ERDF project run by the same organisation. This showed similar weaknesses and repayment of the ERDF grant demanded. This organisation did not receive any other funding from ERDF 2000-2006 Programme in London".

Ofcom considered that these letters confirmed that LEEBA was asked to repay the grants because it was not able to provide evidence of expenditure in relation to the project. Ofcom noted that the programme reflected this by stating that the GOL had asked for repayment of the fund "*due to significant issues with Deltaclub*". Ofcom also considered that, because of Mr Lewandowski's reference to his suspicions that training did not take place, viewers may have concluded that the repayment was being requested because training had not in fact taken place and that was the reason why the relevant documentation could not be provided. However, Ofcom also acknowledged that, later in the programme, Mr Khan stated that training had taken place and therefore viewers would have been able to form their own opinion on this point.

Ofcom noted Mr Mian's complaint that Mr Lewandowski was biased and misrepresented what actually happened, and that the programme makers did not interview any representatives of LECP and LEEBA who were involved with the delivery of the project to obtain their version of events relating to the project. Ofcom took into account Channel 4's submission that, while the programme makers were aware of a "fall out" between Mr Lewandowski and Mr Mian and Mr Khan, it was not material to the matters being discussed in the programme - namely that repayment of funding given to the project had been requested. Ofcom noted that in addition to Mr Lewandowski voicing his suspicions on the programme, the programme makers had sought information from the relevant bodies to satisfy themselves that there was evidence to support the various issues raised by Mr Lewandowski. Ofcom also had regard to the facts that it would have been clear to viewers that Mr Lewandowski held strong views on the subject; and that (having approached Mr Lewandowski, Mr Mian and Mr Khan about the issues) the programme makers had obtained or attempted to obtain information from the three main people involved in the running or delivery of the project.

Taking all the above factors into account, Ofcom considered that it was not incumbent on the programme makers to interview any other parties to ensure that material facts were presented in a way that was fair to Mr Mian or Deltaclub.

Ofcom therefore found no unfairness to Mr Mian and Deltaclub in relation to heads b) and c) of the complaint.

- d) Ofcom considered the complaint that an image of Mr Mian which was included in the programme had been deliberately distorted and digitally edited.

In considering this part of the complaint, Ofcom had regard to Practice 7.9 of the Code, as set out under decision head a) above.

Ofcom recognised that there was a dispute between the parties as to whether the image referred to had been deliberately distorted and digitally edited. On the information available, it was not possible for Ofcom to reach a conclusion on this point. In any event, it is not Ofcom's role to establish whether or not the image had been edited as Mr Mian complained but rather to determine whether the programme makers took reasonable care not to present, disregard or omit material facts in a way that was unfair to him.

Ofcom noted that there were two images of Mr Mian which appeared in the programme. Both images were shots of Mr Mian's head. These images were shown in the programme briefly, did not appear to be extraordinary or unusual in any way and were included merely to identify him to viewers. Ofcom also considered that the photographs did not appear to differ materially from pictures of Mr Mian on his website.

Taking these factors into account, Ofcom was satisfied that the programme makers had taken reasonable care not to present, disregard or omit material facts in a way that was unfair to Mr Mian.

Ofcom therefore found no unfairness to Mr Mian in this respect.

- e) Ofcom considered the complaint that Mr Mian was not given an appropriate and timely opportunity to respond to allegations. Mr Mian said that when the reporter telephoned his offices, his son told her that Mr Mian was off sick and asked her to email any questions so that Mr Mian could provide answers and give his side of the story. Mr Mian went on to complain that the reporter told Mr Mian's son that, because of Mr Mian's health, she would not pursue speaking with him and asked him to ask Mr Khan to respond to her email. The reporter later confirmed receipt of Mr Khan's email but, despite her informing Mr Khan that all relevant material he had supplied would be fairly reflected in the programme, she said in the programme that Mr Mian and Deltaclub "had refused to comment".

In considering this part of the complaint, Ofcom had regard to Practice 7.11 of the Code, 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 noted the following commentary in the programme:

*"Khan and Mian didn't reply to a letter, email or phone calls, so we approached Khan directly".*

Ofcom observed from the above commentary that the programme did not say, as stated in Mr Mian's complaint, that Mr Mian had "refused to comment" but that Mr Mian "*didn't reply...*". Directly following the above comment, the reporter was shown approaching Mr Khan and addressing questions to him. Ofcom noted that Mr Khan sent an email providing more information to the reporter following the doorstep interview and that Mr Mian did not dispute that he did not respond to the programme makers.

