

# **Ofcom Broadcast Bulletin**

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## Introduction

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

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

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

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

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

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

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

licensees must provide), the Code on Electronic Programme Guides, the Code on Listed Events, and the Cross Promotion Code.

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

## Standards cases

### In Breach

#### Big Brother

Channel 5, 15 July 2013, 22:00

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##### Introduction

*Big Brother* is a well-known reality show, broadcast by Channel 5 (or “the Licensee”). Over the course of nine weeks, a number of members of the public (“the Housemates”) live together in the Big Brother House (“the House”) where they compete to win a cash prize. In entering the House, contestants agree to live in a controlled environment, isolated from the outside world. All the conversations and actions of the Housemates are recorded and edited into a one hour programme shown on Channel 5 every night during the series.

Housemates are directed by Big Brother, the voice of the show’s producers, to undertake various tasks and competitions during their time in the House. Housemates are able to talk directly to Big Brother in the Diary Room. Big Brother can also choose to call Housemates to the Diary Room to reflect on their experiences in the House or to challenge their behaviour.

Each week Housemates are called to the Diary Room where they are asked by Big Brother to nominate two of their fellow Housemates for eviction from the House. The two Housemates with the most nominations are put up for eviction by the viewers of the programme, who are able to vote (via phone or Facebook) to save their favourite Housemate. The results of the public vote are revealed on a weekly live show broadcast on a Friday night. This format continues until a final Housemate remains and is declared the winner and receives the prize money.

Ofcom received 165 complaints regarding this programme. Complainants objected to an altercation between two Housemates Daley Ojuederie (“Daley”) and Hazel O’Sullivan (“Hazel”). In summary, complainants were offended by:

- i) Daley’s threatening behaviour towards Hazel (which led to Daley being called to the Diary Room by Big Brother to account for his actions); and
- ii) Big Brother intervening too late after Daley’s threatening behaviour started.

In this episode of the programme, housemates Hazel and Daley were residing in the ‘Luxury House’, also referred to as the ‘Safe House’, a luxury area in the Big Brother compound where they could make requests to the other Housemates using a telephone. When Hazel or Daley used the telephone to call the other Housemates, the latter had to respond immediately or otherwise face punishment by Big Brother.

At 22:46, a sequence was shown of Hazel and Daley in the Luxury House. The sequence had been filmed earlier, starting at approximately 01:00 on the morning of the day of broadcast (15 July 2013).

The sequence commenced with Daley and Hazel initially in their separate beds within the Luxury House laughing and joking, when a pillow fight between the two ensued. During the course of the pillow fight, Hazel removed the duvet from Daley’s bed. This

appeared to upset Daley. The pair argued in an apparently light-hearted manner, with Daley asking Hazel to return his duvet, and Hazel refusing to give it back. The following exchange then took place, during which Hazel was lying on her bed with Daley's duvet beneath her:

- Daley: *"Do you want me to fucking go mad?"*
- Hazel: *"Yeah, you should go mad".*
- Daley: *"Do you remember when I said, yeah, when I go mad, it's fucking scary?"*
- Hazel: [Interrupts] *"You'd have security all over you in two seconds".*
- Daley: *"It doesn't mean I'm gonna to hit you, but it's scary shit".*
- Hazel: *"Go for it".*
- Daley: *"Get the fuck off my cover".*

Daley was shown standing on Hazel's bed, looking over Hazel, who was lying on the bed. Hazel then reached up and pulled down Daley's shorts. He jumped off the bed and pulled his shorts back up. The exchange then continued as follows:

- Daley: *"You fucking bitch. I swear to God, you fucking bitch. Ha, oh, you wanna fucking play that game?"*

Hazel was then shown standing up on her bed, saying:

- Hazel: [Laughing] *"You gonna go crazy on me, motherfucker?"*

Hazel then fell backwards onto her bed and Daley then once again stood over Hazel on the bed. The conversation continued:

- Daley: *"You're gonna try and pull my fucking shit down? On live, on fucking TV?"*
- Hazel: *"I just did".*
- Daley: *"How dare you fucking do that? How fucking dare you? Motherfucker, give me back my fucking cover".*
- Hazel: *"What did you just call me?"*
- Daley: *"Motherfucker, give me back my cover now".*
- Hazel: *"How about we do something really sensible and resolve this friendly with a hug?"*

At this point Hazel moved over so that Daley could remove his duvet from her bed, saying:

- Daley: [Removing his duvet from Hazel's bed] *"Oh, well done! It's not hard is it?"*

Daley was then shown crouching down with his face very close to Hazel's.

Daley: [Whispering] *"Let me tell you something, little girl, have some respect for your fucking elder, 'cause if you don't..."*

Hazel: *"What will you do about it?"*

Daley: *"I'll finish you".*

Hazel: [Sitting up in bed] *"I think I'd finish you quicker".*

Daley: *"What are you talking about? Huh?"*

Hazel: *"Huh? It's OK, I'm not afraid of aggressive men".*

At this point Daley used one hand to push Hazel down on to her bed by her throat, while saying:

Daley: *"Pipe down and go to sleep now, do you understand me?"*

Hazel then made an attempt to grab Daley's neck in a similar fashion, which Daley resisted.

Daley: *"Who do you think you are? Fucking Terminator or something?"*

Daley was shown leaning over Hazel, who was still lying on her bed, and then pinning Hazel's arms down by the sides of her body.

Daley: *"Don't fuck with me, do you understand?"*

Hazel: [Inaudible].

Daley: [Miming hitting his head against Hazel's] *"Before I nut you one"*

Big Brother then interrupted the exchange as follows:

Big Brother: *"This is Big Brother. Would Daley come to the Diary Room?"*

Daley was shown leaving the Luxury House, during which time the following conversation took place:

Daley: *"Before I leave, did I say anything offensive?"*

Hazel: *"No".*

Daley: *"To you?"*

Hazel: *"No, they probably just wanna talk to you".*

In the Diary Room there was an exchange between Big Brother and Daley:

Big Brother: *"Daley, can you explain to Big Brother what was just happening in the Safe House?"*



- Daley: *"In what sense? What was just happening? Erm, I dunno what I can say, I was, she took the covers off me, wouldn't give them back, so we ended up play fighting for them back, hitting each other with pillows, then she eventually give them back [sic], err yeah, maybe got a bit out of hand by swearing a lot, probably. Erm. Yeah, that's about it, I think".*
- Big Brother: *"Can you explain to Big Brother what you mean by 'it might have got a bit out of hand'?"*
- Daley: *"Probably, like, with me probably swearing. Maybe not, erm, recognising how much I'm swearing because I'm a bit drunk, saying 'F this, F that, give me back my F-ing cover, bla bla bla' err, or 'I'll finish you', kind of thing. It was all in a play fighting kind of way, all joking way, that's why I asked her 'did I do anything wrong to you?'"*
- Big Brother: *"Daley, as you are aware, Big Brother does not tolerate aggressive behaviour or language".*
- Daley: *"Aggressive? I never be aggressive to her [sic]. That's play fight, that don't mean anything".*
- Big Brother: *"Can you understand how this might come across as aggressive?"*
- Daley: *"Yeah, yeah, I can understand. So, I'll just make sure I don't do that again, or, I'll tell her to don't, not do that as well".*
- Big Brother: *"Daley, Big Brother will also speak to Hazel".*
- Daley: *"Yeah, yeah, obviously you can speak to her and things and let her know".*

The programme then showed Hazel in the Diary Room. The programme commentary, and on-screen graphics, made clear that this exchange took place at 01:38, i.e. approximately 20 minutes after Daley had left the Diary Room.

- Big Brother: *"Hazel, how are you feeling right now?"*
- Hazel: *"Um, not very good. I just, um, I'm just in an awkward position, I guess, 'cause I've never seen that side of him [i.e. Daley] before and it just, just, maybe it was an overreaction on my part, I dunno. I dunno, he was too close and he was just kind of in a bit of an aggressive manner. I don't know if he intended it, I don't know where it kind of got out of hand or why he felt the need to tell me to respect his elders and that he'd knock me one if, if I didn't, um. I don't know where it went from being just friendly banter to, I suppose feeling kind of a bit cornered and just, I guess I just felt threatened, I dunno, by a male presence and just being the only person in the room with him, and yeah, it was just a bit weird. I don't know where it came from, I don't know what it was to be honest".*

The programme then showed Hazel in the Diary Room *“the next day”*<sup>1</sup> where she was given a formal warning from Big Brother for pulling down Daley’s shorts and slapping his behind in the course of the pillow fight. Hazel apologised for her actions and accepted the warning.

The programme next showed Daley in the Diary Room. The following exchange took place:

Big Brother: *“Before you entered the Big Brother House, the rules regarding unacceptable behaviour were explained to you. At 1.13am this morning, you were threatening and aggressive in your behaviour towards Hazel”.*

Daley: *“Threatening and aggressive towards Hazel?”*

Big Brother quoted some parts of the altercation that had taken place between Hazel and Daley the preceding night, as laid out above. Big Brother also listed some of the things Daley did to Hazel during the altercation:

Big Brother: *“You slapped Hazel’s behind. You also clasped Hazel around her neck and then pinned her to the bed by both arms. Do you understand that this can be seen as aggressive behaviour?”*

Daley: *“OK, yeah, I can understand. But the way you’re saying it is like I, OK, yeah, I can see, I can see”.*

Big Brother: *“Big Brother understands that as you said to Big Brother last night, you were play fighting. However, Big Brother believes that you took it too far and your behaviour became threatening towards Hazel. Hazel also confirmed last night that she felt threatened”.*

Daley: *“What?”*

Big Brother then quoted to Daley part of Hazel’s Diary Room conversation with Big Brother, which took place soon after the altercation between Daley and Hazel. Big Brother said to Daley that Hazel had talked about feeling *“a bit cornered and...threatened”* as a result of Daley’s behaviour towards her. The exchange between Big Brother and Daley continued:

Big Brother: *“Big Brother deems this behaviour to be unacceptable. Big Brother cannot permit behaviour which may cause harm and offence, and unfortunately, what happened between you and Hazel could easily cause harm and offence. Big Brother therefore has no choice but to remove you from the House immediately. Daley, do you have anything you wish to say before you leave the Big Brother House?”*

Daley: *“No, what can I say to that? There’s no way, no way in chance, in Hell that I would be aggressive towards any Housemate, woman, man. I would not be aggressive intentionally in a way where I wanna hurt someone. How can anyone think that, man? Seriously, how can anyone think that? But if it’s threatening, how comes we were cuddling like, after it all happened? And laughing why it happened? I don’t know how, you know, it can be seen as like I*

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<sup>1</sup> i.e. the day leading up to the broadcast on the evening of 15 July 2013.

*actually really wanted to do some damage. And Hazel, as well, I want everyone to know yeah, that Hazel is the most devious person, and, and, a liar as well. I'm very offended, very offended. Very offended, I tell you that now. Hazel is disrespecting me".*

Daley was then asked to leave the Diary Room and the Big Brother House.

Ofcom considered this material raised issues warranting investigation under Rule 2.3 of the Code, which states:

"In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence."

Ofcom therefore asked Channel 5 for its comments on how this content complied with this rule.

## **Response**

### Audience expectations and general background

The Licensee said that *Big Brother* has a well established reputation with viewers. Channel 5 pointed out that the series has run for over a decade, and that it "is known to raise adult themes and deal with controversial and difficult situations and confrontations between persons who may have extreme personalities". The Licensee also noted that *Big Brother's* participants are all consenting adults who expect to deal with challenging situations which arise through living in the House. It added that "the audience would be disappointed if such situations did not arise" and that: "no viewer, even a casual viewer, is in any doubt when tuning into *Big Brother* that she or he may encounter dramatic, confrontational and sensational behaviour".

In addition, the Licensee commented that the programme had attracted about 1.8 million viewers but Ofcom had received "only" 165 complaints: "the content of the programme did not offend generally accepted standards; if the content did offend generally accepted standards, one would expect that to be reflected in the level of complaints".

In the Licensee's comments, it stressed that the current case raised a novel issue about the conduct of a Housemate which had not previously arisen in *Big Brother*:

"This was not a case where one housemate had physically assaulted another housemate; nor was it a case of racism or sexism or unacceptable intolerance. It was not a case where one Housemate had bullied another; nor was it a case where one Housemate was at a particular advantage, as to age, experience or intellect, over another".

It also remarked that the Code does not prohibit: "broadcasting material such as Daley's threatening behaviour towards Hazel. Similar scenes appear in television dramas and films without question or complaint".

### Broadcast warnings

Channel 5 said that a pre-broadcast warning was given at the beginning of the programme, which meant that "no viewer was unprepared for the scenes which

apparently concerned the complainants” and it would be: “difficult to imagine how the warning about the strong nature of the content and its potential capacity to offend could have been clearer”.

The Licensee added that the warning given prior to this episode was sufficiently different from those given at the beginning of other episodes to alert viewers to this strong content. It said that there is a standard warning for *Big Brother* episodes to inform viewers of strong language and adult themes. It stated that “this usual warning is varied when the circumstances of the programme demand it”. In this case, the warning alerted viewers to “*scenes of a sexual nature and some scenes that some viewers may find distressing*”. Channel 5 said that it believed that previously it had been sufficient, in Ofcom’s view, to warn about the type of material included, and was not necessary to be too specific. It said that if a warning specifically to alert viewers of sexual violence is required, then Ofcom should state this in the Code. It did not see how specifically alerting viewers to this programme to sexual violence this “would have made any appreciable difference to the audience” compared to the warning that was actually given.

#### Post-watershed content

The Licensee noted that the programme was broadcast at 22:00, with the altercation between Hazel and Daley occurring at approximately 22.40. It stated that the audience watching the programme at that time of night would have expected strong content, and that after 22:00, the strongest content is permissible.

#### Fairness to voters

Channel 5 underlined that *Big Brother* is a competition which viewers interact with and during which they vote depending on their response to particular Housemates. It said that it is therefore “incumbent upon the programme makers to ensure that viewers are properly apprised of key issues which may affect [their] perceptions about which housemate [they] might want to vote to evict or save”. The Licensee went on to state that it agreed with Big Brother’s decision to broadcast the material showing Daley’s violent conduct, because it contained information “which might affect the way a viewer did or did not vote for Hazel” and allowed viewers to take into account the context which was needed for them to form opinions regarding both the altercation and Hazel as a contestant. “[V]iewers were entitled to see how Daley had behaved, how his behaviour had affected Hazel (or not) and how Big Brother had dealt with the situation”. It added that: “to do otherwise would have compromised the editorial integrity of *Big Brother*”.

The Licensee added: “editorially, it was impossible to ignore the confrontation, because to do so would have deprived the viewers of seeing what happened at the end of a long period of flirtation and ribald behaviour between two prominent Housemates”. It said that not to include the footage could potentially have resulted in viewers being “misled”.

#### Hazel’s distress prior to Big Brother’s intervention

Channel 5 said that there was no indication until immediately before Big Brother’s intervention that Hazel was distressed by the altercation with Daley. When writing to the Licensee to ask for its comments, Ofcom had provided to the Licensee some examples of where in our view viewers might have reasonably considered that Hazel did appear distressed to some extent. These examples are set out below with Channel 5’s response to each:

1. When Hazel said “you’d have security all over you in two seconds”, she could be seen to be warning Daley of the consequences of any violence as a result of him ‘going crazy’.

Channel 5 stated that there was no indication that this was anything other than “role-playing’ or ‘friendly banter’”. It stated that “while she might be seen as warning Daley off, that does not mean that she was fearful or distressed”, adding that Hazel’s comment of “yep, you should go mad” indicates that “Hazel was not afraid and Hazel was encouraging Daley to engage in “scary shit””.

2. Hazel suggested later on in the dialogue that she and Daley could have resolved the conflict with a hug, evidently attempting to defuse the situation.

The Licensee commented that the idea that a hug could resolve matters suggested in fact that Hazel was not feeling distress or fear. It stated that there were “several references to hugging and hugs” before the moment when Big Brother intervened (not included in the broadcast), which also demonstrated in its view that Hazel was not distressed by Daley’s conduct.

3. Before the climax of the altercation, Hazel stated “it’s ok, I’m not afraid of aggressive men”, acknowledging that Daley was being aggressive, so perhaps indicating that she was feeling threatened.

Channel 5 said that this point was clearly showing Hazel matching Daley, demonstrating that she was equally as tough as him. The statement quoted above about aggressive men was actually her way of indicating that she was defiant, rather than fearful.

4. When Daley pushed Hazel down onto the bed by her throat, she attempted to put her hand on his throat to counteract and react to his aggression.

Channel 5 agreed with the above statement, but added that this did not mean that Hazel was afraid or distressed, rather that the two were engaging in a “rough and disturbing game – role-play or banter as they themselves variously put it”. It added that Hazel’s laughter just before Big Brother’s intervention also supported its contention that Hazel was not distressed.

The Licensee added that Hazel seemed to be “wholly engaged in the confrontation and pushing the other party to the limits”. It questioned how behaviour such as this could reasonably be considered to cause viewers harm or offence. The Licensee additionally said that Hazel made it clear in her initial Diary Room interview that she did not feel there was any ongoing threat to her safety, and suggested that she “did not consider that she was in danger or that Daley was a true threat to her”.

Channel 5 commented that it found it unusual that, if Hazel had been feeling distressed, she did not speak about the incident to her close friend and fellow Housemate, Dan, soon afterwards. Hazel “made no attempt to discuss with Dan any aspect of what had transpired during the altercation until *after* it became clear that Daley had been evicted from the House”. It suggested that “if she had been experiencing fear or distress, or if she had thought that Big Brother had mistreated her in any way, Hazel would have confided in Dan” and that “the fact that she did not turn to Dan as soon as she was able to see him after the altercation indicates quite strongly that Hazel had not suffered greatly and did not feel any sense of ongoing distress or fear”.

### Daley's initial Diary Room warning

Channel 5 commented on whether – when Daley was first summoned to the Diary Room – Big Brother's comments demonstrated sufficient condemnation of Daley's violent behaviour so as to mitigate the potential offence caused to viewers by showing it. In response the Licensee said that "apart from evicting him on the spot, there was nothing else that Big Brother could have done to make clear to Daley and viewers that Daley's behaviour was completely unacceptable to Big Brother". Channel 5 remarked that one clear aim of Big Brother's intervention was to defuse the situation, and that the other "frankly obvious" purpose was to "convey concern about what had been happening to both Daley and Hazel". It added:

"By intervening, Big Brother *did* make clear that Daley's behaviour was completely unacceptable. By speaking with Daley in the manner and tone adopted and stating that "*Big Brother does not tolerate aggressive behaviour*", Big Brother made clear to Daley that Big Brother considered his actions completely unacceptable. Big Brother put to Daley that his actions could be seen as aggressive and Daley accepted that".

### Time taken between intervention and eviction

Channel 5 commented that in the programme as broadcast, 12 minutes and 44 seconds elapsed between the audience watching the altercation and the eviction of Daley in the Diary Room. It pointed out that the normal process for a *Big Brother* episode would be to show the previous day's footage (from the first Housemate waking up, to the last Housemate going to sleep) in the following day's programme. The Licensee stated that in this particular instance that was not the case. The production team took the decision to put the whole sequence from the incident/intervention to eviction into one episode (even though these events took place on different days) to mitigate offence and ensure that "no person was left wondering what was going on or how any party was feeling". Channel 5 added that: "all relevant aspects of the matter were dealt with during the course of one programme (indeed during the course of the last thirteen minutes of one programme) it is difficult to see how it would be possible for there to have been any greater degree of mitigation".

### Responsibility of Hazel and Daley for the incident

The Licensee mentioned that by the time of broadcast of the programme investigated in this case, the audience for this series of *Big Brother*: "had seen Hazel and Daley develop a flirtatious and quite sexually charged relationship". It added that "the sequence [of Daley's threatening behaviour] represents the culmination of weeks of chattering, gossip, innuendo and sexual banter" and that: "from *Big Brother's* point of view, the entire confrontation was an extension of the game of sexual intrigue the two housemates had been engaged on for some time".

Channel 5 referred to what it viewed as the important role that Hazel had had in provoking Daley's behaviour towards her. It stated that: "throughout the confrontation, which *both* parties later described as play fighting, Hazel was a dominant and aggressive force". It added that Hazel was not "a naïve debutante", and that she was: "fully aware of her feminine charms and was unashamed about using them to get her way".

In this context, Channel 5 said that: "the simple, inalienable fact is that, but for Hazel's aggressive sexual conduct the confrontation which results in Daley's eviction

would not have occurred – or, at least, would not have occurred in the way it did”. Channel 5 expressed its view that: “it was Hazel’s behaviour towards Daley, in particular removing his shorts on national television and briefly exposing his genitalia, which appeared to be the trigger point for Daley’s more aggressive behaviour towards Hazel”.

The Licensee stated that this was not an attempt to justify Daley’s actions, but to: “provide context for the inclusion of the segment in the programme which justified that inclusion, nothing more”. It went on to add that “Hazel’s actions are part of the relevant context in which any possible offence caused by Daley’s actions must be judged” and that: “the context in which violent conduct occurs is always relevant to any assessment of the violent conduct and its consequences.”

Channel 5 also commented on the appropriateness of Big Brother’s response to Daley’s conduct. It said that it had been right to evict Daley from the House because: “he had crossed the line and his conduct was, in all the circumstances, unacceptable. Threatening physical violence to a woman, or appearing to threaten physical violence to a woman, especially in a sexual context, is unacceptable in a reality television environment and Daley’s conduct in doing so required his eviction”.

