

# **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

#### Comedy Central Trailers

*Workaholics Trailer, Comedy Central, 13 July 2015, 16:59*

*Impractical Jokers Trailer, Comedy Central, 10 August 2015, 10:16 and 11:15*

*Amy Schumer: Mostly Sex Stuff Trailer, Comedy Central, 10 August 2015, 10:27*

*Inside Amy Schumer Trailer, Comedy Central, 29 August 2015, 14:00*

*Inside Amy Schumer Trailer, Comedy Central, 29 August 2015, 16:00*

*All trailers were also broadcast on other various dates and times*

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#### Introduction

Comedy Central is a channel featuring comedy series and stand-up comedy aimed at a primarily adult audience. The licence for Comedy Central is held by Paramount UK Partnership (“Paramount UK” or the “Licensee”).

Ofcom received 27 complaints regarding the broadcast of the pre-watershed trailers set out above. The complainants considered that the content of these trailers were adult in tone, humour and language and were not suitable for transmission pre-watershed when children were available to view. A number of complainants also expressed their particular concerns about the broadcast of these trailers during programmes which were likely to attract child viewers, including back-to-back episodes of *Friends* and episodes of *The Middle*.

Full details of the trailers investigated by Ofcom are set out in our Decision below. The material broadcast included:

- a trailer to promote the programme *Workaholics* which included references to and scenes of characters smoking cannabis;
- a trailer for the programme *Impractical Jokers* which featured the comedian Sal Vulcano at a speed dating event. When speaking to a female participant Sal stated that he only kissed “*the vagina*” before marriage; and,
- trailers for *Amy Schumer: Mostly Sex Stuff* and *Inside Amy Schumer* which contained repeated sexual references and innuendo, including use of the word “slut”, a joke about sex with children and descriptions of sexual activity, for example, one character telling another “*I want to drive you crazy by licking you in places no other man has ever touched before*”.

#### Ofcom’s Investigation

We considered that each of the five trailers discussed above and in the Decision below raised potential issues under Rule 1.3 of the Code which states:

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

We also considered the *Workaholics* trailer (discussed above and in the Decision below) raised potential issues which warranted investigation under Rule 1.10, which states:

“The use of illegal drugs, the abuse of drugs, smoking solvent abuse and the misuse of alcohol:

- ...must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television) ...unless there is editorial justification;
- must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.

We therefore asked Paramount UK how the broadcast of these trailers complied with these rules. We also asked the Licensee to provide us with full details of when these trailers were broadcast on Comedy Central.

During the period of this investigation, Ofcom published a decision on 12 October 2015 relating to breaches of 14 pre-watershed trailers broadcast on Comedy Central and Comedy Central Extra<sup>1</sup>. Subsequently, on 16 October 2015, Paramount UK attended a meeting with Ofcom to discuss the effectiveness of its compliance in this area. At the meeting the Licensee explained its compliance arrangements going forward and sought to reassure Ofcom that it was fully aware of its obligations as a licensee under the Code.

### **Licensee’s response**

Paramount UK expressed its “deep regret at the scheduling of th[e] trailers [during] daytime”. It did not seek to defend the broadcast of the trailers and “apologis[ed] unreservedly”. The Licensee explained that, once it became aware of “Ofcom’s concerns regarding daytime promos”, the trailers “were immediately pulled and an urgent review of all daytime promos was conducted”.

The Licensee stated that it “had pushed the boundaries of [its] compliance practice for promos too far in recent months”. Paramount UK said it was conducting an “internal investigation...to understand how this lapse in judgement happened” and “to ensure it never happens again” by “rebuild[ing] daytime processes and policies”. It added that it was “putting in place compliance training” for all staff and would be “reviewing all daytime content”.

### **Decision**

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

Rule 1.3 states that broadcast material which is unsuitable for children must be appropriately scheduled. Whether the content of a trailer is unsuitable for children depends on all the relevant circumstances. Appropriate scheduling is judged by a

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<sup>1</sup> See: [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb290/Issue\\_290.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb290/Issue_290.pdf)

number of factors including: the nature of the content; the likely number and age range of the audience; the start and finish time of the programme; and likely audience expectations.

When scheduling trailers, particularly pre-watershed, broadcasters have less freedom than with programmes. This is because viewers come across trailers unawares and audience expectations of what is appropriate are affected not only by the time and date of broadcast, but the programming it is scheduled during and around.

Ofcom has previously issued guidance on the watershed on television which includes advice on trailers<sup>2</sup>. Among other things, the guidance advises broadcasters to ensure that the content of trailers shown pre-watershed are appropriate for a pre-watershed audience. This is particularly important when the trailers are promoting post-watershed programming. Parents and carers should be able to anticipate that any material broadcast pre-watershed, when children are available to view, has been scheduled appropriately for all children under the age of 15.

Rule 1.3 makes clear that in deciding appropriate scheduling for pre-watershed trailers (and for all pre-watershed programmes), licensees need to take care in assessing the likely number and age range of children in the audience, taking into account school times, weekends and holidays.

Ofcom considered each of the five trailers to assess firstly whether they were unsuitable for children, and if so whether they were appropriately scheduled.

***Impractical Jokers Trailer, 10 August 2015, 10:16 and 11:15 (and various other dates and times pre-watershed)***

This trailer featured the comedian Sal Vulcano at a speed-dating event. Sal, shown talking to Jennifer (a female participant), repeated a number of statements fed to him by his friends (Joe Gatto, James Murray and Brian Quinn) via an earpiece while being filmed by a hidden camera. The following exchange took place:

Sal: *“Man I would love to see what you look like in a burqa”.*

[Jennifer was shown laughing in response before cutting to a shot of Sal’s friends in a separate room observing him on a TV and speaking into a microphone.]

Joe: *“There is something you should know about me right off the top”.*

[The next shot returned to Sal and Jennifer]

Sal: *“There is something that you should know about me right off the top”.*

Jennifer: *“What?”*

[A close up shot of Joe speaking into a microphone was shown.]

Joe: *“I only do kisses till marriage”.*

[Returned to a shot of Sal and Jennifer].

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/watershed-on-tv.pdf>

Sal: *"I only do kisses until marriage".*

[Jennifer was shown laughing]

Jennifer: *"Kisses where?"*

[The next shot showed Sal's friends laughing as Joe spoke into the microphone.]

Joe: *"The vagina".*

[The next shot featured Sal and Jennifer, with Sal looking down in hesitation while trying to stifle a laugh]

Sal: *"The vagina".*

[Jennifer was shown laughing in response.]

Jennifer: *"The vagina".*

Sal: *"Yeah and I mean I am strict with that".*

## **Decision**

Our concern here was the adult tone and humour of this pre-watershed trailer. Although the word "vagina" can clearly be suitable for broadcast during the day, we would normally anticipate that there would be appropriate editorial justification for its use. In this case, however, the nature of the trailer provided little or no context. The sexual reference to kissing the "vagina" was clearly adult in tone and unsuitable for children.

We then went on to consider whether the trailer was appropriately scheduled. We noted that Comedy Central is not aimed at children nor on the whole likely to appeal to them. Nonetheless this trailer was broadcast on two occasions in the morning of 10 August 2015, during an episode of *Friends* at 10:16 and during an episode of *The Middle* at 11:15. BARB<sup>3</sup> viewing data indicated that these programmes were likely, on occasion, to attract a significant child audience. For example, during the episode of *The Middle*, broadcast at 11:00 on 10 August 2015, 17,000 out of a total of 37,000 viewers were children, equivalent to 47% of the programme's audience. This included 4,000 children (10% of the audience) aged four to nine and 14,000 children (37% of the audience) between 10 and 15 years old. Further, Ofcom was aware that this trailer was broadcast on other dates and various times pre-watershed between 22 July 2015 and 17 August 2015, during the school summer holidays and at weekends, when children were available to view. We concluded that, because this trailer, which was adult in tone and unsuitable for children, was shown at dates and times when children would be watching or were available to view, it was not scheduled appropriately, in breach of Rule 1.3.

## **Breach of Rule 1.3**

***Amy Schumer: Mostly Sex Stuff Trailer, 10 August 2015, 10:27 (and various other dates and times pre-watershed)***

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<sup>3</sup> Broadcasters' Audience Research Board (BARB) is the official source of television viewing figures in the UK.

This trailer consisted of short edited clips of various comedy sketches featuring Amy Schumer and a clip from the comedian's stand-up show. It featured:

- A simulated news clip with a caption stating "*Breaking News: Witch Caught*". Amy Schumer was shown standing behind a podium at press conference addressing the audience: "*This is just a case of slut shaming*". After clips of other sketches were shown, this scene continued with Amy Schumer addressing the audience: "*This slut is not ashamed!*"
- A clip from the comedian's stand-up show: "*I'm celebrating. I've finally just slept with my high school crush [audience cheer] Right [audience cheers intensifies] Thank you. Thank you, but I swear now he like expects me to go to his graduation [audience laughs]. Like I know where I'm going to be in three years right. I'm like whoa*".

## Decision

Ofcom's concern about this trailer was the use of the word "*slut*" in the simulated news clips and Amy Schumer's joke about having sex with a minor.

Ofcom did not specifically research the word "*slut*" in its 2010 offensive language research<sup>4</sup>. However, we noted that the word "*slag*" was found in our research to be a word of "medium acceptability" alongside words such as "*bastard*" and "*bitch*" which may be acceptable in certain contexts pre-watershed. Accordingly, broadcasters will need to take care when using a word like "*slut*" in pre-watershed trailers, especially at times when children are available to view, when there is likely to be less contextual justification.

In this case, we noted that the word "*slut*" was used twice, in the term "*slut shaming*" and in a rebuttal to that accusation: "*this slut is not ashamed*". The word was used in order to make a joke about sexual promiscuity. We also noted that the humour in the concluding joke was dependent on a revelation that Amy Schumer's character had had sex with a minor who had been some years away from finishing school. We considered therefore that the trailer was clearly intended for an adult audience and that the jokes in the trailer were unsuitable for broadcast when considerable numbers of children were available to view.

We then went on to consider whether the trailer had been appropriately scheduled. We noted that this trailer was broadcast pre-watershed during the school summer holidays and at weekends between 2 August 2015 and 16 August 2015 often during back to back episodes of *Friends*. We noted that this trailer on 10 August 2015 at 10:27 was broadcast between an episode of *Friends* (of which 14% (5,000 viewers) of the audience were children aged 4 to 15) and *The Middle* (of which, as noted above, 47% (17,000 viewers) of the audience were children aged 4 to 15). We concluded that, because this trailer, which was adult in tone and unsuitable for children, was shown at dates and times when children would be watching or were available to view, it was not scheduled appropriately, in breach of Rule 1.3.

## Breach of Rule 1.3

***Inside Amy Schumer Trailer, 29 August 2015, 14:00, (and various other dates and times pre-watershed); and Inside Amy Schumer Trailer, 29 August 2015, 16:00 (and various other dates and times pre-watershed)***

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/research/tv-research/offensive-lang.pdf>

These two trailers for *Inside Amy Schumer* included short edited clips of various comedy sketches featuring Amy Schumer.

The first trailer consisted of a clip of Amy Schumer lying in bed. A woman was shown to tuck Amy in as she said: *"Would you like to be awoken by a soft kiss on the cheek or a stranger going down on you?"* This trailer also included the scene featuring two instances of the word "slut" described above.

The second trailer featured a character, played by Amy Schumer, and her partner Kevin at a counselling session. As part of the counselling session the female counsellor suggested a role play:

Counsellor: *"I'm going to be Amy. Kevin I'd like you to say to me all the things you would like to do to Amy in bed".*

Kevin: *"Ok..."*

Amy: *"No. I don't think that's a good idea for us..."*

[Kevin interrupts and continues looking directly at the counsellor].

Kevin: *"First, I want to kiss you for hours and then I want to run my fingers through your long dark hair [Amy, who has blond hair, looked at Kevin puzzled] and then I want to drive you crazy by licking you in places no other man has ever touched before".*

Counsellor: *"Alright, why don't you now say those things directly to Amy".*

Kevin: *"It's ok. I think she got it"* [Kevin winks at the counsellor].

## **Decision**

We noted that the first trailer focused on jokes about a reference to oral sex ("*stranger going down on you*") and sexual promiscuity (see Ofcom's Decision above). We considered therefore that the trailer was clearly intended for an adult audience and that the jokes in the trailer were unsuitable for broadcast when considerable numbers of children were available to view.

The second trailer contained a lengthy description of sexual activity which was highly suggestive in tone (e.g. "*drive you crazy by licking in you places no other man had touched you before*"). Although the extended nature of this clip did provide more context than is normal in many trailers, we considered that this served to underline the unsuitability of this material for children rather than to mitigate its impact, given the adult tone of the material. Again, we therefore considered that this material, clearly intended for a post-watershed audience, was unsuitable for children.

We went on to assess whether these trailers were appropriately scheduled. We noted that the first trailer was broadcast at various times pre-watershed during the school summer holidays, at weekends and when children returned from school from 16 August 2015 until 28 September 2015. BARB data indicated that when the trailer was broadcast at 09:44 during an episode of *Friends* on 31 August 2015, a Bank Holiday, 13,000 viewers (29% of the audience) were children, including 8,000 viewers (19% of the audience) aged four to nine and 5,000 (10.5% of the audience) aged between 10 and 15 years old. We also noted that the second trailer was

broadcast at various times pre-watershed during the same period often during back to back episodes of *Friends* which, as noted above, were likely to have strong appeal to children. We concluded that, because both trailers, which were adult in tone and unsuitable for children, were shown at dates and times when children would be watching or were available to view, they was not scheduled appropriately, in breach of Rule 1.3.

### **Breaches of Rule 1.3**

#### ***Workaholics* Trailer, 13 July 2015, 16:59 (and various other dates and times pre-watershed)**

This trailer consisted of short edited clips from *Workaholics*, a comedy series about three university drop-outs. The trailer included the following:

- A clip featuring the characters Adam DeMamp and Blake Henderson dressed up in costumes designed to resemble food products. Adam was shown smoking cannabis while talking to Blake:

Adam:       *"If you smoke weed in a burrito they'll never know. [Blake chuckled] Did I look cool when I said that?"*

Blake:       *"No man, we look really stupid".*

- A clip of Blake saying: *"We should smoke like no pothead has ever smoked before"*. Adam, Blake and a third character were then shown inhaling a plume of smoke from a chimney before passing out.

### **Decision**

#### Rule 1.3

As detailed above the trailer included brief clips in which references were made to smoking cannabis, a close up shot of Adam smoking cannabis and a clip showing the three friends smoking cannabis from a chimney. In Ofcom's view, the cumulative references to and depictions of smoking cannabis and its effects were clearly unsuitable for children.

We went on to assess whether the trailer was appropriately scheduled. We noted that this trailer was broadcast at various times pre-watershed between 1 July 2015 and 1 August 2015 often broadcast during episodes of *Friends*, *The Middle* and *Two and a Half Men*. For example, on Friday 17 July 2015 this trailer was broadcast at 15:47, when children were returning home from school, during an episode of *Two and a Half Men*. BARB viewing data indicated that 2,000 viewers (23% of the audience) were children aged 4 to 15. We concluded that because this trailer, which was adult in tone and unsuitable for children, was shown at dates and times when children would be watching or were available to view, it was not scheduled appropriately, in breach of Rule 1.3 in this case.

#### Rule 1.10

Rule 1.10 requires that: "the use of illegal drugs...must generally be avoided and in any case must not be condoned, encouraged or glamorised...programmes broadcast before the watershed (in the case of television)...unless there is editorial justification...".

As discussed above, the trailer contained a number of references to cannabis use and its effects. The material was comic in tone and featured slapstick humour (e.g. the three main characters inhaling cannabis smoke from a chimney before immediately passing out) which had the potential to appeal to children. We did not consider there was any specific editorial justification for these scenes and, as noted above, trailers do not provide any context or warning to viewers about the material they are about to see. As a result, we concluded the trailer breached Rule 1.10.

### **Breaches of Rules 1.3 and 1.10**

#### Conclusion

These pre-watershed trailers included themes and content aimed at an adult audience. The adult themes throughout these trailers were clearly from programming intended for a post-watershed audience. Most of the trailers included sexual references and innuendo, which although were not explicit, at times, in Ofcom's view would have been understood by an older child audience. We therefore considered that the content, broadcast around pre-watershed programmes, would have exceeded audience expectations, particularly during periods when there was a likelihood that children, some unaccompanied would have been available to view.

As noted above, the Decision follows a recent Finding<sup>5</sup> by Ofcom in which a number of breaches were recorded for the broadcast of pre-watershed trailers on Comedy Central and Comedy Central Extra. Ofcom has also recently published two breach Findings<sup>6</sup> relating to the broadcast of trailers after the watershed on Comedy Central.

Given the number of breaches recorded, Ofcom is concerned about the Licensee's approach to its compliance of trailers. Ofcom is therefore putting the Licensee on notice that it intends to monitor the compliance of trailers broadcast on Comedy Central and Comedy Central Extra. Should any further breaches of the relevant rules occur, Ofcom is likely to consider taking further regulatory action which may include the imposition of a statutory sanction.

***Impractical Jokers Trailer, 10 August 2015, 10:16 and 11:15***  
***Amy Schumer: Mostly Sex Stuff Trailer, 10 August 2015, 10:27***  
***Inside Amy Schumer Trailer, 29 August 2015, 14:00***  
***Inside Amy Schumer Trailer, 29 August 2015, 16:00***

#### **Breaches of Rule 1.3**

***Workaholics Trailer, 13 July 2015, 16:59***

#### **Breaches of Rules 1.3 and Rule 1.10**

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<sup>5</sup> See: [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb290/Issue\\_290.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb290/Issue_290.pdf)

<sup>6</sup> See: [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/1528201/Issue\\_293.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/1528201/Issue_293.pdf)

## In Breach

### Drive Time

New Style Radio 98.7 FM, 16 July 2015, 15:00

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#### Introduction

New Style Radio 98.7 FM is a community radio station broadcasting to Afro-Caribbean listeners in the Birmingham area. The licence for New Style Radio 98.7 FM is held by Afro-Caribbean Millennium Centre (“ACMC” or “the Licensee”).

Two complaints alerted Ofcom to sexual references and themes of violence in a music track broadcast in the late afternoon. The complainants considered it unsuitable for children and inappropriate for the time of broadcast.