Ofcom noted that the programme alleged impropriety on the part of Mr Mian (as outlined in subhead iii) of the Provisional Decision). In Ofcom's view this amounted to a serious allegation about Mr Mian and Deltaclub.

In these circumstances, it was incumbent on the programme makers to give Mr Mian an appropriate and timely opportunity to respond. Ofcom noted that the programme makers sent a letter dated 26 October 2010 to Mr Mian, by post and email, 20 days before the programme was broadcast. The letter requested an interview with Mr Mian, outlined the allegations that were going to be made in the programme and referred to the date of the intended broadcast. Ofcom noted that there was a disparity between the parties' accounts as to whom the reporter had contacted, how many times the reporter had followed up with Mr Mian directly and what was said by the reporter. However, as referred to under decision head d) above, Ofcom's role is not to resolve conflicts of evidence as to the nature or accuracy of particular accounts of events but to adjudicate on whether Mr Mian had been treated unfairly in the programme as broadcast.

Ofcom took into account the fact that the programme makers wrote to Mr Mian asking him to comment nearly three weeks before the broadcast and, as acknowledged by both parties, attempted to follow up with phone calls when they had not received a response. Taking these factors into consideration, Ofcom considered that the programme makers had given Mr Mian an appropriate and timely opportunity to respond to the allegations made in the programme.

Ofcom concluded that the comment in the programme that Mr Mian "*didn't reply*", was factually correct because the programme makers did not receive a response from him. The programme makers were aware that Mr Mian had been ill and this was likely to have impeded his ability to respond, and this in turn resulted in the programme makers taking the decision not to doorstep Mr Mian.

Taking into account the factors above, Ofcom considered that, the programme makers provided Mr Mian with an appropriate and timely opportunity to respond to the allegations in the programme; and in stating that Mr Mian did not reply to a letter, email or phone calls, the programme makers had accurately stated the position.

Ofcom therefore did not consider that Mr Mian was treated unfairly in the programme as broadcast.

#### Unwarranted infringement of privacy

In Ofcom's view, the individual's right to privacy has to be balanced against the competing rights of the broadcasters to freedom of expression. Neither right as such has precedence over the other and where there is a conflict between the two, it is necessary to focus intensely on the comparative importance of the specific rights. Any justification for interfering with or restricting each right must be taken into account and any interference or restriction must be proportionate.

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

- f) Ofcom considered the complaint that two images of Mr Mian were included in the programme without his consent. Mr Mian also complained that one of the two

images was distorted. Mr Mian also stated that one image used in the broadcast was not on any social network site that he was part of.

Ofcom took into consideration Rule 8.6 of the Code which states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom's finding on the complaint that a photograph of Mr Mian shown in the programme was distorted is set out at decision head d) above.

Ofcom first considered the extent to which Mr Mian had a legitimate expectation that a photograph of him would not be broadcast in the programme.

Ofcom noted that two photographs of Mr Mian in a suit were shown in the programme. One appeared to be similar to the photograph Mr Mian used on his "LinkedIn" profile. The other photograph was a headshot of Mr Mian in a suit. Although Ofcom could not conclusively determine where Channel 4 had obtained the photographs that were broadcast, it considered that the images were similar to those published on Mr Mian's "LinkedIn" profile and Facebook page. In addition, Ofcom also noted that the photographs in question did not reveal anything personal about Mr Mian. Taking into account the fact that similar images of Mr Mian were available in the public domain and the fact that there was nothing inherently private about the photographs themselves, Ofcom considered that Mr Mian did not have a legitimate expectation of privacy in relation to the photographs which were broadcast in the programme.

Having taken account of these factors, Ofcom did not go on to consider whether Mr Mian's consent was required and whether any infringement of Mr Mian's privacy was warranted.

Ofcom therefore found no unwarranted infringement of Mr Mian's or Deltaclub's privacy in the broadcast of the programme.