The Licensee commented on the point in the dispute between Daley and Hazel when Daley’s behaviour led to Big Brother intervening and calling Daley to the Diary Room. It stated that: “it was not until Daley mimed hitting his head against hers that Hazel showed any sign of being disturbed by the course of events”. Daley’s actions at this point were described by the Licensee as: “conduct of a kind and a degree which is harsher, more violent and more unacceptable than any of the earlier conduct Daley displayed”. Therefore, Channel 5 said that: “It is not surprising, then, that this is the moment that, appropriately in Channel 5’s view, Big Brother intervenes and separates the Housemates”.

However, with the event ending as it did, the Licensee stated that it would be important for the production team to include Daley’s conduct in the programme.

#### Hazel’s comments on “throat grabbing”

As part of its response, Channel 5 highlighted a discussion between some Housemates which took place on 23 June 2013, approximately three weeks prior to the programme in question, but had not been broadcast. The conversation was between Hazel and Daley and other Housemates Joe, Jack, Sam and Jemima. During this discussion, the Housemates talked, in passing, about holding a partner by the throat as a way of increasing sexual pleasure. Below are some excerpts from that conversation, provided to Ofcom by the Licensee:

Jack: “You’re going to look like you’ve been strangled but you haven’t  
Hazel: That’s ok I’m used to that  
Jack: Did she say she’s used to that?  
Hazel: Yeah”

....

Daley: “Some girls like that though  
Hazel: Some girls do  
Jack: [shouting] I am that girl  
Hazel: I am that girl”

....

Daley: "You don't kill them to death, but  
Hazel: Just, just about  
Daley: Just, just about"

....

Hazel: "You have to have a bit of neck grabbing"

....

Hazel: "You don't need whips and chains when you have hands"

Channel 5 said that these exchanges indicated that during the actual confrontation between Hazel and Daley, Hazel was being sexually provocative with Daley and Daley was responding to this. It said that: "Daley knew, because Hazel had said so, that she enjoyed "throat grabbing" in the context of sexual play". The Licensee added that the fact that Hazel and Daley grabbed each other's throats during the altercation needed to be assessed in the context of this earlier conversation where Hazel had previously expressed views on this form of sexual gratification, and that "Hazel's previously expressed views [see immediately above] were consistent with the kind of aggressive sexual behaviour Hazel was and had been exhibiting during the altercation. That she should grab Daley's throat (and Daley grab hers) had to be assessed in light of all the relevant circumstances, including her previously expressed views." Channel 5 referred to these exchanges above as evidence to support its assertion that "both [Hazel and Daley] were freely participating in a rough and disturbing game – role-play or banter as they themselves variously put it."

## **Decision**

Under the Communications Act 2003 ("the Act"), Ofcom has a duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that "generally accepted standards" are applied so as to provide adequate protection for members of the public from the inclusion of harmful and/or offensive material. These objectives are reflected in Section Two of the Code:

Rule 2.3 requires broadcasters to ensure that the broadcast of potentially offensive material must be justified by the context.

In applying Rule 2.3, Ofcom must have regard to the need for standards to be applied "in the manner that best guarantees an appropriate level of freedom of expression". The Code is drafted in accordance with Article 10 of the European Convention of Human Rights, which sets out the right of a broadcaster to impart information and ideas and the right of the audience to receive them without unnecessary interference by public authority. In accordance with the fundamental right to freedom of expression, the Code does not prohibit the broadcast of potentially offensive material. However, broadcasters are required to ensure that potentially offensive material is justified by the context.

## **Background**

*Big Brother* is a long-running entertainment series, one in which conflict and tensions are common due to the unique circumstances in the House. Ofcom understands that the audience expects that heated exchanges and clashes between Housemates will



take place over the course of the series, and for these incidents to be included in the nightly highlights programme, because such exchanges will inform the audience's voting decisions.

However, the audience also expects offensive language and behaviour by Housemates to be challenged by Big Brother in an adequate, timely and proportionate manner and for the tone of the programme clearly to indicate where Housemates have behaved in a potentially offensive way. One of the established mechanisms for challenging Housemates' behaviour in the House, and thereby to provide context for any potentially offensive language or behaviour, is through interventions by Big Brother in the Diary Room.

Ofcom considered first whether this broadcast material had the potential to cause offence.

#### Potential to cause offence

In Ofcom's view, Daley's comments and actions (set out in detail in the Introduction) were clearly capable of causing grave offence. His remarks contained clear descriptions and threats of violence against Hazel, and his actions compounded these verbal threats. For example he pushed Hazel onto the bed and held her there by her throat, and subsequently pinned her arms down in what was deemed by Ofcom, and implicitly acknowledged by the Licensee, as an act of sexual violence. Ofcom considered that Daley's actions, combined with the verbal threats towards Hazel (e.g. "*Don't fuck with me, do you understand?... Before I nut you one*") had the potential to cause offence to a substantial proportion of the audience.

We noted that Channel 5 in its submissions to Ofcom said that the Code does not prohibit "broadcasting material such as Daley's threatening behaviour towards Hazel. Similar scenes appear in television dramas and films without question or complaint". Ofcom agrees. However, depending on the level and type of violence and the context in which it is shown, the violence may need to be limited and justified by the context. *Big Brother* is a reality television programme, and due to its nature as such is understood by the viewer to reflect real events. There is, in Ofcom's view, a distinct difference in audience expectations between the broadcasting of dramatised, fictional violence and real violence in the context of a reality television format. This is because the audience recognises that with reality television, the broadcaster has a fundamental role in placing real individuals in scenarios which might cause tension and conflict. The audience would therefore be likely to expect the broadcaster to intervene, and in a robust way, at the earliest opportunity when dealing with any instances of violence in the reality programme format.

Ofcom acknowledged that broadcasters face particular challenges when making decisions about when and how to intervene when producing reality programmes. However, in programmes edited for subsequent transmission (as here), the broadcaster does have both the opportunity and a responsibility to make appropriate editorial decisions to mitigate any offence that might be caused to viewers as a result of the broadcast.

In this case, we took into account that Channel 5 decided not to edit the content featuring Daley's aggressive behaviour towards Hazel for the purpose of limiting offence, and instead decided to broadcast the incident up to the point of Big Brother's intervention, to show, as the Licensee put it in its response: "how Daley had behaved, how his behaviour had affected Hazel (or not) and how Big Brother had

dealt with the situation". In Ofcom's opinion, Channel 5's decision to show the incident as it did heightened the level of offence caused to viewers.

We also considered the level of offence arising from Hazel's distress during the incident. We noted that Channel 5 put forward the argument that it was not clear earlier during the incident that Hazel was distressed. It said for example that:

"...Hazel did not appear to exhibit any signs of fear or distress until immediately before Big Brother intervened and called Daley to the Diary Room. It was not until Daley mimed hitting his head against hers that Hazel showed any sign of being disturbed by the course of events. Indeed, just before that, she had done two things which clearly indicated that she was not in distress: she told Daley she was 'not afraid of aggressive men' and she put her hands around his throat, imitating the position he had taken in relation to her."

Ofcom considered that it was reasonable to interpret Hazel's behaviour differently. In Ofcom's view, there were a number of indications that Hazel was experiencing an increasing level of threat and distress in advance of Daley miming hitting his head against hers.

For example, when Hazel said "*you'd have security all over you in two seconds*", she appeared to be warning him of the consequences of any violence as a result of him 'going crazy'. Hazel also suggested later on in the dialogue that she and Daley could have resolved the conflict with a hug, evidently attempting to defuse the situation. Before the climax of the altercation, Hazel stated defensively "*it's ok, I'm not afraid of aggressive men*". In Ofcom's opinion, it was reasonable to interpret this acknowledgement that Daley was being aggressive as Hazel indicating that she was feeling threatened. Finally, when Daley pushed Hazel down onto the bed by her throat, she attempted to put her hand on his throat to counteract and react to his aggression. Ofcom considered that a reasonable viewer would have concluded, from these actions and statements, that Hazel was in some distress prior to Big Brother's intervention. This in turn contributed to the serious level of offence caused by Daley's violent conduct, which triggered Big Brother's intervention after Daley pinned Hazel to the bed, and threatened her with violence.

Therefore, in Ofcom's view, there were indications that Hazel was distressed in advance of Big Brother's intervention and there were reasons for Big Brother to have intervened earlier and before the point at which Daley pinned her to the bed with his hands at her throat. Ofcom considered that had this been the case, the level of offence caused to viewers would have been reduced to some extent.

Having decided that broadcasting the altercation between Hazel and Daley up to the moment of Big Brother's intervention was capable of causing viewers a considerable level of offence, Ofcom went on to consider whether the broadcast of this material was justified by the context.

#### Context: format, audience expectations and Hazel's conduct towards Daley

We took into account first that Big Brother is an established post-watershed programme format. Its audience has come to expect moments of tension and conflict between Housemates, and for Big Brother to intervene to warn Housemates as appropriate about the acceptability of their behaviour. In this programme, this sequence involved two Housemates with a history of flirtatious behaviour between them being confined to a separate part of the Big Brother House, the Luxury House. While there, these two Housemates were shown engaging in a pillow fight. The pillow

fight, while initially light-hearted and flirtatious, took a notably more serious turn. When Hazel snatched Daley's duvet and would not give it back, this caused a deterioration in Daley's temper, ultimately leading him to exhibit the seriously offensive behaviour described above.

We considered that in line with the *Big Brother* format and audience expectations for the programme, it is understandable that Channel 5 wished to inform viewers about the altercation that occurred in the House, especially one that led to the eviction of a Housemate. However, we did not consider that these factors alone provided sufficient justification on their own to ensure the broadcast of Daley's violently aggressive behaviour complied with Rule 2.3.

In Channel 5's response, it stated:

"It is important not to lose sight of the fact that *Big Brother* is a competition and one in which the viewers actively participate. It is, therefore, incumbent upon the programme makers to ensure that viewers are properly apprised of key issues which may affect a viewer's perceptions about which housemate the viewer might want to vote to evict or save".

Although the argument that voters need to see key events happening in the House does have some merit, it does not mean in Ofcom's view that Channel 5 had an obligation and justification to broadcast everything that went on in the House in order not to mislead viewers, regardless of the level of potential offence that might be caused to viewers. In the circumstances of this case, Ofcom considered that it was possible for Channel 5 to broadcast the altercation and apply generally accepted standards. However, by taking the editorial decision to show the sequence of events as it did, because of the seriously offensive behaviour shown, the Licensee needed to take correspondingly greater steps to mitigate the offence to the audience.

We took account of the Licensee's arguments about Hazel's role in provoking Daley. Channel 5 said, for example, that "the simple, inalienable fact is that, but for Hazel's aggressive sexual conduct the confrontation which results in Daley's eviction would not have occurred", and that "there is no doubt that what happened between Daley and Hazel in this programme happened because Hazel set out, quite deliberately, to engage in sexually charged games with Daley". In making these points Channel 5 said it was not in any way attempting to justify Daley's actions, but trying to provide context for the inclusion of the altercation in the programme. Ofcom accepted that the Licensee was legitimately able to feature the incident, provided it was justified by the context. In assessing that context however, Ofcom considered that, whatever the preceding events were in the House involving Hazel and Daley, Daley's conduct during the altercation became clearly unacceptable, and nothing Hazel had said or done earlier should be taken into account in mitigating the offence his violent conduct caused to viewers.

#### Context: steps taken by Channel 5 to mitigate offence to viewers

In Ofcom's view, because Channel 5 had decided not to edit the incident for the purpose of reducing offence, the steps available to it to mitigate the offence were limited.

We took into account Channel 5's argument that the production team had sought to mitigate offence caused to viewers by compressing the entire incident, from altercation to eviction, into one day's episode, spanning 12 minutes and 44 seconds in total. This was a change from *Big Brother's* usual format, in which a programme

features all the previous day's events (from the time that the first Housemate wakes up, until the last Housemate goes to sleep). In this instance, the production team took the decision to broadcast the altercation, which took place the night before, in the same programme as the eviction, and to telescope this sequence of events into less than thirteen minutes. This meant that viewers were not left wondering what the consequences of Daley's actions were until the following day and to that extent helped mitigate offence caused to viewers.

We then examined Daley's initial Diary Room interview, after Big Brother's intervention. Daley was asked to explain his conduct towards Hazel. The key exchange was:

Big Brother: *"Daley, as you are aware, Big Brother does not tolerate aggressive behaviour or language".*

Daley: *"Aggressive? I never be aggressive to her [sic]. That's play fight, that don't mean anything".*

Big Brother: *"Can you understand how this might come across as aggressive?"*

Daley: *"Yeah, yeah, I can understand. So, I'll just make sure I don't do that again, or, I'll tell her to don't, not do that as well".*

Channel 5 argued that these words were sufficient to signal clearly to Daley and viewers that Big Brother considered Daley's conduct to be unacceptable, and that "apart from evicting him [Daley] on the spot, there was nothing else that Big Brother could have done". Ofcom disagreed. It was Ofcom's view that Big Brother did not at this point make it clear enough through the wording used in the Diary Room that Daley's behaviour was unacceptable. Although of course it was open to Big Brother to evict Daley immediately, it decided not to do so. By keeping Daley in the House longer however it was important, while Channel 5 took some time to assess the appropriate next steps, that in the interim viewers were made aware that Daley had been firmly reprimanded for his offensive actions, and that Big Brother demonstrated to Daley, unequivocally, that his behaviour was unacceptable. Ofcom's view is that during Daley's initial Diary Room intervention, the reprimand issued to Daley did not reflect sufficiently the seriousness of the situation.

That the Licensee could have used more robust wording was demonstrated when Daley was expelled from the House the next day. In the Diary Room Big Brother first summarised the conduct and comments of Daley that caused concern and then said:

Big Brother: *"Big Brother deems this behaviour to be unacceptable. Big Brother cannot permit behaviour which may cause harm and offence, and unfortunately, what happened between you and Hazel could easily cause harm and offence. Big Brother therefore has no choice but to remove you from the House immediately".*

Ofcom's view is that it was made unambiguously clear in the form of words, through Big Brother's unambiguous condemnation of Daley's conduct, only the next day to Daley (and the audience) that his behaviour was unacceptable.

As regards mitigating offence to viewers, that clearer condemnation in the Diary Room was buttressed by the decision to evict him from the House immediately. Channel 5 explained that the delay in deciding on the expulsion was caused by the need to seek and take account of Hazel's comments and for the Licensee to reach a

considered view on the appropriate next steps, taking a number of issues into account. Ofcom recognised that decisions on the timing and tone of Big Brother's interventions in the Diary Room and when to expel a Housemate are matters of judgement, which often need to be made quickly. Nonetheless they must be appropriate to ensure that any offence caused to the audience by the broadcast of material is mitigated so that Rule 2.3 is complied with. In this case Ofcom's view was that Daley's conduct and comments involving Hazel were from the outset unacceptable (as was acknowledged by Channel 5 in its representations). Although we understood the reasons for, and do not question the delay in Daley's expulsion from the House, Ofcom's view was that Big Brother could and should have condemned Daley's actions more clearly when he was first called to the Diary Room.

We noted that Channel 5 provided a pre-broadcast warning to viewers at the start of the programme at 22:00, adding to its usual warning of strong language and adult themes that there were "*scenes of a sexual nature and some scenes that some viewers may find distressing*". There were no other warnings to viewers, for example after the advertising break immediately before 22:40 when the altercation was shown. According to Rule 2.3 of the Code, broadcasters should supply "[a]ppropriate information...where it would assist in avoiding or minimising offence". Warnings - in content, number and placing - therefore need to be tailored to the specific circumstances. Ofcom considered that the warning in this case was not sufficiently different from other warnings shown in an average episode of *Big Brother*, and did not adequately prepare the viewer for the specific events which were broadcast in this case. Although the warning mentioned "*scenes of a sexual nature and some scenes that some viewers may find distressing*", this warning did not in the circumstances of this case give viewers sufficient information to make an informed decision regarding the content of the programme. For example, the pre-programme warning did not explicitly mention that violence or sexual violence would be featured in the episode. We disagree with Channel 5's comment that stating that the programme specifically contained this type of content would not have made an appreciable difference to the audience

#### Context: other issues

In reaching a final decision Ofcom also had regard to some other points put forward by Channel 5.

In assessing context, Ofcom noted the various exchanges mentioned in Channel 5's response, in which Daley, Hazel and some other Housemates discussed the use of strangulation or "throat grabbing" as a means of sexual gratification. These exchanges were never broadcast. We noted that Channel 5 and the production team would have been aware of these exchanges at the time of the events leading up to the altercation, and that they may have helped provide some additional context for people aware of this information to interpret the nature of the altercation between Daley and Hazel which led to his eviction. However, when viewing the programme, the audience would not have been aware of this additional information. They would have been able to rely only on the content as broadcast to assess whether, as Channel 5 asserted, Hazel was not feeling fear and distress during the incident, and the altercation was, "a rough and disturbing game - role-play or banter". Since the audience was not aware of this previous discussion about "throat-grabbing", it could not have helped mitigate the offence caused to them by seeing Daley's violent behaviour.

The Licensee pointed to the disparity between the audience in this case (approximately 1.8 million) and the number of complaints (165) received by Ofcom in

this case, as indicating that the content: “did not offend generally accepted standards”. While useful in alerting Ofcom to potential issues under the Code and to some extent in some cases the level of public concern about a potential issue, the number of complaints is not in any way determinative in deciding whether generally accepted standards have been complied with in any particular case.

### Conclusion

Ofcom recognises that reality television programmes can pose particular difficulties for broadcasters in terms of ensuring potential offence to the audience is appropriately justified by the context. They often involve complex editorial decisions that must be made quickly and in changing circumstances. We also recognise that stronger, more challenging content can be shown well after the watershed at the time that this programme was broadcast. Broadcasters must nevertheless ensure that generally accepted standards are applied.

In this difficult case Ofcom’s view is that Channel 5 did take a number of steps to seek to contextualise the offence in this case, including compressing the incident into one broadcast so that viewers could see the outcome, and ultimately evicting Daley from the House as a result of his violent behaviour.

However, the decision not to edit the material for the purpose of limiting offence – despite its clear potential to cause offence – coupled with the generalised nature of the pre-broadcast warning 40 minutes before the incident and the lack of clarity that Daley’s conduct was unacceptable when Big Brother first intervened led Ofcom to conclude that the offence to viewers was not justified by the context.

For these reasons, on balance, Channel 5 did not apply generally accepted standards and Rule 2.3 was breached.

### **Breach of Rule 2.3**

## In Breach

### Maya Khan Morning Show

Prime TV, 11 September 2013, 16:00

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#### Introduction

Prime TV is a general entertainment satellite channel. Predominantly serving the Pakistani community, it primarily broadcasts in Urdu, with some programmes in Punjabi and Gujarati. The licence for this service is held by PAK (UK) T.V. Limited (“PAK (UK) TV” or “the Licensee”).

*Maya Khan Morning Show* is a general interest magazine programme hosted by the Pakistani presenter, Maya Khan.

Ofcom received a complaint that the programme broadcast on 11 September 2013 featured what purported to be real-life exorcisms carried out on two girls, aged 17 and 11, who had allegedly been possessed by “jinni<sup>1</sup>”.

Ofcom commissioned an independent translation of the content of the programme from the original Urdu into English. Ofcom then viewed the programme and noted the following content:

- During the first 30 minutes of the programme a 17 year old girl, Annam, together with her mother, appeared in a studio discussion with Maya Khan, and three Islamic holy men or scholars known as Pirs. During the discussion, Maya Khan explained that Annam had been possessed by jinni. At one point, Annam appeared distressed and started to leave the studio, followed by one of the Pirs, Mr Nuri. As Mr Nuri approached Annam, she started screaming and repeatedly pushed him away. At this stage, Mr Nuri recited verses from the Qu’ran and Annam groaned, as if in pain. Mr Nuri and Annam were shown struggling with one another and Mr Nuri forced Annam into a chair, holding her by the top of her niqab. He then sprinkled holy water on her and she cried out.
- The subsequent 55 minutes featured an 11 year old girl, Muqades, together with her mother and the same three Islamic Pirs. At one point, Mr Nuri blew into Muqades’ eyes saying: “*Present yourself* [referring to the alleged jinni possessing the girl]”. Muqades began growling like an animal, at which point Mr Nuri put his hand around the girl’s throat and the following exchange took place:

Mr Nuri: *“I will burn you to ashes. Do you want to get burned or tell your name? I am not against you but against your act which you are doing with this girl. Tell your name. Introduce yourself. Perhaps we could help each other. Speak up.”*

Muqades: “[speaking in a deep growling voice] *Will you not beat me up?”*

Mr Nuri: *“Yes. Carry on”.*

Mr Nuri blew into Muqades’ eyes and grabbed and held her by her hair. He then raised a bottle of holy water and said:

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<sup>1</sup> In Muslim belief, jinni are spirits who can influence people using supernatural powers.

*“Will you tell your name or should I burn you? Should I burn you?”*

This was shortly followed by the following conversation:

Mr Nuri (to Muqades):

*“We are not going to give you this girl [i.e. Muqades]. We can give you an offering or we will kill you”.*

Muqades: *“[speaking in a deep growling voice] You cannot kill me”.*

Mr Nuri: *“We have eliminated many things like you”.*

Mr Nuri then pulled out some individual hairs from Muqades’ head and a few moments later, Muqades fell unconscious in her chair. After a period of approximately two minutes, Muqades came to, but appeared drowsy and upset for the remainder of her appearance on the programme.

Having assessed the programme, Ofcom considered that the programme raised issues under the following rules of the Code:

Rule 1.27: “Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio). Paranormal practices which are for entertainment purposes must not be broadcast when significant numbers of children may be expected to be watching, or are particularly likely to be listening.”