This music track was broadcast during the station’s drive time programme as part of a sequence focusing on ‘grime’<sup>1</sup> music. The background to the broadcast was a continuing dispute between various grime artists. The presenter played two tracks recorded by two well-known grime artists in response to controversy sparked by a track recorded by the artist Chip (formerly known as Chipmunk) called *Pepper Riddim* (which criticised other grime artists). At 16:50 the presenter introduced Devilman’s response to the controversy, *Chipmunk Diss*.

This track contained the following lyrics:

- *“Come to your house on a Jamaican ting, box you up in your face and bleach ya, teach ya, I’m an animal, I’m a creature”.*
- *“I specialise in pain and slaughter, I gave him a ten pound draw and he paid me the money for a quarter, drown yourself in water”.*
- *“Chipmunk’s on a funny-man-ting, I heard that he got a boyfriend in Majorca. Paedo, you’re a nonce you’re a stalker, you might as well do the moonwalker”.*
- *“Go on then, go on then, draw for the tool ya, box you in the face with a ruler. Yo, I’ll make the tables turn on you, sh-and sperm on you. I’m gonna end your career”.*
- *“Yeah, cuz you’re not ready, you transvestite you’re not ready. Don’t talk about clash, you like to hit a man’s ass cuz it gives you a semi. I said you’re not ready, you transvestite you’re not ready. I don’t care if you’re in a video with Jammer, smash a man’s head with a tele”.*
- *“I don’t give a how many girls you bang, you’re still a that’s why you hurt your hand. I heard you suck for twos on a fag, or lick a man’s just for a gram”.*

Ofcom considered this content warranted investigation under the following Code rules:

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<sup>1</sup> Grime is a genre of music that has developed from UK garage, drum and bass and dancehall music.

- Rule 1.3: “Children must...be protected by appropriate scheduling from material that is unsuitable for them”.
- Rule 1.5: “Radio broadcasters must have particular regard to times when children 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...Appropriate information should also be broadcast where it would assist in avoiding or minimising offence”.

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

### **Response**

ACMC explained that the “lyrics [were] broadcast accidentally and not deliberately, maliciously or perversely” and accepted that the lyrics were “inappropriate to broadcast whilst children [were] listening”.

The Licensee said that it had written to the presenter responsible for the broadcast and had also held a meeting to discuss the matter with him. The presenter, who was “experienced and responsible”, was aware “that some aspects of the lyrics of this particular genre can be offensive”. He was however “convinced that he had removed any offensive material” and was “greatly surprised that any offensive material remained”. The presenter in question however provided “an undertaking that th[ere] will be greater vigilance in future, in relation to this particular genre of music, particularly whilst children might be listening”.

ACMC said it took this matter seriously and was now “in the process of updating and reissuing” guidelines to its presenters to “ensure an infringement of this type is avoided” in future.

### **Decision**

Under the Communications Act 2003, Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure the standards objectives, which include ensuring that persons under the age of eighteen are protected from material that is unsuitable for them, and providing adequate protection for members of the public from harmful and/or offensive material. These objectives are reflected in Sections One and Two of the Code.

In reaching its Decision in this case, Ofcom has taken careful account of the broadcaster’s and audience’s right to freedom of expression set out in Article 10 of the European Convention on Human Rights.

#### **Rule 1.3 and 1.5**

Rule 1.3 states that children must be protected by appropriate scheduling from material that is unsuitable for them. Appropriate scheduling is judged by a number of factors including: the nature of the content, the time of the broadcast, the likely audience expectations and the availability of children to listen taking into account school time, weekends and holidays.

Rule 1.5 requires radio broadcasters to have particular regard to times when children are particularly likely to be listening. Ofcom's guidance on offensive language radio<sup>2</sup> notes that:

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

- Between 06:00 and 09:00 and 15:00 and 19:00 Monday to Friday during term-time...".

We first considered whether the programme contained material unsuitable for children.

Ofcom considered that the track by Devilman included a number of sexual references, sexual innuendos and derogatory and homophobic lyrics. For example: "You transvestite you're not ready...you like to hit a man's ass cuz it gives you a semi"; "sh-and sperm on you" and "Chipmunk's on a funny-man-ting, I heard that he got a boyfriend in Majorca. Paedo, you're a nonce you're a stalker". It also included a number of references to acts of violence. For example "box you up in your face and bleach ya" and "I don't care if you're in a video with Jammer, smash a man's head with a tele". Although a number of these references may not have been easily understood by children, in Ofcom's view the lyrics cumulatively contained offensive material with strong sexual and violent themes that were unsuitable for children.

We went on to assess whether the material was appropriately scheduled.

In our opinion because the track contained a number of abusive homophobic lyrics as well as sexual references and examples of sexual innuendo, it was capable of causing a considerable degree of offence.

*Chipmunk Diss* was broadcast on a Thursday afternoon during school term time. The Code states that the phrase "when children are particularly likely to be listening" particularly refers to "the school run and breakfast time, but might include other times". In Ofcom's view, in light of the guidance on Rule 1.5 set out above, given the late afternoon broadcast of this material at 16:50, we considered that this content was broadcast at a time when children were particularly likely to be listening.

We noted the Licensee's comments that the presenter was "convinced that he had removed any offensive material". However, although a number of expletives had been edited out of the track, we considered that the material retained a range of adult themes and offensive material. The sexual innuendos and references, together with the cumulative impact of the themes of violence and homophobia, resulted in the material being inconsistent with audience expectations for material broadcast on this station at 16:45 on a weekday.

For these reasons we considered that the *Chipmunk Diss* track was not appropriately scheduled.

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

Ofcom noted that the Licensee accepted that it was not appropriate to broadcast these lyrics during a late afternoon programme, and has taken some steps to improve compliance in the future. Nonetheless there were breaches of Rules 1.3 and 1.5.

### Rule 2.3

Rule 2.3 states that in applying generally accepted standards a broadcaster must ensure that potentially offensive material is justified by the context.

As detailed above and for the same reasons that in our view the lyrics in the track were unsuitable for children, Ofcom considered they were also capable of causing offence to the audience in general.

We went on to consider whether the broadcast of this material was justified by the context. Context includes but is not limited to, editorial content of the programme, the service the material was broadcast on, the time of the broadcast and the likely size and composition of the potential audience, and the likely expectations of the audience.

We noted that the station specialised in “urban, dance, and reggae music” and sought to be “reflective of African Caribbean culture”. Ofcom recognised that certain genres of music may include potentially offensive lyrics. However, in our view, listeners were unlikely to expect derogatory and homophobic sexual references of the type included in the lyrics of this track to be broadcast on this station at this time. We also noted that, although the presenter referred to the continuing controversy between various grime artists before playing this track, he did not provide any warning about its content prior to broadcast. In Ofcom’s opinion, this material was not consistent with the audience’s expectations for the output of this station broadcast at this time.

For all these reasons we considered the broadcast was not justified by the context, and Rule 2.3 was also breached.

### **Breaches of Rules 1.3, 1.5 and 2.3**

## In Breach

### Dog the Bounty Hunter

CBS Reality, 24 October 2015, 16:00

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#### Introduction

CBS Reality is a television channel that screens a variety of reality TV programmes, predominantly from the United States. The licence is held by CBS AMC Networks EMEA Channels Partnership (“CBS” or “the Licensee”).

*Dog the Bounty Hunter* is an American reality TV programme about Duane Chapman’s experiences as a bail enforcement officer.

A complainant alerted Ofcom to the broadcast of offensive language during a pre-watershed showing of the programme.

Ofcom noted that at the end of the programme, in a teaser for the next episode, Duane Chapman was heard saying:

*“There’s a fuckin’ motorcycle there, we got it... He was just here. Fuck... Watch the gun guys. I’ll fuckin’ cap this motherfucker”.*

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

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

We therefore sought comments from CBS as to how the programme complied with this rule.

#### Response

The Licensee said that the content “was in breach of Rule 1.14” and apologised for “this mistake”. It added that “following an internal investigation, this one piece of content did not follow internal procedure” and was broadcast pre-watershed. CBS said it was implementing additional steps to its compliance procedures to ensure that non-compliant material would be identified prior to broadcast.

#### Decision

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

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”. Ofcom research on offensive language<sup>1</sup> notes that the words “fucking”, “fuck”, and “motherfucker” are considered by audiences to be amongst the most offensive language.

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

The use of the words “*fucking*”, “*fuck*” and “*motherfucker*” in this programme broadcast before the watershed at 16:55 was therefore a clear breach of Rule 1.14 of the Code.

Ofcom noted the steps taken by the Licensee to improve its compliance procedures. However the use of the offensive language in this programme broadcast before the watershed was a clear breach of Rule 1.14 of the Code.

**Breach of Rule 1.14**

## In Breach

### A Good Year

Film4, 6 October 2015, 19:35

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#### Introduction

The licence for the film channel, Film4, is held by Channel Four Television Corporation (“Channel 4” or “the Licensee”).

*A Good Year* is a 2006 British romantic comedy-drama film about an investment banker who inherits a vineyard.

A complainant alerted Ofcom to the broadcast of offensive language during a pre-watershed showing of the film. Ofcom noted that in one scene, on an investment bank trading floor, a financial bond trader said the following:

*“Fucking buy it all back Mickey boy! Buy it all back! Immediately, buy it all back!”*

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

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

We therefore sought comments from Channel 4 as to how the programme complied with this rule.

#### Response

The Licensee assured Ofcom that the film went through the “appropriate compliance procedures” to ensure that it was appropriately scheduled, which led to a large number of instances of offensive language being edited out of the version of the film broadcast in this case. The compliance steps taken included viewing twice by “very experienced” compliance personnel, and editing supervised by a compliance specialist. Channel 4 also said that when being prepared for subtitling for the purposes of the hard of hearing, relevant staff “did not identify the language complained of”.

The Licensee said it did not dispute that, “when scrutinised, the film as broadcast probably contained strong language”. However, it did not accept that it was “clear or noticeable”. Channel 4 argued that the relevant scene in which the language was used took place “on a trading floor in the City and [was] noisy with rapid shouting from the traders”. It added that “when viewed in normal circumstances, it is considered that the language complained of did not stand out”. The Licensee also stated that the film had been transmitted 14 times (42 times if Film4+1 and HD transmissions are included) to approximately 3.9 million viewers without any complaint.

In conclusion the Licensee stated that “in context, the use of the language was not clear... the fact that it had not been identified was not a significant failure of Channel 4’s compliance procedures. Given the ambiguity, the relevant language will, of course, be edited for any future pre-watershed transmission”.

## **Decision**

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

Rule 1.14 of the Code states that “the most offensive language must not be broadcast before the watershed...”. Ofcom research on offensive language<sup>1</sup> notes that the word “fucking” is considered by audiences to be amongst the most offensive language.

In reaching our Decision, we took into account that Channel 4 had considered that “the use of the language was not clear”, but had also accepted that “when scrutinised, the film as broadcast probably contained strong language”. We also noted that it had edited out the offensive language for any future pre-watershed transmission of the film. However, the use of the word “fucking” broadcast before the watershed at 19:35 was a breach of Rule 1.14 of the Code.

## **Breach of Rule 1.14**

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

## In Breach

### Various programmes

*Channel i, 18 June 2015, various times*

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#### Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited (“Prime Bangla” or “the Licensee”).

During monitoring we identified some material that raised potential issues under the Code. We obtained translations of the relevant content, which was predominantly in Bengali, and sought the Licensee’s comments on the following programmes:

#### *Tritio Matra, 18 June 2015, 12:00*

This talk show featured discussion about the proposed 2015-16 Bangladesh budget and a recent visit to Bangladesh by the Prime Minister of India. It was sponsored by seven companies.

Because of the subject matter, we considered the programme raised issues warranting investigation under Rule 9.15 of the Code, which states:

“News and current affairs programmes must not be sponsored.”

#### *Mohor Ali, 18 June 2015, 03:00*

This drama series had a number of sponsors, including BSGS College. The sponsorship credit for BSGS College included a graphic, which stated “98% pass rate”.

We considered this sponsorship credit raised issues warranting investigation under Rule 9.22(a) of the Code, which states:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.

We therefore sought comments from the Licensee as to how the content described above complied with the Code.

#### Response

Prime Bangla said that on receipt of Ofcom’s request for comments it held a detailed meeting with its editorial and compliance staff.

The Licensee said that the issues highlighted resulted from editorial misjudgement. It continued that it had taken “serious disciplinary action” against those responsible. It had also appointed a new person who has “more experience in handling OFCOM procedures” to head its editorial team.

Prime Bangla apologised sincerely for the mistakes, which it said would not be repeated.

## **Decision**

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

The AVMS Directive places limits on the amount of advertising a broadcaster can transmit and requires advertising to be kept visually and/or audibly distinct from programming. The requirements of the AVMS Directive are reflected in Section Nine of the Code. The rules in this section serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising.

### *Tritio Matra*, 18 June 2015, 12:00

Rule 9.15 of the Code prohibits the sponsorship of news and current affairs programmes. This rule is directly derived from the requirements of the AVMS Directive<sup>1</sup>. It supports the important principle that news and current affairs must be reported with due accuracy and presented with due impartiality. A broadcaster’s editorial control over the content of its news and current affairs programming should not be, or appear to be, compromised. The Code defines a current affairs programme as one “that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy”.

Ofcom noted that this episode of *Tritio Matra* featured the host and two guests discussing: the current economic climate in Bangladesh; factors affecting investment in the country and its economic growth; and the potential impact of the country’s proposed 2015-16 budget. It also featured discussion on the impact of the Indian Prime Minister’s recent visit to Bangladesh on the country’s economy.

Ofcom considered that these discussions constituted explanation and analysis of current events and issues affecting Bangladesh. We concluded that the programme met the definition of current affairs, as set out in the Code. Because the programme was sponsored, it was therefore in breach of Rule 9.15.

### *Mohor Ali*, 18 June 2015, 03:00

As noted in the Introduction above, the sponsorship credit for one of the programme sponsors, BSGS College, included a graphic stating “98% pass rate”.

Sponsorship credits are treated as part of the programme content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To

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<sup>1</sup> Article 10(4) of the AVMS Directive.

prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, Rule 9.22(a) of the Code requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action, or encourage the purchase or rental of the products or services of the sponsor or a third party.

Ofcom's has published detailed guidance on Rule 9.22(a)<sup>2</sup>. This makes clear that "claims about the sponsor's products/services (in particular those that are capable of objective substantiation) are likely to be considered as advertising messages and therefore should not be included in sponsorship credits".

Ofcom considered that the reference to the sponsor's pass rate in the credit was a claim about the quality of sponsor's service and, as such, constituted an advertising message. The sponsorship credit was therefore in breach of Rule 9.22(a).

### Conclusion

Ofcom has recorded a number of breaches of Section Nine of the Code against this Licensee<sup>3</sup>. In March 2015, Prime Bangla attended a meeting with Ofcom to set out its compliance procedures for ensuring compliance with Section Nine.

We are therefore concerned that the Licensee has again breached this area of the Code both in this case and in a separate case in this issue of the Broadcast Bulletin<sup>4</sup>. We are requesting that Prime Bangla attend a further meeting with Ofcom to discuss its compliance processes.

***Tritio Matra: Breach of Rule 9.15***  
***Mohor Ali: Breach of Rule 9.22(a)***

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

<sup>3</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>; <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf>; <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>; and <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb279/obb279.pdf>.

<sup>4</sup> See page 25

## In Breach

### Azan-e-Magrib

Channel i, 30 June 2015, 21:24

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#### Introduction

Channel i is a news and general entertainment channel aimed at the Bangladeshi community in the UK and Europe. The licence for Channel i is held by Prime Bangla Limited (“Prime Bangla” or “the Licensee”).

A complainant alerted Ofcom to commercial references during *Azan-e-Magrib*, a three-minute Islamic call to prayer.

We noted that a rotating logo for the Icon College of Technology and Management in London appeared throughout the programme in the bottom left-hand corner of the screen, including its name: “ICTM London”, and the message: “*Educating for better jobs*”. We further noted that the presenter, a teenager who recited the words of the Azan,<sup>1</sup> who was shown throughout the programme, wore a t-shirt featuring the name and website address of a fee-paying school in Oldham, Darul Hadis Latifiah Northwest.

The Licensee confirmed that the Icon College of Technology and Management was the sponsor of the programme. Prime Bangla also told us that Darul Hadis Latifiah Northwest had not paid for the inclusion of the reference to the school in the programme, but that the charity which funds the school had previously run an appeal on Channel i.

Section Nine of the Code requires programme sponsorship to be identified clearly by means of sponsorship credits, which must be broadcast at the beginning and/or during and/or end of the sponsored programme. However, sponsorship credits may not be shown during sponsored programmes in which product placement<sup>2</sup> is prohibited.

Rule 9.12(a) of the Code prohibits product placement in religious programmes produced under UK jurisdiction<sup>3</sup>. Ofcom therefore considered the reference to Icon College of Technology and Management raised issues warranting investigation under Rule 9.23 of the Code, which states:

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<sup>1</sup> An Azan (or Adhan) is an Islamic call to prayer or worship, recited by the muezzin (the appointed person at a mosque to lead such calls) at prescribed times of the day.

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

<sup>3</sup> As set out in Section Nine of the Code, “programmes produced under UK jurisdiction” means any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the Audiovisual Media Services Directive).

“Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.”

Ofcom further considered that the reference to Darul Hadis Latifah Northwest raised issues warranting investigation under Rule 9.5 of the Code, which states:

“No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- the presence of, or reference to, a product where there is no editorial justification; or
- the manner in which a product, service or trade mark appears or is referred to in programming.”

We therefore sought comments from the Licensee as to how the content complied with these rules.

### **Response**

Prime Bangla confirmed that it understood the material to be religious in nature, but explained that its programming team had thought that, because it was “short” and “generic”, it was therefore “not a programme” and that therefore “[it] accepted the sponsorship of this material”. The Licensee acknowledged that this was an “editorial misjudgement”, stating that it “understood Ofcom[s] concern and would “put all efforts in place [to ensure] that this will never repeat...again”.

### **Decision**

Under the Communications Act 2003 (“the Act”), Ofcom has a statutory duty to set standards for broadcast content as appear to it best calculated to secure a number of standards objectives, including that “the product placement requirements...are met in relation to programmes included in a television service (other than advertisements)”. The Act prohibits the inclusion of product placement in religious programmes made under UK jurisdiction.