**Accordingly, Ofcom has not upheld Mr Mian's complaint of unfair treatment and of unwarranted infringement of privacy in the broadcast of the programme.**

## Other Programmes Not in Breach

Up to 12 March 2012

Programme	Broadcaster	Transmission Date	Categories
Celebrity Big Brother's Bit on the Side	Channel 5	24/01/2012	Drugs, smoking, solvents or alcohol
Storm Night	Storm	23/01/2012	Participation TV - Other

## Complaints Assessed, Not Investigated

Between 28 February and 12 March 2012

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
606	BBC Radio 5 Live	25/02/2012	Generally accepted standards	1
10 O'Clock Live	Channel 4	29/02/2012	Generally accepted standards	3
10 O'Clock Live	Channel 4	07/03/2012	Religious/Beliefs discrimination/offence	4
4oD smartphones promotion	Channel 4	29/02/2012	Materially misleading	1
4oD smartphones promotion	Channel 4	01/03/2012	Materially misleading	1
4oD smartphones promotion	E4	24/02/2012	Materially misleading	1
4thought.tv	Channel 4	20/02/2012	Sexual orientation discrimination/offence	1
4thought.tv	Channel 4	22/02/2012	Religious/Beliefs discrimination/offence	1
4thought.tv	Channel 4	23/02/2012	Religious/Beliefs discrimination/offence	1
5 News at 5	Channel 5	08/03/2012	Generally accepted standards	1
A Girl's Guide to 21st Century Sex	5*	24/02/2012	Sexual material	1
A Girl's Guide to 21st Century Sex	5*	n/a	Gender discrimination/offence	1
A Room with a View	Channel 4	08/03/2012	Nudity	4
According to Jim	Channel 4	08/03/2012	Violence and dangerous behaviour	1
Advertisement for the Daily Express	Channel 5	23/02/2012	Political advertising	1
Aircrash Confidential (trailer)	Discovery	n/a	Generally accepted standards	1
Alex Polizzi: The Fixer	BBC 2	14/02/2012	Offensive language	1
All Star Family Fortunes	ITV1	25/02/2012	Outside of remit / other	1
American Hoggers	Bio	02/03/2012	Animal welfare	1
Antiques Roadshow promotion	Yesterday	28/02/2012	Race discrimination/offence	1
ARY World	ARY	n/a	Generally accepted standards	1
BBC News at Six	BBC 1	01/03/2012	Generally accepted standards	2
BBC News at Ten	BBC 1	01/03/2012	Generally accepted standards	2
Benidorm	ITV1	24/02/2012	Generally accepted standards	1
Big Breakfast	Heart FM (West Midlands)	n/a	Competitions	1
Big Fat Gypsy Weddings	Channel 4	25/02/2012	Animal welfare	1

Big Fat Gypsy Weddings	Channel 4	25/02/2012	Generally accepted standards	1
Big Fat Gypsy Weddings	Channel 4	28/02/2012	Animal welfare	6
Big Fat Gypsy Weddings	Channel 4	28/02/2012	Race discrimination/offence	1
Big Fat Gypsy Weddings	Channel 4	03/03/2012	Animal welfare	1
Big Fat Gypsy Weddings	Channel 4	06/03/2012	Animal welfare	7
Big Fat Gypsy Weddings	Channel 4	06/03/2012	Generally accepted standards	3
Big Fat Gypsy Weddings	Channel 4	10/03/2012	Offensive language	1
Brainiac: Science Abuse	Pick TV	07/03/2012	Gender discrimination/offence	1
Celebrity Juice	ITV1	21/01/2012	Sexual material	1
Channel 1 News	Channel 1	14/02/2012	Promotion of products/services	1
Charity appeal	Noor TV	07/01/2012	Charity appeals	1
Charley Boorman's Extreme Frontiers	Channel 5	12/12/2011	Offensive language	1
Christian O'Connell Breakfast Show	Absolute Radio	05/03/2012	Generally accepted standards	1
Clare in the Community	BBC Radio 4	16/02/2012	Sexual material	1
Come Dine with Me	Channel 4	21/02/2012	Sexual material	1
Competition	MTV	n/a	Competitions	1
Coppers	Channel 4	27/02/2012	Animal welfare	7
Coronation Street	ITV1	23/02/2012	Harm	1
Coronation Street	ITV1	27/02/2012	Generally accepted standards	2
Coronation Street	ITV1	05/03/2012	Drugs, smoking, solvents or alcohol	1
Coronation Street (trailer)	ITV1	05/03/2012	Generally accepted standards	1
Countdown	Channel 4	24/02/2012	Due impartiality/bias	1
Countdown	Channel 4	08/03/2012	Generally accepted standards	1
Dancing on Ice	ITV1	26/02/2012	Generally accepted standards	1
Dancing on Ice	ITV1	26/02/2012	Violence and dangerous behaviour	1
Dancing on Ice	ITV1	04/03/2012	Outside of remit / other	1
Dancing on Ice	ITV1	04/03/2012	Sexual material	3
Dancing on Ice	ITV1	11/03/2012	Generally accepted standards	1
Dermot O'Leary	BBC Radio 2	18/02/2012	Sexual orientation discrimination/offence	1
Dickinson's Real Deal	ITV1	21/02/2012	Competitions	1
Doctors	BBC 1	13/02/2012	Scheduling	1
Downtown Breakfast	Downtown Radio	27/02/2012	Generally accepted standards	1
EastEnders	BBC 1	20/02/2012	Race discrimination/offence	1
EastEnders	BBC 1	01/03/2012	Outside of remit / other	1
EastEnders	BBC 1	08/03/2012	Gender	1