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

We therefore asked Prime TV how the material complied with these rules.

Ofcom also investigated the content against Rules 1.28 (due care must be taken over the welfare of under eighteens who take part in programmes) and 1.29 (under eighteens must not be caused unnecessary distress or anxiety by their involvement in programmes) of the Code. Ofcom noted the Licensee’s representations (see “Response” section of this decision) that: *Maya Khan Morning Show* is acquired from a third party broadcaster based in Pakistan; as a result it has no role at all in the making of the programme; and that in this case the inappropriate version of the programme was only shown by mistake. In light of these points, we concluded that, in the particular circumstances of this case, it was not appropriate to proceed further under Rules 1.28 or 1.29.



## Response

PAK (UK) TV told Ofcom that it had broadcast this episode of *Maya Khan Morning Show* by mistake. The Licensee explained that the programme is purchased from a third party provider in Pakistan, and that for the previous 18 months, *Maya Khan Morning Show* had been “solely a wedding and fashion show”.

The Licensee explained that the programme is first broadcast in Pakistan before being sent the same day to Prime TV so that it can “be prepared for broadcasting in the UK with the intention that the content of the show could be kept up to date for its viewers”.

PAK (UK) TV said that once it receives the programme from the third party provider it goes through its various internal compliance checks. On this occasion, the episode featuring the purported exorcisms was edited “so that it was compliant with Ofcom rules of the Code”. To ensure that the show was long enough for its slot, clips from previous episodes of *Maya Khan Morning Show* were included. The Licensee said that this edited version of the show was then sent to the scheduler. However “the scheduler had saved the new edited version of the show...with the same file name as the [original] version” that was not compliant with the Code. This led to a “genuine error...whereby the transmission team received the wrong version of the show...from the scheduler” and this was broadcast in error.

PAK (UK) TV apologised for “this uncharacteristic error”. It explained to Ofcom that the following safeguards have been put in place to prevent incidents of a similar nature in the future, including that:

- a programme purchased from a third party can only be broadcast after it has been viewed by a senior member of staff and signed off by the Chief Executive Officer of Prime TV;
- the scheduling and compliance teams will no longer be sent the programme at the same time. Programmes will now first be sent to the compliance team; and
- programmes which have been complied and edited ready for transmission will be stored in a more secure way by the scheduling team to ensure that only material appropriate for transmission will be broadcast.

In summary, the Licensee said that it would be “highly unjust, unfair and unreasonable” for Ofcom to record breaches of the Code against PAK (UK) TV in this case because: the programme had been broadcast in error; new measures had been implemented to prevent similar errors in the future; the Licensee has acted “with full honesty throughout this matter”; and, “Prime TV has made no similar violations in thirteen years of broadcasting”.

## Decision

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appears to it best calculated to secure the standards objectives, including that “persons under the age of eighteen are protected” and “generally accepted standards” are applied so as to provide adequate protection for members of the public from the inclusion in such services of offensive and harmful material.

These duties are reflected in Sections One and Two of the Code respectively. Broadcasters are required to comply with the rules in Section One of the Code to ensure that children are protected. Broadcasters are also required under Rule 2.3 of the Code to ensure that material which may cause offence is justified by the context.

In reaching a decision in this case, Ofcom has taken into account the fact that broadcasters have a right to freedom of expression which gives them a right to transmit and the audience a right to receive creative material, information and ideas without interference from a public body, but subject to restrictions prescribed by law and necessary in a democratic society. This is set out in Article 10 of the European Convention on Human Rights. However, although broadcasters and viewers have this right, it is the responsibility of the broadcasters to ensure that the material they transmit is in accordance with the general law and the Code.

### Rule 1.27

As Ofcom's published Guidance Notes on Rule 1.27 point out<sup>2</sup>, issues of the paranormal are complex because what may be considered an acceptable paranormal practice by one person could be considered to be a dangerous occult practice by another. As a result every case must be dealt with based on the individual facts.

Rule 1.27 specifically aims at protecting children from harm or from unsuitable material relating to the paranormal. Rule 1.27 states in particular that:

“Demonstrations of exorcisms, occult practices and the paranormal (which purport to be real), must not be shown before the watershed...”.

In the Guidance Notes on Rule 1.27, Ofcom defines exorcism as: “...the expulsion or banishing of unwanted forces or entities from a person place or thing. The expulsion may take place by ritual prayer, incantations, conjuration, spells, symbolism, commanding or persuasion. The force or entity may include Satan, one or more other demons, evil spirits or ghosts. It may be done in the name of religion or not”.

In this programme, two girls aged 17 and 11 were featured and described as being possessed by “jinni”. Three Islamic Pirs (or holy men) were also in the programme, who claimed to be able to “cure” the girls or make them “alright”. Over the course of the programme, the Pirs attempted to cast out the alleged “jinni” in a variety of ways, including sprinkling holy water on the girls and reciting verses of the Qu’ran. Ofcom therefore considered that the programme clearly presented two attempts at exorcism.

Ofcom noted the unusual circumstances of this case in which the two exorcisms were presented within the context of a daytime talk show broadcast at 16:00. Taking into account the manner in which the exorcisms were shown and the usually factual nature and content of the programme, we concluded that they were presented to the audience as, and purported to be, real.

We considered that the presentation of the two purported exorcisms in this programme was likely to be capable of distressing and upsetting child viewers. Both Annam and Muqades were presented as possessed by evil spirits which needed to be cast out. They both appeared to be in pain and anguish, and shouted and screamed, as though their behaviour was controlled by such spirits. We considered

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section1.pdf>

that this likelihood of upsetting child viewers was increased because the subjects of the purported exorcisms were both under 18, one of them only 11 years old.

We noted the Licensee's representations that it had recognised that the content of this edition of *Maya Khan Morning Show* was not suitable for daytime transmission and it had been broadcast as a result of an "error".

We concluded that the programme was in clear breach of Rule 1.27.

### Rule 2.3

Rule 2.3 requires that broadcasters must ensure that the broadcast of potentially offensive content is justified by the context.

Ofcom first considered whether the material had the potential to cause offence.

We noted that the programmes included purported exorcisms on two girls, aged 17 and 11. During the programme, the girls were presented as possessed by evil spirits. Both shrieked and shouted, and the 11 year old, Muqades, spoke in a deep growling tone. At times, as the Pirs attempted to treat them, they both appeared in pain and in mental anguish. Ofcom considered that the broadcast of the girls' distress as part of a demonstration of exorcism had the potential to cause considerable offence.

We then considered whether the offensive content in this broadcast was justified by the context. Context includes factors such as: information provided to viewers; the editorial content of the programme and the nature of the offensive content in this case; and, the likely expectations of the audience.

Ofcom noted that the programme began with the following written warning (in English):

*"General viewing, but some scenes may be unsuitable [sic] for some children. Unaccompanied children of any age may watch. A 'PG' film should not disturb a child around eight or older. However, parents are advised to consider whether the content may upset younger or more sensitive children".*

The provision of such information – while it may be useful as a guide to viewers in some circumstances – is not normally, in itself, sufficient to justify by the context the broadcast of offensive content. Ofcom considered that this particular warning also failed to give any specific advice about the type of content featured in the programme. In addition, the warning was contradictory, indicating to viewers that some scenes may be unsuitable for children yet unaccompanied children of any age may watch.

In addition, we noted that this warning was accompanied by the triangular symbol for the British Board of Film Classification's ("BBFC") "PG" (Parental Guidance) certificate. The symbol was also shown throughout the programme in the upper right-hand corner of the screen.

Ofcom was very concerned at this use of the BBFC's Parental Guidance symbol on a programme that had not been certified by it. While the Licensee may have considered it was suitable to apply a rating to the programme, it was clearly inappropriate to do so in a way which was likely to have led viewers to believe this version had been officially certified by the BBFC, when in fact it had not. All broadcasters should note that the BBFC symbols are the property of the BBFC and

cannot be used unless under licence. Ofcom advises broadcasters not to use BBFC symbols or similar-looking symbols without prior consultation with the BBFC.

This episode of *Maya Khan Morning Show* was broadcast at 16:00 on a Wednesday well before the watershed and, as we have already pointed out, contained material that had the potential to cause considerable offence.

Further we consider that this material was not in keeping with the likely expectations of the audience for *Maya Khan Morning Show* on this channel. PAK (UK) TV said in their representations that *Maya Khan Morning Show* had, for the previous 18 months, “been solely a wedding and fashion show”. Taking this into account, along with the broadcast time of the programme, we considered that such a detailed treatment and presentation of paranormal practices would have been well outside audience expectations for this series.

Taking all the factors into account, Ofcom concluded that this potentially offensive material was not justified by the context.

Ofcom noted from the Licensee’s representations that it: did not seek to justify the broadcast of this programme before the watershed; said that it had been shown as a result of an “uncharacteristic error”; and, had taken various measures to ensure a similar mistake would not happen again. Ofcom was concerned about the nature of the breaches in this case. We therefore considered it appropriate to record breaches of Rules 1.27 and 2.3, and further to put the Licensee on notice that there should be no recurrence of similar compliance failures.

### **Breaches of Rules 1.27 and 2.3**

## In Breach

### Shomoyer Sathe

NTV, 28 October 2013, 23:00

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#### Introduction

NTV is a news and general entertainment channel broadcast in Bangla and serving a Bangladeshi community in the UK and Europe. The licence for NTV is held by International Television Channel Europe Limited (“ITCE” or “the Licensee”).

A complainant alerted Ofcom to an interview on NTV with Lutfur Rahman<sup>1</sup>, the Executive Mayor of Tower Hamlets. The complainant considered that the interview was: “a soft interview with no attempt to present an alternative or even ask probing questions. Far from being an interview it was an advertorial”.

Ofcom commissioned a transcript of the interview with Mr Rahman, translated from the original Bangla into English by an independent translator. We noted that this programme featured Mr Rahman being asked questions about his record as Mayor of Tower Hamlets by: the programme host; members of the studio audience; and members of the viewing audience by telephone. We noted that questions were asked on a range of topics, including housing, parking and education. We also noted that, in posing their questions, various audience members made supportive or positive references to Mr Rahman and his policies and record, as follows (with wording taken directly from the translation commissioned by Ofcom):

*“...I would like to first thank, our pride, our dream, the mayor of Tower Hamlets who was elected with votes from all people irrespective of colour, race and religion, honourable Mayor Lutfur Rahman. I thank him for coming today in front of us...”*

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*“...the Mayor is a Bengali and is pride to the Bengali Nation...”*

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*“...I would like to thank you [Mr Rahman] for inaugurating the second round faith grant<sup>2</sup>. Many institutions, especially the religious institutions are being benefitted from this...I thank you on our behalf... Your faith grant is very much praised...”*

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*“...The Mayor promised in his election manifesto that he would make our homes, decent homes. He has made quite a few and my house has also been done...”*

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<sup>1</sup> Lutfur Rahman is the first directly elected Executive Mayor of Tower Hamlets, who was elected to office on 21 October 2010. The next election for this position will take place on 22 May 2014.

<sup>2</sup> Tower Hamlets Borough Council runs a Community Faith Buildings support scheme whose purpose is: “to offer assistance to faith communities to repair, adapt and improve buildings in Tower Hamlets in which faith-based activities occur” (see [http://www.towerhamlets.gov.uk/lgsl/601-650/faith\\_buildings\\_grant.aspx](http://www.towerhamlets.gov.uk/lgsl/601-650/faith_buildings_grant.aspx)).

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*"...I thank our respected Mayor for passing his three years, successful three years..."*

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*"...We are very proud that you are the first elected Mayor. This year we saw in English news paper that you are number 53 among the 100 influential people in Britain. I welcome you for this on our behalf. You have done lot of things for us. We can understand that by looking at changes in the roads and housing that something is being done in our borough..."*

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*"...We are proud that you are a Mayor from Bangladeshi origin. I don't want to ask any question to the Mayor. I would like to know one thing. I came in Tower Hamlets three years back for a visit. The roads and houses were then not in a good condition. But I can now see lot of changes. I visited a home today evening and saw the house was very nice. If I know what steps you took to make these changes. If I can know these, I will try to organise my Union in Bangladesh accordingly"*

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*"...I feel proud and the whole Bengali nation feels proud for Mayor Lutfur Rahman. Many best wishes to you. We acknowledge that he contributed a lot for education, this is undeniable..."*

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*"I am the vice president of a Bangladeshi student union. We held a meeting with you before. You have helped us spontaneously and we thank you for that..."*

The programme host concluded the programme by saying:

*"...Dear viewers, we feel very proud of this Bangladeshi Mayor. We will like more Bangladeshi Mayors, MPs and public representatives..."*

As discussed in more detail below, it was Ofcom's view that this programme was dealing with a matter of political controversy and a matter relating to current public policy i.e. the political debate surrounding the policies and actions of the Mayor of Tower Hamlets, Mr Rahman. We therefore considered this content raised issues warranting investigation under the following rule of the Code:

Rule 5.5: "Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole"

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

## Response

By way of background, ITCE said that this programme was part of a series considering: “successful members of the Bangladeshi community and issues which affect and are of interest to the Bangladeshi community, in particular the British Bangladeshi community”.

The Licensee provided background to the various statements identified by Ofcom in the Introduction above. For example, it said that: “While a literal translation of the expressions used by the audience may sound overly ‘positive’ in an English context, to address Mr Rahman, a man of high political and community stature in the way the audience did in the programme, is in no way unusual. Indeed, it is expected to refer to someone of Mr Rahman’s stature in this way, whether one agrees with him or not. To do otherwise would be perceived as extremely rude”. ITCE added that one member of the audience: “spoke to Mr Rahman in this respectful and deferential way but went on to ask a question critical of Mr Rahman’s policies”. In addition, the Licensee said that when the programme host concluded the programme with a positive reference<sup>3</sup> to Mr Rahman this: “was a reference to the pride the Bangladeshi community feel in Mr Rahman, as a tremendously successful member of the Bangladeshi community and the interviewer’s feeling of gratification that Mr Rahman was willing, in spite of his busy schedule and his success, to be interviewed by a small community television channel”.

ITCE submitted that the programme did not engage the rules in Section Five because the programme was: “not a critique of any controversy surrounding Mr Rahman’s policies nor was it a detailed discussion of Mr Rahman’s policies”. Rather, the programme “was intended to give an insight into Mr Rahman, the person, and not the politician” (and this was made clear at the beginning of the programme by the programme host), and “was intended to promote and showcase the achievements of members of the community to inspire community pride in an attempt to redress some of the well documented disadvantages the community experiences”.

However, if Rule 5.5 had been engaged in this case, ITCE summarised ways in which, in its view, alternative viewpoints had been presented. Firstly, members of the studio audience and callers by telephone asked “difficult and challenging questions” which were “asking [Mr Rahman] to justify his policies and the interviewer referred to the questions several times as a process of holding him to account”. For example, in a question about housing refurbishment, the Licensee said that the programme host: “went on to challenge Mr Rahman as to *why* the standards in the housing refurbishment was not satisfactory”. Second, alternative viewpoints are featured on NTV in: “a variety of other programs where political debate and discussion are discussed, and where views from different sides are debated”.

The Licensee also cited paragraph 1.33<sup>4</sup> of Ofcom’s published Guidance to Section Five of the Code as being relevant in this case, and argued that the application of

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<sup>3</sup> The programme host said: “Dear viewers, we feel very proud of this Bangladeshi Mayor. We will like more Bangladeshi Mayors, MPs and public representatives...”.

<sup>4</sup> Paragraph 1.33 states: “It will not always be necessary to present an opposing view which is at odds with the established view of the majority or inconsistent with established fact in order to preserve due impartiality. Further, whether or not due impartiality has been preserved will also be dependent on a range of other factors such as: the nature of the programme; the programme’s presentation of its argument; the transparency of its agenda; the audience it is

due impartiality should be considered: “within the context of the cultural identity of the audience it serves”. ITCE said that this programme was aimed at: “members of the British Bangladeshi first generation immigrant community”. However, according to the Licensee a: “detailed high level political debate on policy issues would not have been appropriate for the audience who would have been offended had a successful and prominent member of their community been interviewed in a manner that would be considered normal in English language programming aimed at a wider British audience”. Therefore, in this case: “The audience’s expectation in this context [was] not to ‘grill’ what the audience would perceive as ‘their’ Mayor, but to get an insight into who their Mayor is and what is happening in their local area and what the future plans are for their local area”.

In conclusion, ITCE accepted it: “could have reflected opposing view points to those of Mr Rahman using some of the editorial techniques outlined in paragraph 1.37<sup>5</sup>” of Ofcom’s published Guidance to Section Five of the Code. It added that it would be interviewing “some of Mr Rahman’s political opponents” as part of a series of programmes taken as a whole. In particular, it had interviewed John Biggs, the Labour Party candidate running against Mr Rahman in the May 2014 Tower Hamlets Mayoral election, in an edition of *Shomoyer Sathe* broadcast on 3 March 2014. The Licensee added that the programme would also include, later in March 2014, an interview with Chris Wilford, the Conservative Party candidate running against Mr Rahman in the May 2014 Tower Hamlets Mayoral election. In addition, ITCE said that it had engaged a consultant to: “develop tighter internal guidelines in dealing with political interviews and to improve the training of interviewers and those making editorial decisions”.

## Decision

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, including that the special impartiality requirements set out in section 320 of the Act are complied with. This objective is reflected in Section Five of the Code.

Broadcasters are required to comply with the rules in Section Five to ensure that the impartiality requirements of the Act are complied with, including that due impartiality is preserved on matters of political or industrial controversy and matters relating to current public policy.

When applying the requirement to preserve due impartiality, Ofcom must take into account Article 10 of the European Convention on Human Rights. This provides for the broadcaster’s and audience’s right to freedom of expression, which encompasses the right to hold opinions and to receive and impart information and ideas without undue interference by public authority. The broadcaster’s right to freedom of expression is not absolute. In carrying out its duties, Ofcom must balance the right to freedom of expression on one hand, with the requirement in the Code to preserve “due impartiality” on matters relating to political or industrial controversy or matters relating to current public policy.

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aimed at, and what the audience’s expectations are”. (See <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section5.pdf>).

<sup>5</sup> Paragraph 1.37 suggests a number of editorial techniques that broadcasters might consider employing, where programmes handle, for example, controversial policy matters and where alternative views are not readily available.



Section Five of the Code acts to limit, to some extent, freedom of expression because its application necessarily requires broadcasters to ensure that neither side of a debate relating to matters of political or industrial controversy and matters relating to current public policy is unduly favoured. Therefore, while any Ofcom licensee has the freedom to discuss any controversial subject or include particular points of view in its programming, broadcasters must always comply with the Code.

In reaching decisions concerning due impartiality, Ofcom underlines that the broadcasting of comments either criticising or supporting the policies and actions of any political organisation or elected politician is not, in itself, a breach of due impartiality. Any broadcaster may do this provided it complies with the Code.

Rule 5.5 of the Code requires that: “Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service...This may be achieved within a programme or over a series of programmes taken as a whole”. Depending on the specific circumstances of any particular case, it may be necessary to reflect alternative viewpoints in an appropriate way to ensure that Rule 5.5 is complied with. In addition, 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.

Ofcom first considered whether the requirements of Section Five of the Code needed to be applied in this case: that is, whether this programme concerned matters of political or industrial controversy or matters relating to current public policy. This programme lasted approximately 75 minutes and featured Mr Rahman being given the opportunity to speak at length about his policies and actions since becoming the elected Mayor of Tower Hamlets in October 2010. In addition, as detailed in the Introduction, we noted that the programme included a range of statements made by members of the studio audience that could be characterised as being supportive or positive references to Mr Rahman and his policies. For example, these statements included the following:

*“The Mayor promised in his election manifesto that he would make our homes, decent homes. He has made quite a few and my house has also been done...”*

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*“...I thank our respected Mayor for passing his three years, successful three years...”*

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*“You have done lot of things for us. We can understand that by looking at changes in the roads and housing that something is being done in our borough...”*

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*“I came in Tower Hamlets three years back for a visit. The roads and houses were then not in a good condition. But I can now see lot of changes. I visited a home today evening and saw the house very nice”.*

During the programme, Mr Rahman was asked by audience members, both in the studio and by telephone, what he and his administration had achieved since he had been elected, on a range of policy areas. In our view, this programme clearly dealt with a matter relating to current public policy, namely, the political debate surrounding the policies, actions and record of the Mayor of Tower Hamlets, Mr Rahman. In reaching this view, we took into account the Licensee’s arguments that Section Five was not engaged in this case.

Firstly, ITCE argued that the programme was “not a critique of any controversy surrounding Mr Rahman’s policies nor was it a detailed discussion of Mr Rahman’s policies” but “was intended to give an insight into Mr Rahman, the person, and not the politician” and “was intended to promote and showcase the achievements of members of the community to inspire community pride in an attempt to redress some of the well documented disadvantages the community experiences”. We disagreed with these arguments. We considered that this programme did not focus on the background to, and non-political aspects of, Mr Rahman’s life, nor did it deal more widely with “the achievements of members of the [Bangladeshi] community”. Rather, the programme principally featured Mr Rahman, in some detail, explaining in response to audience questions what he and his mayoral administration had done and achieved in relation to various policy areas. Examples of the questions posed to Mr Rahman included the following:

*“My question is whether there will be a permanent graveyard in Tower Hamlets. If there is a plan for one, when the work will be completed, whether it will be completed during the current tenure of the Mayor and which place has been selected for this?”*

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*“The Mayor has started a scheme that if someone has a three-bedroom house and previous resident permit, they can apply for another one. I would like to know that those who did not have this permit and now have three or four bedroom houses what will be for them?”*

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*“The Mayor promised in 2010 that he would allocate 1000 houses each year. My question is how many houses you have allocated up until now and how many houses have been built. Will we get better houses?”*

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*“How would you address the issue of overcrowding within Tower Hamlets? Also how would you help the disabled people in terms of housing and young people at the age of 18 to apply for home within Tower Hamlets?”*

In summary, therefore, we considered that these questions were clearly relating to matters of current public policy, namely the policies of Mr Rahman and his mayoral administration in Tower Hamlets.