The Act also requires that “the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with”. These obligations include ensuring compliance with the Audiovisual Media Services (“AVMS”) Directive.

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

The requirements of the Act and the AVMS Directive are reflected in Section Nine of the Code, including, among other rules, Rule 9.23 and Rule 9.5.

### Rule 9.23

Rule 9.23 prohibits the broadcast of sponsorship credits during programmes in which product placement is prohibited, including religious programmes. Ofcom's Guidance<sup>4</sup> to Section Nine of the Code makes clear that (in the context of Section Nine) a religious programme "is a programme that covers religious acts of worship or whose main focus is religious belief".

In this case, because the programme consisted of a call to prayer, we considered that *Azan-e-Magrib* was a religious programme within the terms of the Code. As a result, we concluded that the screening of sponsorship credits during the programme was in breach of Rule 9.23.

### Rule 9.5

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark, noting that undue prominence may result from a reference to a product, service or trade mark where there is no editorial justification, or from the manner in which a product, service or trade mark is referred to.

Ofcom's published guidance on Rule 9.5 states: "Whether a product, service or trade mark appears in a programme for solely editorial reasons...or as a result of a commercial arrangement between the broadcaster or producer and a third party funder...there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears."

We noted that the name and website of a fee-paying school in Oldham appeared prominently on the t-shirt of the presenter who faced the camera throughout this programme. In the context of a call to prayer, there did not appear to us to be any editorial justification for the inclusion of this reference to the school during the programme.

The content was therefore in breach of Rule 9.5.

### Conclusion

Ofcom noted that Prime Bangla had explained that its programming team had mistakenly assumed that *Azan-e-Magrib* was "not a programme", because it was "short" and "generic". The Code makes clear that programming includes "[a]ll broadcast content except spot advertising and teleshopping", and this is the case regardless of its duration or the type of material. The Licensee acknowledged its "editorial misjudgement", but stated that this editorial misjudgement consisted in it "accept[ing] the sponsorship of this material". The Code does not prohibit the sponsorship of religious programmes or sponsorship credits shown before and/or after such programmes. However it does prohibit sponsorship credits from being shown *during* religious programmes. We were therefore concerned that the Licensee's response suggested it did not appear to understand fully its compliance responsibilities in this area.

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

Ofcom has recorded a number of breaches of Section Nine of the Code against this Licensee<sup>5</sup>. In March 2015, Prime Bangla attended a meeting with Ofcom to set out its compliance procedures for ensuring compliance with Section Nine.

We are therefore concerned that the Licensee has again breached this area of the Code both in this case and in a separate case in this issue of the Broadcast Bulletin<sup>6</sup>. We are requesting that Prime Bangla attend a further meeting with Ofcom to discuss its compliance processes.

### **Breaches of Rules 9.5 and 9.23**

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<sup>5</sup> See: <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb2521/obb253.pdf>; <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb273/Issue273.pdf>; <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb276/Issue276.pdf>; and <http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb279/obb279.pdf>.

<sup>6</sup> See Page 22

## In Breach

### Sponsorship of My Iftar My Health

ATN Bangla UK, 22 June 2015, 11:00

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#### Introduction

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

During monitoring we noted sponsorship credits for Salma Designer Abaya House, Square Glazing, Marble Furnishing, Hillside Travels and Hamlet Solicitors around the programme *My Iftar My Health*. The credits for each company included the full postal address and contact telephone number, in addition to the following text:

Salma Designer Abaya House: *“Ramadan special offer”*

Square Glazing: *“Call us for your free quotation”*

Marble Furnishing: *“Knows what to offer”*

Hillside Travels: *“Highest ticket seller for Biman Bangladesh Airlines”*

Hamlet Solicitors: *“Professional, Friendly, Reliable”*

Ofcom considered that the sponsorship credits raised issues warranting investigation under Rule 9.22(a) of the Code, which states that:

“Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.”

We therefore requested comments from the Licensee as to how the sponsorship credits complied with this rule.

#### Response

ATN Bangla said that the sponsorship ‘cards’ were created to ensure compliance with Rule 9.22(a) by reducing the cards to ‘centre pockets’ (i.e. occupying a central section rather than the entire screen) to make advertising messages indistinguishable. In addition, it said that the text “Sponsor By” was displayed by the cards to ensure they were distinct from advertising.

The Licensee said that following the contact from Ofcom it had reviewed the sponsorship credits and realised the information identified above was “visible from close proximity if watched on a laptop or desktop”, but it believed these credits “were not legible for television viewers as the size of the text were reduced profoundly”.

## Decision

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

The AVMS Directive limits the amount of advertising a broadcaster can transmit and requires that advertising is kept distinct from other parts of the programme service. Sponsorship credits are treated as part of the sponsored content and do not count towards the amount of airtime a broadcaster is allowed to use for advertising. To prevent credits effectively becoming advertisements, and therefore increasing the amount of advertising transmitted, broadcasters are required to ensure that sponsorship credits do not contain advertising messages.

Rule 9.22(a) of the Code reflects this requirement. Among other things, Rule 9.22(a) requires that sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action.

Ofcom’s guidance<sup>1</sup> about the use of sponsor’s slogans and straplines in sponsorship credits states that:

- “[I]t is possible for some sponsors’ slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor’s products/services (e.g. by featuring claims)”; and, that
- “credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code.”

In this case, Ofcom considered that the sponsors’ messages shown in the credits – “*Ramadan special offer*”, “*Highest ticket seller for Biman Bangladesh Airlines*”, “*Knows what to offer*” and “*Professional, Friendly, Reliable*” – were claims about the quality or value the sponsors offered to their customers. Consequently, we considered they were advertising messages.

We also considered that the term “*Call us for your free quotation*” shown on-screen adjacent to Square Glazing’s telephone number represented a direct call to action to contact the sponsor.

Ofcom noted the Licensee’s view that the text of these credits would not be legible to television viewers. We considered that the text was sufficiently discernible to be identifiable to viewers, and given the above, all five of the sponsorship credits in this case were in breach of Rule 9.22(a).

Ofcom has published a number of Findings in relation to sponsorship credits in recent years, and has made clear the need for licensees to exercise care to ensure that credits do not contain advertising messages.

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<sup>1</sup> See: <http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/831193/section9.pdf>

It is the responsibility of licensees to ensure that the material they broadcast is compliant with the Code. Ofcom therefore expects licensees to take account of its published decisions. We are concerned, therefore, by the Licensee's compliance failure in this case.

Ofcom is already investigating the sufficiency of the Licensee's compliance arrangements (Licence Condition 17(2)) and will take account of this case in reaching a decision in that investigation.

**Breaches of Rule 9.22(a)**

## Broadcast Licence Conditions cases

### In Breach

## Community Radio Finance Reports 2014

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### Introduction

Every community radio station is required to complete an annual Finance Report. This is so that Ofcom can:

- check whether stations have stayed within the financial limits for on-air advertisement and sponsorship income, as set out in their licence; and
- use the information as part of Ofcom's annual Communications Market Report, and to help inform Ofcom's community radio policy.

In March this year, Ofcom asked 208 community radio licensees<sup>1</sup> to provide us with their annual Finance Report, covering the period 1 January to 31 December 2014.

Once submitted, each Finance Report was assessed by Ofcom for compliance with the statutory restrictions on the funding of community radio stations, as set out in section 105(6) of the Broadcasting Act 1990, and as modified by The Community Radio Order 2004 and The Community Radio (Amendment) Order 2010.

All community radio Finance Reports for 2014 were assessed by Ofcom against the statutory restrictions that were in place during 2014, and not the revised statutory restrictions which were introduced by The Community Radio (Amendment) Order 2015, which became law on 27 March 2015<sup>2</sup>.

Ofcom considered that the Finance Reports of the licensees listed in the table overleaf raised issues warranting investigation under Conditions 6(5) and (6) contained in Part 2 of the Schedule to their licence, which state that:

“6(5) The Licensee shall ensure that no more than 50 per cent of the relevant income for the Licensee is attributable to either one of, or a combination of, the following:

- (a) the inclusion in the Licensed Service of remunerated advertisements; or
- (b) the sponsorship of programmes included in the Licensed Service.

6(6) The Licensee must ensure that, in calculating its relevant income for the purposes of condition 6(5):

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<sup>1</sup> Only stations that were already broadcasting at the start of 2014 were required to submit a Finance Report for 2014.

<sup>2</sup> Community radio licences were subsequently varied by Ofcom on 30 April 2015 to reflect this change in the regulations.

(a) at least 25 per cent. of the relevant income is attributable to sources of funding other than: remunerated advertisements; the sponsorship of programmes included in the Licensed Service; and volunteer contributions; and

(b) the Licensee has regard to guidelines published by Ofcom”.

We therefore sought formal comments from the relevant licensees on their compliance with these licence conditions.

Licensee (service name)	Decision
Nevis Community Radio Ltd (Nevis Radio, Fort William)	<p>Nevis Community Radio Ltd reported that, in 2014, 98% of its income was derived from on-air advertising and sponsorship. Under the terms of its licence during 2014, the Licensee was only permitted to obtain 50% of its income from such sources.</p> <p>Following Ofcom’s decision to investigate this issue, Nevis Community Radio Ltd did not make any representations, but submitted a revised Financial Report for 2014. This revised report showed that 54% of its income in 2014 had come from on-air advertising and sponsorship, meaning the station remained in breach of the 50% threshold.</p> <p>In response to Ofcom’s Preliminary View that the Licence had been breached, the Licensee said that it had under-estimated the amount of ‘in kind’ income from volunteers in its report. However, we noted that Nevis Community Radio Ltd had already claimed 25% of its income from the value of volunteers, meaning that any further income from this source was not a relevant consideration. At least 25% of the station’s income must come from sources other than on-air advertising and sponsorship and the value of volunteers. Its report indicated that only 21% came from ‘other’ sources.</p> <p><b>Breaches of Licence Conditions 6(5) and 6(6)</b></p>
Peace Full Media Ltd (Legacy 90.1 FM, Hume, Manchester)	<p>Peace Full Media Ltd reported that, in 2014, 65% of its income was derived from on-air advertising and sponsorship. Under the terms of its licence during 2014, the Licensee was only permitted to obtain 50% of its income from such sources.</p> <p>It said it had not breached the threshold by 15% deliberately, and was an oversight “caused by internal issues which have now been sorted.”</p> <p><b>Breaches of Licence Conditions 6(5) and 6(6)</b></p>
Prince Bishop Community Broadcasting Ltd (Bishop FM, Bishop Auckland)	<p>Prince Bishop Community Broadcasting Ltd reported that, in 2014, 60% of its income was derived from on-air advertising and sponsorship. Under the terms of its licence during 2014, the Licensee was only permitted to obtain 50% of its income from such sources.</p> <p>Prince Bishop Community Broadcasting Ltd said that, owing to</p>

	<p>a misallocation of commercial production revenues in the report it submitted, the amount of advertising and sponsorship revenues had been over-stated. It therefore resubmitted its report with the appropriate reallocations.</p> <p>However, the revised report showed that on-air advertising and sponsorship revenues accounted for 54% of its income, meaning the station remained in breach of the 50% threshold.</p> <p>In response to Ofcom's Preliminary View that the Licence had been breached, the Licensee responded that a grant had been awarded to the station prior to December 2014, which would have brought the station's finances for 2014 into compliance, but the actual cash from this grant was not received until February 2015.</p> <p>Funds must be received by the Licensee and accounted for within the financial year concerned in order to qualify as relevant income for the year.</p> <p><b>Breaches of Licence Conditions 6(5) and 6(6)</b></p>
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## Fairness and Privacy cases

### Not Upheld

#### Complaint by The Mediawise Trust on behalf of Mrs L

*Sky News, Sky UK Limited, 26 February 2015*

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#### Summary

Ofcom has not upheld the complaint made by The Mediawise Trust (“Mediawise”) on behalf of Mrs L of unwarranted infringement of privacy in connection with the obtaining of material included in the programme as broadcast and in the programme as broadcast.

This programme included a news report broadcast on the day the ISIL<sup>1</sup> fighter known as “Jihadi John” was identified as former London resident Mr Mohammed Emwazi. *Sky News* (as well as other national and foreign broadcasters and newspapers) sent a reporter and camera crew to the address where Mr Emwazi used to live to seek to interview his family and his neighbours. The complainant, Mrs L, was briefly shown in the report speaking to the *Sky News* reporter as she stood in her doorway. She was not named, but her face was unobscured and her voice was not disguised.

Ofcom found that, in the particular circumstances of this case, Mrs L had a legitimate expectation of privacy with regard to the obtaining and subsequent broadcast of the footage of her in the programme. However, Ofcom considered that, on balance, the broadcaster’s right to freedom of expression and the public interest in the filming and broadcasting of the relevant footage outweighed Mrs L’s legitimate expectation of privacy. Therefore, Mrs L’s privacy was not unwarrantably infringed in connection with the obtaining of the footage of her and its subsequent broadcast in the programme.

#### Introduction and programme summary

On 26 February 2015, *Sky News* broadcast a report about the revealing that day of the identity of the British ISIL fighter widely known as “Jihadi John” as Mr Mohammed Emwazi. The presenter in the studio introduced the report as follows:

*“The IS fighter known worldwide as Jihadi John and seen on video executing IS hostages has been identified as Mohammed Emwazi from London”.*

The presenter went on to state that Mr Emwazi was 27 years old, born in Kuwait and had spent most of his life in west London.

The report itself began by showing images of a hooded figure understood to be Mr Emwazi taken from ISIL videos and the reporter explained that US Government sources claimed that “Jihadi John” was Mr Emwazi, a British citizen and graduate of the University of Westminster. Footage was then shown of a block of flats, outside

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<sup>1</sup> ISIL, or Islamic State of Iraq and the Levant (also known Islamic State (“IS”); Islamic State of Iraq and Syria (“ISIS”); Dawlat al-Iraq al-Islamiyya; Islamic State of Iraq (“ISI”); or Dawlat al Islamiya fi Iraq wa al Sham (“DAISh” and the Islamic State in Iraq and Sham), is a terrorist organisation that was proscribed under UK law on 16 June 2014 ([https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/417888/Proscription-20150327.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417888/Proscription-20150327.pdf)).

which could be seen reporters and camera crews. This was accompanied with the following commentary:

*“He lived here, in the Ladbroke Grove area of west London. The inevitable media pack is here, but there’s been no sign of family members or, indeed, anyone who knows them. Instead, just a sense of shock”.*

Immediately following this, footage of the complainant, Mrs L, was shown as she talked to camera from her front door:

*“I was shocked when your colleague told me. I never thought that something would happen in our estate”.*

The report moved on to talk about the hostages whom it was believed had been killed by Mr Emwazi. No further footage of Mrs L, who was not named in the programme, was shown. Her face was shown unobscured as she talked to the journalists and her voice was not disguised.

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

### *The complaint*

- a) Mediawise complained on behalf of Mrs L that her privacy was unwarrantably infringed in connection with the obtaining of material included in the programme in that she was filmed at her home without her consent. Mediawise said that Mrs L was not aware that she was being filmed.

Mediawise explained that Mrs L had returned home for lunch when she was doorstepped by reporters who informed her that she lived above the home of Mr Emwazi (or “Jihadi John”). Although she had not been aware of this, the information terrified her and she asked the reporters to consider her family’s safety and not to name her.

- b) Mediawise complained on behalf of Mrs L that her privacy was unwarrantably infringed in the programme as broadcast in that footage of her was shown in the news bulletins without her knowledge or consent. Mrs L said that a work colleague had told her the next day that she had appeared on *Sky News*. It said that Mrs L felt that the broadcast of this material put her and her family in risk of retribution and that this had made her ill.

Mediawise said that Mrs L was not experienced in dealing with the media and that she was not told how the footage of her would be used. It said that her request to reporters to consider her family’s safety should have alerted them to her understandable anxiety. Mediawise explained that the Lebanon-based Arabic TV channel, Al Mayadeen, had shown the footage and that relatives of Mrs L in Morocco had called her following the broadcast. Mediawise also said that Mrs L and her children had been living in fear ever since the broadcast and that she was anxious about opening her front door and of passing cars in the street.

### *The broadcaster’s response*

Before answering the specific heads of Mediawise’s complaint on behalf of Mrs L, Sky UK Limited (“Sky”, the Ofcom licence holder for the Sky News Channel), explained that *Sky News’* Home Affairs Correspondent Mr Mark White was broadcast on the day that it was first discovered that the ISIL fighter who had beheaded several

western hostages, including the British nationals Mr David Haines and Mr Alan Henning, was a former London resident called Mr Mohammed Emwazi. It said that the “unmasking” of the man thus far known as “Jihadi John” was a news story of huge national and international significance. *Sky News*, as well as the BBC, ITV, national newspapers and many foreign broadcasters and journalists went to the address where Mr Emwazi’s family lived. Sky said that on such a significant news story in which the revelation itself had enormous impact, and which also raised the issue of how young men living apparently normal lives in the UK could be radicalised into carrying out such barbaric acts, it considered it justified to seek out any information and illustrative material it could find using warranted newsgathering techniques, including knocking on neighbours’ doors and asking whether people would talk to them.

Sky said that the ability of its journalists to gather news in this way on stories of great significance was of paramount importance to journalistic endeavour. It said that the journalist who reported in this case conducted himself in a restrained and polite manner and that it was apparent that most of the media on site did so too. The broadcaster said that at one point, a group of journalists, including its own team, was considering whether to knock on a particular door and a woman turned up to say that it was her mother’s home and that she was sick and should not be bothered. The broadcaster said that the journalists all moved away from that address.

In the case of Mrs L, the broadcaster explained that before its journalist arrived at her home, she had already opened her door and spoken to at least one other broadcaster present on site. However, Sky said that it was clear from what Mrs L said that she had already been speaking to other journalists – “I was shocked when your colleague told me”. Sky said that its journalist had every reason to believe that she had willingly opened her door and was willingly speaking.

Sky said that when the interview took place with Mrs L, there were seemingly three journalists asking questions. It said that a young woman asked Mrs L some questions which she answered in a relaxed and friendly manner, but that she was unable to add very much substantive information. It said that at the end of the woman’s questions, Mrs L offered: “If I knew, I would tell you, believe me”. The woman journalist then thanked her and turned to go, which, the broadcaster said, would have been a perfect moment to shut the door had Mrs L wished not to speak anymore. The broadcaster said that the *Sky News* journalist asked Mrs L very politely: “Excuse me Madam; I’m really sorry if you’ve already been asked this, but have you seen any police activity?”. The broadcaster said that there was a reply and some further questions, including one from another journalist.