			discrimination/offence	
Eastenders	BBC1	n/a	Generally accepted standards	1
EastEnders (trailer)	BBC 1	12/03/2012	Outside of remit / other	1
Ei Jonopade	Bangla TV	16/01/2012	Due impartiality/bias	1
Embarrassing Bodies	Channel 4	05/03/2012	Generally accepted standards	1
Emmerdale	ITV1	n/a	Drugs, smoking, solvents or alcohol	1
Emmerdale	ITV1	13/02/2012	Generally accepted standards	2
Emmerdale	ITV1	29/02/2012	Offensive language	1
Emmerdale	ITV1	05/03/2012	Sexual orientation discrimination/offence	17
Emmerdale	ITV1	08/03/2012	Violence and dangerous behaviour	1
Fighting Talk	BBC Radio 5 Live	03/03/2012	Generally accepted standards	1
Film4 promotion	Channel 4	n/a	Sexual material	1
Ford Football Special Newcastle v QPR	Sky Sports 1	15/01/2012	Offensive language	1
Formula 1	Sky Sports	n/a	Outside of remit / other	1
Formula 1	Sky Sports	01/03/2012	Outside of remit / other	1
Foyle's War	ITV3	04/03/2012	Advertising scheduling	1
Programming	BBC Radio 4 Extra	n/a	Scheduling	1
Geordie Shore	MTV	21/02/2012	Generally accepted standards	2
Goals on Sunday	Sky Sports 1	26/02/2012	Generally accepted standards	1
Got to Dance	Sky2	25/02/2012	Competitions	1
Great British Railway Journeys	BBC 4	05/03/2012	Outside of remit / other	1
Greigys at Breakfast	Northsound 1	23/02/2012	Due impartiality/bias	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	08/02/2012	Generally accepted standards	1
Halfords' sponsorship of Happy Motoring on Dave	Dave	24/02/2012	Generally accepted standards	1
Han: The Price of Freedom	Community Channel	19/02/2012	Violence and dangerous behaviour	1
Harry Hill's TV Burp	ITV1	18/02/2012	Violence and dangerous behaviour	1
Harveys's sponsorship of Coronation Street	ITV1	n/a	Gender discrimination/offence	2
Harveys's sponsorship of Coronation Street	ITV1	n/a	Generally accepted standards	6
Hollyoaks	Channel 4	01/03/2012	Sexual orientation discrimination/offence	1
Home and Away	Channel 5	n/a	Sexual material	1
Homeland	Channel 4	26/02/2012	Offensive language	2
HR Comedy By Nigel Williams	BBC Radio 4	22/02/2012	Generally accepted standards	1
Hush	Film 4	07/03/2012	Offensive language	1