Second, we took into account the Licensee's argument that the programme host's introduction to the programme signalled that the programme was aiming to give: "an insight into Mr Rahman, the person, and not the politician". In this regard, we noted that the programme host gave the following general introduction:

*"Peace be upon you dear viewers. Welcome to the NTV Screen to watch the programme 'Shomoyer Sathe'. We discuss 'present Bangladesh' in this programme every Monday of the week, meaning what has been happening in Bangladesh and what will happen in Bangladesh. It is different today, we will discuss about a Bengali today, not about Bangladesh. What people of Bangladesh have been doing in the UK? We will discuss about our success and failures. Today we have invited such a person in this programme who is a pride for Bangladesh, and a pride of Bengali nation. He is the 53<sup>rd</sup> of the 100 most influential Bengalis in Britain. He is the honourable executive Mayor of the London Borough of Tower Hamlets, Mr Lutfur Rahman..."*

However, a few seconds later, the programme host went to say the following, which in our view made clear that the programme planned to discuss Mr Rahman's policies and record in office to some degree:

*"Dear viewers, there are 12 honourable people in the studio today as audience. There are established on their own rights. The people are successful in business, education and politics. They will ask questions to the mayor regarding the help and support they received and did not get in the last three years. This means today we would like to know what are the success and failures of Mayor Lutfur Rahman in the last three years"*

Given the above, therefore, we considered that Section Five was applicable in this case, and that NTV needed to comply with the requirements of that Section. Ofcom then went on to assess whether the programme preserved due impartiality by, for example, containing sufficient alternative viewpoints.

In our view, this programme presented a very one-sided treatment of the policies and record of Mr Rahman in his role as Mayor of Tower Hamlets. This was due to a combination of factors. Firstly, questions from audience members were generally couched in terms that could be characterised as supportive of, or did not seek to challenge, Mr Rahman. Second, Mr Rahman was given numerous opportunities to set out his position, at length and uninterrupted and unchallenged, on his policies and record. In effect the programme gave him a platform to promote himself as a local politician in Tower Hamlets. For example, we noted the following statements by Mr Rahman:

*"Our budget is £1.2 billion. When I was the council leader for two years, we used to take a cut of £3 million each year. It was difficult to take the cut of two thirds of a million pounds and now you can think, how difficult it is to take a cut of £123 million. Praise be to God, we have taken this burden of cut without cutting any fundamental services. We have invested more in the libraries. You can see the Watney Market Library; it's a community facility and a library. We have continued swimming pools, leisure facilities and libraries and we have invested more in fundamental services. Community facilities are similarly very important to us. Despite the cut, we did not close any community facilities. Shadwell centre is open and ongoing; similarly Bethnal Green Centre is open and ongoing. All other centres throughout the council are open. We continue them and resource them"*

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*“We have arranged to give a grant to the faith community. This is the first time in the history of the country that a council has done this. It is not for activities but to protect and preserve the buildings up to £3 million. All organisations, who applied in the 1<sup>st</sup> round, got £20,000 to £25,000 except one. The second round will be up to £300,000. Every community has been benefitted”.*

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*“It was my pledge before becoming Mayor that we will bring the council homes to a decent standard. Each house will get a new bathroom, new kitchen, double glazing etc. We are delivering a project of £168 million. We are on target to deliver the project. All council homes within next two to three years will have new facilities”.*

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*“We have delivered nearly three and half thousand homes in three years in partnership. God willing, if I get time, with your prayers, the Tower Hamlets housing crisis should not remain there. I will deliver it as I promised to you. Thank you”.*

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*“It was my promise that I will re-house 1000 overcrowded houses every year. I will give new 1000 homes per year to bigger families living in small houses. I have already re-housed three and half thousand families. I believe I am meeting my target but it’s an ongoing project. It is not enough for us. I would like to build more houses and deal with every single problem”.*

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*“I have allocated £2 million just to help those families who are in problems because of the [welfare] benefits cut. Because of the problems created by the government. I have tried to help them and with the two million, we have been paying rents and benefits of some families”.*

At times Mr Rahman acknowledged the practical difficulties he had faced in implementing his policies (for example, through his use of phrases such as: *“We are trying out best”* or *“It is not possible to give house to all”*). In our view, however, during the programme there was no serious challenge put to Mr Rahman about his policies and record in office. For example, the viewpoints of other political parties were not included, either in person or put to Mr Rahman by the programme host or other programme contributors.

In reaching this view, we took into account the Licensee’s representations as to whether sufficient alternative viewpoints were included within the programme.

Firstly, ITCE said that alternative viewpoints were featured in the programme by audience members asking Mr Rahman “difficult and challenging questions” to justify his policies and “the interviewer referred to the questions several times as a process of holding him to account”. We disagreed. We noted that, out of the 19 questions posed to Mr Rahman during the programme, only the following could be reasonably categorised as difficult or challenging to any degree:

*“The Mayor promised in his election manifesto that he would make our homes, decent homes. He has made quite a few and my house has also been done. But this has been done by the labours quite hurriedly and as a result cracks are created. This is a common problem and it has happened in my house as well. I telephoned and they came and repaired it. There are many complaints like this...My question is what are the Mayor’s further plans regarding this?”*

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*“My question tonight is about overcrowding within Tower Hamlets. Recently, we heard on the news that thousands of people are on the waiting list. Also from council statistics we saw that this number was rising year by year. Basically my question is, how would you address the issue of overcrowding within Tower Hamlets? Also how would you help the disabled people in terms of housing and young people at the age of 18 to apply for home within Tower Hamlets?”*

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*“I would like to say something about parking. When relatives come to our borough, there is no public parking for them in our borough. Is there any initiative regarding this?”*

The only time that in our view the programme host could be reasonably characterised as asking a difficult and challenging question to some degree was the following instance:

*“I have a question as well. The immigration and police attacked the Whitechapel market together. Someone says, it was an immigration attack, some says it was for some illegal goods. The businessmen at Whitechapel have not taken this positively. It was a negative aspect for our residents at Whitechapel. I would like to know why this has happened and whether you have taken any steps regarding this. I have another question to you. We see drugs everywhere after evening. It was more before and it is still there. How this can be controlled more?”*

Taken together, we did not consider that the above questions sufficiently provided alternative viewpoints on the issue of Mr Rahman’s policies and record in office, given the large amount of the programme that was taken up by Mr Rahman promoting and defending his policy record, and that the overwhelming majority of the audience questions put to Mr Rahman were either positive or not critical or questioning of him and his policies. For example, we noted the following such questions from audience members:

*“I would like to thank you for inaugurating the second round faith grant. Many institutions, especially the religious institutions are being benefitted from this...I thank you on our behalf...Your faith grant is very much praised...”*

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*“I am the vice president of Bangladeshi student union. We held a meeting with you before. You have helped us spontaneously and we thank you for that. There are many colleges in Tower Hamlets area owned by Bangladeshi and others. Bangladeshi students suffer from problems because of them. Is there any plan from your side to take steps regarding this?”*

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*“What provision you have in place for the people of Tower Hamlets. How will you ensure that we have a bright future ahead of us. As you know there are lots of youth in the borough?”*

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*“We are proud that you are a Mayor from Bangladeshi origin. I don’t want to ask any question to the Mayor. I would like to know one thing. I came in Tower Hamlets three years back for a visit. The roads and houses were then not in a good condition. But I can now see lot of changes. I visited a home today evening and saw the house was very nice”.*

In considering the various viewpoints included in the programme, we noted that many of the questions put to Mr Rahman, as laid out in the Introduction, could be characterised as highly positive about Mr Rahman and his policies. For example, Mr Rahman was variously described as: *“our pride, our dream”*; *“pride to the Bengali Nation”*; having passed *“three years, successful three years [as Mayor]”*; having done *“lot of things for us”*; having *“contributed a lot for education”*.

In this regard, we noted the argument put forward by ITCE that: *“a literal translation of the expressions used by the audience may sound overly ‘positive’ in an English context”*, and that *“to address Mr Rahman, a man of high political and community stature in the way the audience did in the programme is no way unusual”*. We acknowledge the different cultural and linguistic traditions which exist in various ethnic communities as to the deference which should be properly shown to elected politicians and respected figures in those communities. Ofcom considered that many of the positive references to Mr Rahman in this programme went beyond expressing respect to an elected community figure to being positive endorsements of Mr Rahman and his policies. In addition, even if various contributors did show appropriate deference and politeness to the Mayor during this programme, this did not remove the obligation on the Licensee to reflect alternative viewpoints to that of Mr Rahman sufficiently in this programme or in a series of programmes taken as a whole.

We also considered the role of the programme host in this programme. Ofcom agreed with ITCE that the programme host *“referred to the questions [being asked by audience members] several times”*. But we did not consider this to be equivalent to *“holding him [i.e. Mr Rahman] to account”* as argued by the Licensee. Rather, we considered that the role of the programme host during the programme largely consisted of directing the course of the programme’s proceedings rather than seriously challenging Mr Rahman at any point about his policies and record in office. ITCE said that when the programme host concluded the programme with a positive reference<sup>6</sup> to Mr Rahman this: *“was a reference to the pride the Bangladeshi community feel in Mr Rahman, as a tremendously successful member of the Bangladeshi community and the interviewer’s feeling of gratification that Mr Rahman was willing, in spite of his busy schedule and his success, to be interviewed by a small community television channel”*. However, in our view, the likely effect of this statement was to reinforce the predominantly one-sided nature of the discussion in this programme in favour of the policies and record of Mr Rahman.

The Licensee also argued that alternative viewpoints were featured on NTV in: *“a variety of other programs where political debate and discussion are discussed, and where views from different sides are debated”*. However, ITCE did not provide any

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<sup>6</sup> The programme host said: *“...Dear viewers, we feel very proud of this Bangladeshi Mayor. We will like more Bangladeshi Mayors, MPs and public representatives...”*

evidence of how alternative viewpoints on the policies and record of Mr Rahman have been reflected on NTV, as appropriate, in a series of programmes taken as whole (i.e. more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience). In addition, we noted the Licensee said in representations to us that: it would be interviewing “some of Mr Rahman’s political opponents” as part of a series of programmes taken as a whole; in particular it had broadcast an interview with John Biggs, the Labour Party candidate running against Mr Rahman in the May 2014 Tower Hamlets Mayoral election, in an edition of *Shomoyer Sathe* on 3 March 2014; and also planned to broadcast an interview, on 10 March 2014, with Chris Wilford, the Conservative Party candidate running against Mr Rahman in the May 2014 Tower Hamlets Mayoral election. However, we did not consider these subsequent interviews with two of Lutfur Rahman’s political opponents, over four months after the broadcast of the original programme in this case, meant the Licensee had preserved due impartiality over a series taken as a whole.

In reaching our decision, we also took into account paragraph 1.33<sup>7</sup> of Ofcom’s published Guidance to Section Five of the Code – referred to by the Licensee. In particular, ITCE argued that the “British Bangladeshi first generation immigrant community” would not have considered a “detailed high level political debate on policy issues” as “appropriate” in a programme of this nature. According to the Licensee, the audience would be offended had a successful and prominent member of their community been interviewed in a manner “that would be considered normal in English language programming aimed at a wider British audience”. Ofcom’s Guidance to section Five of the Code states, at paragraph 1.4: “...in reaching a decision whether due impartiality needs to be preserved in a particular case, broadcasters should have regard to the likely expectation of the audience as to the content, and all other relevant contextual factors”. The extent to which Ofcom should take account of the likely target audience for a particular channel and their expectations will depend on the circumstances. If an Ofcom-licensed channel is broadcasting in a language other than English and primarily aiming to reach an audience based outside the UK, it is normally appropriate for Ofcom to have regard to some extent to the expectations of that audience in deciding whether due impartiality was preserved. This however is only one factor to consider in determining whether due impartiality has been preserved in any particular case. It is not the only factor. In this case, an elected politician holding office in the UK, and facing re-election in about eight months’ time, was being questioned on his policies and record in office. We would expect any Ofcom licensee, broadcasting to an audience in the UK about the policy performance of an elected UK politician, to ensure that politician was challenged and/or that alternative viewpoints were reflected appropriately. It is an editorial matter for the broadcaster to decide how these requirements might be fulfilled. Ofcom considers that ITCE could, and should, have ensured that Mr Rahman was questioned and alternative viewpoints reflected appropriately (either within this programme or in a series of programmes taken as a whole) so as to ensure due impartiality without offending its audience unnecessarily.

We welcome ITCE’s acceptance that it: “could have reflected opposing view points to those of Mr Rahman using some of the editorial techniques outlined in paragraph 1.37<sup>8</sup>” of Ofcom’s Guidance to Section Five of the Code. Furthermore, we noted that

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<sup>7</sup> See footnote 3.

<sup>8</sup> Paragraph 1.37 states that: “It is an editorial matter for the broadcaster as to how it maintains due impartiality. Where programmes handle, for example, controversial policy

ITCE had engaged a consultant to: “develop tighter internal guidelines in dealing with political interviews and to improve the training of interviewers and those making editorial decisions”. However, for all the reasons above, Ofcom concluded that the Licensee failed to preserve due impartiality as required by Section Five of the Code. This programme therefore breached Rule 5.5 of the Code.

### **Breach of Rule 5.5**

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matters and where alternative views are not readily available, broadcasters might consider employing one or more of the following editorial techniques:

- interviewers could challenge more critically alternative viewpoints being expressed, for example, by programme guests or audience members, so as to ensure that programme participants are not permitted to promote their opinions in a way that potentially compromises the requirement for due impartiality;
- where an interviewee is expressing a particular viewpoint, interviewers could reflect alternative viewpoints through questions to that interviewee;
- alternative viewpoints could be summarised, with due objectivity and in context, within a programme;
- having available interviewees to express alternative views; or
- if alternative viewpoints cannot be obtained from particular institutions, governments or individuals, broadcasters could refer to public statements by such institutions, governments or individuals or such viewpoints could be expressed, for example, through presenters’ questions to interviewees”.



## Advertising Scheduling Findings

### In Breach

#### Advertising minutage

*Hidayat TV, 9 October 2013, 16:00*

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#### Introduction

Hidayat TV is an Islamic channel which broadcasts educational and religious programmes in Arabic, English and Urdu. The licence for Hidayat TV is held by Hidayat Welfare Society Limited (“Hidayat TV” or “the Licensee”).

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

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

During monitoring of Hidayat TV on 9 October 2013 between 16:00 and 19:00, Ofcom noted 13 minutes and 22 seconds of advertising during commercial breaks in the 18:00 clock hour.

Ofcom therefore sought comments from the Licensee under Rule 4 of COSTA.

In addition, Rule 11 of COSTA states:

“Broadcasters must ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service. This shall be done by optical (including spatial) means; acoustic signals may also be used as well”.

During programming between 16:00 and 19:00 Ofcom noted a scrolling caption ran across the bottom of the screen in a continuous loop, comprising appeals to viewers for funds for programming, information on community events, administrative notices, and including the following text:

*“...TO ADVERTISE YOUR BUSINESS ON HIDAYAT TELEVISION PLEASE  
CALL US ON: [landline number]”.*

Although the banner was distinct from the programmes in which it was broadcast, Ofcom noted that the material in the banner contained both advertising (i.e. an invitation for businesses to advertise on Hidayat TV) and editorial.

Ofcom therefore sought comments from the Licensee under Rule 11 of COSTA..

#### Response

The Licensee expressed regrets for the breach. It explained that the scrolling text was “purely non commercial community news” and was not carried as television advertising or teleshopping with any financial gain.

## **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content which it considers are best calculated to secure a number of standards objectives. One of these objectives is that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”.

Articles 20 and 23 of the EU Audiovisual Media Services (AVMS) Directive set out strict limits on the amount and scheduling of television advertising. Ofcom has transposed these requirements by means of key rules in COSTA. Ofcom undertakes routine monitoring of its licensees’ compliance with COSTA.

Rule 4 of COSTA limits advertising in any one clock hour to a maximum of 12 minutes.

Ofcom concluded that Hidayat TV had carried 13 minutes and 22 seconds of advertising in the 18:00 clock hour in breach of Rule 4 of COSTA.

Rule 11 of COSTA directs broadcasters to ensure that television advertising and teleshopping is readily recognisable and distinguishable from editorial content. COSTA defines ‘television advertising’ as “any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services...in return for payment”.

Ofcom noted the Licensee’s statement that there was no commercial intent or financial gain for the channel behind the scrolling text highlighted. However, Ofcom considered that an invitation to businesses to advertise on Hidayat TV represented an announcement for self-promotional purposes in order to promote the supply of goods and services in return for payment, and therefore fell within the definition of television advertising in COSTA.

Ofcom therefore concluded that scrolled advertising (i.e. an invitation for businesses to advertise on Hidayat TV) and editorial were broadcast on-screen in a single banner, and that the Licensee had failed to ensure that advertising was readily recognisable and distinguishable from editorial content, in breach of Rule 11 of COSTA.

## **Breaches of Rules 4 and 11 of COSTA**

## Broadcast Licence Condition cases

### In Breach

#### Provision of service

*OX105 FM (now Destiny 105), 2 October 2013 to present*

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#### Introduction

OX105 FM (recently re-branded as Destiny 105) is a community radio station licensed to provide a service for the people living in the OX4 postcode area of Oxford. The licence is held by OX4 FM Community Interest Company (“the Licensee”).

A representative of the Licensee informed Ofcom that, between 2 and 7 October 2013, the station had been off air due to the removal of necessary equipment and an inability to access the studio. The Licensee confirmed that since 7 October 2013, it had been broadcasting an automated service.

Ofcom considered that this raised issues warranting investigation under Conditions 2(1) and 2(4) in Part 2 of the Schedule to OX105 FM’s licence. These state, respectively:

“The Licensee shall provide the Licensed Service specified in the Annex<sup>1</sup> for the licence period.” (Section 106(2) of the Broadcasting Act 1990); and

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

Ofcom therefore requested formal comments from the Licensee on its compliance with these Conditions.

#### Response

The Licensee reiterated that, from 2 October 2013 the station had been off air and had subsequently broadcast automated output.

It also said that: “We have now resumed local programming with over 12 hours a day originating from live presenters over the last weekend. In addition, while we continue to require automation overnight and to fill in some temporary scheduling gaps, a significant amount of our weekday schedule is now being filled by local presenters. This automation system is in the process of being fully upgraded to enable the station to provide additional local information and content in addition to music during the times when a live presenter is unavailable.”

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<sup>1</sup> The licence annex sets out the radio station’s ‘Key Commitments’. These include a description of the programme service, social gain (community benefit) objectives (such as training provision), arrangements for access for members of the target community, opportunities to participate in the operation and management of the service, and accountability to the community. OX105 FM’s Key Commitments can be found here: <http://www.ofcom.org.uk/static/radiolicensing/Community/commitments/cr000215.pdf>.

## Decision

Provision by a Licensee of its licensed service on the frequency assigned to it is the fundamental purpose for which a community radio licence is granted. Ofcom has a range of duties in relation to radio broadcasting, including securing a range and diversity of local radio services which are calculated to appeal to a variety of tastes and interests, and the optimal use of the radio spectrum. This is reflected in the licence condition requiring the provision of the specified licensed service. Where a licensed service is not being provided in accordance with the licence, none of the required community radio programme output is provided. In addition, choice for listeners is reduced.

In this case, the Licensee found itself in the position of being without its studio and equipment, which it required to be able to broadcast its service. While we acknowledge that the Licensee appears to have been experiencing financial issues that led to this situation, it is the responsibility of a licensee to manage its affairs so that the service it is licensed to deliver continues to be provided.

By ceasing to provide its licensed service from 2 October 2013, the Licensee breached Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the licence. Ofcom has therefore formally recorded this breach by the Licensee.

We noted the Licensee's confirmation that while the service (which has recently been re-branded as Destiny 105) has not yet resumed broadcasting in compliance with all of its Key Commitments, it is committed to doing so, and is taking the appropriate steps to return to compliance.

Ofcom will therefore monitor the service in due course to assess whether the resumed service is operating in accordance with its Key Commitments. The Licensee is put on notice that, should similar issues arise, Ofcom will consider taking further regulatory action.

**Breaches of Licence Conditions 2(1) and 2(4) in Part 2 of the Schedule to the community radio licence held by OX4 FM Community Interest Company (licence number CR000215BA)**

## Fairness and Privacy cases

### Not Upheld

#### Complaint by Pinder Reaux Solicitors on behalf of Aardvark Kennels

*Dispatches: Undercover Designer Dogs, Channel 4, 11 March 2013*

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##### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast made by Pinder Reaux Solicitors (“Pinder Reaux”) on behalf of Aardvark Kennels.

The programme investigated the high demand for “designer dogs” as domestic pets in the UK and looked at the conditions in which significant numbers of puppies were imported and whether human health was being put at risk. Part of the report included heavily obscured and secretly filmed footage of Aardvark Kennels’ shop and an employee taking delivery of puppies from Slovakian importers. Earlier in the same programme, one of the puppy importers was shown in secretly filmed footage claiming that mostly they imported puppies that were younger in age than the ages printed in the travel documents of the animals.