The broadcaster said that the conversation between the *Sky News* journalist and Mrs L lasted for at least two minutes and 15 seconds and that it was not a “snatched” interview. It said that there was real conversation and interaction and it was only the rather minimal amount of knowledge Mrs L was able to impart that prevented it being longer. Sky said that the *Sky News* journalist was polite and gentle at all times and Mrs L was friendly, even slightly apologetic at not knowing more. The broadcaster said that at no time did Mrs L raise objections to the questioning or to being filmed. It said that she was friendly and accommodating and that its presumption was that she had, in effect, consented to be filmed. She had come home briefly for a break from work and was returning again, so had further opportunities to talk to journalist teams on her way out. The broadcaster said that at no time was there any indication at all that Mrs L would not want her words to be used.

Sky said that the report broadcast by *Sky News* used a short section of what Mrs L said: *"I was shocked when your colleague told me. I never thought that something would happen in our estate"*. The broadcaster said it was important because it was illustrative of the shock and surprise in the community where Mr Emwazi lived. It also underlined the way in which terrorists or jihadists could be radicalised while living within such a normal, ordinary community, and therefore its use was warranted.

In response to the complaint itself, Sky said that Mrs L's appearance in its report did not amount to an "unwarranted infringement of privacy" and cited the following reasons:

- Mrs L was not named in the report;
- her address was not given;
- the framing of the shot of her at her door made it impossible to identify her home;
- Mrs L was fully aware that she was being filmed given that a camera was clearly visible throughout;
- she had already opened her door and engaged with other journalists including other broadcasters;
- the report offered no information about Mrs L other than a picture of her face; and,
- given her demeanour, her lack of objection and her willingness to talk for a significant amount of time, Mrs L had implied consent.

The broadcaster said that the news report, and Mrs L's appearance in it, was warranted, even if her participation was minor. It said that it was sorry if Mrs L had felt concern about appearing as she did in the news report. However, given that her participation was very minor, that she willingly opened her door and spoke to the *Sky News* journalist (having already done so with other journalists), and that neither her name nor her address were revealed, Sky said that it strongly contended that Mrs L's privacy was not unwarrantedly infringed. However, Sky said that it would be happy to undertake not to use the footage again in any future reports, now that it had been made aware of Mrs L's concerns.

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

Ofcom prepared a Preliminary View on this case that the complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. Ofcom has summarised the main points made by Mediawise in its representations on the Preliminary View. Sky chose not to make any representations on the Preliminary View.

In summary, Mediawise said that Mrs L's front door was not readily accessible to the general public - it was located on an upper corridor accessible only to residents with an electronic fob, giving the residents a reasonable expectation of privacy. Mediawise explained that visitors gained access by contacting a resident and that it would appear that on the day Mrs L was interviewed, journalists had used the 'trade' button at the controlled entrance to gain access.

Mediawise said that two other journalists had first knocked on Mrs L's door and had introduced themselves to her. Mrs L had made it clear to them that she wanted to protect her family's privacy and they were still there when the TV crews arrived. As the *Sky News* journalists did not introduce themselves to her, Mediawise explained that Mrs L made the reasonable assumption that they were connected to the first set of journalists.

Mediawise also said that Mrs L could have had no expectation that the footage would be sold for transmission internationally. This had added to the anxiety caused to Mrs L.

Mediawise concluded that Mrs L acknowledged that there was a story to be followed up, however, she was concerned about the lack of sensitivity shown by the media towards those living on the estate and, in particular, those who are Muslim who might fear, if not experience, repercussions as a result.

## **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, Ofcom carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast, a transcript of it, unedited footage of the exchange that took place between the complainant and the film crew (which was not included in the programme as broadcast, but submitted by Sky in their response), and both parties' written submissions and supporting material, including a letter given the date 28 February 2015 which was circulated to local residents by the Metropolitan Police. The letter referred to media reports suggesting that "Jihadi John" had links to north Westminster and provided reassurance that "no known threats to our local communities and residents have arisen as a result of the recent developments". It also said that the police had "previously asked media outlets not to speculate about the details of our investigation on the basis that life is at risk". Ofcom also took into account the relevant representations made by Mediawise on behalf of Mrs L in response to the Preliminary View on this complaint, which was to not uphold.

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.

- a) Ofcom first considered the complaint that Mrs L's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme as broadcast in that she was filmed at her home without her consent. She said that she was doorstepped by reporters who informed her that she lived above the home of "Jihadi John".

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

Before assessing whether Mrs L's privacy was unwarrantably infringed in connection with the obtaining of the footage of her, we first considered her complaint that she was doorstepped by reporters who informed her that she lived above the home of "Jihadi John". Practice 8.11 of the Code defines doorstepping as the "filming or recording of an interview or attempted interview with someone or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning". It should not take place unless "a request for an interview has been refused or it has not been possible to request an interview or there is a good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep".

From viewing the programme as broadcast and the unedited footage of Mrs L, we noted that *Sky News* and other news reporters were seeking information on Mr Emwazi from his family or neighbours on the day it was revealed that he had lived on an estate in west London and went to the University of Westminster. It appeared that reporters knocked on different doors in the block of flats in the estate to ask local residents if they would talk to them and to get their reaction to the breaking news. Mrs L was one of the residents of the estate who opened her door to the reporters. We noted that Mrs L was filmed as she was standing in the doorway of her flat and she was willingly answering questions put to her by the reporters and that, although she appeared to be shocked and surprised by the news, she did not appear distressed. We also noted that Mrs L said to the *Sky News* reporter "*I was shocked when your colleague told me*" (referring to the news that "Jihadi John" used to live in the estate) which indicated that she had already spoken to at least one other reporter. We considered therefore that it did not amount to doorstepping for the purposes of Practice 8.11.

In considering whether or not Mrs L's privacy was unwarrantably infringed in connection with the obtaining of material included in the programme, we assessed the extent to which Mrs L had a legitimate expectation of privacy. The test applied by Ofcom is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual finds him or herself. Ofcom approaches each case on its facts in this respect.

With regard to the filming itself, as set out above, Mrs L was filmed as she stood in the front doorway of her home as she responded to questions put to her by journalists. We noted that Mrs L said in her complaint that she was not aware that she was being filmed. However, we observed from viewing the unedited footage that one of the reporters was carrying a large microphone which was directed at Mrs L. We also noted from Sky's response that its journalist was accompanied by a camera operator "at his shoulder". We considered that from the footage it appeared that the filming was conducted openly.

However, we took into account Mediawise's comment in response to the Preliminary View that Mrs L's front door was not readily accessible to the general public and that Mrs L was filmed from an area (i.e. the space outside her door which formed part of the corridor/pathway to the flats in the block) with restricted access that was only accessible to residents with an electronic fob or to visitors gaining access by contacting a resident. We acknowledged that, even though Mrs L seemed willing to answer the reporters' questions, her reaction to the news that Mr Emwazi had lived on the estate was clearly one of shock and surprise: "*I was shocked when your colleague told me*". We noted Mediawise's comment that Mrs L had told other journalists, with whom she assumed the *Sky News* journalists were connected, that she wanted to protect her family's privacy. We also considered the police letter circulated to local residents which referred to "the extensive media coverage" about the identity of "Jihadi John" and that the police were aware that this may have caused anxiety. We noted the concerns expressed by Mrs L for her safety. Given these circumstances, and in particular that Mrs L was filmed at her front door in the way that she was, we considered that she had a legitimate expectation of privacy.

Having established that Mrs L had a legitimate expectation of privacy in connection with the obtaining of the footage, Ofcom then considered whether the programme makers had secured her consent. We noted that Mediawise said that Mrs L did not give her consent to being filmed and that Sky, in turn, said that, because Mrs L did not raise objections to being questioned or to being filmed at the time, and that she was friendly and accommodating to the reporters, the programme makers had assumed that they had her consent to being filmed.

Ofcom acknowledged that there was disagreement between the parties about whether or not Mrs L's consent had been secured. However, it appeared from the footage that the programme makers had not asked her explicitly whether she consented to them filming her; their first words to her were "Excuse me Madam; I'm really sorry if you've already been asked this, but have you seen any police activity?". Therefore, in these particular circumstances, we considered that Mrs L had not given her consent.

We went on to consider, therefore, whether the filming of this footage was warranted in the circumstances of this case. The Code states that "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy.

In considering this, we carefully balanced the broadcaster's right to freedom of expression and the viewers' right to receive information and ideas without unnecessary interference against the complainant's right to privacy. In particular, we considered whether there was sufficient public interest or other reason to justify the infringement of Mrs L's privacy in the obtaining of this footage of her.

Ofcom considered that the news report about "Jihadi John" and details of his identity as a British national was a news story of significant public interest which raised the issue of how young men living apparently normal lives in the UK can be radicalised into carrying out acts of terrorism. We considered that there was a genuine public interest in obtaining the relevant footage of Mrs L's reaction to the news that Mr Emwazi had lived on the estate as it provided the broadcaster with

a first-hand testimony which was illustrative of the reactions of the local residents and the community, and it underlined how young people living within an ordinary community can be radicalised. On this basis, and notwithstanding that Mrs L did not give consent to being filmed, Ofcom concluded that the infringement of Mrs L's legitimate expectation of privacy was warranted in the circumstances.

Ofcom also considered whether, in accordance with Practice 8.9, the material had been obtained proportionally in all the circumstances, and in particular, to the subject matter of the programme. We noted that the footage was obtained by reporters knocking on the doors of local residents to gather information on Mr Emwazi and his family and to gain their reaction to the fact that he had lived in their midst. We observed that the filming of Mrs L appeared to have been conducted openly. We noted Mediawise's comment that Mrs L was filmed from an area with restricted access and that the reporters appeared to have gained access by using the trade button at the controlled entrance. However, although it appeared that Mrs L was understandably shocked and surprised by the news, she was friendly and accommodating when answering the questions put to her by the reporters. Given these circumstances, and taking into account the public interest in the obtaining of this material, Ofcom considered that the means of obtaining the material had been proportionate.

Having taken all the above factors into account, Ofcom considered that, on balance, the broadcaster's right to freedom of expression and the public interest in obtaining material of Mrs L outweighed her legitimate expectation of privacy.

Therefore, we concluded that there was no unwarranted infringement of Mrs L's privacy in connection with the obtaining of material included in the programme as broadcast.

- b) Ofcom next considered the complaint that Mrs L's privacy was unwarrantably infringed in the programme as broadcast in that footage of her was shown in the news bulletins without her knowledge or consent.

In considering this head of the complaint, Ofcom had regard to Practice 8.2 of the Code, which states that information which discloses the location of person's home or family should not be revealed without permission, unless it is warranted. We 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.

To assess whether Mrs L's privacy was unwarrantably infringed in the broadcast because footage of her was included without her consent, Ofcom first considered the extent to which Mrs L had a legitimate expectation of privacy in respect of the broadcast of the footage. As set out in head a) above, the test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be assessed in light of the circumstances in which the individual concerned finds him or herself.

Again, Ofcom took account of the context in which Mrs L was filmed - i.e. openly, but in the doorway of her home, and answering questions put to her by reporters standing outside of her home about news which had caused her shock and surprise - as well as the actual material of her that was broadcast. As set out above at head a) and in the "Introduction and programme summary" section, the programme included footage of Mrs L as she said to the *Sky News* reporter: "I

*was shocked when your colleague told me. I never thought that something would happen in our estate”.*

We noted that the programme makers took some steps to obscure Mrs L’s identity in the programme. Mrs L was not named in the programme, however her face was shown unobscured and her voice was not disguised. We also observed that, while the precise location of her home was not disclosed in the programme, the report said that Mr Emwazi lived in the Ladbroke Grove area of west London and Mrs L said *“I never thought that something would happen in our estate”* (other media sources identified the estate as the Mozart Estate and this was reported in other news programmes later in the day). We also considered the police letter acknowledging that media coverage about the identity of “Jihadi John” may cause anxiety to local residents. We noted the concerns expressed by Mrs L for her safety and Mediawise’s comments in response to the Preliminary View on her anxiety about possible repercussions. Taking the elements above into account we considered that the inclusion of unobscured footage of Mrs L’s reaction in the broadcast was sensitive and gave rise to Mrs L having a legitimate expectation of privacy in the circumstances.

Having concluded that Mrs L had a legitimate expectation of privacy and given that Mrs L did not explicitly consent to being filmed (as set out in head a), and it followed that no explicit consent was given for the footage to be broadcast, Ofcom went on to consider whether the broadcast of this footage was warranted or not.

We carefully balanced Mrs L’s right to privacy in the broadcast of the footage of her included in the programme with the broadcaster’s right to freedom of expression and the audience’s right to receive the information broadcast without unnecessary interference. In particular, we considered whether there was sufficient public interest or other reason to justify the infringement of Mrs L’s privacy in the broadcast.

Again, Ofcom considered that the news report about “Jihadi John” and details of his identity as a British national was a news story of significant public interest. We considered that there was a genuine public interest in the broadcast of the footage in the news report, as it gave viewers a first-hand testimony which was illustrative of the reactions of the local residents and the community, and it underlined how young people living within an ordinary community can be radicalised into carrying out acts of terrorism. We also took into account the need to have careful regard to the editorial freedom of broadcasters to be able to collect and show the public’s reaction to significant breaking news stories. In the particular circumstances of this case, we considered that, although Mrs L’s face was not obscured and her voice was undisguised, the footage of her was very brief and did not reveal anything that could be considered particularly private or sensitive to her or to her family. We also noted that the language used in the report would have made it clear to viewers that the footage of Mrs L was included to illustrate the sense of shock and surprise in the neighbourhood, rather than revealing anything sensitive or private to her.

On this basis, and taking all the elements above into account, Ofcom considered that, on balance, the broadcaster’s right to freedom of expression, and the public interest in the inclusion of footage of Mrs L, outweighed Mrs L’s legitimate expectation of privacy in the circumstances of this case.

Therefore, we concluded that Mrs L's privacy was not unwarrantably infringed in the in the programme as broadcast.

**Ofcom has not upheld Mediawise's complaint made on behalf of Mrs L of unwarranted infringement of her privacy in connection with the obtaining of material included in the programme and in the programme as broadcast.**

## Not Upheld

### Complaint by Dr Ijaz Rehman

*Khara Sach, ARY News, 9 January 2015*

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#### Summary

Ofcom has not upheld Dr Ijaz Rehman's complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast.

The programme included an interview with Mr Imran Khan and his new wife, Mrs Reham Khan (Dr Rehman's former wife), who had recently married. During the interview Mrs Khan spoke of having previously been a victim of domestic violence and Mr Khan said that for *"ten years she [Mrs Khan] had raised the children by herself"*.

Ofcom found that:

- While it was unclear what steps the broadcaster took to ensure that material facts had not been presented, omitted or disregarded in a way that was unfair to Dr Rehman, given the fact that there was a Court Order in existence, the content of which appeared to state that Dr Rehman had been subject to a restraining order in relation to Mrs Khan.
- Ofcom considered that the references in the programme to domestic violence in Mrs Khan's previous marriage could not reasonably be seen as being unfair to him. Further, the references made in the programme to Mrs Khan having raised her children by herself were, in Ofcom's view, unlikely to have been reasonably understood by viewers to mean that Mr Rehman had been a "miser" who had failed to provide child maintenance. Therefore, there was no unfairness in the programme to Dr Rehman in this regard.
- We considered that it was not incumbent upon the broadcaster to have offered Dr Rehman an appropriate and timely opportunity to respond to the comments made in the programme in order to avoid unfairness to him.
- There was no unwarranted infringement of Dr Rehman's privacy in the programme as broadcast. We concluded that, in the particular circumstances of this case, the intrusion into Dr Rehman's privacy was warranted because, on balance, Mrs Khan's right to freedom of expression in matters of direct relevance and importance to her and the public interest served through the broadcast of Mrs Khan's comments about domestic violence outweighed Dr Rehman's expectation of privacy with regard to the discussion of these matters in the programme.

#### Introduction and programme summary

ARY News is a television station providing news coverage and information programming to the Pakistani community in the UK.

A transcript in English (translated from the original Urdu) of the programme broadcast on 9 January 2015 was prepared by an independent translation company for Ofcom. Both parties to the complaint confirmed that the translated transcript represented the

content in the programme relevant to the complaint and that they were satisfied that Ofcom could rely on the translated transcript for the purpose of investigating the complaint.

On the 9 January 2014, ARY News broadcast an edition of *Khara Sach*, a talk show programme presented by Mr Mubashir Luqman. The programme included an interview with Mr Imran Khan and his wife, Mrs Reham Khan, who had recently married.

The interview consisted of Mr Luqman asking Mr and Mrs Khan a series of questions relating to their recent marriage, including the ceremony itself, the wedding dress, and how their children from their previous marriages reacted to the news they were betrothed. Reflecting the fact that both Mr and Mrs Khan were well-known in Pakistan (Mr Khan being a former cricketer and now a politician, and Mrs Khan a former BBC weather presenter and now a TV presenter in Pakistan), Mr and Mrs Khan also spoke about wider issues of celebrity status, the importance of educating children, what they believed to be important in a marriage and the political situation in Pakistan.

During the interview, Mr Khan explained that it was his mother who had ensured that he received an education. He then said:

*“Reham’s [Mrs Khan’s] children, for ten years she raised the children by herself, she did not have anything, she had two jobs. Raised her children as well as earning money and within England. In Pakistan we have an extended family system, we have relatives, it’s easy to raise children here because you have an extended family; you have cousins, for example: me and my sister’s children, they are all growing up together. In England, on your own raising three children, doing two jobs, and training them and academically all three of them are very good. The biggest problem In England or in the west for the single parent’s children is that they are weak in their education. Because the parents can’t pay attention to them. The biggest quality I like about her is that she is a good mother, she worked hard, meaning she worked as well as being a mother, then educated her children as well...”*

Mr Khan also spoke of: *“the way she [Mrs Khan] struggled doing two jobs and raising two children and then abroad [where] you don’t have your family with you”*.