I'm in a Boy Band!	BBC 2	26/02/2012	Scheduling	1
I'm in a Girl Group!	BBC 2	04/03/2012	Offensive language	1
Inspector Morse	ITV3	01/03/2012	Advertising minutage	1
International Football Highlights	ITV1	29/02/2012	Generally accepted standards	1
International Twenty20 Cricket	Sky Sports 1	23/02/2012	Offensive language	1
International Twenty20 Cricket	Sky Sports 1	27/02/2012	Generally accepted standards	1
IRT Deadliest Roads	History	23/02/2012	Generally accepted standards	1
Isme.com's sponsorship of Loose Women	ITV1	02/03/2012	Generally accepted standards	1
Isme.com's sponsorship of Loose Women	ITV1	08/03/2012	Generally accepted standards	1
ITN News	ITV1	05/03/2012	Outside of remit / other	1
ITV News and Weather	ITV1	06/03/2012	Due accuracy	1
ITV News at Ten and Weather	ITV1	24/02/2012	Generally accepted standards	1
ITV Player promotion	ITV4	10/02/2012	Materially misleading	1
Jack FM	Jack FM Oxfordshire	06/03/2012	Generally accepted standards	1
James O'Brien	LBC 97.3FM	06/03/2012	Disability discrimination/offence	1
Jonotar Moncho	Bangla TV	11/01/2012	Due impartiality/bias	1
Joop Homme's sponsorship of Body of Proof	Alibi	n/a	Race discrimination/offence	1
Junior Doctors: Your Life in Their Hands	BBC 3	01/03/2012	Offensive language	1
Keith Allen Meets Nick Griffin	Channel 4	05/03/2012	Generally accepted standards	1
Keith Allen Meets Nick Griffin	Channel 4	06/03/2012	Sexual orientation discrimination/offence	5
Kick the Mould Out	105.9 Bishop FM	23/02/2012	Generally accepted standards	1
Kundli Aur Kismat/Future & Fortune	Sunrise TV	08/02/2012	Advertising/editorial distinction	1
Let's Dance for Sport Relief	BBC 1	25/02/2012	Offensive language	3
Let's Dance for Sport Relief	BBC 1	25/02/2012	Scheduling	10
Let's Dance for Sport Relief	BBC 1	03/03/2012	Outside of remit / other	1
Let's Dance for Sport Relief	BBC 1	10/03/2012	Generally accepted standards	1
Loose Women	ITV1	17/02/2012	Gender discrimination/offence	1
Loose Women	ITV1	23/02/2012	Due impartiality/bias	52
Loose Women	ITV1	02/03/2012	Gender discrimination/offence	1
Lorraine	ITV1	01/03/2012	Offensive language	1
Macleans' sponsorship of Dancing on Ice	ITV1	n/a	Harm	1
Magnum Mini's	ITV1	27/02/2012	Sponsorship credits	1

sponsorship of ITV Mystery Dramas				
Magnum Mini's sponsorship of ITV Mystery Dramas	ITV1	n/a	Sponsorship credits	1
Make Bradford British	Channel 4	01/03/2012	Race discrimination/offence	2
Make Bradford British	Channel 4	01/03/2012	Religious/Beliefs discrimination/offence	1
Make Bradford British	Channel 4	01/03/2012	Generally accepted standards	1
Make Bradford British	Channel 4	08/03/2012	Race discrimination/offence	1
Make Bradford British (trailer)	Channel 4	29/02/2012	Offensive language	1
Men In Black	Comedy Central	19/02/2012	Hypnotic and other techniques	1
Metro in the Mornings	Metro Radio	28/02/2012	Crime	1
Mr and Mrs Smith	BBC Radio 4	14/02/2012	Sexual material	1
My Dad is a Woman (trailer)	ITV1	29/02/2012	Scheduling	1
Naughty Naughty Pets	CITV	19/02/2012	Sexual material	1
Nazi Titanic	Channel 5	06/03/2012	Suicide and self harm	1
Never Mind the Buzzcocks	BBC 2	06/03/2012	Race discrimination/offence	1
News Review	DM Digital	21/01/2012	Generally accepted standards	2
News, Sport and Weather	Sky News	21/02/2012	Race discrimination/offence	1
Official Top 10	Viva	07/02/2012	Nudity	1
One Born Every Minute	Channel 4	29/02/2012	Materially misleading	1
Paralympic Swimming Trials	BBC Interactive Red Button (Channel 301 on Freeview)	04/03/2012	Disability discrimination/offence	1
Party Paramedics	Channel 4	23/01/2012	Materially misleading	1
Party Paramedics	4OD service	n/a	Outside of remit / other	1
Pedigree Dogs Exposed	BBC 4	27/02/2012	Outside of remit / other	1
PM	BBC Radio 4	22/02/2012	Generally accepted standards	1
Postcode Lottery	BBC 1	05/03/2012	Outside of remit / other	1
Proud and Prejudiced	Channel 4	27/02/2012	Race discrimination/offence	1
Proud and Prejudiced	Channel 4	27/02/2012	Generally accepted standards	1
Psychic TV	Psychic TV	n/a	Participation TV - Misleadingness	1
Question Time	BBC 1	23/02/2012	Generally accepted standards	1
Question Time	BBC 1	01/03/2012	Generally accepted standards	3
Regional News and Weather	BBC 1	20/02/2012	Outside of remit / other	1
Regional News and Weather	BBC 1	01/03/2012	Outside of remit / other	1