Ofcom found that:

- The broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Aardvark Kennels.
- Given that the programme did not make specific allegations about the role played by Aardvark Kennels, there was no unfairness in not giving Aardvark Kennels a specific opportunity to respond.
- The broadcaster had adequately and fairly reflected the position of Aardvark Kennels, although summarised and edited, regarding the secret filming of the delivery of puppies to the shop.
- Aardvark Kennels did not have a legitimate expectation of privacy in relation to the broadcast of the footage shown in the programme, Therefore, Aardvark Kennels’ privacy was not unwarrantably infringed in the programme as broadcast.

##### Introduction and programme summary

On 11 March 2013, Channel 4 broadcast an edition of *Dispatches* entitled *Undercover Designer Dogs*, which investigated whether the high demand for “designer dogs” as domestic pets in the UK was “*fuelling another side to the pet trade*”. It looked at the conditions in which significant numbers of puppies were being imported and asked whether the relaxation of the UK quarantine regulations was putting human health at risk. The programme reported that a relaxation in quarantine rules in 2012 meant that young puppies could now legally be brought into the UK on pet passports. However, concerns had been raised about cheap puppies being imported from Eastern Europe where paperwork and rabies vaccinations were suspect.

To investigate these concerns, the programme makers set up an online pet shop called *"Hatched, Matched, Dispatched"* and a cover story for approaching European puppy importers who had come to their attention during their research. The programme makers planned to express an interest in buying imported puppies to sell in the UK in order to see how suspect importers operated and to film meetings with such importers surreptitiously.

The programme included secretly filmed footage of Slovakian puppy importers, Mr Milan Vincze, and his daughter Ms Aya Vincze. Ms Vincze told the programme's undercover reporter that the puppies they usually imported were younger than the ones they currently had in their van which meant that the *"stated age"*, as Ms Vincze called it, on the pet passports of the puppies was false. The programme explained that:

*"the age of 15 weeks is critical. That's because a puppy should be 12 weeks old before it's vaccinated against rabies. And then, according to the Department for the Environment, DEFRA<sup>1</sup>, you must wait a further three weeks before importing it"*.

Later in the programme, the reporter was shown following Mr and Ms Vincze's van. The reporter stated that:

*"They've [Mr and Ms Vincze] have told us they're delivering all these puppies to two of their regular clients. We're not quite sure where they are. We think they're pet shops, anyway we've decided to follow them"*.

The reporter stated that for a while, the programme makers had lost the van but then:

*"30 minutes later we were lucky enough to run into them [Mr and Ms Vincze] again. They were making a delivery on a high street in London"*.

Mr and Ms Vincze were then shown delivering some of the puppies to a pet shop at night. The programme showed the front of a brightly lit pet shop and an unidentified person being handed a number of puppies one at a time from the van. The sign above the pet shop, the face of the person taking the puppies, and the identity of the businesses on either side of the pet shop were obscured by blurring. The reporter stated:

*"Although the pet shop had been closed, it was opening for a special delivery... We've seen about six [puppies] so far. [I'm] just going to sit here and wait for a bit longer. So they're taking another one in now, they're taking them one by one. I think that's the seventh or eighth puppy they've brought in. The owner's putting them in his arms and taking them in. I don't know how many more they've got left to deliver. Anyway, I'm just about to turn the light off in case they see us"*.

The reporter then read a statement in which Mr Vincze denied any wrongdoing, followed by a statement from the pet shop which stated that it had been *"legally importing healthy puppies from Slovakia for years"* and that DEFRA had never queried the puppies' ages.

Aardvark Kennels, the pet shop shown in the programme, was not referred to by name in the statement or identified in any other way in the programme.

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<sup>1</sup> Department for Environment, Food & Rural Affairs.

## Summary of complaint and the broadcaster's response

### Unjust or unfair treatment

Pinder Reaux complained on behalf of Aardvark Kennels that it was treated unjustly or unfairly in the programme as broadcast because:

- a) An incorrect and unfair impression was given that Aardvark Kennels was involved in criminal activity, namely the illegal importation of incorrectly certified animals.

In particular, Pinder Reaux said that footage of an Aardvark Kennels' employee was shown receiving a delivery of puppies from someone who was described by the programme as an *"illegal animal importer"*. Although the front sign of the Aardvark Kennels' shop was obscured in the programme, people who were familiar with the shop and its location had been able to identify it from the footage included in the programme. Pinder Reaux said that, as a consequence, Aardvark Kennels had received a number of threatening telephone calls and emails and it had been subjected to threatening messages posted on social media websites.

In response, Channel 4 said that no allegations of wrongdoing were made in the programme against Aardvark Kennels. The puppies Aardvark Kennels was shown taking delivery of had clearly been described by one of the importers, Ms Vincze, earlier in the programme as being aged 15 weeks or older. The puppies were therefore beyond the point of risk of having rabies because it was after they were required to have had the second rabies vaccination. It also said that the programme did not state that Mr and Ms Vincze had previously delivered puppies to Aardvark Kennels. It said that if it could be inferred from the programme that Ms Vincze was admitting to falsifying paperwork and deceiving DEFRA inspectors, which Channel 4 did not concede, then it was also likely that their customers would be deceived about the puppies' ages.

Channel 4 said that, because the shop was not identified by name, and that considerable efforts were taken by the programme makers to obscure the shop's identity (e.g. heavy blurring and colour changes to the neighbouring shops), it did not consider that the complainant had adequately made out its claim that it was identified as a direct result of the programme. Finally, Channel 4 said that, since it could not be denied that Aardvark Kennels had accepted these particular puppies, there was no unfairness to them in the programme.

- b) The programme makers did not properly inform Aardvark Kennels in advance that footage of the shop, including the footage of an employee receiving a delivery of puppies, would be included in the programme.

Pinder Reaux said that a letter (dated 4 March 2013) from the programme's producer to the complainant stated only that it was informing Aardvark Kennels that the programme had evidence that one of its suppliers was importing dogs illegally, but added that "we are not intending to name Aardvark [Kennels] in the broadcast programme". Pinder Reaux stated that the letter seemed to be informative only and did not request a response from Aardvark Kennels.

In response, Channel 4 said that, in view of the considerable steps taken by the programme makers to obscure the identity of the pet shop (referred to above), it did not consider it necessary to forewarn Aardvark Kennels before the programme was broadcast that shots of its exterior and of an employee receiving a delivery of puppies would be included in the programme. However, it denied

that Aardvark Kennels had been misled, stating that in a letter of 4 March 2013 the programme makers had told the complainant that Mr Vincze had been “covertly filmed delivering puppies to Aardvark [Kennels]”, and that, in a subsequent email dated 8 March 2013, the programme makers had told Aardvark Kennels that “proportionate and appropriate measures had been taken to obscure the identity of your shop and any staff members who were covertly filmed”.

- c) The programme did not contain a full or fair representation of the detailed submissions Aardvark Kennels sent to the programme makers after it had been informed by them that one of its suppliers was to be featured in the programme. This resulted in the programme creating a grossly inaccurate depiction of Aardvark Kennels.

In response, Channel 4 said that the programme makers were not obliged to offer Aardvark Kennels a right to reply because no allegations of wrongdoing had been made against the complainant in the programme. However, in view of the public health and animal welfare issues raised by the importer’s activities, the programme makers wrote to Aardvark Kennels before the programme was broadcast in order to inform the complainant of the evidence the programme had gathered. Channel 4 added that the programme makers believed it was in the interests of fairness and accuracy that Aardvark Kennels’ response was summarised in the programme.

#### Unwarranted infringement of privacy

Pinder Reaux complained that the privacy of Aardvark Kennels was unwarrantably infringed in the programme as broadcast because:

- d) Footage of the exterior of the Aardvark Kennels pet shop, along with footage of an employee receiving a delivery of puppies, was included in the programme without its permission and despite an assurance from the programme makers that it was not intending to name Aardvark Kennels in the broadcast programme.

Pinder Reaux stated that Aardvark Kennels had specifically requested that the shop not be shown in the programme when it submitted detailed representations to the programme makers. It said that people who were familiar with the shop and its location were able to identify it from the footage included in the programme. As a result, Aardvark Kennels had received a number of threatening telephone calls and emails, and had been subjected to threatening messages posted on social media websites.

In response, Channel 4 stated that it had been justified in mounting the programme’s secret filming operation because preliminary research had uncovered material evidence, including testimony from former customers of Aardvark Kennels, which raised concerns about the working practices of both the pet shop and one of its suppliers, Mr and Ms Vincze. During covert filming of meetings between Mr and Ms Vincze and the programme makers, Ms Vincze made specific admission of how they routinely evaded the rules with falsified paperwork that showed puppies as young as 10 and 12 weeks old to be 15 weeks, and duping DEFRA inspectors by hiding smaller, younger puppies behind bigger ones. Channel 4 said it was crucial to the credibility of the story and the public interest, to show that Mr and Ms Vincze were supplying UK pet shops directly and that these shops were selling puppies to UK homes relying on the paperwork provided by Mr and Ms Vincze and DEFRA checks. Investigating



these concerns, Channel 4 argued, was in the public interest because the evidence raised concerned the protection of public health and the exposing of misleading claims (i.e. Mr and Ms Vincze). Therefore, showing the surreptitiously filmed footage of the puppy delivery, albeit that the puppies were aged 15 weeks or older, to the pet shop was necessary to the credibility and authenticity of the programme.

With regard to the inclusion of footage of Aardvark Kennels and one of its employees in the programme, Channel 4 stated that it did not accept that the complainant's privacy had been unwarrantably infringed because the complainant did not have a legitimate expectation of privacy with regard to the broadcast of the covert filming. Channel 4 argued that: although the filming was surreptitious it was conducted in a public place, that is, on the street; no private act or information was included in the material broadcast; and neither the complainant, its staff, nor the shop itself were reasonably identifiable from the broadcast. If Ofcom were to consider that the complainant did have a legitimate expectation of privacy, any infringement of such a right would have been warranted by the public interest value in the matters revealed.

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

Ofcom's initial Preliminary View in this case was that the complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast should not be upheld. In summary, Ofcom provisionally concluded that:

- The programme makers had taken sufficient steps to obscure the identifying features of Aardvark Kennel's shop and its employee so that neither would be recognisable to an ordinary viewer. In addition, in the absence of evidence from the complainant that anyone had identified the pet shop, Ofcom was unable to conclude that the pet shop was identifiable from footage included in the programme. Given that Aardvark Kennels was not identifiable from the footage, Ofcom did not consider that an unfair impression was given in the programme that Aardvark Kennels was involved in criminal activity, namely the illegal importation of incorrectly certificated animals.
- Ofcom was also satisfied that the broadcaster had adequately reflected Aardvark Kennels' position, although summarised and edited, regarding the puppies and Ofcom considered that this was presented fairly in the programme.
- In relation to the complaint of unwarranted infringement of privacy, Ofcom took the view that the identity of the pet shop and its employee were not identifiable in the programme as broadcast. Therefore, in the circumstances of this case, Aardvark Kennels did not have a legitimate expectation of privacy in relation to the footage included in the programme as broadcast. Having reached this conclusion, it was not necessary for Ofcom to consider whether any infringement into the privacy of Aardvark Kennels was warranted.

Both parties were given the opportunity to make representations on the initial Preliminary View. Pinder Reaux, on behalf of Aardvark Kennels, and Channel 4 made representations that were directly relevant to the complaint and Ofcom's Preliminary View not to uphold the complaint.

### Pinder Reaux's representations

In summary, Pinder Reaux said that Channel 4's failure to properly undertake a full and fair representation of the detailed submissions that Aardvark Kennels sent to the programme makers resulted in the programme creating a grossly and inaccurate depiction of it. It said that while the programme included a brief statement from Aardvark Kennels at the end of the programme, the entirety of its statement was not included. Pinder Reaux said that cherry picking a couple of sentences from Aardvark Kennels' statement was wholly unjust and amounted to unfair treatment. Pinder Reaux said that the programme clearly imputed that Aardvark Kennels was involved in illegal/criminal activity.

Pinder Reaux said that while Aardvark Kennels did not dispute that some steps were taken in the programme to shield its identity, these steps were insufficient. Pinder Reaux submitted further material to show that Aardvark Kennels was readily identifiable from the programme. This evidence included:

- Postings from the local council's Facebook page that were posted 24 to 48 hours after the broadcast of the programme. Pinder Reaux said that the posts provided to Ofcom mentioned Aardvark Kennels by name which showed that it was clearly readily identifiable via the programme. It also said that the nature of these posts clearly showed that Aardvark Kennels was perceived as being involved in criminal activity.
- Postings made on the Facebook page of Get Gumtree Animal Free ("GGTAF", a group campaigning to prevent the sale of animals via the online classified advertisements website, Gumtree). Again, Pinder Reaux said that the posts identified Aardvark Kennels as the pet shop featured in the programme.
- Emails sent directly to Aardvark Kennels via its own website within 24 hours of the programme being broadcast.
- Postings from Aardvark Kennels' own dedicated Facebook page.
- Transcripts of two abusive telephone call messages that were left on Aardvark Kennels' voicemail. Pinder Reaux said that many more telephone calls were received, but it was not possible for them all to be recorded.

Pinder Reaux said that these instances were illustrative of the extent to which Aardvark Kennels was identified by the programme and the manner in which it was portrayed, that is as being involved in criminal activity, which, it maintained, was untrue.

### Channel 4's representations

In summary and in relation to the material provided by Pinder Reaux to Ofcom to show that Aardvark Kennels was readily identifiable from the programme, Channel 4 said that it was abundantly clear that Aardvark Kennels was named as the premises in the programme by an active online community of campaigners for puppy welfare who were already very familiar with the pet shop. It would only have taken one person with specialist knowledge of Aardvark Kennel's activities and reputation to identify it as the shop in the programme and then circulate this to a network of people via the campaign's publically available social networking website. The broadcaster stated that while some of the objectors referred loosely to "illegality", it was clear that

such comments were directed to the pet shop buying, and then selling in the UK, puppies that campaigners suspect to have been “puppy-farmed” in Eastern Europe. This, Channel 4 said, was the true reason for the shop being targeted by campaigners.

Channel 4 provided Ofcom with material that it stated showed that campaigners and animal welfare interest groups were already raising awareness and concerns on online social networking websites about how Aardvark Kennels operated well before the programme’s broadcast. Contrary to what the complainant states, Channel 4 said that it was clear from this material that Aardvark Kennels did not have a “positive/neutral” online presence prior to the broadcast of the programme. In fact, the very first posting on the local council website was from a member of GGTA which showed the cross-pollination of the campaigners.

The broadcaster said that it was this identification of Aardvark Kennels, i.e. due entirely to prior knowledge of its alleged “bad practices” and associations with puppy farming and importation of puppies from Eastern Europe in an established online community, that led to wider identification of the pet shop that was so heavily disguised in the programme. Channel 4 said that the steps taken to conceal the identity of Aardvark Kennels from the “ordinary viewer” were proportionate in all the circumstances. To the extent that Aardvark Kennels was identified by someone with specialist knowledge which was then passed on between like-minded people, Channel 4 said that it was in relation to activities in respect of which the pet shop was well-known and for which it had already been widely criticised.

In relation to the initial Preliminary View itself, Channel 4 made the following observations:

- Undue weight was placed by Ofcom on whether Aardvark Kennels’ premises were identifiable from the programme and the lack of evidence provided by the complainant in determining whether the programme was fair. Channel 4 said that whether the premises could be identified from the programme had no bearing on “fairness”. In any event, even if the pet shop was identified, the programme was not unfair.
- It did not follow from any alleged identification of the Aardvark pet shop either that it had a legitimate expectation of privacy in respect of the broadcast of the programme or that its privacy was unwarrantably infringed by the broadcast of the programme. It said that in the event that Ofcom determined that the complainant had a legitimate expectation of privacy in regard to the footage broadcast in the programme, then the public interest as already set out in Channel 4’s statement above, outweighed any privacy rights engaged and therefore any infringement was clearly warranted.

Having carefully considered the representations of both parties, Ofcom considered, in light of the further points raised, to reconsider the initial Preliminary View and, in particular, our reasoning in finding that the complainant was not identifiable from the footage shown in the programme. This was reflected in the revised Preliminary View and in the Decision below.

### **Ofcom’s Revised Preliminary View**

Ofcom provided both parties with a revised Preliminary View with the opportunity to make representations on it. While the decision not to uphold the complaint remained the same as the initial Preliminary View, the revised Preliminary View included

altered reasoning on the issue of whether the complainant was identifiable from the footage shown in the programme. Neither the complainant nor Channel 4 made any further representations on the revised Preliminary View.

## **Decision**

In reaching this Decision, Ofcom carefully considered all the relevant material provided by both parties. This included a recording and a transcript of the programme as broadcast, both parties' written submissions and supporting material. We also considered the representations made by the parties on the initial Preliminary View. Neither party made any further representations on the revised Preliminary View.

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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

### Unjust or unfair treatment

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster's actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 of the Code.

- a) Ofcom considered the complaint that Aardvark Kennels had been treated unfairly and unjustly in the programme as broadcast, in that an incorrect and unfair impression was given that Aardvark Kennels was involved in criminal activity, namely the illegal importation of incorrectly certificated animals.

Ofcom had regard to whether reasonable care was taken by the broadcaster to satisfy itself that material facts had not been presented, disregarded or omitted in the programme in a way which was unfair to Aardvark Kennels (as outlined in Practice 7.9 of the Code).

The programme set out to investigate whether the demand for "designer dogs" as pets in the UK was having a significant effect on the conditions in which puppies were being imported and whether the relaxation of the quarantine regulations put human health at risk. Part of the investigation examined whether some dog importers were bringing puppies into the UK from abroad with falsified travel documents and immunisation histories. It was in this context that the footage of Aardvark Kennels was included in the programme.

Before considering the substance of the complaint that the programme gave an unfair impression that Aardvark Kennels was involved in the illegal importation of incorrectly certified animals, it was necessary for Ofcom to assess whether or not the pet shop shown in the programme was identifiable as being Aardvark Kennels. For the reasons detailed in head d) of the revised Preliminary View below, we considered, on balance, that Aardvark Kennels was identifiable as the

pet shop from the footage, albeit only to a small and limited number of individuals who were very familiar with the shop or had specialist knowledge of it.

Ofcom went on to consider the substance of the complaint about whether or not an unfair impression was given in the programme that Aardvark Kennels was involved in the illegal importation of incorrectly certificated animals.

Ofcom began by noting, particularly, the allegations made in the programme relating to Mr and Ms Vincze, and her admission that they supplied puppies younger than 15 weeks old on falsified paperwork. We noted that just before the footage of the pet shop was shown in the programme, the reporter stated that Mr and Ms Vincze had told the undercover reporters that they were “...*delivering all these puppies to two of their regular clients. We’re not quite sure where they are. We think they’re a pet shop, anyway we’ve decided to follow them*”. From this, we took the view that there was potential for viewers to form the impression that the pet shop was complicit in the activity exposed in the programme.

However, having watched the programme and taken careful note of the content of the programme as a whole, Ofcom considered that no specific allegation was made that the particular puppies shown being delivered to the pet shop were “incorrectly certified”, or that they had been imported illegally. In the secretly filmed footage of Mr and Ms Vincze included in the programme, Ms Vincze said that:

*“The age [of the puppies] is officially 15 weeks, but they are younger mostly. Well, those [i.e. the puppies Mr and Ms Vincze were transporting at the time of the filming] are older because they were before Christmas and our customers had troubles to sell puppies, so we kept them with ourselves. But usually they are younger than the stated age”.*

In our view, Ms Vincze’s comments suggested clearly that the puppies she and her father imported were younger “*mostly*” than the official age for importation. However, in relation to the puppies in their current consignment, and those later shown being delivered to the pet shop, Ms Vincze’s comments were unequivocal in conveying that those particular puppies were older than the required 15 weeks. Ofcom considered that viewers would have clearly understood that the puppies in the van and later shown being delivered to the pet shop to be older than 15 weeks.

We also noted that the programme makers had sought a response from the pet shop about what they had discovered during the course of their investigation and that a summary of it was included in the programme. While the name of the pet shop remained undisclosed, the programme stated that:

*“Dispatches informed the pet shop and the authorities about what we discovered. The shop owner told us that he had been legally importing healthy puppies from Slovakia for a year. He said these puppies and their paperwork are all inspected by DEFRA which has never queried their age”.*

Ofcom took the view that the presentation of the summary of Aardvark Kennels’ response, albeit anonymous, would have left viewers in no doubt what its position was – namely, that it legally imported healthy animals and that they were inspected by the relevant authority which had never questioned the ages of the animals.

Given, therefore, that no specific allegation was made in the programme that the puppies shown being delivered to the pet shop were “incorrectly certified”, or that they had been imported illegally, and the presentation of a summary of the pet shop’s response to the programme’s findings, we considered that the programme had not presented material facts in a manner that materially and adversely affected viewers’ perception of the heavily obscured pet shop shown in the programme.

Ofcom considered therefore that the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Aardvark Kennels.

- b) Ofcom next considered the complaint that Aardvark Kennels was not properly informed in advance by the programme makers that footage of the pet shop and one of its employees would be included in the programme and that the letter it received from the programme makers appeared informative only and did not request a response.

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

Ofcom considered whether the claims made in the programme amounted to significant allegations that would require the broadcaster to give Aardvark Kennels an opportunity to respond.

Again, Ofcom noted the allegations made in the programme about Mr and Ms Vincze, and Ms Vincze’s admission that they supplied puppies younger than 15 weeks old on falsified paperwork. We noted too that, just before the footage of the pet shop was shown in the programme, the reporter stated that Mr and Ms Vincze had revealed to the undercover reporters that they were “*delivering all these puppies to two of their regular clients. We’re not quite sure where they are. We think they’re a pet shop, anyway we’ve decided to follow them*”.