In addition, when speaking of Mrs Khan a few minutes later, Mr Luqman said: *“When I met her children, then I thought that this woman had exceptional qualities, that she was doing two jobs, and alone raising three children”*.

Further into the programme, after a brief discussion about the type of food the couple liked to eat, the following exchange took place between Mr Luqman and Mr and Mrs Khan:

Mr Luqman: *“If you permit, I want to ask you a personal question, it’s sort of a difficult question, and it’s quite personal. When I was researching about you, I came to know that you personally had been a victim of domestic violence, then, for you [to get married] would be a very gigantic step! Because one would have seen trauma, psychological and all that.*

Mrs Khan: *“Listen with the grace of Allah, I am not scared by my experience, domestic violence is a very big issue, I don’t think there is much*

*attention paid to this in Pakistan, domestic violence is not of one type, it's of many types, I have never spoken about my personal experience, because I was in the media and I felt that it was unfair that one exposes the other party. But I am very much concerned about such a thing and there is a need for a lot of awareness about this. And when I discussed with my family, when he had proposed, we had a reservation when you have had such an extreme experience and when I discussed with my brother, they were suspicious of that again.*

Mr Luqman: *You are not scared.*

Mrs Khan: *No, no.*

Mr Khan: *I do not beat up women.*

Mrs Khan: *Yes, but domestic violence is of many types”.*

Following this comment by Mrs Khan, Mr Khan's spoke about his previous marriage to Ms Jemima Khan and the conversation switched to a discussion about marriage in general, particularly in the context of western culture, before turning to other topics notably: divorce, religion and politics.

No further mention was made about domestic violence or Mrs Khan's personal life before she married Mr Khan.

The complainant, Dr Rehman, was not named or identified in the programme.

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

#### *Unjust or unfair treatment*

a) Dr Rehman complained that he was treated unjustly or unfairly in the programme as broadcast because it included false allegations that attacked his character. In particular, Dr Rehman said that in the programme:

- Mrs Khan alleged that she had been subject to domestic violence thereby declaring that he [Dr Rehman], as her ex-husband, had been the perpetrator. Dr Rehman said that the programme's presenter claimed that he had researched and found evidence that Mrs Khan had been the victim of domestic abuse, which Dr Rehman rejected as "a blatant lie". He also said that Mr Khan's reference to not being a "wife beater" had been a "loaded statement" which implied that Dr Rehman was, or had been, a "wife beater".
- Mr Khan alleged that Mrs Khan had had to raise her children all alone for ten years and that she had been "penniless" and had had to take on two jobs. Dr Rehman said that the programme suggested therefore that he had been a "miser" who did not pay child maintenance which was incorrect and unfair. Dr Rehman said that he had always supported his children and had made the necessary child maintenance payments through the Child Support Agency at the time.

b) Dr Rehman also complained that he was not given an opportunity to respond to the allegations of domestic violence and not providing for his children made in the programme. He said that had he been given the chance to respond to the

allegations, he would not have had to face the consequences caused by the programme, namely that his life and that of his current wife had been turned upside down by the false allegations made in the programme.

In response to both heads of Dr Rehman's complaint of unjust or unfair treatment ARY News said that fair treatment and a right to reply should be upheld in all fact-based programmes, but that in this case "these principles were not properly managed". It said that the programme was recorded at short notice and, because it was broadcast live from Mr and Mrs Khan's home, the programme makers were unable to brief the presenter via 'talkback' (i.e. a microphone in the presenter's ear through which a producer can offer guidance or direction). The broadcaster said that, given these circumstances, the presenter was responsible for ensuring balance and fairness in the report but he did not achieve this. In particular, ARY News said that the presenter failed to counter the comments made by Mr Khan regarding domestic violence.

ARY News rejected Dr Rehman's claim (made within his complaint to Ofcom) that it "conspired" with Mr and Mrs Khan to defame him. It accepted that some comments within the interview "implicated Dr Rehman" but said these were not planned, there was never an intention to "malign" him and that the presenter's failure to counter the comments made by Mr Khan was "a mistake" not deliberate.

The broadcaster added that it had previously acknowledged this failure and the programme's failure to give Dr Rehman a "right to reply" (i.e. an opportunity to respond) since receiving the complaint and tried to resolve the complaint by offering to broadcast an apology to Dr Rehman (the broadcaster regretted that it had not been able to secure "a mutually agreeable resolution" to the complaint with Dr Rehman). It also said that it had cancelled the *Khara Sach* programme and that the presenter of the relevant part of the programme no longer worked for the channel.

#### *Unwarranted infringement of privacy*

- c) Dr Rehman complained that his privacy was unwarrantably infringed in the programme as broadcast because personal information about his private life was discussed in the programme without his consent. He said that as a result of the programme, his whole life was now open to questioning at his place of work. He added that he lived a normal, private life well away from the glare of the media, but since the broadcast of the programme everything had changed and images of him and the story had appeared in the media worldwide.

ARY News provided no response specifically in relation to the complaint of unwarranted infringement of privacy.

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

Ofcom prepared a Preliminary View that Dr Rehman's complaint should not be upheld. Both parties were given the opportunity to make representations on the Preliminary View. ARY News chose not to do so. However, Dr Rehman submitted a number of comments which are summarised below.

Dr Rehman said that Ofcom had incorrectly assumed that the existence of a restraining order against him was proof of his guilt. He added that if this was the case, he would have a conviction for domestic violence, which he does not. Dr Rehman further stated that his ex-wife "obtained the restraining order on the basis of

lies” and that the public interest was not served by the broadcast of the comments made about him in these circumstances. In addition, Dr Rehman said that by saying that Mrs Khan raised her children single-handedly, the programme implied that she received no other financial support which was untrue. Dr Rehman stated that he and his ex-wife had been married up until 2005 and that he had supported the family as the sole earner. Following his divorce from his ex-wife, Dr Rehman stated that he had continued to maintain the family through regular payments.

## **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 our Decision, we carefully considered all the relevant material provided by both parties. This included a recording and translated transcript, agreed by both parties, of the programme as broadcast and both parties’ written submissions and supporting documentation. Ofcom also took careful account of the representations made by the complainant in response to the Preliminary View on this complaint.

When considering and deciding 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 Ofcom Broadcasting Code (“the Code”).

### *Unjust or unfair treatment*

- a) Ofcom first considered Dr Rehman’s complaint that he was treated unjustly or unfairly in the programme as broadcast because the programme included false allegations that attacked his character. Those allegations were, specifically, that Dr Rehman had subjected his ex-wife (Mrs Khan) to domestic violence and that he had not provided financial support for his children after their divorce.

In considering this part of the complaint, Ofcom had regard to of 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 the individual or organisation.

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

## Domestic violence

As set out in the “Introduction and programme summary” section above, in response to a question from the presenter, Mrs Khan said that she had been a victim of domestic violence. Dr Rehman was not named as the perpetrator of the alleged domestic violence. However, we noted that Mrs Khan’s comments about domestic violence were made immediately after the presenter suggested that, given she “*had been a victim of domestic violence*”, getting married again would have been “*a very gigantic step*”. We also noted that, after Mrs Khan assured the presenter that she had not been “*scared*” by her experience, Mr Khan interjected saying: “*I do not beat up women*”. In light of these statements, we concluded that it was likely a reasonable viewer would have understood the claim in the programme that Mrs Khan had been a victim of alleged domestic violence to have related to her previous marriage and, therefore, her ex-husband (i.e. the complainant). In addition, we observed that after Mr Khan said that he did not “*beat up women*”, Mrs Khan said (for the second time) that “*domestic violence is of many types*”. Notwithstanding Mrs Khan’s qualification of Mr Khan’s assertion that he did not beat up women, we considered that viewers were likely to have understood these comments as a whole to relate to an allegation that her former husband (Dr Rehman) had subjected Mrs Khan to domestic violence during their marriage, albeit not necessarily physically. Given the serious nature of this allegation about Dr Rehman we considered that it had the clear potential to materially and adversely affect viewers’ opinions of him.

Having established that the comments relating to alleged domestic violence had the potential to materially and adversely affect viewers’ opinions of Dr Rehman, we next considered whether the inclusion of these comments in the programme as broadcast resulted in unfairness to the complainant.

We noted that, when talking to Mrs Khan during the programme, the presenter said: “*when I was researching about you I came to know that you personally had been a victim of domestic violence*”. Ofcom first considered the steps that the programme makers had taken prior to the broadcast to satisfy themselves that this material fact had not been presented, disregarded, or omitted in a way that might cause unfairness to Dr Rehman.

In its response to the complaint, ARY News provided Ofcom with a link to an article (posted on an internet blog) about the claim that Dr Rehman had subjected Mrs Khan to domestic violence. This article included a copy of a Court Order (under the Family Law Act 1996) issued by Kingston-upon-Hull County Court on 30 January 2006. The Court Order gave the police the power to arrest Dr Rehman without a warrant (for a specified period of time) if, during that period, he: harassed his then wife, Mrs Khan, at her home or, used or threatened to use violence against Mrs Khan or their children. The document included the following words: “*The Court is satisfied that the respondent [described as Mr Ijaz Ur Rehman] has used or threatened violence against the applicant [described as Mrs Reham Rehman] and the following children [the names of the children were redacted]*”. The Court Order also stated that “*the respondent admits he did push the applicant [i.e. Mrs Khan]*”.

On examining the article, Ofcom also noted that it appeared to have been posted on 13 September 2015 and that the Court Order may have only recently been placed in the public domain by Mrs Khan and Dr Rehman’s eldest son. On that basis, given that the programme was broadcast on 9 January 2015, it is unclear

whether this specific information was available to the programme makers prior to the broadcast of the programme.

Notwithstanding this lack of clarity, however, In Ofcom's view the programme makers must have exercised *some* degree of reasonable care in satisfying themselves that Mrs Khan had previously suffered domestic abuse, prior to the broadcast of the programme. This is because, when the issue of domestic violence was put to her, Mrs Khan confirmed that the presenter was correct. Further, regardless of when the programme-makers may have become aware of the existence of the Court Order, the fact remains that its content appears to corroborate the factual accuracy of the statements made by both Mr Luqman and Mrs Khan in the programme as broadcast.

Ofcom took into account Dr Rehman's representations on the Preliminary View, that the existence of a restraining order was not proof of his guilt and that he had not been convicted or charged in relation to domestic violence. Ofcom further noted Dr Rehman's view that the restraining order had been obtained on the basis of lies.

Notwithstanding these representations, however, Ofcom also noted that the restraining order had in fact been made by a Court and that the existence of this order had not been denied by Dr Rehman. Further, it was clear to Ofcom that the restraining order related to a civil matter in the County Court and did not refer to any criminal matters committed by Dr Rehman in a domestic context. We also took note from the Court Order that it stated that "the respondent [Dr Rehman] admits he did push the applicant [i.e. Mrs Khan]"; a statement that was not denied by Dr Rehman.

Taking all the above factors into account, Ofcom found that the inclusion of the statements relating to the domestic abuse suffered by Mrs Khan did not present, disregard or omit material facts in a way that resulted in unfairness to Dr Rehman

### Financial support

With regard to the second element of Dr Rehman's complaint at this head, namely that he had not provided financial support for his children, we observed that at no point in the programme did Mr Khan specifically state that Mrs Khan had been "penniless" after her divorce. We noted that on several occasions either Mr Khan or the presenter spoke about Mrs Khan having "*worked hard*" or "*struggled*" to raise her children (i.e. the three children of her marriage to Dr Rehman) on her own in the time since her divorce from Dr Rehman and having had "*two jobs*" during this period. For example, Mr Khan said: "*for ten years she raised the children by herself, she did not have anything, she had two jobs.*"

We noted that, in response to the Preliminary View, Dr Rehman said that by saying that Mrs Khan raised her children single-handedly the programme implied that she received no other financial support. However, in our view, the comments made during the interview clearly indicated that Mrs Khan had been a single parent after her divorce and that she had had to raise her children by herself. Given the lack of any reference to Dr Rehman not providing financial support, we considered it unlikely that viewers would have reasonably interpreted these statements to mean that Mrs Khan's ex-husband had been a "miser" who failed to pay child maintenance.

Taking all the factors above into account, Ofcom considered that in the particular circumstances of this case, the broadcaster did take reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way that was unfair to Dr Rehman. Given this, we found that there was no unfairness in the programme to Dr Rehman in this regard.

- b) Ofcom then considered Dr Rehman's complaint that he was treated unjustly or unfairly in the programme because he was not given an appropriate and timely opportunity to respond to the allegations made about him.

In considering this aspect of the complaint, Ofcom took account of Practice 7.11 of the Code which states: "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".

Again, Ofcom noted the comments made in the programme by Mr and Mrs Khan and the presenter, Mr Luqman, as set out in the "Introduction and programme summary" section above. We considered whether these comments could reasonably be regarded as "significant allegations" that would require the broadcaster to provide Dr Rehman with an appropriate and timely opportunity to respond.

In our view, the comments relating to domestic violence in Mrs Khan's previous marriage had the potential to be considered as a significant allegation of wrongdoing, however we concluded at head a) of the "Decision" section above that the references to domestic violence in the programme did not result in any unfairness to Dr Rehman. We also considered that there was no unfairness to Dr Rehman in the inclusion of comments relating to Mrs Khan raising their children single-handedly. Given the existence of the Court Order (see above), the contents of which appeared to corroborate that Mrs Khan had been exposed to domestic violence in her marriage with Dr Rehman, we did not consider that there was the likelihood for additional adverse damage to his reputation in relation to this past, nor that the provision of an opportunity to respond was necessary to prevent unfairness to him. Therefore, in the circumstances of this particular case, we considered that it was not incumbent upon the broadcaster to have offered Dr Rehman an appropriate and timely opportunity to respond to the comments made in the programme in order to avoid unfairness to him.

Therefore, Ofcom found that there was no unfairness in this regard.

#### *Unwarranted infringement of privacy*

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

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

- c) We considered Dr Rehman's complaint that his privacy was unwarrantably infringed in the programme as broadcast because it included personal information about his private life without his consent.

In assessing this head of complaint, Ofcom had particular regard to Practice 8.6 of the Code. This states that if the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted.

Ofcom began by assessing the extent to which Dr Rehman had a legitimate expectation of privacy in relation to the inclusion in the programme of information about his personal life.

The test applied by Ofcom as to whether a legitimate expectation of privacy arises is objective: it is fact sensitive and must always be judged in light of the circumstances in which the individual concerned finds him or herself. Ofcom therefore approaches each case on its facts.

Dr Rehman neither appeared in, nor was named, in the programme as broadcast. However, as set out above, in our opinion, given the specific comments made about alleged domestic violence and the difficulties Mrs Khan faced in bringing up her children after her divorce, as well as the context in which these comments were presented, it is likely a reasonable viewer would have understood that Dr Rehman was the person to whom the relevant comments in the programme were connected.

The comments made implicitly about Dr Rehman in the programme related to his alleged conduct towards his now ex-wife when they were married. We considered that these matters relating to Dr Rehman's previous family life were of an inherently sensitive and private to him. This was because of the nature of the comments themselves and because, on the information available, it appeared that, prior to the broadcast of the programme, the allegations about Dr Rehman's conduct had not been placed in the public domain or thereafter widely disseminated in the press. Further, as stated in his complaint, Dr Rehman was not a public figure whose private life was a common topic of discussion but someone who "lived a normal private life well away from the glare of the media".

Taking account of all of these factors, we concluded that Dr Rehman had a legitimate expectation of privacy with regard to the inclusion in the programme of information relating to his alleged conduct towards his ex-wife and financial support for his children. Having come to this view, we observed that, in his complaint, Dr Rehman said that he did not consent to the broadcast of this information and this claim was not contested by the broadcaster. Given this, Ofcom went on to consider whether or not any infringement of Dr Rehman's legitimate expectation of privacy in the broadcast of this information was warranted.

The Code states that "warranted" has a particular meaning. It means that, where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why, in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy.

In determining whether any infringement of Mr Rehman's legitimate expectation of privacy was warranted in this case, we carefully balanced the broadcaster's right to freedom of expression and the viewers' right to receive information and ideas without unnecessary interference against the complainant's right to privacy. In particular, we considered whether there was sufficient public interest or other reason to justify the infringement into Dr Rehman's privacy that resulted from the broadcast of the relevant information.

ARY News did not provide any specific arguments regarding why, in its view, it might be warranted to have infringed Dr Rehman's privacy in this respect. However, we noted that the matters discussed in the programme were relevant not only to Dr Rehman but were also matters of direct relevance and importance to Mrs Khan in that they concerned her own experience of her previous marriage and her role as a mother after her divorce. In this context, we noted Mrs Khan's right, in accordance with her right to freedom of expression, to discuss matters (i.e. the way in which her ex-husband allegedly conducted himself towards her during their marriage and the difficulties she faced in bringing up her children after their divorce) which were personal and private to her.

As set out above, we acknowledged that the information included in the programme that related to Dr Rehman's alleged conduct was sensitive and private to him. However, after carefully balancing all the relevant factors, Ofcom considered that, in the circumstances of this case, Mrs Khan's right to disclose this information and the public interest served by the broadcast of that element which related to domestic violence outweighed Dr Rehman's expectation of privacy in relation to the broadcast of this material. We had regard in particular to: the fact that the information was personal to Mrs Khan as well as to Dr Rehman; the significance of the broadcaster's and Mrs Khan's rights to freedom of expression (particularly in light of the fact that there was a Court Order in existence which corroborated the comments being made in the programme); the audience's right to receive information without undue interference; and, the public interest that was served by the broadcast of an open discussion of the issue of domestic violence. On this basis, Ofcom concluded that the infringement into his legitimate expectation of privacy in this respect was warranted.

Therefore, we found that there was no unwarranted infringement of Dr Rehman's privacy in the programme as broadcast.

**Ofcom has not upheld Dr Rehman's complaint of unjust or unfair treatment and unwarranted infringement of privacy in the programme as broadcast.**

## Not Upheld

### Complaint by Mr Patrick Conroy

*Gangsters: Faces of the Underworld, Quest, 21 June 2015*

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#### Summary

Ofcom has not upheld Mr Patrick Conroy's complaint of unjust or unfair treatment in the programme as broadcast.

The programme included an interview with Mr Phil Berriman who revealed that he had become involved in a drug smuggling operation as a consequence of his association with the complainant, Mr Conroy. The events described by Mr Berriman took place between 1990 and 1995.