Regional News and Weather	BBC 1	07/03/2012	Outside of remit / other	1
Royal Marines: Mission Afghanistan	Channel 5	05/03/2012	Offensive language	1
Russell Howard's Good News	BBC 3	24/02/2012	Sexual orientation discrimination/offence	1
Saturday Kitchen	BBC 1	10/03/2012	Race discrimination/offence	1
Saturday Kitchen	BBC 1	10/03/2012	Race discrimination/offence / Scheduling	1
Save The Children Ad	Smooth Radio	14/02/2012	Political advertising	1
Simon Bates at Breakfast	Smooth Radio	01/03/2012	Transgender discrimination/offence	1
Six Nations Rugby Union	BBC 1	04/02/2012	Religious/Beliefs discrimination/offence	1
Six Nations Rugby Union	BBC 2	26/02/2012	Generally accepted standards	1
Skins	E4	05/03/2012	Sexual material	1
Sky & BBC News - Oscar Features	Sky News / BBC News	n/a	Disability discrimination/offence	1
Sky News	Sky News	29/02/2012	Due impartiality/bias	1
Splash	BBC 2	17/12/2011	Nudity	1
SpongeBob SquarePants	Nickelodeon	02/03/2012	Offensive language	1
Steve Berry	Talksport	26/02/2012	Generally accepted standards	1
Storm TV	Storm	17/02/2012	Participation TV - Protection of under 18s	1
Sun, Sea and A&E	Pick TV	07/03/2012	Offensive language	1
Take Me Out	ITV1	02/03/2012	Materially misleading	1
The Agency (trailer)	CBS Action	20/02/2012	Offensive language	1
The Bank Job	Channel 4	02/03/2012	Offensive language	2
The Bank Job	Channel 4	10/03/2012	Materially misleading	1
The Big Bang Theory	E4	n/a	Sexual material	1
The Big Questions	BBC 1	04/03/2012	Fairness	1
The Business Show	Hope FM (Bournemouth)	13/02/2012	Commercial communications on radio	1
The Chairman's Interview	Yorkshire Radio	29/02/2012	Generally accepted standards	2
The Chase	ITV1	22/02/2012	Competitions	1
The Chase	ITV1	02/03/2012	Competitions	1
The Chase	ITV1	09/03/2012	Generally accepted standards	1
The Chris Moyles Show	BBC Radio 1	22/02/2012	Generally accepted standards	2
The Da Vinci Code	Channel 5	04/03/2012	Scheduling	1
The Da Vinci Shroud - Revealed	Channel 5	01/03/2012	Violence and dangerous behaviour	1
The Fresh Prince of Bel Air	n/a	n/a	Sexual material	1
The Jonathan Ross Show	ITV1	10/03/2012	Generally accepted standards	1