As already set out in head a) above, Ofcom also considered the content of the programme as a whole and took the view that no specific allegation was made that the particular puppies shown being delivered to the pet shop were “incorrectly certified”, or that they had been imported illegally.

Therefore, we considered that the programme did not allege wrongdoing, incompetence or make any other significant allegation against Aardvark Kennels. For this reason, it was not incumbent upon the programme makers or the broadcaster to offer Aardvark Kennels an appropriate and timely opportunity to respond to the material to be included in the programme, or to inform Aardvark Kennels prior to broadcast that the pet shop and one of its employees (both of whom had been heavily obscured) would be featured in the programme.

In any event, Ofcom was aware that the programme makers had written to Aardvark Kennels on 4 March 2013, some eight days before the programme was broadcast, to inform it that Mr and Ms Vincze had been covertly filmed delivering puppies to the pet shop, but that it did not intend to name Aardvark Kennels. The programme included the following summary of a response received from Aardvark Kennels (though it remained unnamed):

*“Dispatches informed the pet shop and the authorities about what we discovered. The shop owner told us that he had been legally importing healthy puppies from Slovakia for a year. He said these puppies and their paperwork are all inspected by DEFRA which has never queried their age.”*

Given the factors set out above, Ofcom concluded that there was no unfairness to Aardvark Kennels in this respect.

- c) Ofcom then considered the complaint that the programme did not contain a full or fair representation of the detailed submissions Aardvark Kennels sent to the programme makers after it had been informed by them that one of its suppliers was to be featured in the programme.

Ofcom had regard to Practice 7.13 that states that, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

As already noted in head b) above, the programme had included an anonymous statement from Aardvark Kennels in the programme. Ofcom compared this summary to the contents of the letter dated 7 March 2013 that the owner of Aardvark Kennels had sent to the programme makers in response to being informed that the pet shop had been covertly filmed taking delivery of the puppies. In particular, we noted the following extract from the letter directly relevant to this head of complaint:

“I have been importing nice healthy puppies commercially from Slovakia for just one year now, and they are imported legally under the Traces System, which we notify DEFRA of our intention to import puppies, and they receive an Importer Notification Form from ourselves. Then upon the puppies arrival to our kennels, the following day an Inspector from DEFRA comes to inspect all puppies and their passports, the original Intra Trade Health Certificate, and vaccination dates, and has never queried the validity of information on the passports or ages of the puppies, as they are the required 15 weeks old. The older age is something we prefer as they have had all vaccinations and are immunised, and are more unlikely to go off colour. Whereas our UK bred puppies are 8 weeks of age with only part vaccinations given.

A small family run business, Aardvark Kennels has over 30 years of experience in the pet trade, and has a good unblemished reputation. We do not wish to be implicated in any way whatsoever of any wrongdoing or illegal activity. Although your letter to us says ‘we do not intend to name Aardvark in the broadcast programme’, I would like your assurances that any footage of my shop front or myself or members of staff will not be shown. We are importing the puppies legally under the new EU trade rules. The puppies we are importing are of good quality and are very difficult breeds to purchase in the UK.”

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

In the particular circumstances of this case, Ofcom noted that the response from Aardvark Kennels was edited and summarised in the programme as quoted above in head b). Although the programme makers had decided not to present the response in its entirety, the edited extract of it included in the programme adequately set out, in our view, Aardvark Kennels' position regarding the issues raised by the programme makers in a way that would have left viewers in no doubt that it only imported healthy puppies from Slovakia and that DEFRA, who inspected the puppies' paperwork, had never queried the animals' ages.

Taking all these factors into account, Ofcom was satisfied that the broadcaster had adequately reflected Aardvark Kennels' position, although summarised and edited, regarding the puppies and we considered that this was presented fairly in the programme.

Ofcom considered therefore that there was no unfairness to Aardvark Kennels in this respect.

#### Unwarranted infringement of privacy

- d) Ofcom considered the complaint that the privacy of Aardvark Kennels was unwarrantably infringed in the programme as broadcast in that footage of the exterior of its shop and one of its employees was shown in the programme without its permission and despite an assurance from the programme makers that it was "not intending to name Aardvark in the broadcast programme".

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

This is reflected in how Ofcom applies Rule 8.1 of the Code which states that any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted. Ofcom also had regard to Practice 8.6 which states that, if the broadcast of a programme would infringe the privacy of a person, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

In the initial Preliminary View, Ofcom considered that, owing to the steps taken by the programme makers to obscure the identity of the pet shop and its employee in the programme, neither were identifiable in the programme as broadcast, and as such Aardvark Kennels did not have a legitimate expectation of privacy in relation to the footage included in the broadcast. It was also noted that Pinder Reaux had said that Aardvark Kennels had been identified from the programme and that it had received threatening telephone and email messages although no evidence of this was provided to Ofcom.

Ofcom considered the arguments put forward by the parties (in response to the initial Preliminary View) relating to whether the pet shop was identified or identifiable as a result of the footage shown in the programme. Having reviewed the information subsequently provided to us, and having examined carefully the footage shown in the programme, we now take the view that, on balance, there was sufficient evidence to suggest that the shop had been identified as a result of



the programme, albeit to a very small constituency of individuals who were very familiar with the shop or had specialist knowledge of it.

However, we noted the circumstances in which Aardvark Kennels was filmed and carefully considered the nature of the content which was actually broadcast in the programme (as described in the "Introduction and programme summary" section above).

The brief inclusion in the programme of the exterior of the shop (which was heavily obscured with the colour of its sign changed) and the delivery of the puppies to the shop (conducted in a public place, i.e. the public highway with the face of the shop employee blurred) could not, in our opinion, be reasonably considered as disclosing information of a private or sensitive nature that gave Aardvark Kennels a legitimate expectation of privacy (notwithstanding that it was identifiable to a small constituency of people).

Taking into account the factors detailed above, we therefore considered that, in the circumstances of this case, Aardvark Kennels did not have a legitimate expectation of privacy in relation to the footage included in the programme as broadcast. Having reached this conclusion, it was not necessary for us to consider whether any infringement into the privacy of Aardvark Kennels was warranted.

Ofcom concluded therefore that Aardvark Kennels' privacy was not unwarrantably infringed in the programme as broadcast.

**Therefore, Ofcom has not upheld Pinder Reaux's complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast made on behalf of Aardvark Kennels.**

## Not Upheld

### Complaint by Ms Joanne Cross

*Countdown to Murder: Stalked to Death, Channel 5, 31 October 2013*

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#### Summary

Ofcom has not upheld Ms Joanne Cross' complaint of unjust or unfair treatment in the programme as broadcast.

*Countdown to Murder* is a documentary series which recounts high-profile murder cases. This edition provided a detailed account of events leading up to the murder of a nurse, Ms Jane Clough, who was killed by Mr Jonathan Vass, a colleague she had become romantically involved with. The programme explained that Mr Vass was already married (to the complainant, Ms Cross, although Ms Cross was never named in the programme) and that they had two children.

Ofcom considered that the broadcaster took reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that was unfair to Ms Cross.

#### Introduction and programme summary

On 31 October 2013, Channel 5 broadcast an edition of *Countdown to Murder*, a documentary series which recounts high-profile murder cases. This edition, entitled *Stalked to Death*, provided a detailed account of events leading up to the murder of Ms Clough. The programme included interviews with various people, including: Ms Laura Richards, a criminal behaviour analyst; the parents of Ms Clough (Mr John Clough and Mrs Penny Clough); and, a friend and colleague of Ms Clough, Ms Tara Hassett. The programme also included dramatic reconstructions of events leading up to the murder and of the murder itself.

The programme explained that Ms Clough, who was a nurse at Blackpool Victoria Hospital, had become romantically involved with a colleague, Mr Vass, who worked for the ambulance service as an Ambulance Technician. It explained that Mr Vass was already married (the programme did not at any point give the name of his wife) and that they had two children. The programme stated that Ms Clough was unaware of this when she started seeing Mr Vass. The narrator said:

*"Vass had been married for two years and had two small children, both under five years old. Jane [Clough] was shocked at the news but Vass told her he was leaving his wife, that she had been unfaithful and they were in the process of separating. He was lying".*

Mr Clough (the murder victim's father) explained in the programme that:

*"He [Mr Vass] portrayed himself as the hurt party – he was a deception right from the start".*

The narrator further explained:

*"Vass was living a double life. He was married and had two young children. And was conducting affairs with other women".*

Mr Clough said:

*“Jane had told us that he had said he was separating from his wife because she had been adulterous on two occasions, that’s how he came to be interested in Jane”.*

Ms Richards then provided insight into Mr Vass’ behaviour:

*“He carried on with multiple women. He learnt that you charmed them, then you disarmed them and you compliment them. And once you’ve got their trust, he would become quite different”.*

The programme said that Ms Clough and Mr Vass moved in together and that at this time Ms Clough was unaware that Mr Vass was still living with his wife. The narrator stated:

*“He invented night shifts and family errands to run, when in reality he was going home to see his wife and two children”.*

When Ms Clough became aware that there was no divorce pending and challenged Mr Vass, they began to argue. A friend and colleague of Ms Clough’s, Ms Hassett, was interviewed in the programme and explained:

*“She [Ms Clough] didn’t want to be the person to break up a marriage, especially a marriage where there are two young children. However, he [Mr Vass] assured her it was all over and that he only went to see the children and so she thought he was doing the right thing”.*

The programme explained that during the course of their relationship Mr Vass became increasingly violent, repeatedly raping and assaulting Ms Clough. Having had a baby with Mr Vass and not being willing to put up with the abuse any longer, it said that Ms Clough had moved out of her home with Mr Vass and back to her parents’ house. The programme stated:

*“Throughout all of this time, Vass was still body building and seeing his wife and children”.*

The programme stated that not long after moving out, Ms Clough returned to Mr Vass and the abuse started again. Ms Clough moved out for a second time and reported Mr Vass to the police. It stated that Mr Vass was arrested and charged with assault and rape, however he denied the charges and was granted bail and freed. The narrator stated:

*“Despite the charges against him, Vass’ wife allowed him access to their children”.*

Mr Vass, not wanting Ms Clough to testify against him in a trial for rape and assault, and being angry at the accusations she had made, stalked Ms Clough for several weeks. On 25 July 2010, Mr Vass murdered Ms Clough in the car park of the hospital in which she worked, stabbing her 71 times before cutting her throat.

The programme explained that at his criminal trial for the killing of Ms Clough Mr Vass pleaded guilty to murder, though denied the rapes and abuse. He was sentenced to life imprisonment.

Ms Cross was not named or shown in the programme and was only referred to in the programme as Mr Vass' wife.

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

In summary, Ms Cross complained that she was treated unjustly or unfairly in the programme as broadcast in that material facts were presented, disregarded or omitted in a way that damaged her reputation and her character.

In response, Channel 5 said that it regretted any embarrassment or distress felt by Ms Cross due to the programme. However, it said that the programme was not one about Ms Cross, who was not referred to in it by name, and that its editorial focus was to follow the timelines of the murderer and victim in the days and hours leading up to the murder of Ms Clough. Channel 5 said that, while the programme was not about Ms Cross, because of her relationship with Mr Vass it was inevitable that some details of Ms Cross' relevant interactions with him would be included in the programme.

Channel 5 said that each of the references to Ms Cross was factually accurate and in context and that the programme did not result in any unjust treatment or unfairness to her. It considered each of Ms Cross' particular concerns in turn:

- Ms Cross complained that the programme wrongly stated that she had been unfaithful to Mr Vass on two occasions.

In response, Channel 5 said that the programme did not state that Ms Cross had been unfaithful to Mr Vass on two occasions. Rather, the programme made it clear that the idea that Ms Cross had been "*adulterous on two occasions*" was one of many lies Mr Vass had told Ms Clough.

Channel 5 highlighted the narrator's statement "*But Jane had no idea that Vass was lying to her*" and said that this statement in particular made it clear to viewers that the various things Mr Vass had told Ms Clough about his personal circumstances were dishonest. It said that this included the information contained in the comment made by Ms Clough's father, who said:

*"Jane had told us that he [Mr Vass] had said he was separating from his wife because she had been adulterous on two occasions, that's how he came to be interested in Jane".*

In Channel 5's view, the ordinary, reasonable viewer would have assumed that Ms Cross had not had any extra-marital affair or had been adulterous, but that Mr Vass had lied to Ms Clough.

- Ms Cross complained that the programme wrongly stated that she had allowed Mr Vass to live with her and her children up until he had been accused of the rape and assault of Ms Clough. Ms Cross said that she had told Mr Vass to leave the family home earlier when she discovered he was having an affair. She said that Mr Vass had moved out on 4 September 2009.

In response, Channel 5 reiterated its point that the programme was not about Ms Cross but focussed on the behaviour and actions of Ms Clough and Mr Vass prior to Ms Clough's murder. It said that the programme made it clear that Mr Vass had been dishonest with both Ms Cross and Ms Clough. The references to Mr Vass' contact with Ms Cross and their children were relevant only to the question of the

lies Mr Vass had told Ms Clough and how he spent his time in the days before the murder.

The broadcaster said that the programme suggested that, once Mr Vass had moved in with Ms Clough, his home was with her, although he did spend some time with Ms Cross and their children. The programme did not suggest that Mr Vass was regularly living with Ms Cross and her children. Channel 5 stated that, in context, the statement in the programme that *“He [Mr Vass] was fired from the hospital and his wife threw him out”* meant no more than Mr Vass had no job and nowhere to live.

Channel 5 explained that, rather than assuming that Mr Vass had been living with Ms Cross prior to him being arrested, the ordinary, reasonable viewer would have correctly concluded that, once Mr Vass was arrested, he was unable to live in the home he had formerly shared with Ms Clough, nor, because of Ms Cross’ view of him, the home where Ms Cross and their children resided. The narrator stated that: *“He [Mr Vass] was forced to move in with his parents”*.

The broadcaster said that only a strained or forced reading of the programme would suggest that, in context, the programme had wrongly told viewers that Mr Vass had been living with Ms Cross all through his association with Ms Clough. Further, it said that, even if that “forced reading” was correct, it would mean no more than that Ms Cross had supported Mr Vass during this time, despite knowing about his affair with Ms Clough. Channel 5 said that this was true.

Channel 5 said that Ms Cross had provided public support to Mr Vass during his prosecution for his violent behaviour towards Ms Clough. In particular, at a bail hearing on 11 December 2009, the court was told that Ms Cross (and another woman) were “horrified” that it was alleged that Mr Vass was violent and “...do not support the prosecution’s view that this man is violent at all”.

The broadcaster explained that, in its view, even if the programme had wrongly stated that Ms Cross had permitted Mr Vass to live with her and her children after she became aware of his affair, but before the rape allegations had been made, it did not accept that such a statement would have been likely to affect viewers’ understanding of Ms Cross in a way that damaged her reputation and character in a way that was unfair to her. It said that viewers would have had no reason to think that Ms Cross was in any way complicit in Ms Clough’s death or was anything other than an ordinary woman trying to keep her home functioning in difficult circumstances.

- Ms Cross complained that the programme implied that, despite the assault allegations made against Mr Vass, Ms Cross had continued to allow him to see their children, thereby potentially jeopardising their safety. Ms Cross stated that, although Mr Vass continued to see their children, any contact was supervised in a controlled and public facility to ensure their safety.

In response, Channel 5 said that there was nothing in the programme which suggested that either Ms Cross or her children were ever in danger from Mr Vass or that Ms Cross had done anything to put her children in danger. The programme had stated:

*“Despite the charges against him, Vass’ wife [Ms Cross] allowed him access to their children. He spent the rest of his days in the gym and is said to have*

*been taking more and more steroids. But at least it seemed he was keeping to his bail conditions”.*

The broadcaster said that the programme correctly stated the fact that Mr Vass was allowed access to his children by Ms Cross. It said that the statement had to be judged in the general context and explained that the programme was seeking to present a view of Mr Vass’ life at that particular point in time. Channel 5 reiterated its point that the format of this particular series focussed intensely on the lives of the murderer and his victim in the time leading up to the murder. Viewed in this context, the broadcaster said that the comment about Mr Vass being allowed access to his children by Ms Cross could be seen to be about Mr Vass and not Ms Cross.

## **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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast, both parties’ written submissions and supporting documentation. The parties chose not to make any representations on Ofcom’s Preliminary View in this case (which was not to uphold Ms Cross’ complaint).

When considering complaints of unjust or unfair treatment, Ofcom has regard to whether the broadcaster’s actions ensured that the programme as broadcast avoided unjust or unfair treatment of individuals and organisations, as set out in Rule 7.1 the Code. Ofcom had regard to this Rule when reaching this Decision. When considering each of the heads of complaint below, we also had regard to Practice 7.9 of the Code which states that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to an individual or organisation.

- a) Ofcom considered the complaint that the programme wrongly stated that Ms Cross had been unfaithful to her former husband, Mr Vass, on two occasions.

Ofcom noted from the programme that Ms Clough’s father made the following comment:

*“Jane had told us that he [Mr Vass] had said he was separating from his wife because she had been adulterous on two occasions, that’s how he came to be interested in Jane”.*

In our view, it was clear that the comment was not presented as a statement of fact and that it was made by Mr Clough who was recalling what he said he had been told by his daughter.

We then considered the context in which the comment about the alleged adultery of Mr Vass' wife was made. In doing so, Ofcom took note of the comments made immediately before, when the narrator introduced Ms Clough's parents' contribution to the programme:

Narrator: *"Jane's parents were suspicious of him [Mr Vass] from the start."*

Mrs Clough (in interview):

*"He [Mr Vass] told stories that his grandma had owned a house on Baker Street in London and that he had this inheritance and I had suspicions that really he was a bit of a dreamer, a bit of a liar. I didn't trust him".*

Narrator: *"Vass was living a double life, he was married and had two young children and conducting affairs with other women".*

Given the above, Ofcom was of the view that the comments were made in the context of the programme establishing for viewers the firm idea that Mr Vass was *"a bit of a liar"*.

Further, we noted that it was explained in the programme that Mr Vass was still married (to Ms Cross) when he was seeing Ms Clough, and that he and his wife had in fact not planned to separate, in contrast to what Mr Vass had told Ms Clough. It was therefore made clear that at least some of the information Mr Vass had told Ms Clough about his wife and their relationship was incorrect. The programme included the following sequence:

Narrator: *"He [Mr Vass] invented nightshifts or family errands to run, when in reality he was going home to see his wife and young children".*

Mr Clough (in interview):

*"In actuality, he was going back to the marriage, there was no divorce pending. It was a relationship that was still active".*

Therefore, given the context in which this sequence appeared in the programme, we considered that viewers were likely to understand Mr Clough's comment about Mr Vass' wife being adulterous was untrue.

We considered too that the narrator made it quite clear that what Mr Vass had told Ms Clough about his wife, Ms Cross, having been adulterous was a lie by stating:

*"Vass had been married for two years and had two small children, both under five years old. Jane [Clough] was shocked at the news but Vass told her he was leaving his wife, that she had been unfaithful, and they were in the process of separating. He was lying".*

Further, the programme continued to depict Mr Vass as a dishonest and untrustworthy person throughout the entire programme, including the following examples:

Narrator: *"But Jane had no idea that Vass was lying to her".*

...

Mrs Clough (in interview):

*“Jane was in love with him [Mr Vass] and I wasn’t, and I think the picture that I got of him was completely different to the one that he had spun her”.*

...

Narrator: *“Vass divided his time between working at the hospital, living his fantasy life with Jane and going back to his wife and children”.*

Taking all the above into account, Ofcom considered that it was more than likely that viewers would have understood that the programme was not suggesting that Ms Cross had been unfaithful to her former husband, but that Mr Vass was dishonest and that his claim that his wife had been adulterous was only one of the lies he had told Ms Clough during their relationship.

Ofcom concluded therefore that there was no unjust or unfair treatment in this respect.

- b) Ofcom next considered the complaint that the programme wrongly stated that Ms Cross had allowed Mr Vass to live with her and her children up until he had been accused of the rape and assault of Ms Clough. Ms Cross said that she had told Mr Vass to leave the family home earlier when she discovered he was having an affair. She said that Mr Vass had moved out on 4 September 2009.

Ofcom noted that the programme did not provide any specific information about when the first accusations of rape and assault, and later charges, were brought against Mr Vass (although supporting material provided to Ofcom by the broadcaster indicated that Mr Vass was arrested “towards the end of November” of 2009), nor did it give any specific information about when Mr Vass moved out of his home with Ms Cross. The programme did provide a date, however, for when further charges were brought against Mr Vass:

*“On 10 December 2009 Vass was charged with a further six rapes, making nine counts in all”.*

The programme then explained that Mr Vass was granted bail, stating:

*“Vass was freed...He was fired from the hospital and his wife threw him out. He was forced to move in with his parents”.*

Given this detail in the programme, we understood that, while Ms Cross maintained that Mr Vass moved out of their home in September 2009, she complained that the programme suggested that Mr Vass did not move out until sometime around December 2009.

It is important to note that it is not for Ofcom to investigate and adjudicate on whether information broadcast is factually correct or not, but rather to consider whether the inclusion of specific information amounted to unjust or unfair treatment of an individual and/or organisation. Therefore, Ofcom is not able and is not required to determine when Mr Vass moved out of the home he shared with Ms Cross.