Ofcom found that:

- The broadcaster took reasonable steps to satisfy itself that the claims made by Mr Berriman in the programme were not presented, disregarded or omitted in a way that was unfair.
- In the particular circumstances of this case, the comments made in the programme did not amount to significant allegations about Mr Conroy that required the broadcaster to have offered him an appropriate and timely opportunity to respond to them.

#### Introduction and programme summary

On 21 June 2015, Quest broadcast an episode of *Gangsters: Faces of the Underworld*, a documentary series presented by Mr Bernard O'Mahoney, a former member of a criminal gang, in which he interviewed people involved in the criminal underworld to give an insight into some of the UK's most notorious criminals and gangsters. In this episode, Mr O'Mahoney began by discussing the British judicial system about which he said:

*"We have created a judicial system that puts emphasis on everybody's rights while overlooking their wrongs. The scales of justice are equally redundant because the standard of justice we get is based on our ability to pay. The truth is, justice is something of a lottery, it's available to some and not others".*

Mr O'Mahoney then introduced Mr Phil Berriman who, he said, had:

*"Suffered a grave injustice after a trivial dispute with a nightclub owner. This resulted in him enduring a nightmarish journey which took him around the world, landed him in prison and ended with his attempted murder".*

Mr O'Mahoney was then shown sitting with Mr Berriman as they discussed his experiences. Mr Berriman said that on 25 November 1990, he had received a "punishment beating" which had been arranged by a nightclub owner. Mr Berriman said that the perpetrators were arrested and charged with wounding with intent. Mr Berriman said that although he had no intention of going through with the court case, he had wanted to prove that "he wasn't scared of the guy". However, after receiving further threats and his house being "shot up", Mr Berriman said that he wanted to

*“sort out”* the situation. He said: *“I didn’t want to hurt him, but I wanted somebody heavy to scare him so it was over and done with”*.

Mr O’Mahoney said that *“the man who was deemed scary enough...was Newcastle villain Paddy Conroy [photograph of Mr Conroy shown]”*. Mr Berriman described how Mr Conroy did not hurt his attacker, but had warned him to stop harassing Mr Berriman. Following this, Mr Berriman said he would have been happy to have paid Mr Conroy for his services, but instead, he became indebted to Mr Conroy.

Mr Berriman explained that Mr Conroy and his associates were trying to *“break into the smuggling business”* and that rather than taking Mr Berriman’s money, Mr Conroy had asked him to help out, given his knowledge of boats. Mr Berriman said that he was first asked to buy a boat on behalf of Mr Conroy and his associates which was to be used in a drug smuggling operation on the coast of southern Spain. Mr Berriman said that after this operation *“went wrong”*, Mr Conroy and his associates purchased a tug boat which was moored in Scotland. He added that the tug boat was unseaworthy and that Mr Conroy had sent him to repair it *“so it could be used to smuggle drugs from North Africa”*. Mr Berriman said that the tug boat never left the harbour and sunk before it entered the breakwater.

Later in the programme, footage of Mr Conroy was shown as Mr O’Mahoney said:

*“Despite offering to pay Conroy for warning off his tormentor and working unpaid for weeks, Berriman was still deemed to be in his debt [photograph of Mr Conroy shown]. However, when Conroy was remanded in custody to await trial for kidnap and torture, Berriman thought his debt was null and void. Sadly for Berriman, his joy was short lived”*.

Mr Berriman was then shown saying:

*“Conroy then got arrested for the kidnap and torture of Billy Collier, as far as I was concerned, that was it, it was over, it was finished with. I was ecstatic to be honest. Then of course, he escaped, I was then put under pressure to take him abroad [photograph of Mr Conroy shown]. He was then the most wanted man, if you like, in England”*.

Mr Berriman said that Mr Conroy had told him that there was a job in Tenerife, the Canary Islands, where there were *“5 tonnes of hash each to pick up”*. After Mr Berriman returned to England, he said that Mr Conroy became paranoid because he thought that he had been cut out of the deal. As a consequence, Mr Berriman said that Mr Conroy demanded that he return to Spain otherwise *“there was going to be trouble, they were going to set fire to my house”*. Mr Berriman returned to Spain to meet Mr Conroy and told him that his boat was in Gibraltar. Mr Berriman said he was then told to sail to Tenerife, but that after waiting in Casablanca, Morocco, he was informed that he now needed to sail to Dakar, Senegal, West Africa. Mr Berriman said that he telephoned Mr Conroy who threatened *“that I would have to sail the boat to Dakar or they were going to set fire to my house with my kids in it in Billingham”*.

Mr Berriman described his trip to Dakar where he said they collected 3.7 tonnes of cannabis. He then said that they changed the appearance of the boat but *“sailed straight into a trap”* where customs and excise officers were waiting. He added that Mr Conroy was arrested in Malaga, Spain, the next day.

Mr O'Mahoney said:

*"Facing a ten to fifteen year prison sentence, Berriman could take no more and told the authorities of his ordeal. According to the law, if you are forced to commit a crime, there is a defence known as duress and that is how Berriman pleaded when he eventually stood trial".*

Mr Berriman said that there were *"three of us charged with 3.7 tonnes of cannabis"*. Mr O'Mahoney asked Mr Berriman what the outcome of the trial was to which Mr Berriman replied:

*"Well we did 15 months on remand. My two co-defendants bottled it and pleaded guilty and I went on with a full duress defence and proved it in court. And we lost all the boats because the other two guys pleaded guilty but I was still free and I was free of Conroy because he then was convicted of it, kidnap and torture thing, and got 10 or 11 years".*

A photograph of Mr Conroy was shown again and Mr O'Mahoney said *"Berriman may well have been free, but free from Conroy he was not, in fact, the worst was yet to come"*.

Mr Berriman said he was released from prison on 4 November 1995. He explained that he had all the unused evidence from the trial which proved that Mr Conroy's gang had paid informers. Mr Berriman said that one of Mr Conroy's friends contacted him and asked Mr Berriman to meet him at a yard in Hartlepool, north east of England in January 1996. Mr Berriman said that when he arrived:

*"three guys jumped out with bits of wood, nails in, they were all masked up and gloved up...and they just set about and beat me all over the floor and they beat me for two or three hours. I had 130 separate injuries [various photographs of Mr Berriman's injuries were shown]. They hit my legs with ball bearing hammers and tried to break my legs – they thought they had broken my legs. I had 27 staples in the back of my head, teeth knocked out, broken ribs, well you name it, I was just beaten all over. I was rolling around the floor while they beat me up. I knew I was in for a good kicking but I didn't think they'd intended to kill me, but knowing the organisational skills of this firm, anything could go wrong".*

The section of the programme featuring Mr Berriman ended. Mr O'Mahoney then interviewed various other people who had been involved in criminal activities. He concluded the programme by stating:

*"I doubt that there is much, if any, sympathy for Berriman, Ellis, Negus or Logan, they chose to associate with criminals and so they shouldn't be overly surprised that they became victims. But surely, such an understandable attitude goes against the very spirit of our judicial system. We should not turn our back on victims simply because of the company that they keep. I personally do not believe in justice, we are promised that in the next world, whilst here on earth all we really have is the law".*

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

### *The complaint*

Mr Conroy complained that he was treated unfairly in the programme as broadcast because:

- a) An inaccurate view of events told by Mr Berriman unfairly claimed that Mr Conroy:
  - was an international drug smuggler;
  - had threatened to murder children; and,
  - had set people up to be tortured.
- b) Mr Conroy said that it was inaccurate for Mr Berriman to state that he (Mr Berriman) was found not guilty of involvement in the drug smuggling activities because he had successfully pursued a defence of duress. Mr Conroy explained that the court case had, in fact, collapsed because of mistakes on the part of the police. Mr Conroy said that to include this inaccurate version of events implied, unfairly, that Mr Conroy had threatened and coerced Mr Berriman into smuggling drugs and that this was accepted by the jury during the trial.
- c) Mr Conroy was not given an appropriate and timely opportunity to respond to the allegations as set out at head a) and b) above.

### *The broadcaster's response*

Before addressing the specific heads of complaint, Discovery (who hold the Licence for Quest Channel) said that Mr Conroy was a "career criminal" who had a history of criminal activity from an early age dating back to 1975. The broadcaster added that, by his own admission, he came from and headed up one of the north east of England's most notorious crime families. The broadcaster provided Ofcom with a website link to a Chronicle Live news article which included an extract from an interview with Mr Conroy and detailed some of his criminal history<sup>1</sup>.

Discovery explained that for the first series of *British Gangsters: Faces of the Underworld*, Mr Conroy was interviewed over a period of three days and appeared in one of the episodes which examined Mr Conroy's involvement in crime. Discovery added that Mr Conroy made no complaint about this programme.

The broadcaster stated that the investigative journalist, Mr Donal MacIntyre, had also profiled Mr Conroy for his series *MacIntyre's Underworld* broadcast in 2006. The broadcaster again described the content of this programme which looked at Mr Conroy's involvement in crime.

The broadcaster said that it was important to understand the background to this case when considering whether there has been any unfairness to Mr Conroy. In particular the broadcaster said that Article 28 of the European Audiovisual Media Services Directive explained a right to reply as follows:

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<sup>1</sup> <http://www.chroniclelive.co.uk/news/north-east-news/conroy-confessions-of-a-villain-1503284>

“Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, **in particular reputation and good name, have been damaged** [emphasis added by the broadcaster] by an assertion or incorrect facts in a television programme must have a right to reply or equivalent remedies...”.

Discovery then went on to address each specific head of complaint.

*Head a)*

- It was unfair to claim that Mr Conroy was an international drugs smuggler.

In response, Discovery said that the programme did not directly call Mr Conroy “*an international drugs smuggler*” with the connotation of a high-level, international crime syndicate. Instead, it explained how Mr Berriman had become indebted to Mr Conroy and he was forced, under duress, to bring in a boat that contained cannabis.

Discovery stated that Mr Berriman faced trial in Exeter Crown Court in October and November 1995. However, following his acquittal, the trial judge banned all reporting of the case, except for the fact that Mr Berriman had been acquitted. The broadcaster explained that in 1997, the reporting ban was lifted and The Observer<sup>2</sup> newspaper reported the details of the case (a copy of which was provided by the broadcaster to Ofcom). Discovery stated that the article explained how Mr Berriman had become indebted to Mr Conroy and had “undertaken the voyage only after months of threats and violence which had left him fearful for his life”. The broadcaster also highlighted the assertion in the article that the detectives in the case had been secretly recorded, and that those recordings appeared to confirm that the police were aware of this intimidation. Discovery said that Mr Berriman had smuggled a very large quantity of cannabis, but was acquitted. The broadcaster observed that this information had been in the public domain for 18 years and that at no time was it aware that Mr Conroy refuted the published story, nor did he ever sue or threaten to sue the newspaper. The broadcaster added that Mr Conroy’s history of intimidation and violence was well documented as well as the fact that Mr Berriman was acting under duress from Mr Conroy to smuggle cannabis.

Discovery also referred to Mr O’Mahoney’s book *Fog on the Tyne: The Story of Britain’s Bloodiest Gang War*, published in 2011. The broadcaster explained that the book tells the exact same story as that told in the programme. The broadcaster added that as far as it was aware, in the four years since the book was published, Mr Conroy had not taken any legal action.

The broadcaster also provided Ofcom with a witness statement from a Detective Chief Inspector of Northumbria Police which, it said, demonstrated the Conroy family’s involvement with drugs.

The broadcaster said that given the above, it did not accept that any unfairness had been caused to Mr Conroy in permitting Mr Berriman to tell his story again, which had been in the public domain for some 18 years and had been repeated since.

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<sup>2</sup> “*Drugs catch sunk by crime squad*”, The Observer, 26 January 1997.

It was unfair for Mr Berriman to state that Mr Conroy had threatened to murder children.

The broadcaster identified that this referred to the statement made in the programme that Mr Berriman “*was threatened that I would have to sail the boat to Dakar or they were going to set fire to my house with my kids in it in Billingham*”.

The broadcaster said that this was a verbal threat and, as such, no recording or notes existed. However, it said that taking into account that Mr Berriman was acquitted of smuggling under a defence of duress and Mr Conroy’s recorded history, it did not believe that this statement could amount to unfairness. The broadcaster stated that Mr Conroy had admitted in the past to threatening families, including children, with murder. In particular, the broadcaster said in his interview in *MacIntyre Underworld: Get Conroy*, Mr Conroy stated on camera, in reference to a feud, that:

“I would have killed the whole family. All their loved ones. I would have murdered every one of them”.

Therefore, the broadcaster said it was not surprising for Mr Berriman to have claimed that Mr Conroy had also intimidated him with a similar threat. Further, given that Mr Berriman had been acquitted for smuggling drugs as he was acting under duress, the broadcaster said it was reasonable that such threats in relation to his children were made. The broadcaster concluded by stating that Mr Conroy had already admitted to using such threatening behaviour and therefore, it did not seem unfair for that claim to be repeated – albeit in a different context.

- It was unfair to state that Mr Conroy had set people up to be tortured.

Discovery identified three references made to torture in the programme. The broadcaster stated that Mr Conroy was convicted and sentenced to eleven and a half years in prison for the kidnap and torture of Mr Billy Collier. The broadcaster said that this had been well documented and appeared in a number of television programmes, newspapers and online articles. The broadcaster provided Ofcom with website links<sup>3</sup> to a number of online sources which confirmed Mr Conroy had been convicted of this crime.

The broadcaster added that Mr O’Mahoney’s published book also quoted the judge in the court case in which Mr Conroy was convicted. Although Mr Conroy continued to maintain his innocence, the broadcaster stated that he tried and failed to have his case overturned in 1997 and the Criminal Cases Review Commission also refused to refer his case to the Court of Appeal. The broadcaster added that Mr Conroy had a history of protesting his innocence and making unsubstantiated claims.

The broadcaster said that despite his conviction and the courts’ refusal to reconsider his case, extracts from Mr Conroy’s social media pages (a copy of which was provided by the broadcaster to Ofcom) showed that he continued to promote conspiracy theories and claimed that he had been “set up, fitted up and framed for torture offences’ by police agents and supergrasses”.

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<sup>3</sup> <http://www.chroniclive.co.uk/news/north-east-news/hardman-paddy-conroy-targeted-drug-1401511>; <http://www.chroniclive.co.uk/news/north-east-news/underworld-enforcer-breaks-silence-over-7126528>; and, [http://www.thenorthernecho.co.uk/news/1836717.convicted\\_torturer\\_plans\\_appeal/](http://www.thenorthernecho.co.uk/news/1836717.convicted_torturer_plans_appeal/)

Discovery explained that despite these declarations of innocence, Mr Conroy was tried and convicted in a court of law for torture and kidnap. Therefore it was not possible for any unfairness to be caused to him by the programme referring to the fact he was: remanded in custody; arrested; and, convicted for torture.

*Head b)*

In response to Mr Conroy's complaint that it was inaccurate for Mr Berriman to state that he was found not guilty of involvement in the drug smuggling activities because he had successfully pursued a defence of duress, the broadcaster said that Mr Berriman was tried at Exeter Crown Court in 1995. The broadcaster said that in a letter from the Home Office to Mr Berriman dated 13 May 1998 (a copy of which was provided to Ofcom by the broadcaster) which related to compensation, it clearly stated that Mr Berriman's case was based on duress and that he was acquitted. Further, the broadcaster said the letter also stated that Mr Berriman was tried for the importation of cannabis. The broadcaster added that there may have been other circumstances (not relevant to whether there was unfairness to Mr Conroy) which the court heard, but that this did not detract from the fact of Mr Berriman's case of duress.

Discovery said that it had been informed that the trial judge had imposed reporting restrictions on the trial because of the involvement of undercover officers and that Mr Berriman's duress defence relied upon elements of Mr Conroy's criminal record. The broadcaster said that at the time, Mr Conroy was still on trial for kidnap and torture and the judge did not want to prejudice that case. However, Mr Conroy was subsequently convicted and sentenced to 11 and a half years for this crime.

Further, Discovery said a letter dated 28 April 1995 from Mr Berriman's solicitors to the Prosecutions Office of HM Customs and Excise (now HM Revenue & Customs), a copy of which was provided by the broadcaster to Ofcom, had drawn attention to Mr Berriman's defence of duress. The broadcaster added that the purpose of the letter was to obtain information from Mr Conroy's trial for kidnap and torture to demonstrate Mr Conroy's character and what he was capable of. The broadcaster said that this correspondence not only referred directly to Mr Conroy's involvement in the case, but also the fact that the interviewing officers were also "fully aware of the suggested involvement of the person [Mr Conroy]".

Discovery also stated that an article in The Chronicle local newspaper dated 21 June 2015 (a copy of which was provided by the broadcaster to Ofcom<sup>4</sup>) also confirmed that Mr Berriman was "found not guilty after a jury rules he acted under duress from Tyneside gangsters who had threatened to kill his family". The broadcaster said that the newspaper also published an online article (a website link to this article was provided to Ofcom<sup>5</sup>) which explained the reasons for Mr Berriman's acquittal. The broadcaster added that Mr O'Mahoney's published book also made clear reference to Mr Berriman's defence of duress:

"[Mr Berriman] gave powerful evidence of how he had become indebted to Paddy Conroy and had undertaken the voyage only after months of threats and violence, which had left him in fear of his life. On the prison interview tape, the officers appeared to be aware of the intimidation Berriman claimed he endured".

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<sup>4</sup> <http://www.chroniclelive.co.uk/news/north-east-news/paddy-conroy-says-take-lie-9493940>

<sup>5</sup> <http://www.chroniclelive.co.uk/news/north-east-news/i-always-thought-would-even-1626523>

Given that Mr Berriman was acquitted of all charges under a defence of duress, and that this was supported by the many referenced sources above, the broadcaster said that no references in the programme to Mr Berriman's successful defence of duress could be unfair to Mr Conroy.

*Head c)*

In response to Mr Conroy's complaint that he was not given an appropriate and timely opportunity to respond to the allegations made in the programme, Discovery said that Mr Conroy was a convicted torturer and kidnapper. Discovery also stated that he was a lifelong career criminal who had spent a large amount of time in prison. Further, the broadcaster said that he had admitted, on camera, to kidnap, and extremely violent and threatening behaviour. In addition, the broadcaster said he had tried and failed to have his conviction overturned. The broadcaster stated that he had a history of telling falsehoods and mounting conspiracy theories, and lodged multiple complaints to Northumbria Police believing that he was the subject to a campaign of harassment.