The Mad Bad Ad Show	Channel 4	22/02/2012	Race discrimination/offence	1
The Mad Bad Ad Show	Channel 4	02/03/2012	Generally accepted standards	1
The Matt Edmondson Show	BBC Radio 1	22/02/2012	Generally accepted standards	1
The National Lottery Friday Night Draws	BBC 1	24/02/2012	Drugs, smoking, solvents or alcohol	1
The One Show	BBC 1	08/03/2012	Generally accepted standards	1
The Only Way is Essex	ITV2	19/02/2012	Gender discrimination/offence	1
The Only Way is Essex	ITV2	26/02/2012	Crime	1
The Only Way is Essex	ITV2	26/02/2012	Violence and dangerous behaviour	1
The Real Radio Football Phone-In	Real Radio Scotland	05/03/2012	Generally accepted standards	1
The Week with George Galloway	Talksport	17/02/2012	Race discrimination/offence	1
The West Country Tonight	ITV1 West Country	28/02/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	08/02/2012	Race discrimination/offence	1
The Wright Stuff	Channel 5	02/03/2012	Generally accepted standards	1
The Wright Stuff	Channel 5	05/03/2012	Due impartiality/bias	1
This Morning	ITV1 Granada	23/02/2012	Generally accepted standards	1
This Morning	ITV1	21/02/2012	Generally accepted standards	18
This Morning	ITV1	06/03/2012	Generally accepted standards	1
This Week	BBC 1	09/03/2012	Religious/Beliefs discrimination/offence	1
This Week's Fresh Music Top 20	4 Music	02/03/2012	Nudity	1
Those Who Kill (trailer)	ITV3	19/02/2012	Generally accepted standards	1
Those Who Kill (trailer)	ITV3	22/02/2012	Generally accepted standards	1
Those Who Kill (trailer)	ITV3	22/02/2012	Hypnotic and other techniques	2
Those Who Kill (trailer)	ITV3	05/03/2012	Hypnotic and other techniques	1
Those Who Kill (trailer)	ITV3	n/a	Hypnotic and other techniques	2
Today	BBC Radio 4	09/03/2012	Outside of remit / other	1
Tom and Jerry	Boomerang	28/02/2012	Drugs, smoking, solvents or alcohol	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	27/02/2012	Generally accepted standards	1
Tombola.co.uk's sponsorship of Emmerdale	ITV1	n/a	Gambling	1
Tombola.co.uk's sponsorship of	ITV1	n/a	Generally accepted standards	1

Emmerdale				
Tonight: Public v Private Sector - Who Wins?	ITV1	01/03/2012	Due impartiality/bias	15
Top Gear	BBC 2	04/03/2012	Materially misleading	1
Top Gear	BBC 2	04/03/2012	Generally accepted standards	1
Traffic Cops	Watch	16/02/2012	Nudity	1
Traffic Cops	Watch	16/02/2012	Offensive language	1
Tropic Thunder	BBC 3	04/02/2012	Scheduling	1
Tuff Puppy	Nickelodeon	04/03/2012	Generally accepted standards	1
Upstairs, Downstairs	BBC 1	04/03/2012	Sexual material	1
Victorious	Nickelodeon	20/02/2012	Generally accepted standards	1
Waterloo Road	BBC 1	22/02/2012	Violence and dangerous behaviour	9
Weekends with Ricky K	Citybeat 96.7FM	03/03/2012	Offensive language	1
White Heat (trailer)	BBC 2	08/03/2012	Sexual material	1
Whitechapel	ITV1	05/03/2012	Generally accepted standards	1
Whitechapel	ITV1 Yorkshire	13/02/2012	Religious/Beliefs discrimination/offence	1
Whitney's Addictions: Death of a Diva	Channel 5	21/02/2012	Generally accepted standards	1
Wingin' It	BBC 1	23/02/2012	Offensive language	1
Winx Club	Pop	17/02/2012	Nudity	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Age discrimination/offence	1
Wonga.com's sponsorship of Channel 5 drama	Channel 5	n/a	Generally accepted standards	1
You've Been Framed!	ITV1	03/03/2012	Generally accepted standards	1
You've Been Framed!	ITV1	03/03/2012	Generally accepted standards	2

## Investigations List

If Ofcom considers that a broadcast may have breached its codes, it will start an investigation.

Here is an alphabetical list of new investigations launched between 15 and 28 March 2012.

Programme	Broadcaster	Transmission Date
Advertising minutage	S4C	17 March 2012
Advertising minutage	S4C	5 and 8 March 2012
Bluebird Live	SportxxxGirls	4 March 2012
Channel S News	Channel S	9 February 2012
Death on the Nile	ITV1	17 March 2012
Doktorunuz Sizinle	Kanal 7 Avrupa	1 February 2012
Emmerdale	ITV1	22 March 2012
Hollyoaks	Channel 4	12 March 2012
Home and Away	Channel 5	13 March 2012
Jorbozeh II	GEM TV	1 February 2012
Peace TV	Peace TV	various
Sri Lanka's Killing Fields	Channel 4	14 March 2012
Transitions Adaptive Lenses' sponsorship of Coach Trip	Channel 4	5 March 2012

**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 Codes being recorded.**

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

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

For fairness and privacy complaints go to:

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