We noted that the programme included a number of dramatic reconstructions of events leading up to the murder of Ms Clough, in the order that they occurred. At regular intervals during the programme, the number of days/hours until the murder was displayed on the screen while a ticking clock noise could be heard. Ofcom was of the view that, owing to this format, it was reasonable to assume that viewers would expect the events depicted in the programme to run chronologically. We therefore took the view that potentially it could be inferred from the point at which the statement “...and his wife threw him out” was made in the programme that it was at this time, i.e. sometime after 10 December 2009, that Mr Vass left permanently the home he shared with Ms Cross.

However, Ofcom recognised that the programme was not about Ms Cross. Its focus was on the behaviour and actions of Ms Clough and Mr Vass prior to Ms Clough’s murder. We considered that references to Ms Cross and her children were largely incidental and appeared to be relevant only in setting out Mr Vass’ deceptive behaviour and to give background to how he spent his time in the days before the murder. We also noted that the programme suggested that, once Mr Vass had moved in with Ms Clough, his home was with her, although it was also made clear that he did spend some time with his wife and their children. Ofcom did not consider that the programme suggested that Mr Vass was regularly living with Ms Cross and her children.

Ofcom noted that the programme stated that: *“In early 2008, after they’d been together for around ten months, Vass convinced Jane to let him move into her house in Barrowford, Lancashire”*. We also noted other comments made in the programme relating to Mr Vass and his movements, for example:

*“He [Mr Vass] invented nightshifts or family errands to run, when in reality he was going home to see his wife and young children”.*

*“In actuality, he was going back to the marriage, there was no divorce pending. It was a relationship that was still active”.*

*“Vass divided his time between working at the hospital, living his fantasy life with Jane and going back to his wife and children”.*

In our view, it was likely that viewers would have understood from the programme that Mr Vass was living a double life and that he was spending time at the homes of both Ms Cross and Ms Clough.

Given the above, we considered that whether or not Mr Vass moved out of Ms Cross’ home permanently in September 2009 or December 2009 was unlikely materially and adversely to affect viewers’ perceptions of Ms Cross in a way that would be unfair to her.

Ofcom concluded therefore that there was no unjust or unfair treatment in this respect.

- c) Ofcom finally considered the complaint that the programme implied that, despite the assault allegations made against Mr Vass, Ms Cross had continued to allow him to see their children, thereby potentially jeopardising their safety. Ms Cross stated that, although Mr Vass continued to see their children, any contact was supervised in a controlled and public facility to ensure their safety.

Having carefully watched the programme and examined the transcript of it, Ofcom was satisfied that there was nothing in the programme to suggest that Mr Vass had been violent towards either Ms Cross or her children, or that they were ever in danger from him.

We then considered the following comment from the programme:

*“Despite the charges against him, Vass’ wife [Ms Cross] allowed him access to their children. He spent the rest of his days in the gym and is said to have been taking more and more steroids. But at least it seemed he was keeping to his bail conditions”.*

As outlined at head b) of this Decision above, Ofcom recognised that the programme focussed not on Ms Cross, but rather on the behaviour and actions of Ms Clough and Mr Vass prior to Ms Clough’s murder. We acknowledged that references to Ms Cross and her children appeared to be relevant in setting out Mr Vass’ deceptive behaviour and to give background to how he spent his time in the days before the murder. Viewed in this context, we considered that the comment about Mr Vass being allowed access to his children by Ms Cross would be likely to be seen by viewers as a factual account of how he spent some of his time in the days leading up to the murder of Ms Clough and not as a critical comment about Ms Cross.

Given the context in which the comment was made, we took the view that viewers’ perceptions of Ms Cross were unlikely to be materially and adversely affected in a way that was unfair to her. Although no information was provided in the programme about how access to the children was arranged (because the programme was not focussed on Ms Cross and her children), Ofcom considered that, equally, the programme did not suggest that Ms Cross’ children were in any danger or that she was in any way irresponsible for allowing Mr Vass access to them.

Ofcom concluded therefore that there was also no unjust or unfair treatment in this respect.

Taking all the factors above into account, Ofcom considered that the broadcaster took reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that was unfair to Ms Cross.

**Therefore, Ofcom has not upheld Ms Cross’ complaint of unjust or unfair treatment in the programme as broadcast.**

## Not Upheld

### Complaint by Limo Broker Limited

*Watchdog, BBC 1, 16 October 2013*

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#### Summary

Ofcom has not upheld this complaint of unjust or unfair treatment in the programme as broadcast made by Limo Broker Limited (“Limo Broker”).

The programme included a report about Limo Broker which offered limousines for hire through a network of agents across the UK. The report alleged that bookings arranged by Limo Broker were “*sometimes wrong – the wrong vehicle, the wrong colour, the wrong time*” and did not always “*turn up*”. It also alleged that the company used sales techniques to pressure its customers into make bookings which they might not otherwise have made.

Ofcom found that:

- the broadcaster took reasonable care to satisfy itself that the material facts were not presented, omitted or disregarded in a way that was unfair to Limo Broker, particularly in regard to the omission of specific claims made by the company in its response to the programme makers.
- Limo Broker was given an appropriate and timely opportunity to respond to the claims made about it in the programme.

#### Introduction and programme summary

On 16 October 2013, BBC 1 broadcast an edition of its weekly consumer affairs programme, *Watchdog*. This edition of the programme included a report about Limo Broker, described in the programme as “*Britain’s largest limousine hire company*”, which offered limousines for hire through a network of agents across the UK.

The programme alleged that bookings arranged by Limo Broker were “*sometimes wrong – the wrong vehicle, the wrong colour, the wrong time*” and did not always “*turn up*” and it included contributions from customers who had used Limo Broker. The first contributor was Ms Gemma Underwood who explained that her boyfriend had booked a limousine as a surprise for her 21<sup>st</sup> birthday, but the car “*never turned up*”. The programme said that Ms Underwood’s boyfriend, “*Matthew*” (Mr Matthew Rogers), had paid an arrangement fee to Limo Broker in advance and, although the fee was refunded, no apology was given. The programme commented that this was: “*[h]ardly the behaviour you’d expect from a firm that describes itself as the country’s most trusted limo hire company*”.

The next contributors to the programme were Mr and Mrs Samson, referred to as “*Helen*” and “*Paul*”, who had booked a Bentley decorated with ribbons along with a uniformed driver for their daughter’s wedding. Mr Samson said that because the limousine he had booked was late they had to hire a taxi and his daughter was late to her own wedding. Mr and Mrs Samson also explained that when the limousine eventually arrived it was the wrong car with no ribbons and the driver was wearing jeans and a T-shirt. The programme said while Mr and Mrs Samson were reimbursed

by Limo Broker: *“it was little consolation for the damage done on their daughter’s big day”*.

The programme then showed secretly filmed footage recorded by an undercover reporter, “Anna”, who joined Transport Broker Limited, Limo Broker’s parent company, to train as a call handler. The programme said that, during the four days she worked there, it became clear that: *“the company is far more concerned about making sales than it is about making sure that bookings are being made correctly”*. Footage was shown of Transport Broker Limited’s former Head of HR and Training who, the programme said, was: *“encouraging Anna to put pressure on customers by implying that their best prices are only available for a limited time”*. Further footage showed this person making, what appeared to be, an obscene hand gesture about the person to whom he was speaking while taking a telephone booking. In addition, the programme showed secretly filmed footage of Anna being told that it was acceptable to *“lie”* to customers about the exact type of limousine which would be provided.

The programme included the views of Professor Margaret Griffiths, described in the programme as a *“consumer law expert”*, who had watched the secretly filmed footage and seen a copy of the company’s training manual which the undercover reporter said included a *“sales staff ‘cheat sheet’”* which listed phrases designed to increase the pressure on customers to make bookings. Professor Griffiths said that some of the statements were: *“illegal because they are what is termed an unfair commercial practice”*.

After the report and back in the studio, the programme’s reporter said:

*“Limo Broker Limited would like to personally apologise to Paul, Helen and Gemma for any inconvenience they caused [and] they’d like to offer all of them a free hire on a date of their choice as a gesture of goodwill. They say in recent weeks they have made severe alterations to staffing and procedures inside the company. They’ve got rid of the training manual cheat sheet and appointed a new HR manager with 25 years’ experience to improve customer service standards”*.

To assess Limo Broker’s claim to have improved its service, the programme subsequently made a booking with the company. The programme’s reporter said that he had booked a white stretch limousine with pink ribbons to arrive at 14:00, saying it was for his wedding anniversary. The programme then showed footage of the car which was sent to fulfil this booking. The undercover reporter said that the car arrived on time and was a stretch limousine, but it was not white and it did not have pink ribbons. He said that Limo Broker had explained that the discrepancy was due to *“a problem with the hire firm they used to source the limo”* before adding: *“...not their fault then, but either way they were the ones that took the booking and we didn’t get what we wanted”*.

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

- a) Limo Broker complained that it was treated unjustly or unfairly in the programme as broadcast because material facts were presented, disregarded or omitted in a way that portrayed the company unfairly.

In particular, Limo Broker said that the programme was devoid of balance and omitted relevant information provided by Limo Broker to the programme makers prior to the broadcast. The complainant said that the omissions of particular information resulted in the report giving an incomplete and unfair impression of

the company in relation both to its general approach to customer service and particularly its actions in relation to the specific cases featured in the programme. Limo Broker also said the broadcast of this report had a serious and detrimental impact on its business. Limo Broker provided the following examples of information it said was unfairly omitted from the programme:

- i) Limo Broker did not confirm any booking with its customers until the provider (i.e. the agent which will supply the limousine) had confirmed its availability.

In response, the BBC said that it did not accept Limo Broker's claim that it never confirmed bookings until the provider had confirmed the availability of the relevant vehicle. It said that the evidence gathered by the programme makers, the testimony of the whistleblower, and the experience of the undercover reporter all indicated that sales staff at Limo Broker regularly booked vehicles, and took customers' deposits, without regard to whether availability had been confirmed or not. The broadcaster also said that the sales manual encouraged staff to give the impression that bookings were made directly with Limo Broker rather than with a third party agent and that it included no guidance to staff to check availability before closing a sale. Given this, the BBC argued that the omission of this claim from the programme did not result in unfairness to the complainant.

- ii) The booking made by Mr Rogers, Ms Underwood's boyfriend, was cancelled by the limousine driver due to what he described as the threatening behaviour and language he was subjected to by Mr Rogers. Instead, the programme only showed Ms Underwood complaining that the limousine "*didn't show up*" and thereby failed to reflect the full picture in relation to this case.

The BBC did not accept that Limo Broker's account regarding the cancellation of Mr Rogers' booking was accurate. Mr Rogers told the programme makers that the limousine was due to arrive at 23:30. However, he received a telephone call from the driver saying he would be about 20 to 25 minutes late. The limousine had not arrived by 00:30, so Mr Rogers called the driver and was told that the limousine was five minutes away. The BBC said that Mr Rogers' party waited outside for the vehicle for over an hour during which time Mr Rogers tried to call the driver a number of times. When the driver eventually answered, the broadcaster said that he told Mr Rogers "I don't have a Scooby [i.e. a clue] where I am" and that he would call again in five minutes. The driver did not call again. By this time, Mr Rogers' group had been waiting for well over two hours, over an hour of that time in the rain. His girlfriend was distraught and in tears, and he himself was, on his own admission, becoming very angry. He called the driver again to find the phone had been switched off so he left what he acknowledged was an abusive message on the driver's voicemail. Later, Mr Rogers accepted that this was regrettable but argued that, in the circumstances, it was at least understandable.

The BBC said that from Mr Rogers' account it was clear that the booking had effectively been cancelled by the hire company before he left the message. This was because by the time he left the message the car was almost three hours late. The driver had switched off his mobile telephone and it was apparent to Mr Rogers that the car was not going to arrive at all.

The broadcaster explained that, prior to the broadcast of the programme, Limo Broker provided the programme makers with a document purporting to

corroborate the company's account of events and, in particular, that the booking was cancelled because of Mr Rogers' threatening behaviour. However, the programme makers did not consider that this document could be relied upon, because it was a scanned copy of the booking form with a brief handwritten note added at the bottom which was not signed or dated. Also, the company had already offered to provide Mr Rogers with another booking free of charge as a gesture of goodwill. The programme makers believed that, had Mr Rogers actually issued threats against the limousine driver such that he felt the need to cancel the booking, it was unlikely that such a gesture would have been made.

Given this, the BBC argued that the omission of the company's account of the events leading up to the cancellation of Mr Rogers' booking from the programme did not result in unfairness to the complainant.

- iii) The agent which fulfilled the programme reporter's booking provided an upgrade in the form of a different car to the one originally booked rather than informing him that there was a fault with the original vehicle reserved. Limo Broker added that rather than making this clear the programme focused on the fact that the wrong vehicle was sent.

The BBC said that the programme focused on the fact that the wrong vehicle had been sent because this was one of the most common complaints made against Limo Broker. The programme therefore made a test limousine booking to see if the vehicle which was ordered would arrive and if it fitted the exact requirements set out during the booking. Although the correct type of vehicle (a stretch limousine) arrived on time, it was not the right colour and it did not have pink ribbons decorating it as specified in the booking. The BBC said that the fact that the vehicle provided may have been an upgrade in some respects was irrelevant to the investigation and would have been wholly irrelevant to a customer had the colour of vehicle and the decoration with ribbons been requested for a particular reason. The broadcaster argued that, therefore, the omission of the fact that this vehicle was an upgrade did not result in unfairness to the company.

- b) Limo Broker also complained that it was treated unjustly or unfairly in the programme as broadcast because it was not given an appropriate or timely opportunity to respond to the claims being made about it in the programme. It said that it was only given three working days to investigate and respond to the programme makers.

In response, the BBC accepted that the time allowed for Limo Broker to respond was limited, but argued that it was sufficient for the company to respond to the allegations which would be made in the programme. It said that all the complaints due to be featured in the programme had already been investigated by Limo Broker with appropriate gestures of goodwill offered in response. The training manual featured in the programme was in use by the company on a regular basis and the obscene gesture made by a member of staff about a customer "spoke for itself". It added that formulating an appropriate response would not have required significant research and would not have detained the company unduly.

The BBC also said that at no point during the pre-broadcast correspondence did Limo Broker indicate that it might find it difficult to provide a response in the time specified and that, in the event, the company did provide a comprehensive

response before broadcast – which itself indicated that the time allowed was sufficient.

By way of background to its response to the complaint, the BBC explained that it had decided to investigate Limo Broker after *Watchdog* had received over 120 complaints about Limo Broker from its customers, and that part of the programme's investigation was partly based on the testimony of a "whistleblower" who had worked for the company for several months.

## 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 unjust or unfair treatment and unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes in such services.

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

In reaching this Decision, we carefully considered all the relevant material provided by both parties. This included a recording and transcript of the programme as broadcast and both parties' written submissions and supporting material, including pre-broadcast correspondence between the broadcaster and the complainant, and a copy of the Limo Broker sales training manual referred to in the programme. The parties chose not to make any representations on Ofcom's Preliminary View in this case (which was not to uphold Limo Broker's complaint).

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 the Code. We had regard to this Rule when reaching our Decision.

- a) Ofcom first considered Limo Broker's complaint that it was treated unjustly or unfairly because the programme omitted relevant information provided to the programme makers prior to the broadcast.

Ofcom recognises that programme makers and broadcasters can legitimately select whether or not to include particular pieces of information or material in a programme. Ultimately, this is an editorial decision for broadcasters to make prior to the broadcast of a programme. However, broadcasters must ensure that material facts are presented fairly in programmes. Therefore, Ofcom had regard to Practice 7.9 of the Code. This provides that, before broadcasting a factual programme, broadcasters should take reasonable care to satisfy themselves that material facts have not been presented, disregarded or omitted in a way that is unfair to the individual or organisation. Ofcom also had regard to Practice 7.13 which states that, where it is appropriate to represent the views of a person or organisation that is not participating in the programme, this must be done in a fair manner.

In considering this complaint, Ofcom noted that the broadcaster and the complainant had different accounts of Limo Broker's business practices. It is

therefore important to note that it is not for Ofcom to investigate and adjudicate on whether information broadcast or omitted is factually correct or not, but rather to consider whether the inclusion/omission of information amounted to unjust or unfair treatment of an individual or organisation. In this case, we considered each example given by Limo Broker of information which it said was omitted from the programme, and then the relevant section of the programme as a whole, to reach an overall decision on whether the company was treated unfairly in this respect.

- *Confirmation of availability*

Ofcom noted that Limo Broker had provided the programme makers with a response to the allegations to be made in the programme and, in particular, it explained that, because it used a large number of agencies to provide vehicles, it had developed a system which allowed its staff to see providers' availability. It told the programme makers that its sales staff checked with the providers "through the system and through communications prior to the completion of a booking". It also stated that "[n]o booking is confirmed to the customer until the provider has confirmed their availability".

Ofcom noted that the programme did not reflect this aspect of Limo Broker's response in the report. However, the report did refer to complaints about vehicles being booked through Limo Broker for special occasions that did not arrive.

We took into account too the BBC's statement summarised above and, in particular, that it did not accept Limo Broker's claim that Limo Broker never confirmed bookings until the provider had confirmed the availability of the relevant vehicle. The BBC said that the claims made in the programme were based on several strands of evidence, including the testimony of a whistleblower and the undercover reporter, that indicated that staff at Limo Broker regularly booked vehicles without having checked, or having any regard to, whether the availability had been confirmed or not. Ofcom also noted that the company's sales manual encouraged staff to give customers the impression that the booking was being made directly with Limo Broker rather than a third party agent.

Ofcom took into account all the factors above and, in particular, the evidence gathered by the programme makers that supported their claim that Limo Broker staff did not, in fact, always confirm availability before making bookings. We therefore took the view that it was reasonable (and so not unfair) for the programme makers and the broadcaster to decide not to include this particular piece of information (about Limo Broker's system of checking limo availability) from Limo Broker's response in the programme.

- *Cancellation of Mr Rogers' booking*

We noted from Limo Broker's response to the programme makers that it claimed that Mr Rogers had threatened the driver and sent the programme makers a copy of the booking form (provided to Ofcom by the complainant) on which, Limo Broker said, the driver had written "[h]ire terminated after receiving verbal abuse from Mr Rogers section 6 terms and conditions, have also received voicemails from him threatening to 'cut my throat' when he finds me". Ofcom noted that the hand written note was neither signed nor dated.



Ofcom noted that the programme did not include any reference to Limo Broker's claim that the booking was cancelled by the driver due to Mr Rogers' alleged aggressive and threatening telephone calls to him. Rather, it stated that Ms Underwood eventually got her money back, but did not receive an apology at the time. Later, the programme's reporter stated that Limo Broker "...would like to personally apologise to Helen, Paul and Gemma [Ms Underwood] for any inconvenience caused" and offered all of them a free vehicle hire as a gesture of goodwill.

Again, Ofcom took account of the BBC's statement in response and noted that it challenged Limo Broker's account of the cancellation of Mr Rogers' booking. We noted the detailed account of what the BBC said the programme makers had been told by Mr Rogers and Ms Underwood in relation to their experience. Consideration was also given to the broadcaster's view that, had Mr Rogers' threat caused the driver to be too fearful to complete the booking, it would have been unlikely that Limo Broker would have reimbursed Ms Underwood or subsequently have offered her a booking free of charge.

In Ofcom's view, the focus of this part of the programme was the contributors' accounts of being let down by Limo Broker having booked a vehicle from the company. While we recognised that there was disagreement between the BBC and the complainant about the cause of the cancellation of Ms Underwood's limousine, it was clearly accepted by both parties that the car that had been hired never arrived.

Ofcom had regard to all the factors above and in particular the strength of the corroborated account of these events recalled by Mr Rogers and Ms Underwood, and the willingness of Limo Broker to reimburse her and offer another booking as a goodwill gesture. As a result we took the view that it was reasonable (and so not unfair) for the programme makers and the broadcaster to decide not to include in Limo Broker's response as presented in the programme any reference to Mr Rogers' alleged threats to the driver.

- *The programme's test booking*

Ofcom noted that, in its response to the programme makers, Limo Broker had explained the car originally booked "was not fit for use as it needed a tyre replacing" and that the agent had not informed Limo Broker of this. It also said that the agent gave the customer an upgrade free of charge as an apology for the alteration in that the vehicle which was sent would have cost an additional £150.

In the programme as broadcast, Limo Broker's response was represented as follows:

*"Well, Limo Broker say it was a problem with the hire firm they used to source the limo...Not their fault then. But either way, they were the ones who took our booking and we didn't get what we wanted".*

The programme did not refer to the exact nature of the fault with the original car or that it was replaced with an upgrade. The programme makers did however include, albeit in a summarised form, Limo Broker's explanation why the vehicle that arrived differed in some respects to the one which had been booked.

Ofcom took into account that the focus of this report was whether vehicles booked through Limo Broker met the requirements made during those bookings, and that the reasons for this particular vehicle differing from the one actually booked were summarised in the programme. We therefore considered that it was not incumbent on the programme makers or the broadcaster to explain the exact nature of the circumstances that resulted in a replacement vehicle being provided. In these circumstances, Ofcom concluded that it was reasonable (and so not unfair) for the programme makers and the broadcaster to decide not to include reference to this particular piece of information from Limo Broker's response in the programme.

Given the above, Ofcom did not consider that the omission of any or all of the examples given by the complainant resulted in the report giving an incomplete and unfair impression of the company. Ofcom considered therefore that the broadcaster took reasonable care to satisfy itself that material facts were not presented, disregarded or omitted in a way that was unfair to Limo Broker.

- b) Ofcom then considered Limo Broker's complaint that it was not given an appropriate and timely opportunity to respond to the claims the programme made about it.