Given that there was nothing in the programme that could be considered to be unfair to Mr Conroy, Discovery said that it did not consider that he had a right to reply. Further, given his past convictions, the broadcaster said it seemed unlikely that there was anything in the programme that could reasonably be considered to damage his reputation in such a way that would require a right to respond.

Discovery said that Mr Conroy was interviewed for the first series of *British Gangsters* in which he was given free rein to discuss his life in crime, the reasons why he believed he was innocent and what he considered to be the injustices perpetrated against him. To support this, the broadcaster provided Ofcom with a letter from the programme's presenter, Mr O'Mahoney, to the broadcaster dated 23 August 2015 in which he discussed his experience of Mr Conroy. At no time, the broadcaster stated, did Mr Conroy raise in the programme the issue of Mr Berriman, the court case and what he now considered to be unfair accusations. This was despite the fact that the details of this case first emerged in The Observer newspaper article in 1997, were repeated in Mr Berriman's book (*The Waccy Baccy Boat* published in 2005) and subsequently again in Mr O'Mahoney's book published in 2011.

Discovery said that it considered the above information clearly demonstrated that there was no unfairness to Mr Conroy from the broadcast of this programme.

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

Ofcom prepared a Preliminary View in this case that the complaint of unjust or unfair treatment in the programme as broadcast should not be upheld.

Both parties were given the opportunity to make representations on the Preliminary View. Mr Conroy's representations, which were relevant to the Preliminary View, are summarised below. Discovery chose not to make any representations on the Preliminary View.

In summary, Mr Conroy said that the Crown Prosecution Service ("CPS") still maintained that Mr Berriman was lying about the accusations made against Mr Conroy which were included in the programme. Mr Conroy said that the CPS and HM Revenue & Customs who were in charge of the investigation claimed that "crooked

policemen” connected to Mr Berriman were behind the collapse of the drugs trial. Mr Berriman provided Ofcom with a copy of The Observer newspaper article <sup>6</sup> (also provided by the broadcaster in response to Ofcom’s Entertainment Decision on Mr Conroy’s complaint) which he said illustrated this view. Mr Conroy said that the programme gave a completely different view of already publicised facts behind the acquittal and “shifts all blame for that acquittal towards myself and the allegations that I was behind forcing of Phil Berriman into committing this crime” with no mention of the “true reasons behind his acquittal”. Mr Conroy said the newspaper article also pointed out how a detective’s evidence had helped acquit Mr Berriman.

Mr Conroy said at no time was he contacted or asked to provide his view on the drug smuggling allegations which were going to be made about him in the programme. He also said that if the CPS did not accept Mr Berriman’s version of events then “how can Bernard O’Mahoney and the Quest channel go ahead with airing these slurs and slander against me without contacting me?”

## **Decision**

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

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

In reaching this decision, we carefully considered all the relevant material provided by both parties. This included a recording of the programme as broadcast and both parties’ written submissions. Ofcom also took into account the relevant representations made by Mr Conroy in response to the Preliminary View on this complaint, however, we concluded that his representations did not materially affect the outcome of Ofcom’s Decision to not uphold the 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 or organisations, as set out in Rule 7.1 of the Code.

In assessing this case, it was not Ofcom’s role to make a determination about whether or not the substance of Mr Berriman’s contribution was factually correct or not, but to establish whether or not in broadcasting the comments, the broadcaster had complied with Section Seven (Fairness) of the Code. In particular, we considered the manner in which Mr Berriman’s contribution was presented in the programme and whether it had the potential to materially and adversely affect viewers’ opinions of Mr Conroy in a way that was unfair to him.

- a) We first considered Mr Conroy’s complaint that he was treated unfairly in the programme as broadcast because an inaccurate view of events was told by Mr Phil Berriman.

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<sup>6</sup> “*Drugs catch sunk by crime squad*”, The Observer, 26 January 1997

In assessing this part of the complaint, 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.

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

- We first considered Mr Conroy's complaint that Mr Berriman unfairly claimed that Mr Conroy was an international drug smuggler.

We carefully viewed the programme and noted that Mr Berriman began telling his story by explaining that Mr Conroy and his associates were trying to "*break into the smuggling business*". Mr Berriman described an unsuccessful attempt to smuggle drugs on the coast of southern Spain and the unsuccessful repairs to a tug boat which was to be used "*to smuggle drugs from North Africa*". In relation to the incident in which Mr Berriman subsequently stood trial, he said he was informed by Mr Conroy to sail to Dakar where they collected 3.7 tonnes of cannabis.

We had regard to the fact that the programme did not explicitly state that Mr Conroy was an international drug smuggler, nor that he was part of some high level international crime syndicate. However, we considered that based on the comments made by Mr Berriman, the connotation was that, at the time, Mr Conroy wanted to become more involved in smuggling drugs from the continent and north Africa.

Given the serious nature of the allegation made by Mr Berriman in relation to Mr Conroy's involvement in drug smuggling, we assessed the basis on which his comments were included in the programme. We noted that the programme made clear that Mr Berriman was a man who "*chose to associate with criminals*" and we took the view that the audience would have understood that the purpose of his contribution was to provide his first-hand testimony of his experience of the events which had taken place. In particular, we considered that the purpose of the programme was to provide an insight into the criminal underworld and its victims and Mr Berriman was contributing to the programme because he had become a victim of crime as a consequence of his alleged association with Mr Conroy. In this context, we considered that Mr Berriman was entitled to express his views of his experience, which included his claims about the reasons Mr Conroy had allegedly wanted his assistance, i.e. because of his expertise of boats, and for the broadcaster to have included them in the programme. We noted too that Mr Berriman's account and recollection of events were corroborated by a number of different and independent sources, for example, The Observer newspaper article already referred to above which reported on the drug smuggling trial and a published book in 2011 written by Mr O'Mahoney, which told the same story as that in the programme, i.e. Mr Conroy's involvement in drug smuggling. We also noted that both of these publications had been in the public domain for a number of years.

Therefore, taking into account all the factors noted above, we considered that the broadcaster took reasonable care to satisfy itself that the programme did

not present, disregard or omit material facts in a way that resulted in unfairness to Mr Conroy.

- We considered Mr Conroy's complaint that Mr Berriman had unfairly claimed that Mr Conroy had threatened to murder children.

We viewed the programme and noted that Mr Berriman said he had telephoned Mr Conroy who threatened "*that I would have to sail the boat to Dakar or they were going to set fire to my house with my kids in it in Billingham*". In our view, the programme made clear that Mr Berriman considered Mr Conroy's threats were real, which was, at least in part, the reason Mr Berriman decided to sail to Dakar.

We then assessed whether or not the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way which was unfair to Mr Conroy.

We recognised that Mr Conroy disputed the veracity of Mr Berriman's claim. We noted too that due to the nature of the threat, i.e. that it was verbal, the broadcaster was not able to provide Ofcom with corroborative material to show that this threat had taken place. However, we noted that the broadcaster said that Mr Conroy, by his own admission, had threatened other people in the past and it would therefore not be inconceivable that he had demonstrated the same behaviour towards Mr Berriman in the circumstances. We also took into account, as noted above, that we considered Mr Berriman was providing his first-hand testimony of the events which had taken place and viewers would have understood that he was providing his own recollection based on his experience. In this context, we considered that Mr Berriman was entitled to express his views of his experience, which included his claim about the reasons he had allegedly decided to become involved in drug smuggling and his view that he had successfully pursued a defence of duress at trial i.e. he had been threatened (which included threats being made against his children), and for the broadcaster to have included them in the programme.

Therefore, taking into account all the factors noted above, we considered that the broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Mr Conroy.

- We considered Mr Conroy's complaint that Mr Berriman had claimed unfairly Mr Conroy had set people up to be tortured.

Having regard to Mr Berriman's comments in the programme, we noted that he spoke about Mr Conroy's arrest and conviction for the "*kidnap and torture of Billy Collier*". We noted too that following Mr Berriman's release from prison, the programme's presenter had stated: "*Berriman may well have been free, but free from Conroy he was not, in fact, the worst was yet to come*" and, immediately following this, Mr Berriman described how he was attacked by three men who beat him over a period of two hours.

We had regard to the fact that in relation to the claim made about Mr Berriman, the programme did not explicitly state that Mr Conroy had set Mr Berriman up to be tortured. However, we considered that the sustained attack and severe injuries Mr Berriman allegedly incurred as a result would have

been likely to have been reasonably understood by viewers to amount to an act of torture. We therefore considered whether or not the broadcaster had taken reasonable care to satisfy itself that material facts had not been presented, disregarded or omitted in a way which was unfair to Mr Conroy.

We recognised that Mr Conroy disputed in his complaint the veracity of the claims made about him in the programme. With regards to the comments made in connection with Mr Conroy's arrest and conviction for the kidnap and torture of Mr Collier, we noted that although Mr Conroy denied his involvement in this matter, he was convicted for this offence and his attempts to have this overturned had been unsuccessful. We also noted that the information regarding this matter had been in the public domain for a number of years. In this respect, therefore, we considered that the broadcaster had not presented, disregarded or omitted material in a way which was unfair to Mr Conroy.

In relation to whether or not Mr Conroy had arranged for Mr Berriman to be tortured, we noted that the broadcaster did not specifically address this matter. Nevertheless, and as noted above, we considered that Mr Berriman was providing his first-hand testimony of the events which he said had taken place and viewers would have understood that in doing so, he was providing his recollection of his experience of Mr Conroy and the subsequent events which he said had taken place. In this context, we considered that Mr Berriman was entitled to express his views of his experience, which included his claim that he had been attacked following his release from prison, and for the broadcaster to include them in the programme. Further, we considered that given Mr Conroy had been convicted for kidnap and torture in relation to another incident, it was unlikely that the inclusion of the claim that Mr Conroy had allegedly set Mr Berriman up to be tortured would have materially or adversely affected viewers' opinions of Mr Conroy. Therefore, we considered that the broadcaster took reasonable care to satisfy itself that the programme did not present, disregard or omit material facts in a way that resulted in unfairness to Mr Conroy.

Therefore, Ofcom considered that there was no unfairness to Mr Conroy in this respect.

- b) Ofcom next considered Mr Conroy's complaint that it was inaccurate for Mr Berriman to state that he (Mr Berriman) was found not guilty of involvement in the drug smuggling activities because he had successfully pursued a defence of duress.

In considering this part of the complaint, we also had regard to Practice 7.9 of the Code (as set out in head a) above).

Again, we viewed the programme and noted that the programme's presenter said that Mr Berriman pursued a defence of duress at trial. Mr Berriman then stated that he *"went on with a full duress defence and proved it in court and we lost all the boats because the other two guys pleaded guilty but I was still free"*. We considered that the inclusion of this comment directly connected Mr Conroy to drug smuggling and confirmed that the court agreed that Mr Berriman had been threatened by him. We therefore considered whether or not the broadcaster had taken reasonable care to satisfy itself that this had not been presented, disregarded or omitted in a way which was unfair to Mr Conroy.

We recognised that Mr Conroy disputed in his complaint and representations on Ofcom's Preliminary View the veracity of Mr Berriman's claim that he successfully pursued the defence of duress at his trial. However, we noted the material provided by the broadcaster which corroborated Mr Berriman's claim: namely, a letter from the Home Office which stated that Mr Berriman's case had been based on duress and he had been acquitted; a letter from Mr Berriman's solicitors to the Prosecutions Office of HM Customs and Excise (now HM Revenue & Customs) which also included information about Mr Berriman's defence of duress; The Observer newspaper article (provided by the broadcaster and Mr Conroy) which also included information about Mr Berriman's defence of duress; an article in The Chronicle which confirmed that a jury had ruled that Mr Berriman had acted under duress; an online article on The Chronicle website which stated that Mr Berriman had "proved he made the voyage under duress"; and, Mr O'Mahoney's published book which made reference to Mr Berriman's duress defence. Further, we noted that information regarding this matter had been in the public domain for a number of years. Again, we also took into account that Mr Berriman was providing his first-hand testimony of the events which had taken place and viewers would have understood that he was providing his own recollection based on his experiences. In this context, we also considered that Mr Berriman was entitled to express his views of his experience, which included his claim that he had successfully pursued a defence of duress at trial, and for the broadcaster to have included them in the programme. In this respect, therefore, we considered that the broadcaster had not presented, disregarded or omitted material in a way which was unfair to Mr Conroy.

Therefore, Ofcom considered that there was no unfairness to Mr Conroy in this respect.

- c) Mr Conroy was not given an appropriate and timely opportunity to respond to the allegations as set out at head a) and b) above.

In assessing this head of complaint Ofcom took into account 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.

Again, Ofcom noted the comments made by Mr Berriman as set out in the "Introduction and programme summary" section above, and we considered if they could reasonably be regarded as significant allegations that would require the broadcaster to provide Mr Conroy with an appropriate and timely opportunity to respond.

In our view, the comments made by Mr Berriman were expressions of his own recollection of his involvement with Mr Conroy and while his comments about Mr Conroy may be regarded as amounting to significant allegations of wrongdoing, we concluded at heads a) and b) of the "Preliminary View" section above that the inclusion of Mr Berriman's contribution to the programme did not result in any unfairness to Mr Conroy. We also noted the nature of Mr Conroy's previous convictions for serious criminal offences, as well as his criminal past being widely documented in the public domain and we did not consider that there was the likelihood for additional adverse damage to his reputation in relation to his past criminality, nor that the provision of an opportunity to respond was necessary to prevent unfairness to him. Given these factors, and in the circumstances of this particular case, we considered that it was not incumbent upon the broadcaster to

have offered Mr Conroy with an appropriate and timely opportunity to respond to Mr Berriman's comments in order to avoid unfairness to Mr Conroy.

Therefore, we considered that there was no unfairness to Mr Conroy in this respect.

**Ofcom has not upheld Mr Conroy's complaint of unfair and unjust treatment in the programme as broadcast.**

## Complaints assessed, not investigated

Here are alphabetical lists of complaints that, after careful assessment, Ofcom has decided not to pursue between 14 and 27 November 2015 because they did not raise issues warranting investigation.

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

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Come Dine With Me	4Seven	16/11/2015	Generally accepted standards	1
Ganga	&TV	n/a	Advertising scheduling	1
BBC News	BBC 1	11/11/2015	Scheduling	1
Breakfast	BBC 1	16/11/2015	Generally accepted standards	1
Class of 92: Out of Their League	BBC 1	29/10/2015	Offensive language	1
Crimewatch	BBC 1	16/11/2015	Generally accepted standards	1
Cuffs	BBC 1	28/10/2015	Scheduling	1
Cuffs	BBC 1	11/11/2015	Scheduling	2
Cuffs	BBC 1	18/11/2015	Scheduling	1
Doctor Who	BBC 1	31/10/2015	Generally accepted standards	1
Doctor Who	BBC 1	07/11/2015	Generally accepted standards	1
EastEnders	BBC 1	16/11/2015	Generally accepted standards	8
EastEnders	BBC 1	19/11/2015	Generally accepted standards	3
EastEnders	BBC 1	20/11/2015	Scheduling	1
Fake Britain	BBC 1	16/11/2015	Materially misleading	1
Football Focus	BBC 1	07/11/2015	Scheduling	1
Have I Got a Bit More News for You	BBC 1	02/11/2015	Generally accepted standards	1
Have I Got a Bit More News for You	BBC 1	02/11/2015	Race discrimination/offence	1
Have I Got a Bit More News for You	BBC 1	23/11/2015	Generally accepted standards	1
Have I Got News for You	BBC 1	30/10/2015	Generally accepted standards	1
Have I Got News for You	BBC 1	20/11/2015	Generally accepted standards	3
Holby City	BBC 1	17/11/2015	Generally accepted standards	1
MasterChef	BBC 1	20/03/2015	Race discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Question Time	BBC 1	19/11/2015	Religious/Beliefs discrimination/offence	1
The Coroner	BBC 1	16/11/2015	Scheduling	1
The Coroner	BBC 1	18/11/2015	Scheduling	3
The Coroner	BBC 1	23/11/2015	Offensive language	1
The Mission	BBC 1	10/11/2015	Under 18s in programmes	1
This Week	BBC 1	19/11/2015	Generally accepted standards	1
News	BBC 1 / ITV / Channel 4	17/11/2015	Outside of remit / other	1
Children in Need: Best Bits	BBC 2	14/11/2015	Scheduling	1
Gymnastics	BBC 2	28/10/2015	Race discrimination/offence	1
Live at the Apollo	BBC 2	16/11/2015	Generally accepted standards	1
London Spy	BBC 2	09/11/2015	Generally accepted standards	1
London Spy	BBC 2	23/11/2015	Generally accepted standards	7
MasterChef: The Professionals	BBC 2	25/11/2015	Generally accepted standards	1
Victoria Derbyshire	BBC 2	19/11/2015	Generally accepted standards	1
Britain's Biggest Sexists	BBC 3	03/11/2015	Generally accepted standards	1
Family Guy	BBC 3	16/11/2015	Generally accepted standards	1
Footballers, Sex, Money: What's Gone Wrong?	BBC 3	17/11/2015	Gender discrimination/offence	1
TV Licensing Item	BBC channels	n/a	Materially misleading	1
BBC News	BBC News Channel	13/11/2015	Generally accepted standards	3
Newsbeat	BBC Radio 1	13/11/2015	Generally accepted standards	1
BBC News	BBC Radio 2	12/11/2015	Scheduling	1
Jeremy Vine	BBC Radio 2	18/11/2015	Generally accepted standards	1
Weekend Wogan	BBC Radio 2	08/11/2015	Generally accepted standards	1
New Writing in the Arab World: Playing with Bombs	BBC Radio 4	13/11/2015	Generally accepted standards	1
Today Programme	BBC Radio 4	16/11/2015	Generally accepted standards	1
Iain Lee	BBC Three Counties Radio	03/11/2015	Generally accepted standards	6
Gigglebiz	CBeebies	17/11/2015	Generally accepted standards	1
In the Night Garden	CBeebies	25/11/2015	Outside of remit / other	1
Swashbuckle	CBeebies	21/11/2015	Religious/Beliefs discrimination/offence	1
Alan Carr: Chatty Man	Channel 4	20/11/2015	Offensive language	7