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

As noted above, the programme included allegations about Limo Broker's service and the way its sales staff operated, notably that they used techniques to coerce people into making bookings which they otherwise would not have made. Ofcom considered that, given the serious nature of these claims, in accordance with practice 7.11, the programme makers needed to offer Limo Broker an appropriate and timely opportunity to respond to the claims being made about it.

On 10 October 2013, following several telephone calls to ensure that they contacted the appropriate person within the company, the programme makers sent Limo Broker an email in which they set out, in specific detail, the nature of the claims the programme intended to make about it, including the testimony of the contributors and the findings of the undercover reporter. This was followed by another email on 11 October 2013 which set out the views of Professor Griffiths, the consumer law expert, regarding the company's sales training manual. Receipt of this second email was acknowledged by the complainant on the same day. The first email offered Limo Broker the opportunity of being interviewed for the programme and also asked for a written response by 12:00 on 16 October 2013. On 14 October 2013, Limo Broker sent the programme makers an email saying that it would not take part in an interview and that it would "provide a statement as soon as possible". On 15 October 2013, Limo Broker sent a detailed response to the allegations made about it to the programme makers. On the following day (16 October 2013), the programme makers contacted Limo Broker again with regard to the test booking and to which the company responded. As is set out above, Limo Broker's response to the claims made about it was reflected in the programme, albeit in summary.

Ofcom recognised that Limo Broker complained that it was only given three working days in which to investigate and respond to the programme makers'

claims and that the BBC accepted that this was a comparatively limited period in which to research and draft such a response. However, as the BBC also set out in its response to this complaint, the material on which the claims were based was not new or unfamiliar to Limo Broker. In addition, the company did not request any extra time in which to respond, but did, in fact, provide a detailed response to the programme makers on the day before the deadline set in the programme maker's first email, i.e. 16 October 2013.

In light of these observations, and taking into account the factors noted above, we took the view that Limo Broker was given an appropriate and timely opportunity to respond to the claims made about it in the programme. Therefore, Ofcom concluded that there was no unfairness to Limo Broker in this respect.

**Therefore, Ofcom has not upheld Limo Broker's complaint of unjust or unfair treatment in the programme as broadcast.**

## Other Programmes Not in Breach

Up to 3 March 2014

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>
Advertising minutage	Starz	Various	Advertising minutage
Advertising scheduling	NDTV	Various	Advertising scheduling
Countdown to Murder	Channel 5	31/10/2013	Generally accepted standards
Remembering Martyrs	International Live Channel (ILC)	Various	Violence and dangerous behaviour

## Complaints Assessed, not Investigated

### Between 18 February and 3 March 2014

This is a list of complaints that, after careful assessment, Ofcom has decided not to pursue because they did not raise issues warranting investigation<sup>1</sup>.

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Harry and the Hendersons	5*	16/02/2014	Offensive language	1
Asaram ke sewadar Shiva se mili	Aaj Tak	06/10/2013	Religious/Beliefs discrimination/offence	1
Babagardi : Khul gayi Baba ki Kartoton ki Pol	Aaj Tak	04/09/2013	Generally accepted standards	1
Baba Ki Bam Lila	Aaj Tak Channel	02/11/2013	Religious/Beliefs discrimination/offence	1
Advertisements	All	Various	Advertising minutage	1
Advertisements	ATN Bangla	14/02/2014	Advertising scheduling	1
BBC News	BBC	25/02/2014	Outside of remit / other	1
BBC News	BBC	Various	Product placement	1
Great British Menu	BBC	Various	Generally accepted standards	1
Winter Olympics	BBC	Various	Outside of remit / other	1
BBC News at Six	BBC 1	12/02/2014	Disability discrimination/offence	1
BBC News at Ten	BBC 1	20/02/2014	Violence and dangerous behaviour	1
Breakfast	BBC 1	25/02/2014	Outside of remit / other	1
Call the Midwife	BBC 1	09/02/2014	Materially misleading	3
Call the Midwife	BBC 1	16/02/2014	Generally accepted standards	1
Doctors	BBC 1	18/02/2014	Scheduling	1
Doctors	BBC 1	19/02/2014	Scheduling	1
EastEnders	BBC 1	27/02/2014	Scheduling	1
Holby City	BBC 1	18/02/2014	Generally accepted standards	1
James Martin: Home Comforts	BBC 1	28/02/2014	Scheduling	1
Jonathan Creek	BBC 1	28/02/2014	Generally accepted standards	1
Match of the Day	BBC 1	01/03/2014	Outside of remit / other	1
MOTD2 Extra	BBC 1	02/03/2014	Race discrimination/offence	1
Outnumbered	BBC 1	12/02/2014	Gender discrimination/offence	1
Question Time	BBC 1	06/02/2014	Generally accepted standards	1

<sup>1</sup> Ofcom has listed the cases on these pages by broadcaster rather than by programme, as it has done to date. We are doing this on a trial basis to allow stakeholders the opportunity to let us know if this is helpful. Please send any comments to [OfcomStandardsTeam@ofcom.org.uk](mailto:OfcomStandardsTeam@ofcom.org.uk).

Question Time	BBC 1	27/02/2014	Due impartiality/bias	1
Silk	BBC 1	24/02/2014	Outside of remit / other	1
Six Nations Rugby Union	BBC 1	21/02/2014	Outside of remit / other	1
The Andrew Marr Show	BBC 1	16/02/2014	Outside of remit / other	1
The One Show	BBC 1	24/02/2014	Drugs, smoking, solvents or alcohol	1
WPC 56	BBC 1	12/02/2014	Scheduling	1
WPC 56	BBC 1	13/02/2014	Scheduling	1
BBC News at One	BBC 1 Scotland	28/02/2014	Elections/Referendums	1
The Street	BBC 1 Scotland	17/02/2014	Offensive language	1
Line of Duty	BBC 2	26/02/2014	Religious/Beliefs discrimination/offence	1
QI XL	BBC 2	01/02/2014	Religious/Beliefs discrimination/offence	1
The Restaurant Man	BBC 2	26/02/2014	Offensive language	1
The Winter Olympics (trailer)	BBC 2	17/02/2014	Materially misleading	1
Top Gear	BBC 2	02/02/2014	Scheduling	1
Top Gear	BBC 2	16/02/2014	Generally accepted standards	3
Top Gear	BBC 2	23/02/2014	Violence and dangerous behaviour	2
Top Gear	BBC 2	02/03/2014	Generally accepted standards	1
Winter Olympics	BBC 2	08/02/2014	Generally accepted standards	1
Winter Olympics	BBC 2	12/02/2014	Generally accepted standards	2
Winter Olympics	BBC 2	12/02/2014	Sexual material	1
Winter Olympics	BBC 2	16/02/2014	Generally accepted standards	1
Winter Olympics	BBC 2	23/02/2014	Generally accepted standards	1
Bad Education	BBC 3	23/02/2014	Generally accepted standards	1
Family Guy	BBC 3	17/02/2014	Generally accepted standards	1
Ja'mie: Private School Girl	BBC 3	20/02/2014	Race discrimination/offence	1
Ja'mie: Private School Girl	BBC 3	21/02/2014	Race discrimination/offence	2
Ja'mie: Private School Girl	BBC 3	26/02/2014	Disability discrimination/offence	2
BBC News	BBC News Channel	17/02/2014	Outside of remit / other	1
The Radio 1 Breakfast Show with Nick Grimshaw	BBC Radio 1	19/02/2014	Sexual material	1
Archive On 4	BBC Radio 4	15/02/2014	Scheduling	1
Arthur Smith Sings Leonard Cohen Again	BBC Radio 4	17/02/2014	Offensive language	1
PM	BBC Radio 4	25/02/2014	Outside of remit / other	1
PM	BBC Radio 4	27/02/2014	Outside of remit / other	1

Sunday	BBC Radio 4	23/02/2014	Scheduling	1
Today	BBC Radio 4	13/02/2014	Outside of remit / other	1
Today	BBC Radio 4	26/02/2014	Generally accepted standards	1
You and Yours	BBC Radio 4	28/02/2014	Outside of remit / other	1
Sunday Sequence	BBC Radio Ulster	26/01/2014	Religious/Beliefs discrimination/offence	1
Capital Breakfast	Capital FM (South Wales)	05/02/2014	Generally accepted standards	1
Programming	Cartoon Network	09/01/2014	Scheduling	1
Programming	Cartoon Network	24/01/2014	Scheduling	1
Programming	Cartoon Network (Central Eastern Europe)	22/01/2014	Scheduling	1
How to be Epic at Everything	CBBC	04/02/2014	Scheduling	1
99 Women	CBS Action	23/02/2014	Animal welfare	1
Dog and Beth: On the Hunt	CBS: Reality	08/02/2014	Offensive language	1
8 Out of 10 Cats	Channel 4	17/02/2014	Generally accepted standards	1
Babylon	Channel 4	09/02/2014	Animal welfare	1
Bodyshockers	Channel 4	30/01/2014	Materially misleading	1
Bodyshockers	Channel 4	31/01/2014	Generally accepted standards	1
Bodyshockers	Channel 4	13/02/2014	Outside of remit / other	2
Channel 4 News	Channel 4	26/01/2014	Materially misleading	1
Channel 4 News	Channel 4	07/02/2014	Due impartiality/bias	1
Channel ident "Gay Mountain"	Channel 4	Various	Generally accepted standards	71
Dispatches: Hunted	Channel 4	05/02/2014	Generally accepted standards	7
Extreme Dog Styling	Channel 4	21/02/2014	Offensive language	1
Hollyoaks	Channel 4	09/01/2014	Scheduling	1
Hollyoaks	Channel 4	24/02/2014	Sexual orientation discrimination/offence	1
Jimmy Carr: Making People Laugh	Channel 4	28/02/2014	Generally accepted standards	1
Paul Chowdhry: What's Happening White People?	Channel 4	18/02/2014	Race discrimination/offence	1
Sexting Teacher	Channel 4	18/02/2014	Generally accepted standards	8
The Paralympic Winter Games (trailer)	Channel 4	23/02/2014	Offensive language	2
The Repo Man	Channel 4	27/02/2014	Generally accepted standards	1
The Super Bowl: American Football Live	Channel 4	02/02/2014	Flashing images/risk to viewers who have PSE	1
The Taste	Channel 4	11/02/2014	Gender discrimination/offence	1
Will and Grace	Channel 4	18/02/2014	Offensive language	1
Advertisements	Channel 5	20/01/2014	Advertising scheduling	1

Aldi's sponsorship of Neighbours	Channel 5	Various	Sponsorship credits	1
Ben Fogle: New Lives in the Wild	Channel 5	14/02/2014	Generally accepted standards	2
Big Brother	Channel 5	17/06/2013	Generally accepted standards	307
Big Brother	Channel 5	08/08/2013	Generally accepted standards	244
Big Brother	Channel 5	11/08/2013	Offensive language	1
Big Brother	Channel 5	12/08/2013	Outside of remit / other	2
Big Brother	Channel 5	13/08/2013	Generally accepted standards	1
Big Brother	Channel 5	15/08/2013	Disability discrimination/offence	6
Big Brother	Channel 5	15/08/2013	Voting	8
Big Brother	Channel 5	16/08/2013	Generally accepted standards	1
Big Brother	Channel 5	18/08/2013	Generally accepted standards	1
Big Brother	Channel 5	19/08/2013	Materially misleading	1
Big Brother	Channel 5	19/08/2013	Voting	1
Big Brother	Channel 5	Various	Product placement	1
Big Brother's Bit on the Psych	Channel 5	17/08/2013	Generally accepted standards	1
Big Brother's Bit on the Psych	Channel 5	31/08/2013	Disability discrimination/offence	2
Big Brother's Bit on the Side	Channel 5	15/07/2013	Generally accepted standards	4
Big Brother's Bit on the Side	Channel 5	08/08/2013	Generally accepted standards	12
Big Brother's Bit on the Side	Channel 5	09/08/2013	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	13/08/2013	Generally accepted standards	1
Big Brother's Bit on the Side	Channel 5	16/08/2013	Generally accepted standards	1
Celebrity Big Brother	Channel 5	Various	Generally accepted standards	1
Checktrade.com's sponsorship of Cowboy Builders	Channel 5	Various	Materially misleading	1
Daybreakers	Channel 5	23/02/2014	Generally accepted standards	1
Ice Road Truckers	Channel 5	14/02/2014	Offensive language	1
Jim Davidson: At Least I'm Not Boring	Channel 5	10/02/2014	Offensive language	1
NCIS	Channel 5	27/02/2014	Scheduling	1
Neighbours	Channel 5	25/02/2014	Competitions	1
Police 5	Channel 5	18/02/2014	Materially misleading	1
Police 5	Channel 5	25/02/2014	Generally accepted standards	1
Police Interceptors	Channel 5	24/02/2014	Violence and dangerous behaviour	1
Super Casino	Channel 5	01/03/2014	Gambling	1
The Big British	Channel 5	17/02/2014	Due impartiality/bias	26



Immigration Row: Live				
The Hotel Inspector	Channel 5	09/02/2014	Offensive language	1
The Hotel Inspector	Channel 5	13/02/2014	Sexual orientation discrimination/offence	1
The Hotel Inspector	Channel 5	16/02/2014	Offensive language	2
The Hotel Inspector	Channel 5	20/02/2014	Generally accepted standards	1
The Hotel Inspector	Channel 5	23/02/2014	Offensive language	1
Advertisements	Channel i	14/02/2014	Advertising scheduling	1
Advertisements	CHSTV	14/02/2014	Advertising scheduling	1
Advertisements	CHSTV /ATN Bangla UK	Various	Advertising scheduling	1
Pat and Stan	CITV	09/02/2014	Scheduling	1
Super Scoreboard	Clyde1	04/02/2014	Generally accepted standards	1
Trouble in Paradise	Discovery Channel	15/01/2014	Generally accepted standards	1
Channel ident	E4	15/02/2014	Scheduling	1
Hollyoaks	E4	26/02/2014	Materially misleading	1
The Mindy Project	E4	28/02/2014	Scheduling	1
Frequency of trailers	Food Network	24/01/2014	Outside of remit / other	1
Aunt Bessie's sponsorship of The Chase	ITV	Various	Sponsorship credits	2
Birds of a Feather	ITV	30/01/2014	Disability discrimination/offence	3
Births, Deaths and Marriages	ITV	11/02/2014	Gender discrimination/offence	1
Boots' sponsorship of This Morning	ITV	03/03/2014	Animal welfare	1
Coronation Street	ITV	14/02/2014	Scheduling	1
Coronation Street	ITV	19/02/2014	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	19/02/2014	Scheduling	1
Coronation Street	ITV	21/02/2014	Scheduling	99
Coronation Street	ITV	23/02/2014	Scheduling	1
Coronation Street	ITV	24/02/2014	Drugs, smoking, solvents or alcohol	1
Coronation Street	ITV	Various	Generally accepted standards	1
Coronation Street	ITV	Various	Product placement	1
Dancing on Ice	ITV	02/03/2014	Materially misleading	1
Dancing on Ice	ITV	02/03/2014	Voting	1
Daybreak	ITV	06/02/2014	Materially misleading	1
DCI Banks	ITV	17/02/2014	Disability discrimination/offence	1
DCI Banks	ITV	17/02/2014	Outside of remit / other	1
Dickinson's Real Deal	ITV	09/02/2014	Competitions	1
Emmerdale	ITV	13/02/2014	Sexual material	1
ITV News and Weather	ITV	11/02/2014	Due impartiality/bias	1
ITV News and	ITV	20/02/2014	Generally accepted	1

Weather			standards	
ITV News and Weather	ITV	20/02/2014	Violence and dangerous behaviour	1
ITV News at Ten and Weather	ITV	20/02/2014	Violence and dangerous behaviour	1
ITV News at Ten and Weather	ITV	26/02/2014	Generally accepted standards	1
ITV News London	ITV	24/02/2014	Due accuracy	1
Loose Women	ITV	13/02/2014	Disability discrimination/offence	2
Lorraine	ITV	04/02/2014	Generally accepted standards	1
Scrambled!	ITV	16/02/2014	Religious/Beliefs discrimination/offence	1
Seven Seas' sponsorship of ITV National Weather	ITV	12/02/2014	Sponsorship credits	1
Surprise Surprise	ITV	01/12/2014	Outside of remit / other	1
The Brit Awards 2014	ITV	19/02/2014	Drugs, smoking, solvents or alcohol	3
The Brit Awards 2014	ITV	19/02/2014	Generally accepted standards	2
The Brit Awards 2014	ITV	19/02/2014	Materially misleading	1
The Brit Awards 2014	ITV	19/02/2014	Offensive language	13
The Brit Awards 2014	ITV	19/02/2014	Scheduling	1
The Chase	ITV	14/02/2014	Materially misleading	1
The Chase	ITV	20/02/2014	Materially misleading	1
The Chase	ITV	21/02/2014	Materially misleading	1
The Chase	ITV	21/02/2014	Outside of remit / other	1
The Martin Lewis Money Show	ITV	07/02/2014	Materially misleading	1
The Trevor Nelson Collection 2 The Album's sponsorship of Valentine's in Vegas	ITV	12/02/2014	Sponsorship	1
This Morning	ITV	19/02/2014	Outside of remit / other	1
TSB advertisement	ITV	11/02/2014	Political advertising	1
UEFA Champions League	ITV	25/02/2014	Competitions	1
Ladette to Lady: Australia	ITV2	Various	Generally accepted standards	1
You've Been Framed!	ITV2	28/02/2014	Religious/Beliefs discrimination/offence	1
You've Been Framed! 'Christmas'	ITV2 +1	08/12/2013	Outside of remit / other	1
ITV News (trailer)	ITV3	15/02/2014	Generally accepted standards	1
118 118's sponsorship of ITV Movies	ITV4	06/02/2014	Sponsorship credits	1
Heroes of the City	Jim Jam	13/02/2014	Outside of remit / other	1
Toddlers and Tiaras	Kanal 11 (Sweden)	14/02/2014	Under 18s in programmes	1

Äntligen helg	Kanal 5	02/02/2014	Disability discrimination/offence	2
Partaj	Kanal 5	05/01/2014	Generally accepted standards	1
James O'Brien	LBC 97.3FM	11/02/2014	Generally accepted standards	1
Nick Ferrari	LBC 97.3FM	13/02/2014	Generally accepted standards	1
Advertisements	NTV	14/02/2014	Advertising scheduling	1
PM Programme	Radio 4	12/02/2014	Scheduling	1
Kesri Lehar	Sangat TV	16/01/2014	Violence and dangerous behaviour	1
Sikh Youth Show	Sikh Channel	26/01/2014	Religious/Beliefs discrimination/offence	2
Sky News	Sky News	14/01/2014	Nudity	1
Sky News	Sky News	25/01/2014	Offensive language	1
Sky News	Sky News	22/02/2014	Generally accepted standards	1
Sky News with Dermot Murnaghan	Sky News	17/02/2014	Generally accepted standards	1
Sky News with Kay Burley	Sky News	30/01/2014	Due impartiality/bias	1
Sky News with Kay Burley	Sky News	25/02/2014	Outside of remit / other	1
Sunrise	Sky News	02/03/2014	Religious/Beliefs discrimination/offence	1
Superleague	Sky Sports 1	14/02/2014	Undue prominence	1
NCIS: Los Angeles	Sky1	28/02/2014	Offensive language	1
Soccer A.M.	Sky1	22/02/2014	Generally accepted standards	1
Arise Asia Cup 2014	Star OK	02/03/2014	Advertising scheduling	1
Studio 66	Studio 66 TV1	04/02/2014	Scheduling	1
Lunchtime Show	Takeover Radio	11/02/2014	Generally accepted standards	1
Night Owls (Alien Jesus)	TFM Radio	19/02/2014	Religious/Beliefs discrimination/offence	1
The Breakfast Show	Town 102 FM	28/01/2014	Competitions	1
Paråkning OS i Sotji	TV10 (Sweden)	12/02/2014	Outside of remit / other	1
Trolljägarna	TV3	Various	Outside of remit / other	1
Winter Olympics	Various	Various	Outside of remit / other	1
Khana Rozana	Venus TV	23/01/2014	Undue prominence	1
Prettylittlething.com's sponsorship of Fresh Prince of Bel Air	Viva	14/02/2014	Sponsorship credits	1
MC In The Morning	West FM	Various	Competitions	1

## Investigations List

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

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

Here are alphabetical lists of new investigations launched between 20 February and 5 March 2014.

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

Programme	Broadcaster	Transmission date
Sixth Sense	Pick TV	28 January 2014
Advertising minutage	Channel 4	2 January 2014
Advertising minutage	Channel 5	14 January 2014
Advertising minutage	News18 India	21 January 2014
BBC SE Regional News	BBC 1	13 February 2014
Community Announcement	Channel i	21 January 2014
Criminal Justice	Channel Nine UK	25 January 2014
Do You Know Me	Channel 5	10 February 2014
FA Cup Football	BT Sport 1	16 February 2014
Golden Recipe	ATN Bangla	13 January 2014
Jerry Springer	Pick TV	27 January 2014
Joystick Warriors	RT	4 March 2014
Law and Talk	ATN Bangla UK	2 November 2013
Legal Platform	ATN Bangla	7 January 2014
Save Bangladesh advertisement	Channel Nine UK	25 January 2014

The Supplement Game: The Truth About Supplements	The Active Channel	30 September 2013
Various news programmes	RT	Various
Winning Figure: Toning and Nutrition	The Active Channel	18 February 2014

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

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

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

<b>Licensee</b>	<b>Licensed Service</b>
Chorley FM	Chorley FM
Leith Community Media Works Limited	Castle FM 98.8

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

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