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Bernard Matthews' sponsorship of The Simpsons	Channel 4	13/11/2015	Sponsorship credits	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	24/11/2015	Sponsorship credits	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	25/11/2015	Sponsorship credits	1
Bernard Matthews' sponsorship of The Simpsons	Channel 4	n/a	Sponsorship credits	2
Building Hitler's Supergun: The Plot to Destroy London	Channel 4	22/11/2015	Outside of remit / other	1
Channel 4 News	Channel 4	13/10/2015	Due impartiality/bias	1
Doctor in Your House	Channel 4	17/11/2015	Generally accepted standards	1
Fargo	Channel 4	15/11/2015	Generally accepted standards	1
Fosters' sponsorship of Original Comedy on 4	Channel 4	11/11/2015	Sponsorship credits	1
Fosters' sponsorship of Original Comedy on 4	Channel 4	18/11/2015	Sponsorship credits	2
Fosters' sponsorship of Original Comedy on 4	Channel 4	25/11/2015	Sponsorship credits	1
Fosters' sponsorship of Original Comedy on 4	Channel 4	26/11/2015	Sponsorship credits	1
Gogglebox	Channel 4	13/11/2015	Animal welfare	3
Gogglebox	Channel 4	20/11/2015	Generally accepted standards	4
Gogglebox	Channel 4	22/11/2015	Generally accepted standards	1
Hollyoaks	Channel 4	13/11/2015	Generally accepted standards	1
Homeland	Channel 4	15/11/2015	Generally accepted standards	1
Isis: The British Women Supporters Unveiled (trailer)	Channel 4	20/11/2015	Religious/Beliefs discrimination/offence	2
My Psychic Life	Channel 4	04/11/2015	Materially misleading	1
Peep Show	Channel 4	18/11/2015	Generally accepted standards	1
Restoring Britain's Landmarks	Channel 4	11/11/2015	Religious/Beliefs discrimination/offence	1
TFI Friday	Channel 4	20/11/2015	Scheduling	4
The House of Hypochondriacs	Channel 4	24/11/2015	Outside of remit / other	1
The House of Hypochondriacs (trailer)	Channel 4	20/11/2015	Disability discrimination/offence	1
The Open at Cheltenham with AP McCoy (trailer)	Channel 4	09/11/2015	Generally accepted standards	1
Toast of London (trailer)	Channel 4	22/11/2015	Scheduling	1
5 News at 5	Channel 5	19/11/2015	Outside of remit / other	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
5 News Tonight	Channel 5	11/11/2015	Scheduling	1
Can't Pay? We'll Take it Away!	Channel 5	25/11/2015	Generally accepted standards	1
Home and Away	Channel 5	13/11/2015	Scheduling	1
Loch Lomond: A Year in the Wild	Channel 5	17/11/2015	Materially misleading	1
NCIS: Los Angeles (trailer)	Channel 5	06/11/2015	Violence and dangerous behaviour	1
On Benefits: Got Talent?	Channel 5	19/11/2015	Disability discrimination/offence	1
On Benefits: Got Talent?	Channel 5	19/11/2015	Generally accepted standards	1
On Benefits: Got Talent?	Channel 5	19/11/2015	Materially misleading	1
Robin Hood: Prince of Thieves	Channel 5	08/11/2015	Scheduling	1
Secrets of St Paul's Cathedral	Channel 5	13/11/2015	Outside of remit / other	1
The Gadget Show	Channel 5	23/11/2015	Harm	1
The Wright Stuff	Channel 5	09/11/2015	Drugs, smoking, solvents or alcohol	1
Ultimate Police Interceptors	Channel 5	24/11/2015	Offensive language	1
Pinjira	Channel S	04/11/2015	Drugs, smoking, solvents or alcohol	1
Telefilm Pinjira	CHSTV	04/11/2015	Drugs, smoking, solvents or alcohol	1
DJ Hicks	Cool FM	21/10/2015	Generally accepted standards	1
Halfords' sponsorship of Motoring on Dave	Dave	23/11/2015	Sponsorship credits	1
Storage Hunters UK	Dave	21/11/2015	Generally accepted standards	1
Citroen Van's sponsorship of documentaries on Discovery	Discovery	25/10/2015	Sponsorship credits	1
Fosters' sponsorship of Original Comedy on 4	E4	n/a	Sponsorship credits	1
Hollyoaks	E4	13/11/2015	Race discrimination/offence	2
Paralympics (trailer)	E4	17/11/2015	Disability discrimination/offence	1
Rude Tube	E4	26/11/2015	Generally accepted standards	1
The O'Reilly Factor	Fox News	04/11/2015	Religious/Beliefs discrimination/offence	1
Heart Breakfast with Joel & Lorna	Heart North West	16/11/2015	Sexual orientation discrimination/offence	1
Kids Round - LIVE!	Inspire FM 105.1FM	28/10/2015	Religious programmes	1
Adventure Time	ITV	14/11/2015	Sexual material	1
Anadin's sponsorship of The Chase	ITV	13/11/2015	Sponsorship credits	1
Anadin's sponsorship of The Chase	ITV	19/11/2015	Offensive language	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Aunt Bessie's sponsorship of I'm A Celebrity Get Me Out of Here!	ITV	15/11/2015	Sponsorship credits	1
Britain's Got Talent (trailer)	ITV	14/11/2015	Animal welfare	1
Celebrity Juice (trailer)	ITV	07/11/2015	Transgender discrimination/offence	1
Comparethemarket.com's sponsorship of Coronation Street	ITV	20/11/2015	Sponsorship credits	1
Coronation Street	ITV	16/11/2015	Generally accepted standards	3
Coronation Street	ITV	16/11/2015	Race discrimination/offence	2
Coronation Street	ITV	18/11/2015	Outside of remit / other	2
Coronation Street	ITV	23/11/2015	Offensive language	1
Coronation Street	ITV	23/11/2015	Scheduling	1
Coronation Street	ITV	26/11/2015	Generally accepted standards	1
Coronation Street	ITV	n/a	Outside of remit / other	1
Deals, Wheels and Steals	ITV	03/11/2015	Materially misleading	1
Emmerdale	ITV	12/11/2015	Generally accepted standards	2
Emmerdale	ITV	18/11/2015	Disability discrimination/offence	1
Emmerdale	ITV	19/11/2015	Disability discrimination/offence	1
Emmerdale	ITV	19/11/2015	Materially misleading	1
Emmerdale	ITV	20/11/2015	Disability discrimination/offence	1
Emmerdale	ITV	25/11/2015	Violence and dangerous behaviour	56
Gino's Italian Escape	ITV	06/11/2015	Animal welfare	1
Good Morning Britain	ITV	17/11/2015	Generally accepted standards	1
Green Flag's sponsorship of ITV Weather	ITV	23/11/2015	Sponsorship credits	1
I'm a Celebrity, Get Me Out of Here!	ITV	15/11/2015	Animal welfare	1
I'm a Celebrity, Get Me Out of Here!	ITV	15/11/2015	Flashing images/risk to viewers who have PSE	1
I'm a Celebrity, Get Me Out of Here!	ITV	15/11/2015	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here!	ITV	15/11/2015	Sexual orientation discrimination/offence	1
I'm a Celebrity, Get Me Out of Here!	ITV	15/11/2015	Voting	1
I'm a Celebrity, Get Me Out of Here!	ITV	16/11/2015	Generally accepted standards	3
I'm a Celebrity, Get Me Out of Here!	ITV	23/11/2015	Religious/Beliefs discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
I'm a Celebrity, Get Me Out of Here!	ITV	24/11/2015	Outside of remit / other	1
I'm a Celebrity, Get Me Out of Here!	ITV	24/11/2015	Violence and dangerous behaviour	18
I'm a Celebrity, Get Me Out of Here!	ITV	25/11/2015	Generally accepted standards	23
I'm a Celebrity, Get Me Out of Here!	ITV	25/11/2015	Religious/Beliefs discrimination/offence	1
I'm a Celebrity, Get Me Out of Here!	ITV	26/11/2015	Generally accepted standards	2
I'm a Celebrity, Get Me Out of Here!	ITV	26/11/2015	Generally accepted standards	9
International Football	ITV	17/11/2015	Flashing images/risk to viewers who have PSE	1
International Football	ITV	17/11/2015	Generally accepted standards	1
ITV Evening News	ITV	18/11/2015	Under 18s in programmes	8
ITV Evening News	ITV	25/11/2015	Generally accepted standards	1
ITV News	ITV	17/11/2015	Due impartiality/bias	1
ITV News and Weather	ITV	22/11/2015	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	10/11/2015	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	11/11/2015	Due impartiality/bias	1
ITV News at Ten and Weather	ITV	13/11/2015	Due accuracy	1
ITV News at Ten and Weather	ITV	19/11/2015	Generally accepted standards	1
ITV News at Ten and Weather	ITV	24/11/2015	Due accuracy	1
ITV News Special	ITV	14/11/2015	Violence and dangerous behaviour	1
Jekyll and Hyde (trailer)	ITV	24/10/2015	Scheduling	2
Loose Women	ITV	18/11/2015	Generally accepted standards	2
Loose Women	ITV	18/11/2015	Religious/Beliefs discrimination/offence	2
Loose Women	ITV	19/11/2015	Generally accepted standards	1
Loose Women	ITV	19/11/2015	Scheduling	1
Text Santa (trailer)	ITV	18/11/2015	Nudity	1
Text Santa (trailer)	ITV	26/11/2015	Nudity	1
The Chase	ITV	26/11/2015	Disability discrimination/offence	1
The Jeremy Kyle Show	ITV	12/11/2015	Generally accepted standards	88
The Jeremy Kyle Show	ITV	17/11/2015	Scheduling	1
The Jeremy Kyle Show	ITV	18/11/2015	Generally accepted standards	1
The Jeremy Kyle Show	ITV	23/11/2015	Age discrimination/offence	1

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
The Jeremy Kyle Show	ITV	26/11/2015	Generally accepted standards	1
The Jonathan Ross Show	ITV	14/11/2015	Generally accepted standards	1
The X Factor	ITV	07/11/2015	Scheduling	1
The X Factor	ITV	14/11/2015	Generally accepted standards	2
The X Factor	ITV	14/11/2015	Outside of remit / other	1
The X Factor	ITV	21/11/2015	Generally accepted standards	1
The X Factor	ITV	21/11/2015	Generally accepted standards	1
The X Factor	ITV	21/11/2015	Outside of remit / other	2
The X Factor	ITV	21/11/2015	Race discrimination/offence	1
The X Factor	ITV	21/11/2015	Scheduling	30
The X Factor Results Show	ITV	15/11/2015	Generally accepted standards	6
The X Factor Results Show	ITV	15/11/2015	Harm	1
The X Factor Results Show	ITV	15/11/2015	Voting	1
The X Factor Results Show	ITV	22/11/2015	Generally accepted standards	1
The X Factor Results Show	ITV	22/11/2015	Scheduling	26
The X Factor Results Show	ITV	22/11/2015	Voting	2
This Morning	ITV	10/11/2015	Materially misleading	1
This Morning	ITV	18/11/2015	Drugs, smoking, solvents or alcohol	1
This Morning	ITV	19/11/2015	Scheduling	1
This Morning	ITV	n/a	Generally accepted standards	1
ITV News Granada Reports	ITV Granada	06/11/2015	Due impartiality/bias	1
ITV News Granada Reports	ITV Granada	18/11/2015	Generally accepted standards	3
ITV News London	ITV London	25/11/2015	Due impartiality/bias	1
Celebrity Juice	ITV2	29/10/2015	Generally accepted standards	1
Celebrity Juice	ITV2	31/10/2015	Generally accepted standards	1
I'm a Celebrity, Get Me Out of Here Now!	ITV2	23/11/2015	Violence and dangerous behaviour	1
Release the Hounds	ITV2	11/11/2015	Generally accepted standards	1
Safeword	ITV2	17/11/2015	Disability discrimination/offence	1
The Keith Lemon Sketch Show	ITV2	21/11/2015	Generally accepted standards	1
The Xtra Factor	ITV2	22/11/2015	Outside of remit / other	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
On the Buses	ITV3	11/11/2015	Race discrimination/offence	1
Warner Leisure Hotels' sponsorship	ITV3	n/a	Sponsorship credits	1
The Only Way is Essex	ITVBe	08/11/2015	Gender discrimination/offence	2
Halloween Lock Up competition	Key 103	19/10/2015	Competitions	1
Mike & Chelsea Breakfast Show	Key 103	26/10/2015	Generally accepted standards	2
Mike & Chelsea Breakfast Show	Key 103	17/11/2015	Generally accepted standards	1
Kiss Breakfast	Kiss FM	11/11/2015	Generally accepted standards	1
Jackie Burton	Legacy 90.1 FM	02/11/2015	Race discrimination/offence	1
Self-promotional material	MTV	04/11/2015	Flashing images/risk to viewers who have PSE	1
Subtitling	n/a	n/a	Television Access Services	1
Monsters Vs Aliens	Nick Toons	19/11/2015	Offensive language	1
Danone's sponsorship	Pick TV	n/a	Sponsorship credits	2
Q Radio Breakfast Show	Q Radio	04/11/2015	Scheduling	1
The Crealy Jukebox	Radio Exe	15/11/2015	Generally accepted standards	1
Johnny Vaughan	Radio X	29/10/2015	Competitions	1
Sexcetera	Real Lives	04/11/2015	Sexual material	1
Sangat TV	Sangat TV	17/10/2015	Religious/Beliefs discrimination/offence	1
Calvin Klein Eternity's sponsorship US Drama	Sky Living	28/10/2015	Sponsorship credits	1
Hard (trailer)	Sky Living	12/11/2015	Scheduling	1
The Top 10 Show	Sky Living	17/11/2015	Offensive language	1
Murnaghan	Sky News	15/11/2015	Generally accepted standards	2
News on the Hour	Sky News	20/11/2015	Due accuracy	1
Sky Midnight News	Sky News	22/11/2015	Outside of remit / other	1
Sky News Tonight with Adam Boulton	Sky News	24/11/2015	Due impartiality/bias	1
Sky World News	Sky News	16/11/2015	Violence and dangerous behaviour	1
Sunrise	Sky News	06/11/2015	Generally accepted standards	1
Week in Review	Sky News	13/11/2015	Generally accepted standards	1
Futurama	Sky1	05/11/2015	Advertising minutage	1
Futurama	Sky1	14/11/2015	Scheduling	1
The Top 10 Show	Sky1	21/11/2015	Offensive language	1
A League of Their Own	Sky2	12/11/2015	Disability discrimination/offence	1

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Studio 66 TV	Studio 66 TV	06/11/2015	Participation TV - Protection of under 18s	1
Drivetime	Talksport	23/11/2015	Race discrimination/offence	1

## Complaints outside of remit

Here are alphabetical lists of complaints received by Ofcom that fell outside of our remit. This is because Ofcom is not responsible for regulating the issue complained about. For example, the complaints were about the content of television and radio adverts, or accuracy in BBC programmes.

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

<http://consumers.ofcom.org.uk/complain/tv-and-radio-complaints/what-does-ofcom-cover/>

## Complaints about television or radio programmes

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

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

Programme	Broadcaster	Transmission Date	Categories	Number of complaints
Fosters' sponsorship of Original Comedy on 4	All4	n/a	Generally accepted standards	1
Fake Britain	BBC 1	23/11/2015	Due impartiality/bias	1
Regional News and Weather	BBC 1	16/11/2015	Due impartiality/bias	1
South Today	BBC 1 (South)	02/11/2015	Due accuracy	1
Newsnight	BBC 2	19/11/2015	Due impartiality/bias	7
Iain Lee	BBC Three Counties Radio	03/11/2015	Outside of remit / other	1
Advertisement	Channel 5	14/11/2015	Advertising content	1
Advertisement	Channel 5	18/11/2015	Advertising content	1
Stitch with Janet Claire	Create and Craft	15/11/2015	Advertising content	1
Advertisement	Dave	14/11/2015	Advertising content	1
Advertisement	DM News Plus	10/11/2015	Advertising content	1
Advertisement	DM News Plus	n/a	Advertising content	1
Advertisement	E4	22/11/2015	Advertising content	1
Advertisement	ITV	08/11/2015	Advertising content	1
Advertisement	ITV	13/11/2015	Advertising content	2
Advertisement	ITV	17/11/2015	Advertising content	1
Advertisement	ITV	19/11/2015	Advertising content	1
Advertisement	ITV	21/11/2015	Advertising content	1
Advertisement	ITV	22/11/2015	Advertising content	1
Advertisement	ITV	26/11/2015	Advertising content	1
Advertisement	QVC	30/06/2015	Advertising content	1
Advertisement	Radio X	23/11/2015	Advertising content	1
Advertisement	Sky Arts	22/11/2015	Advertising content	1
'Jihadi Jez' Under Fire From His Own Side	Sky News website	13/11/2015	Outside of remit / other	45

<b>Programme</b>	<b>Broadcaster</b>	<b>Transmission Date</b>	<b>Categories</b>	<b>Number of complaints</b>
Advertisement	Talksport	20/11/2015	Advertising content	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 14 and 27 November 2015.

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

Programme	Broadcaster	Transmission date
News	Al Jazeera Eng	17 October 2015
News	Bay FM	13 October 2015
Noreen Khan	BBC Asian Network	12 November 2015
Jessie	Disney Channel	Various
Geo News	Geo News	28 October 2015
Nick Ferrari	LBC 97.3 FM	16 November 2015
Programming	Now Music	Various
Advertising minutage	Sikh Channel	13 October 2015
Love / Hate (trailer)	Spike	15 November 2015
Big Church Day Out	TBN UK	Various

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

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

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

Licensee	Licensed Service
Celador Radio Limited	Fire Radio
That's Oxford Limited	That's Oxford TV
That's Solent Limited	That's Solent
YourTV Manchester	That's Manchester

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/>.

### Discontinued Investigation

In issue 290 of the Broadcast Bulletin<sup>1</sup>, Ofcom announced it would be launching an investigation under the Procedures for the consideration and adjudication of Fairness and Privacy complaints into two editions of *Channel 4 News* broadcast on 2 and 3 March 2015.

This investigation has been discontinued because the complainant withdrew their complaint.

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb290/Issue\\_290.pdf](http://stakeholders.ofcom.org.uk/binaries/enforcement/broadcast-bulletins/obb290/Issue_290.pdf)